



## **PROCEDURAL ORDER NO. 2**

Please find below the responses to the clarification questions. We have chosen not to answer certain questions which are to be left to teams to work out from the ‘bundle’.

1. Did Energy Pro obtain written approval from Future Energy that the shipped gearboxes were in conformity with the standards required under Clause (A) of the Purchase Contract?

**No written approval is required under the purchase contract. Energy Pro is required to obtain certified approval in the form of a ‘fit certificate’ signed by the on-duty in charge engineer of Future Energy, who issues the certificate based on the requirements of Clause (A). Such certificate is then forwarded to CFX Ltd as proof of conformity of wind turbines to Clause (A).**

2. Does question c. refer to the material breach of the Purchase Contract and question d. to the fulfilment of the procedural requirements defined in Art. 15.1?

**No comments as you need to work this out yourself.**

3. Was Future Energy forced to join the arbitration?

**No comments as you need to work this out yourself.**

4. What is Future Energy’s reason for joining the arbitration?

**Energy Pro made it clear to Future Energy that if the latter did not join the arbitration any damages Energy Pro would have to pay would be recovered from Future Energy through litigation in Andelstein (Claimant’s Exhibit No. 9).**

5. Does the resignation of Ms. Arbitrator 1 refer to the remaining 3 days that were additionally allocated for the issue of quantum?

**That is correct. Her arbitration fees had been agreed taking into account that there would be only 2 days of arguments on quantum. For a further three days, unless she is paid, she will resign immediately after the second day hearing on quantum.**

6. Is Ms. Arbitrator 1 resigning before deciding on the merits of the dispute or after?

**Arguments on quantum will only take place after the completion of all the arbitration hearings on issues of merit and procedure (Procedural Order 1).**



7. Did Future Energy issue the certified approval of the gearboxes?

**Refer to the answer of Question 1.**

8. Were the gearboxes sent by Energy Pro only mixed-up or were they defectively produced?

**The gearboxes produced by the JV were in conformity with Clause (A). However, the in-charge engineer of Future Energy negligently certified and approved wind turbines of model GH 2635 as the model sent by Energy Pro instead of GJ 2635. As a result, Energy Pro sent wind turbines of model GH 2635 to CFX Ltd with the certificate of approval mentioning Model GJ 2635.**

9. Do the gearboxes produced by Energy Pro work for CFX's wind turbines independently of the wrong certification?

**The requirements for GH 2635 wind turbines are radically different from the GJ 2635 model. Hence, the GH 2635 wind turbines are useless to CFX Ltd.**

10. Why does Energy Pro refuse to deposit the additional fees required into the bank account of Ms. Arbitrator 1, as she requested?

**Energy Pro feels they are being economically exploited by Ms. Arbitrator 1. She had agreed to the fees and although subsequent discussions reveal that the issue of quantum would take longer, Energy Pro believes that this is no justification to pay her more once an agreement has been reached.**

11. Is it possible to make the wrongly certified gearboxes compatible with the 1.5 MW wind turbines by doing a minor modification?

**It is not possible as it involves major modifications which CFX Ltd neither has time nor is it economical as the cost of repair exceeds the purchase price. Moreover, CFX Ltd has no experienced personnel to perform such modifications.**

12. Are CFX Ltds payments made per delivery or are the payments made for the whole year as an instalment?

**Three Part payments are made per delivery in the first year and for the remaining four years to be made in one yearly payment.**



13. Has an agreement for certification services been concluded between Energy Pro, Inc. and Future Energy, Inc.?

**An agreement has been reached between CFX Ltd, Energy Pro and Future Energy that Future Energy would be the independent certification company for the wind turbines of Model GJ 2635.**

14. Does this Agreement mention in any sense the Purchase Contract between Energy Pro, Inc. and CFX, Ltd.?

**It does not explicitly mention the Purchase Contract itself, but the required specifications for the wind turbines under Clause (A) of the Purchase Contract is explicitly mentioned.**

15. Should the submissions of the parties (Application for Arbitration/Statement of defence) be viewed as binding facts?

**They should be treated as accepted facts unless denied/contested by any of the parties in the bundle.**

16. When exactly were the gearboxes delivered to CFX, Ltd.?

**Sometime between 11 February 2012 – 13 March 2012.**

17. Are the dates in the Procedural Order No. 1 correct (25 February 2013 and consequently 20 February 2013)?

**The correct date of Procedural Order No .1 is 25 February 2013.**

18. Had there been any communication from Future Energy, Inc. in regard to arbitration after Energy Pro's letter dated 1 January 2013?

**None.**

19. Is the joinder of Future Energy, Inc. viewed as an independent one or on the Claimant's side?

**No comments as you need to work this out yourself.**

20. Are there other reasons for Ms. Arbitrator's resignation apart from the ones mentioned in the Statement of Defence? If the answer to the aforesaid is the affirmative, what are they?

