

## **Representation Plan on behalf of Energy Pro Inc.**

### **Facts and Nature of the Dispute**

In mid-2010, Energy Pro Inc. (hereinafter 'Energy Pro'), approached CFX Ltd (hereinafter 'CFX') in order to discuss a possible cooperation in manufacturing the 1.5 MW wind turbine gearboxes for the Catalan market. In December 2010, Energy Pro and CFX (hereinafter 'the Parties') entered into a joint venture agreement to establish a "Syrus-Catalan Wind Turbine Gearbox Joint Venture Company" which would be based in Catalan and would operate there. The Joint Venture's main business included the manufacture and assembly of the 1.5 MW wind turbine gearboxes for the Catalan market. Subsequently, the Parties also entered into an exclusive Purchase Contract. Therein, CFX committed to purchase from Energy Pro minimum quantities of 1.5 MW wind turbine gearboxes at fixed prices over a five year period. In February 2012, in accordance with the Purchase Contract, CFX issued a purchase order for 100 gearboxes. In March 2012, after having received the gearboxes, CFX transferred the first part payment of USD 2 million to Energy Pro. Approximately one month later, Future Energy informed the Parties that one of its engineers had wrongly certified the gearboxes and that they were of the wrong model. In May 2012, CFX invalidly declared the suspension of the Purchase Contract. Seven month later, as CFX defaulted on the second and third part payments, Energy Pro sent the notice of termination of the Purchase Contract.

The nature of the dispute is both legal and commercial. The Parties seem to differ on the question of who is responsible for the delivery of the wrong gearboxes. The legal consequences of the faulty delivery have brought the Parties significantly apart and the accruing financial losses resulting from the suspension of the performance under the Purchase Contract further widened the gap between them.

### **Interest of the Parties**

#### **Energy Pro**

1. Energy Pro wishes to reduce the financial losses resulting from the termination of the Purchase Contract.
2. Energy Pro is committed to repair its tattered image and rebuild the trust between the Parties.
3. Energy Pro is interested in learning lessons from the past failures for the sake of improving the cooperation between the Parties under the Purchase Contract and the Joint Venture Agreement.

## **CFX**

1. CFX wants to receive the right gearboxes as soon as possible and thus intends to avoid any further financial losses.
2. CFX wishes Energy Pro to share the responsibility for the failure of the Purchase Contract and improve both its and the Joint Venture's image on the Catalan market.
3. CFX is interested in renegotiating the provisions of the Purchase Contract so that the equality of the Parties is secured for the future cooperation.

### **Negotiation strategy and Responsibility sharing**

Energy Pro wishes to start the mediation by preparing an agenda of the issues that both Parties intend to discuss. Firstly, Energy Pro would like to discuss the losses it suffered because of the withheld payments. Should CFX be willing to cooperate on this matter, Energy Pro is ready to provide CFX with the right gearboxes in due course. Subsequently, Energy Pro wishes to touch upon Future Energy whose negligence led to all other occurrences. Energy Pro is willing to enquire more about the past and future role of Future Energy or any other certification company should CFX insist on replacing Future Energy. While discussing this matter, Energy Pro will seek to establish a mutual agreement on the responsibility of Future Energy for the past failures. As Energy Pro is particularly interested in continuing the cooperation between the Parties, it wishes to improve the communication between them. Energy Pro believes that this is an important factor that contributed to past disagreements. Should CFX be also willing to continue the cooperation, Energy Pro intends to rebuild the shaken trust between the Parties and improve the image of both companies and the entire Joint Venture on the Catalan market.

Andre Li, Chief Executive Officer of Energy Pro, will conduct negotiations, however if necessary, he will be supported by his counsel. Therefore, as CEO of Energy Pro, he will focus on material and economic aspects of the issues that are going to be discussed, especially the past incidents, a possible future cooperation, as well as any kind of agreement. He will work on preserving the company's interests. The lawyer will be in charge of the legal framework of any arrangements and will back his client, if needed, however he will mostly play a subsidiary role in the course of the mediation.

