

## I. DETAILED FACTUAL SUMMARY IN FAVOR OF SPCC

### A. Introduction

1. This summary sets forth the factual record demonstrating SPCC's diligent performance of its obligations under the Contract for the Borduria Combined Cycle Power Plant Project. The contemporaneous documentary evidence establishes that SPCC acted professionally, proactively, and in full compliance with its contractual obligations from the Project's inception, while BEU failed to provide complete Site access as required under the Contract.

### B. Project Commencement and SPCC's Immediate Mobilization

2. The Project formally commenced on 15 January 2019.<sup>1</sup> BEU acknowledged receipt of SPCC's commencement notice and confirmed its "readiness to support SPCC's mobilisation activities in full accordance with the Contract requirements."<sup>2</sup>
3. Within two days of commencement, on 17 January 2019, SPCC's Project Manager, Mr. Miroslav Horák, demonstrated SPCC's commitment to an efficient project start by proposing a comprehensive kick-off meeting agenda.<sup>3</sup> The proposed agenda addressed all essential project coordination matters, including introductions and project organisation, contract administration procedures, programme review, site handover and mobilisation, design and engineering, and HSE and quality matters.<sup>4</sup>
4. SPCC's proactive approach extended to facilitating three-party coordination from the outset. Mr. Horák specifically noted that Dr. Heinrich Weber from DPI (the Engineer) had indicated his availability to attend, observing that this "would be beneficial for establishing the three-party working relationship from the outset."<sup>5</sup>
5. BEU confirmed the meeting arrangements on 18 January 2019 and approved the proposed agenda "as proposed," acknowledging it "looks excellent and covers all the key items we need to address at the kick-off."<sup>6</sup>

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<sup>1</sup> **Exhibit R-1:** Letter from BEU to SPCC re BORDURIA COMBINED CYCLE POWER PLANT PROJECT – ACKNOWLEDGMENT OF COMMENCEMENT AND INITIAL COORDINATION, 2019-01-16, dated 16 January 2019.

<sup>2</sup> **Exhibit R-1:** Letter from BEU to SPCC re BORDURIA COMBINED CYCLE POWER PLANT PROJECT – ACKNOWLEDGMENT OF COMMENCEMENT AND INITIAL COORDINATION, 2019-01-16, dated 16 January 2019.

<sup>3</sup> **Exhibit C-1:** Email from Miroslav Horák to Ivana Petrović re Proposed kick-off meeting agenda, 2019-01-17, dated 17 January 2019.

<sup>4</sup> **Exhibit C-1:** Email from Miroslav Horák to Ivana Petrović re Proposed kick-off meeting agenda, 2019-01-17, dated 17 January 2019.

<sup>5</sup> **Exhibit C-1:** Email from Miroslav Horák to Ivana Petrović re Proposed kick-off meeting agenda, 2019-01-17, dated 17 January 2019.

<sup>6</sup> **Exhibit R-2:** Email from Ivana Petrović to Miroslav Horák re RE: Proposed kick-off meeting agenda - confirmed, 2019-01-18, dated 18 January 2019.

### C. The Kick-Off Meeting and SPCC's Comprehensive Planning

6. The kick-off meeting was held on 21 January 2019 at BEU's offices in Szohôd.<sup>7</sup> The meeting minutes demonstrate SPCC's thorough preparation and professional approach to project execution.

#### 1. Contract Administration

7. SPCC presented its proposed contract administration procedures, which were "generally aligned with BEU's approach."<sup>8</sup> The parties agreed on communication protocols, meeting schedules, submittal procedures, and payment procedures.<sup>9</sup>

#### 2. Programme Presentation

8. SPCC's Planning Manager, Mr. Martin Dvořák, presented a preliminary programme with key milestone dates.<sup>10</sup> The Engineer, Dr. Weber, requested additional detail in the formal baseline programme, and SPCC committed to submitting a detailed Baseline Programme Rev 0 by 28 February 2019.<sup>11</sup>