**Refer to the answer of Question 10.**



21. When exactly was Future Energy's letter about wrong certification delivered to Energy Pro, Inc. and CFX, Ltd.?

**20 April 2012.**

22. Whether there is any undisclosed fact regarding the 1st issue?

**All the facts are in the bundle.**

23. Whether there is an existence of contract/agreement between Energy Pro/CFX Ltd and Future Energy?

**Refer to the answer of Question 13.**

24. The relief requested as 'Termination penalty' as per page no. 7 of the Moot Problem is USD 8,000,000, but in the 'Application for Arbitration' (page 2, Moot Problem) the relief claimed is USD 10,000,000. Since Energy Pro has already received the 2 million shouldn't the claim be for an amount of USD 8,000,000 alone?

**Energy Pro is claiming USD 8 million in damages. In the alternative, it is claiming USD 10 million should the tribunal agree with CFX Ltd that the first part payment should be returned to CFX Ltd (Relief Requested, Statement of Defense).**

25. Who appointed 'Future Energy INC.' as the certifying company?

**Refer to the answer of Question 13.**

26. Can we assume that CFX Ltd. received the first set of gear boxes on 13<sup>th</sup> march 2012 or was it sometime before that?

**Refer to the answer of Question 16.**

27. Did 'Future Energy' receive goods, for certification, as ones not in conformity with the specified standards (supply of wrong goods to the certifier himself)? Did the seller at the first instance erroneously supply the wrong goods to the certifying company?

**Refer to the answer of Question 8.**

28. Was Future Energy's improper certification due to the wrong goods received by it?

**Refer to the answer of Question 8.**



29. Is CFX Ltd. impliedly terminating the contract?

**No comments as you need to work this out yourself.**

30. Is CFX Ltd. impliedly claiming damages from Energy Pro?

**No comments as you need to work this out yourself.**

31. Did Energy Pro admit that they have manufactured the wrong gearbox or they have just no idea that they have manufactured the wrong gearbox and think it's Future's fault to certify?

**Refer to the answer of Question 8.**

32. Was the third party which is Future energy provided the Model which is signed in the purchase contract?

**Yes, in the agreement signed between Energy Pro, CFX Ltd and Future Energy, Future Energy was contracted to certify the wind turbines of Model GJ 2635.**

33. Did the Energy Pro or CFX knew the specification of the gearbox or just responsible for manufacturing the gearbox according to the Model provided by the Future?

**The JV which is owned by both Energy Pro and CFX Ltd manufactured gearboxes. But both CFX Ltd and Energy Pro had negotiated and agreed to the Clause (A) specifications which was required in all GJ 2635 wind turbines.**

34. Why did the CFX still issue the order when they had knew that the gearbox has problems?

**CFX Ltd is required under the Purchase Contract to first issue purchase orders before gearboxes are delivered, failure to issue a purchase order is a breach under the Purchase Contract.**

35. What's the relationship between the CFX and Future energy?

**There is no relationship. Since both CFX Ltd and Energy Pro knew that Future Energy had developed the 1.5 MW wind turbine, they agreed that Future Energy would be most suitable as an independent certification company.**



36. Whether there existed an agreement between Energy Pro and Future Energy?

**Refer to the answer of Question 13.**

37. Please define the meaning of "third party" in P26 Issue1?

**A party who is not signatory to the arbitration clause.**

38. Is “certified approval” in Claimant’s Ex.2 clause 10.2 a written document? If so, is it containing that “gearboxes in conformity with the standards of Model No.GH2635” or that “gearboxes in conformity with the standards of Model No.GJ2635” but, which actually approved based on the requirements for the Model No.GH2635?

**Certified approval is given through a ‘fit certificate’ by the on-duty in charge engineer of Future Energy. The certificate mentioned that wind turbines of Model GJ 2635 have been certified but the approval was based on the requirements of Model GH 2635.**

39. What kind of mistake leads to the manufacturing flaws. Is the design showed on the contract wrong or it's just a mistake made by that engineer?

**Refer to the answer of Question 8 and 39.**

40. Are the manufacturing flaws in Respondent's second Manufacturing Review same to the differences between GJ 2635 gearbox and GH 2635 gearbox?

**The manufacturing flaws in the 1<sup>st</sup> and 2<sup>nd</sup> design review are issues in the manufacturing of the gearboxes by the JV and primarily related to wrong methods of production being employed in producing the gearboxes.**

41. Who gave JV the model number or was it a number or a model?

**The Model number was given by Future Energy which remained unchanged when TurboFast and CFX Ltd obtained rights to manufacture the gearboxes.**