## **Representation Plan on behalf of CFX Ltd**

### **Facts and Nature of the Dispute**

In mid-2010, CFX Ltd (hereinafter 'CFX'), having the technology licence for 1.5 MW wind turbines, was approached by Energy Pro Inc. (hereinafter 'Energy Pro'), manufacturing gearboxes, in order to discuss a possible cooperation in manufacturing the 1.5 MW wind turbine gearboxes for the Catalan market. In December 2010, CFX and Energy Pro (hereinafter 'the Parties') entered into a joint venture agreement to establish a "Syrus-Catalan Wind Turbine Gearbox Joint Venture Company" which would be based in Catalan and would operate there. The Joint Venture's main business included the manufacture and assembly of the 1.5 MW wind turbine gearboxes for the Catalan market. In April 2011, the Parties also entered into an exclusive Purchase Contract. CFX committed to purchase from Energy Pro minimum quantities of 1.5 MW wind turbine gearboxes at fixed prices over a five year period. In February 2012, CFX issued a purchase order for 100 gearboxes. In March 2012, CFX transferred the first part payment of USD 2 million to Energy Pro after receiving the gearboxes. In April 2012, Future Energy wrote to the Parties that one of its engineers had wrongly certified the gearboxes destined for sale in Catalan. In May 2012, CFX suspended the Purchase Contract as a result of receiving wrongly certified gearboxes. In December 2012, Energy Pro sent a notice of termination of the Purchase Contract as CFX was defaulting on the 2<sup>nd</sup> and 3<sup>rd</sup> part payment.

The nature of the dispute is both legal and commercial. The Parties seem to differ on the question what led to the delivery of the faulty gearboxes. Both contractual and legal consequences of the faulty delivery have brought the Parties significantly apart. What deepened the gap between the Parties were the accruing financial losses resulting from the suspension of the performance under the Purchase Contract.

### **Interest of the Parties**

#### **CFX**

1. CFX looks forward to receiving the right gearboxes as soon as possible and thus intends to avoid any further financial losses.
2. CFX wishes that Energy Pro shares the responsibility for the failure of the Purchase Contract and wants to improve both its image and the Joint Venture's image on the Catalan market.

3. CFX is interested in renegotiating the provisions of the Purchase Contract so that the equality of the Parties is secured for the future cooperation.

### **Energy Pro**

1. Energy Pro wishes to reduce the financial losses resulting from the termination of the Purchase Contract.
2. Energy Pro is committed to repair its tattered image and rebuild the trust between the Parties.
3. Energy Pro is interested in learning lessons from the past failures for the sake of improving the cooperation between the Parties under the Purchase Contract and the Joint Venture Agreement.

### **Negotiation strategy and Responsibility sharing**

CFX wishes to start the mediation by preparing an agenda of the issues that both Parties intend to discuss. What CFX looks forward to discussing first is the question of the faulty gearboxes. In order to keep the losses to a minimum, CFX will encourage Energy Pro to deliver the right gearboxes as soon as possible. Should Energy Pro be willing to cooperate on this matter, CFX is willing to help Energy Pro find a solution for the faulty gearboxes in due course. Subsequently, CFX wishes to touch upon Future Energy's role in the Purchase Contract. CFX is willing to discuss the role of another certification company should Energy Pro agree on replacing Future Energy with another certifier. As CFX is particularly interested in continuing the cooperation between the Parties in a fair manner, it also wishes to renegotiate certain provisions of the Purchase Contract. CFX believes that the communication between the Parties is also a major factor that contributed to past disagreements which is why CFX would like to touch upon this topic as well. Should Energy Pro be willing to continue the cooperation, CFX intends to rebuild the shaken trust between the Parties and improve the image of both companies and the entire Joint Venture on the Catalan market.

The Client, who is member of the Board of CFX, will conduct negotiations, however when necessary, the Client will be supported by its Counsel. Therefore, the Client will focus on material and economic aspects of the issues that are going to be discussed, especially the delivery of the right gearboxes, a possible future cooperation, as well as any kind of agreement. As member of the Board of CFX, the Client will work on preserving the company's interests. The Counsel will be in charge of the legal framework of any arrangements and will back its Client, if needed, however she will mostly play a subsidiary role in the course of the mediation.