#### 3. Ground Investigation

9. BEU's Technical Manager, Mr. Dragan Kostić, "emphasized the importance of comprehensive ground investigation given limited existing data" and "requested SPCC submit a detailed investigation programme promptly."<sup>12</sup> SPCC immediately committed to submit a Ground Investigation Programme by 15 February 2019.<sup>13</sup> The Engineer noted that "ground investigation results may impact foundation design and potentially the programme" and "requested the investigation be expedited."<sup>14</sup>

#### 4. Design Approach

10. SPCC's Engineering Manager, Dr. Wilhelm Braun, presented a design submission schedule targeting Engineer's approval by mid-April to maintain the programme.<sup>15</sup> When BEU raised concern about the tight schedule for design review, the Engineer confirmed DPI would mobilize sufficient resources to meet the 21-day review period, and Dr. Braun "confirmed SPCC's design team is fully resourced and committed to meeting the schedule."<sup>16</sup>

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<sup>7</sup> **Exhibit C-2:** Project Management Meeting No. 001, 2019-02-25, dated 25 February 2019.

<sup>8</sup> **Exhibit C-2:** Project Management Meeting No. 001, 2019-02-25, dated 25 February 2019.

<sup>9</sup> **Exhibit C-2:** Project Management Meeting No. 001, 2019-02-25, dated 25 February 2019.

<sup>10</sup> **Exhibit C-2:** Project Management Meeting No. 001, 2019-02-25, dated 25 February 2019.

<sup>11</sup> **Exhibit C-2:** Project Management Meeting No. 001, 2019-02-25, dated 25 February 2019.

<sup>12</sup> **Exhibit C-2:** Project Management Meeting No. 001, 2019-02-25, dated 25 February 2019.

<sup>13</sup> **Exhibit C-2:** Project Management Meeting No. 001, 2019-02-25, dated 25 February 2019.

<sup>14</sup> **Exhibit C-2:** Project Management Meeting No. 001, 2019-02-25, dated 25 February 2019.

<sup>15</sup> **Exhibit C-2:** Project Management Meeting No. 001, 2019-02-25, dated 25 February 2019.

<sup>16</sup> **Exhibit C-2:** Project Management Meeting No. 001, 2019-02-25, dated 25 February 2019.

## D. SPCC's Timely Performance of Kick-Off Meeting Actions

11. The evidence demonstrates that SPCC systematically fulfilled its commitments from the kick-off meeting.

### 1. Design Deliverables Schedule

12. On 23 January 2019, just two days after the kick-off meeting and two days before the deadline, SPCC submitted its Design Deliverables Schedule.<sup>17</sup> The schedule set out a comprehensive four-batch submission plan covering process and performance, civil and structural, mechanical systems, and electrical and control systems.<sup>18</sup>
13. Notably, SPCC demonstrated flexibility and forward-thinking by proposing a practical approach to the foundation design challenge. Dr. Braun explained that foundation design would be “necessarily preliminary pending the ground investigation results” and proposed submitting “foundation design based on assumed parameters from the available geotechnical data, with a commitment to revise once the investigation is complete.”<sup>19</sup> This approach would “allow the Engineer to review our general approach and identify any concerns early.”<sup>20</sup>
14. SPCC also proposed parallel reviews by DPI and BEU “to optimize the schedule” and help achieve the mid-April approval target.<sup>21</sup> SPCC confirmed it was “ready to submit Batch 1 tomorrow (24 January) if you are comfortable with the proposed structure.”<sup>22</sup>

### 2. Site Establishment Planning

15. On 25 January 2019, SPCC’s Construction Manager, Mr. Pavel Novotný, submitted detailed site establishment requirements to BEU’s Site Representative.<sup>23</sup> The comprehensive communication addressed site access and security, temporary facilities, laydown and storage areas, utilities and temporary connections, and site surveys and investigations.<sup>24</sup>

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<sup>17</sup> **Exhibit C-3:** Email from Dr. Wilhelm Braun to Dragan Kostić re Design deliverables schedule - initial proposal, 2019-01-23, dated 23 January 2019.

<sup>18</sup> **Exhibit C-3:** Email from Dr. Wilhelm Braun to Dragan Kostić re Design deliverables schedule - initial proposal, 2019-01-23, dated 23 January 2019.

