

**Joseph Langweiler**  
Advocate at the Court  
75 Court Street  
Capital City  
Mediterraneo  
Tel (o) 146 9845; Telefax (o) 146 9850  
Langweiler@lawyer.me

By email and courier

Equatoriana RenPower Ltd.  
Mr. Henry la Cour  
1 Russell Square  
Oceanside  
Equatoriana  
h.lacour@equatoriana-renpower.eq

Legal Counsel  
Julia Clara Fasttrack  
Advocate at the Court  
14 Capital Boulevard  
Oceanside  
Equatoriana  
Tel. (0) 214 77 32 Telefax (0) 214 77 33  
fasttrack@host.eq

The Arbitration Institute of the Finland Chamber of Commerce  
P.O. Box 1000  
FI-00101 Helsinki  
Finland  
info@arbitration.fi

31 July 2024

**Request for Arbitration**  
(pursuant to Article 6 of the FAI-Rules)

in the Arbitral Proceedings **GreenHydro Plc v. Equatoriana RenPower Ltd.**

GreenHydro Plc  
1974 Russell Avenue  
Capital City  
Mediterraneo

- CLAIMANT -

Represented by Joseph Langweiler

Equatoriana RenPower Ltd.  
1 Russell Square  
Oceanside  
Equatoriana

- RESPONDENT -

Represented by Julia Fasttrack

**STATEMENT OF FACTS**

1. Claimant, GreenHydro Plc, is a medium-sized engineering company specialized in the planning, construction and sale of plants for the production of green hydrogen and connected services for the whole hydrogen and Power-to-X value chain for the industry, energy and mobility sector.



2. Respondent, Equatoriana RenPower Ltd. (ERenPow) is a fully government-owned company. It was created in 2004 by a merger of the two state-owned energy companies operating in the field of renewables. In addition to being a major player in the Equatorianian market with its wind and solar farms, ERenPow plays an important role in the “Green Energy Strategy” of the Government of Equatoriana. To ensure the ambitious goal of Net-Zero-2040, ERenPow was to invest in the creation of a “sustainable hydrogen infrastructure covering the entire value chain needed to decarbonize Equatoriana’s large steel and transport industry”, as was stated in the Green Energy Strategy. On 3 January 2023, ERenPow invited bids for the construction and delivery of a plant to produce green hydrogen and potential derivatives.
3. The relevant documents were published via the official tender platform. They provided that the tender process as such was governed by the Public Procurement Law of Equatoriana and be conducted in its initial phase as a reverse auction. It was a technology open tender, and for the comparability of the various proposals, the overall efficiency in relation to the price was relevant. The Request for Quotation further stated that the local content of the materials to be provided was an important factor in evaluating the bids and to be eligible a minimum of 25% was required. (Claimant Exhibit C 1).
4. According to the description, the bids were to cover the following four elements: a fixed 100 MW plant for the production of green hydrogen (turnkey), maintenance and training services for one year, and two options for Respondent concerning the extension of the plant. The first covered a mere extension in capacity up to double the fixed contracted capacity. The second covered the addition of a part for the production of eAmmonia.
5. For Claimant, the realisation of the project was of considerable importance. It would have been the first opportunity for Claimant to showcase its new technology on a larger scale and show the advantages of its patent-protected production process. The process allows for the use of the excess heat created during the production of hydrogen for district heating, thereby increasing the overall efficiency of the plant. So far, the only operating plant is Claimant’s own 5 MW facility and at the time of the tender, another 20 MW plant had just been commissioned by the Government of Mediterraneo. Claimant’s innovative process is based on electrolysis using a proton exchange membrane (PEM-electrolysis). It relies on the special properties of the used membrane, which is permeable to protons but not to gases such as hydrogen or oxygen. The relevant electrolyzers are delivered in stacks of 10 MW each. The modular setup has the advantage that further stacks may be added at a later time, provided that the required other infrastructure and space is available.
6. The PEM-electrolysis is particularly suitable for the use of unstable renewable power, and the overall plant efficiency in Claimant’s research facility was over 85% due to the additional use of the process heat.
7. The great attraction of the project was the likelihood that it could be realized within a very short time. There was strong Equatorianian government support, and many preparatory steps in the planning and permission process had already been taken. Under the Green Energy Strategy, the necessary environmental, construction, and operation permits for green energy projects were to be granted in a facilitated and expedited procedure, which included strict timelines and a limitation of the possible objections. For the project itself, those parts of the planning process involving the participation of the local communities had already been completed, excluding the risk of any delay from that side. The issuance of the necessary environmental permits was imminent and only depended on internal procedures. For the other permits, which usually do not create any problems, the detailed planning of the plant was necessary. Furthermore, the construction site was prepared and well-connected with the required infrastructure.
8. In addition, a suitable transformer was available. In 2020, Claimant ordered the transformer from its long-time Equatorianian business partner Volta Transformer for another project. The transformer was to be delivered in early 2024, but in November 2022 the other project had been cancelled due to the insolvency of the other customer. The transformer was of the right size for the present project with a capacity able to cover also the two options, should

Respondent make use of them. The availability of the suitable transformer meant that one of the obstacles of projects as the one at hand which often resulted in longer lead in times could be avoided.

