



BIRCH CREEK

Constellation NewEnergy, Inc.
1310 Point Street, 8th Floor
Baltimore, MD 21231
Fax: (410) 270-2600

Via U.S. Mail

March 21, 2022

Re: Notice of Force Majeure Event – UN-School House

Reference is made to that certain Power Purchase Agreement, dated as of September 15, 2021 (as amended, modified or supplemented from time to time, the “**Agreement**”), by and between Constellation NewEnergy, Inc. (“**Constellation**”), and UN-School House LLC (“**Company**”). Capitalized terms used but not defined herein have the meaning set forth in the Agreement.

We write in response to Constellation’s letter, dated March 2, 2022, objecting to Company’s claim of Force Majeure because Constellation asserted that Company’s initial notice did not provide sufficient information for Constellation to determine if the present circumstances meet the definition of Force Majeure as set forth in the Agreement.

Force Majeure is defined in the Agreement as “any event that wholly or partly prevents or delays the performance by the Party affected of any obligation arising hereunder, but only if and to the extent: (a) such event or condition is not reasonably foreseeable and is not within the reasonable control of the Party affected; (b) that despite the exercise of reasonable diligence, cannot be or caused to be prevented or avoided by such Party; and (c) such event is not the direct or indirect result of the affected Party’s negligence or the failure of such Party to perform any of its obligations under this Agreement.”

As we previously noted, delivery of the racking equipment supplied by GameChange Solar (“**Supplier**”) has been delayed due to an engine failure that occurred on a boat transporting racking equipment for the Facility. In support of Company’s Force Majeure claim, please find attached to this letter as Attachment A, Supplier’s notice of Force Majeure, dated February 8, 2022. As set forth in Attachment A, the delay in question (a) was not foreseeable and not within the control of Company; (b) despite the exercise of diligence, Company could not prevent or avoid the delay; and (c) the delay was not the result of Company’s negligence or failure to perform its obligations. The relevant equipment is manufactured to be Facility-specific and, as such, Supplier and Company are limited in their alternative procurement options. Otherwise, Supplier and Company are working diligently to address the issue. Therefore, Company asserts that its Force Majeure claim is valid and within the definition of Force Majeure as contained in the Agreement.

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The other operative language of the Agreement lies within Section 14.1. This section requires that the affected Party “give prompt telephonic notice, as well as written notice and full details of the event to the other Party (including an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement) as soon as practicable after the occurrence of the event” (emphasis added).

Deliveries of the racking equipment to the project site are now expected to begin by the end of this month (March). Please note that the transloading process at the port in Panama is complete and the equipment arrived at the Port of Houston. At this time, we believe that the delay by Supplier will result in a thirty (30) day delay to the construction schedule for the project, assuming that site deliveries of the racking equipment commence at the end of this month. Accordingly, pursuant to Section 4.12 of the Agreement, extending the Guaranteed Commercial Operation Date on a Day-for-Day basis for thirty (30) days as a result of this event of Force Majeure results in a new Guaranteed Commercial Operation Date of July 1, 2022. Once the site deliveries for the equipment have commenced, Company will in turn give notice to Constellation.

Please do not hesitate to contact Allie King at king@birchcreekdev.com should you have any questions or concerns. Nothing set forth herein is a complete recitation of the facts and Company hereby reserves all available rights and remedies. Thank you for your attention to this matter.

Sincerely,

UN-School House LLC

DocuSigned by:
By: 
Name: Dan Siegel
Title: Authorized Representative

cc: Wholesale Trading – PJM Desk
1310 Point Street, 8th Floor
Baltimore, MD 21231



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Attachment A
Supplier's Notice of Force Majeure

[See attached.]



To: Blue Ridge Power LLC
130 Roberts Street
Asheville, NC 28801

Reference: School House PO GPRME-1480 and Viaduct PO-1481
Re: Frijsenborg Vessel Failure - Product Delivery Schedule Delay Notifications – Force Majeure

February 8, 2022

Dear Customer,

As required and part of our continued effort to keep Blue Ridge Power updated on the above referenced purchase orders with Goods on the MV Frijsenborg, we are hereby notifying you that deliveries has been delayed due to engine failure that has disabled the vessel.

GameChange Solar ("GCS ") recently received the preliminary report from the fire investigator regarding the root cause of the engine failure and subsequent fire that disabled the vessel. According to the preliminary findings:

- That failure was caused by a failed "bearing housing", aka a "saddle". The saddle sits around the crankshaft and is secured in place by a number of bolts.
- The saddle broke (fractured) in three places; and the bolts that hold the saddle in place also broke.
- The saddle breaking resulted in the piston, connecting rod and saddle blowing out of the engine block.
- Prior to the incident, there was no indications of anything overheating.
- The automatic misting system activated in the engine room; and later the CO² system was properly released.
- There was damage in the separator room as a result of the heat.
- The racks on the starboard side of the engine room, which carry the electrical wiring, was also damaged.
- There was no evidence of corrosion to the main engine.
- There was no evidence of overheating damage to either the crankshaft or associated metal parts.
- The damaged parts from the main engine have been sent to the UK, to fire experts Burgoyne's.
- The saddle was original, from new-build, 2016.
- Cargo Underwriter's Fire Expert considers that the cause of the incident was an internal fracture on the saddle.
- In the ordinary course of events, the saddle would not be inspected by the crew regularly and would only be inspected at the 5 years Special Survey.
- Frijsenborg would have had her Special Survey in 2021.
- Cargo Underwriter's Fire Expert does not consider that as part of that Special Survey the saddle and associated bolts would have been inspected other than cursory: i.e. there would not have been an examination to the extent that fatigue cracks would have been observed.
- It is unusual for a failure of this nature to occur within 20,000 running hours.
- The crew do not get involved with the torquing of the bolts. That is a job for the engine manufacturers, MAN Diesel.

Based on initial discussion with the Fire Expert, this would not have been detected at any maintenance interval. This failure is not expected at the 20,000 engine hours as seen on the Frijsenborg. There were no indications the bearing housing would fail. As such, the vessel would have been considered seaworthy. GCS deems this failure to be completely unforeseeable and there is no way GCS could have reasonably prevented this delay.

GCS has taken great steps and incurred significant costs working to reduce the delay period. To that goal, GCS has contracted a replacement vessel to arriving in Panama and carry the goods to Houston for delivery. GCS had to both contact and manage complex offloading to a barge, and double bank the replacement vessel to facilitate the transfer of goods.

The tentative plan for delivery is as follows:

- The transfer of goods is scheduled to start by Feb 7, 2022 and should complete before Feb 16, 2022.
- Transfer through the Panama Canal should take 2-3 days. GCS expects a 9 day sailing from Panama to Houston. Arriving in Houston on March 1. Offload the replacement vessel March 2-10. Site deliveries would start the week of March 14.

We understand that these unforeseen events have impacted Blue Ridge Power's project schedule and our team has been diligent with providing communications to Blue Ridge Power as information was available. We will continue to monitor this challenging situation. This event is outside of GameChange's control and GameChange is excused from the delays pursuant to the doctrines of impossibility of performance, commercial impracticability, or frustration of purpose, and thereby avoid liability for the unforeseen event. GameChange reserves all rights, claims and defenses available, including but not limited to, those under the contract with Blue Ridge Power and at law. Feel free to reach out to us with any questions.

Regards,



Phil Vyhanek
President & COO

CC: Andrew Worden
Pam Ramirez
Ken McLaughlin
Kate Parsons
Sean Jardinico
Nathan Pavlik