<sup>19</sup> **Exhibit C-3:** Email from Dr. Wilhelm Braun to Dragan Kostić re Design deliverables schedule - initial proposal, 2019-01-23, dated 23 January 2019.

<sup>20</sup> **Exhibit C-3:** Email from Dr. Wilhelm Braun to Dragan Kostić re Design deliverables schedule - initial proposal, 2019-01-23, dated 23 January 2019.

<sup>21</sup> **Exhibit C-3:** Email from Dr. Wilhelm Braun to Dragan Kostić re Design deliverables schedule - initial proposal, 2019-01-23, dated 23 January 2019.

<sup>22</sup> **Exhibit C-3:** Email from Dr. Wilhelm Braun to Dragan Kostić re Design deliverables schedule - initial proposal, 2019-01-23, dated 23 January 2019.

<sup>23</sup> **Exhibit C-4:** Email from Pavel Novotný to Branko Simić re Site establishment requirements and access, 2019-01-25, dated 25 January 2019.

<sup>24</sup> **Exhibit C-4:** Email from Pavel Novotný to Branko Simić re Site establishment requirements and access, 2019-01-25, dated 25 January 2019.

16. SPCC demonstrated its readiness to mobilize promptly by proposing a formal site handover meeting on 1 February at 10:00 at the site main gate.<sup>25</sup> SPCC also requested a pre-mobilisation site visit on 30 January to “finalize our mobilisation logistics.”<sup>26</sup>
17. Mr. Novotný’s detailed planning was evident in his acknowledgment that “getting these basics right in the first week will really help us establish efficiently and safely.”<sup>27</sup>

### **3. Procurement Status**

18. On 29 January 2019, SPCC’s Procurement Manager, Mr. František Kučera, provided BEU with a comprehensive update on long-lead item procurement.<sup>28</sup> The report demonstrated that SPCC had already placed purchase orders for critical equipment well in advance of the Contract commencement:
19. The gas turbine purchase order had been placed on 10 December 2018, with manufacturing slots confirmed and detailed design in progress.<sup>29</sup> The HRSG and cooling system purchase orders had been placed on 18 December 2018.<sup>30</sup> For electrical equipment from the local supplier Sildavo Electrical Works, a Letter of Intent had been issued with formal PO in preparation.<sup>31</sup>
20. SPCC proactively identified risk items and mitigation measures, demonstrating professional project management.<sup>32</sup> SPCC committed to providing monthly procurement status reports as part of progress reporting.<sup>33</sup>

## **E. BEU’s Failure to Provide Complete Site Access**

21. On 1 February 2019, BEU issued the Notice of Site Possession.<sup>34</sup> However, the notice revealed that BEU was **not** providing possession of the entire Site as required under the Contract.

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<sup>25</sup> **Exhibit C-4:** Email from Pavel Novotný to Branko Simić re Site establishment requirements and access, 2019-01-25, dated 25 January 2019.

<sup>26</sup> **Exhibit C-4:** Email from Pavel Novotný to Branko Simić re Site establishment requirements and access, 2019-01-25, dated 25 January 2019.

<sup>27</sup> **Exhibit C-4:** Email from Pavel Novotný to Branko Simić re Site establishment requirements and access, 2019-01-25, dated 25 January 2019.

<sup>28</sup> **Exhibit C-5:** Email from František Kučera to Ivana Petrović re Long-lead item procurement status, 2019-01-29, dated 29 January 2019.

<sup>29</sup> **Exhibit C-5:** Email from František Kučera to Ivana Petrović re Long-lead item procurement status, 2019-01-29, dated 29 January 2019.

<sup>30</sup> **Exhibit C-5:** Email from František Kučera to Ivana Petrović re Long-lead item procurement status, 2019-01-29, dated 29 January 2019.

<sup>31</sup> **Exhibit C-5:** Email from František Kučera to Ivana Petrović re Long-lead item procurement status, 2019-01-29, dated 29 January 2019.

<sup>32</sup> **Exhibit C-5:** Email from František Kučera to Ivana Petrović re Long-lead item procurement status, 2019-01-29, dated 29 January 2019.