9. In light of these two factors, it was realistic that the plant would start producing green hydrogen from the beginning of 2026 onwards, as planned in the Request for Quotation, if the contracts were concluded in summer 2023. The fact that the plant would be operative by 2026 was important for the Claimant and an attraction of the project since it would allow the Claimant to use the project as a reference project for potential new projects, i.e., new customers. Taking into account the exponential market growth predicted from 2026 onwards, the existence of such a reference project was extremely important for Claimant. It could have helped to disprove the reservations which existed in certain quarters of the renewable energy community against the PEM-technique. While it is generally recognized that the PEM-technique has many advantages, in particular in case of an unstable power supply by green energy, its economic viability has been questioned by interested competitors. In light of these opportunities associated with a successful bid, Claimant decided to enter the tender process with an initial offer which was calculated on a cost-only basis without any profit margin.
10. On the basis of its initial offer and the innovative technology, Claimant was amongst the two final bidders with whom ERenPow entered into specific negotiations from early May 2023 onwards. From the beginning of the tender process, Claimant had been exploring its opportunities to fulfil its obligations of local content both in relation to the already fixed part of the delivery obligations as well as for the two options. At the time the detailed negotiations started, Claimant had been in very promising negotiations with two local producers. If successful, these negotiations would have ensured local content going well beyond the required 25%, in particular in case the eAmmonia-option was exercised.
11. For the hydrogen plant itself, i.e. the agreed 100 MW plant and the extension option, Claimant was about to sign a contract with Volta Transformer. According to the contract, Volta Transformer was not only to provide the transformer for the project but also 40% of the electrolyser stacks as well as the packaging of all stacks at the site in Greenfield in Equatoria. The non-transformer-related tasks were to be performed by Volta Electrolyser, a 100% subsidiary of Volta Transformer. Volta Electrolyser produced, under a licence from Claimant, electrolysers which were nearly identical to the ones of Claimant's and could thus be combined easily with Claimant's stacks. That contract had largely been negotiated by the end of June 2023 but was finally signed only on 25 August 2023. The delay in signing was due to an unexpected offer on 29 June by the Volta Family, the owner of Volta Transformer, to sell the latter to Claimant. After an agreement had been reached on how the contract for the Green Hydrogen Plant should affect the purchase price for Volta Transformer, it was finally signed on 25 August 2023. The overall value of the contract for the fixed part of the Green Hydrogen Plant was close to EUR 100 million, while for the extension option, the plan was to reduce the quantity of stacks to be delivered by Volta Transformer to 20% and let them do the entire packaging.
12. In addition, since May 2023 Claimant has been in promising negotiations with the Equatorian company P2G for the eAmmonia-option. At the time, Claimant was concerned that it would not have the necessary expertise, experience, and manpower to plan and build the eAmmonia module itself within the ambitious time frame. Thus, the plan was to largely contract out that work to a company with more experience in the field and limit Claimant's involvement to the overall planning and the integration of the module into the hydrogen plant. In that case, Claimant itself would have provided merely works and services making up roughly 20% of the value of the eAmmonia option while the remaining 80% would have been provided by P2G. If everything had worked out as planned and Respondent had made use only of the eAmmonia-option, around 45% of the overall contract volume would have been produced and delivered by entities from Equatoria.
13. During the final discussion between the two CEOs on 13 July 2023, Claimant informed Respondent that it was willing to lower its already competitive price by another 5%, in return

for exclusion of the right to terminate the Agreement for convenience and certain commitments concerning the sharing of data for future marketing purposes. On the basis of the calculation at the time, the offer would not only have failed to cover the costs but also resulted in a loss of EUR 15 million already for the fixed part if no further savings could be realized. Respondent was aware of that, as Claimant was very transparent about its cost calculation during the negotiations. The realization of that innovative project required ongoing and forward-looking cooperation between the two partners who trust each other. Claimant also informed Respondent about its ongoing negotiations with the two local partners and the possibility that, if successful, Claimant would have a local content of much more than the required 25%.

14. After two and a half months of intensive negotiations, Claimant finally managed to sign the Purchase and Service Agreement with Respondent on 17 July 2023. Deviating slightly from the originally planned structure, the Agreement provided in essence that Claimant would deliver at a first stage a plant of 100 MW at a price of EUR 285 million and would grant Respondent two options for the extension of the plant in capacity and products (**Claimant Exhibit C 2**).
15. As agreed, there was considerable media coverage about the project and the signing of the contract. The media emphasized the innovative character of the technology used (**Claimant Exhibit C 3**). Unfortunately, someone also leaked incorrect information about Claimant's adherence to the local content requirement, which seriously affected its ongoing negotiation with the local partner P2G for the eAmmonia module, reinforcing unrealistic price expectations.
16. In the end, the negotiations with P2G failed due to quality issues, and Claimant had to contract Green Ammonia from Danubia as its partner for the eAmmonia module. This had no influence on the local content for the contracted 100 MW green hydrogen plant which was still above the requested 25% but would have resulted in a lower percentage if Respondent exercised the eAmmonia option. Claimant immediately informed Respondent that its plan to contract P2G for the eAmmonia module had not worked (**Claimant Exhibit C 4**).
17. In October 2023, local elections in Equatoriana led to a shift in the power balance within the Equatorian government. As a consequence, Mr. Positive, the particularly unpopular minister for energy and environment, was replaced by a colleague from the Equatoriana National Party (ENP), Ms. Theresa Vent. The ENP and Ms. Vent had long opposed the Green Energy Strategy developed by the previous minister. In their view, it was too strict and too focused on specific quotas for certain types of renewables, in particular green hydrogen.
18. In her first press conference, Ms. Vent announced a revision of the Green Energy Strategy and a major reshuffle in the board of directors of ERenPow. On 27 December 2023, Claimant's CEO, Mr. Cavendish, received a call from his then counterpart at ERenPow, Ms. Michelle Faraday. Ms. Faraday informed Mr. Cavendish that she would be replaced by the end of the month by a former manager of a solar company, Mr. Henry la Cour. He was a member of the ENP and a well-known critic of hydro energy. She confirmed rumours that ERenPow would review all contracts to see whether they fit the new policy objectives (**Claimant Exhibit C 5**). Her prediction was that the new CEO would try everything to either terminate the unwanted contracts or at least aggressively renegotiate them.
19. That is what happened shortly thereafter. On 29 February 2024, Respondent gave notice of termination of the Purchase and Service Agreement due to a delay of 28 days in delivering the final plans for the entire plant including the options (**Claimant Exhibit C 6**). Mr. la Cour further pointed to a provision in the law of Equatoriana according to which state entities could always terminate contracts for convenience against the payment of expenses incurred if government policies changed. In the ensuing negotiations, Respondent took the position that the Agreement allegedly no longer fitted the amended policy and thus had to be terminated.
20. Claimant strongly contested that view, and Mr. Cavendish left no doubt that in its view Respondent had no right to terminate the Agreement. In light of Claimant's interest in the realisation of the project as a reference project, any right to terminate for convenience had been

excluded in return for the final price reduction of 5%, and the delay did not justify a termination for a fundamental breach under the CISG.

21. During the Parties' negotiations, Claimant very soon got the impression that the termination was primarily intended to reduce the already very favourable price even further. Respondent's higher management always played with the option of fulfilling the contract under certain conditions that would lead to a more favourable price for Respondent. At the final stage of the negotiations, Respondent purported to have received the green light from the new minister to continue with the project provided that Claimant accepts another price reduction of 15%. This is evident from the content of the without-prejudice offer made by Respondent in the negotiations. (Claimant Exhibit C 7).
22. The offer shows that Claimant, whilst pretending not to pursue the Green Hydrogen Project due to a change in policy, was actually merely interested in renegotiating the price. This is not a valid reason for terminating the Purchase and Service Agreement with Claimant.

## LEGAL EVALUATION

23. The Arbitral Tribunal has jurisdiction and the claim is admissible.
24. According to the dispute resolution clause in Art. 30 of the Agreement, the Arbitration shall be conducted in English under the FAI-Rules, with the place of arbitration in Vindobona, Danubia. The relevant clause provides:

"Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or validity thereof, shall first be submitted to mediation in accordance with the Mediation Rules of the Finland Chamber of Commerce.

(a) The place of mediation shall be Danubia.

(b) The language of the mediation shall be English.

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or validity thereof, shall be finally settled by arbitration in accordance with the Rules for Expedited Arbitration of the Finland Chamber of Commerce. However, at the request of a party, the Arbitration Institute of the Finland Chamber of Commerce may determine that the Arbitration Rules of the Finland Chamber of Commerce shall apply instead of the Rules for Expedited Arbitration if the Arbitration Institute considers this to be appropriate considering the amount in dispute, the complexity of the case, and other relevant circumstances.

(a) The seat of arbitration shall be in Vindobona, Danubia.

(b) The language of the arbitration shall be English."

25. Neither the jurisdiction nor the admissibility of the claim is affected by the fact that the Parties did not enter into mediation proceedings as foreseen in the first part of Art. 30. From the conduct of the Parties' negotiations and Respondent's final offer of 25 May 2024, it was obvious that mediation would not have resulted in a resolution of the dispute, given Respondent's insistence on a 15% price reduction. In its without-prejudice offer following a meeting of both CEOs a week earlier, Respondent had made clear that "any further discussion made only sense if Claimant was willing to talk about serious price reduction of 15% or at least a two-digit number" (Claimant Exhibit C 7). That was, however, obviously unacceptable for Claimant, which was already making a deficit under the contract as it stood. Thus, mediation would have been a mere waste of time and resources.
26. The Agreement is governed by the CISG. The choice of law clause in Art. 29 of the Agreement provides:

"The Agreement is governed by the law of Equatoriana to the exclusion of its conflict of laws principles".
27. As Equatoriana is a Contracting State of the CISG, the CISG applies to the Agreement, which is an international sales transaction. Contrary to Respondent's view expressed in its notice of



termination, the Parties did not exclude the CISG. It does not form part of the “conflict of laws principles” of Equatoriana.

28. As a mixed contract containing engineering and planning work as well as the delivery of goods, the Agreement also falls within the sphere of application of the CISG. The preponderant part with a value of over 60% of the overall prices consists of the delivery of goods.
29. Respondent’s purported termination is invalid, as it is neither justified under the Agreement nor under the CISG. During the final stage of the negotiations, the Parties explicitly agreed that in return for a further reduction of the initially proposed price of 5% by Claimant, Respondent would only have a right to terminate the Agreement in case of severe breaches and would use its best endeavors to make the project a success. Thus, any right of termination for convenience was excluded as explicitly discussed between the Parties.
30. The delay in the first delivery did not constitute a fundamental breach justifying a termination of the Agreement under the CISG. Respondent only used the delay in the first delivery as a pretext to terminate the contract. In fact, it is the change in the Equatorianian government and the new government’s change in policy that was driving Respondent’s decision to terminate the contract. Moreover, it is Respondent that had promised to use its best endeavors to ensure the success of the project. This obligation of Respondent had been introduced in the contract under the condition that Claimant accepted the low price and was able to use the plant as a showcase. By terminating the contract for no valid reason, Respondent breached its promise to use its best efforts for the project implementation.
31. As a consequence, Claimant is entitled here to ask for specific performance of the contract, i.e., that Respondent continues to fulfill the contract, accepts delivery, and pays for it.
32. The estimated monetary value of the claim in the sense of Article 6.3 (f) FAI-Rules is EUR 100 million, representing Claimant’s interest in the performance of the Agreement as planned. In light of the amount in dispute and the complexity of the case, Claimant considers the application of the Arbitration Rules of the Finland Chamber of Commerce (Arbitration Rules) to be more appropriate and suggests that, deviating from Article 19.1 (d) of the Arbitration Rules, the third arbitrator should be appointed directly by the Arbitration Institute.
33. In case the Arbitration Institute decides for the application of the Arbitration Rules and three arbitrators, *GreenHydro Plc* hereby nominates Mr. Narvin Aqua, Helsinki Crescent 3, Capital City, Mediterraneo, as its arbitrator for confirmation.

## REQUEST

34. In light of the above, Claimant asks the Arbitral Tribunal for the following orders:
  - 1) Declare that the Agreement is governed by the CISG.
  - 2) Declare that the Agreement has not been validly terminated by Equatoriana RenPower.
  - 3) Order Equatoriana RenPower to fulfill the Agreement by using its best effort to have the necessary construction and operation permits issued and allowing Claimant to start with the construction works on the Greenfield site, as well as taking all further steps agreed upon under the Purchase and Service Agreement and necessary to ensure the realization of the project, including but not limited to making the relevant payments.
  - 4) Order Equatoriana RenPower to bear the costs of the arbitration.
  - 5) To make any other order the Arbitral Tribunal considers appropriate.

*Langweiler*

Joseph Langweiler