<sup>33</sup> **Exhibit C-5:** Email from František Kučera to Ivana Petrović re Long-lead item procurement status, 2019-01-29, dated 29 January 2019.

<sup>34</sup> **Exhibit R-3:** Letter from BEU to SPCC re BORDURIA COMBINED CYCLE POWER PLANT PROJECT – NOTICE OF SITE POSSESSION, 2019-02-01, dated 1 February 2019.

22. BEU excluded approximately 2.1 hectares in the northeastern portion of the Site.<sup>35</sup> The reason given was that this area was “currently subject to ongoing negotiations with an adjacent industrial facility (Klow Chemical Works) regarding a boundary easement matter.”<sup>36</sup>
23. BEU acknowledged the issue but sought to minimize its impact, stating that it “anticipate[d] this matter will be resolved within approximately 60 days” and that it “d[id] not anticipate this temporary exclusion will impact SPCC’s ability to commence work.”<sup>37</sup> However, BEU also acknowledged that “SPCC may wish to assess the potential programme impact.”<sup>38</sup>
24. This partial site possession constituted a breach of BEU’s obligations under Sub-Clause 2.1 of the Contract to provide the Contractor with possession of the Site.

#### **F. SPCC’s Continued Diligent Performance Despite BEU’s Breach**

25. Despite BEU’s failure to provide complete site access, SPCC continued to perform its obligations diligently.

##### **1. Contract Administration Cooperation**

26. On 31 January 2019, BEU’s Contracts Administrator, Ms. Ana Nikolić, sent SPCC a detailed query regarding contract administration procedures.<sup>39</sup> The email sought clarification on payment application procedures, variation procedures, claims notification, document control, meeting minutes, and communication protocols.<sup>40</sup>
27. Notably, Ms. Nikolić acknowledged the importance of SPCC’s potential claims, stating: “I want to emphasize the importance of timely notification. We have seen on other projects how delays in claim notification create disputes. If SPCC becomes aware of any event that may entitle you to additional time or cost, please notify promptly.”<sup>41</sup>

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<sup>35</sup> **Exhibit R-3:** Letter from BEU to SPCC re BORDURIA COMBINED CYCLE POWER PLANT PROJECT – NOTICE OF SITE POSSESSION, 2019-02-01, dated 1 February 2019.

<sup>36</sup> **Exhibit R-3:** Letter from BEU to SPCC re BORDURIA COMBINED CYCLE POWER PLANT PROJECT – NOTICE OF SITE POSSESSION, 2019-02-01, dated 1 February 2019.

<sup>37</sup> **Exhibit R-3:** Letter from BEU to SPCC re BORDURIA COMBINED CYCLE POWER PLANT PROJECT – NOTICE OF SITE POSSESSION, 2019-02-01, dated 1 February 2019.

<sup>38</sup> **Exhibit R-3:** Letter from BEU to SPCC re BORDURIA COMBINED CYCLE POWER PLANT PROJECT – NOTICE OF SITE POSSESSION, 2019-02-01, dated 1 February 2019.

<sup>39</sup> **Exhibit R-4:** Email from Ana Nikolić to Jiří Procházka re Contract administration procedures - query, 2019-01-31, dated 31 January 2019.

<sup>40</sup> **Exhibit R-4:** Email from Ana Nikolić to Jiří Procházka re Contract administration procedures - query, 2019-01-31, dated 31 January 2019.

<sup>41</sup> **Exhibit R-4:** Email from Ana Nikolić to Jiří Procházka re Contract administration procedures - query, 2019-01-31, dated 31 January 2019.

## **2. Progress at PMM-002**

28. By the second Project Management Meeting on 26 February 2019, SPCC had made substantial progress.<sup>42</sup> Mr. Horák reported that “mobilisation complete, ground investigation 75% complete, design submissions progressing well, strong HSE performance.”<sup>43</sup>
29. The ground investigation was proceeding ahead of schedule. Of 24 planned boreholes, 18 had been completed, with completion forecast for 6 March (ahead of the original schedule).<sup>44</sup> The final report was targeted for 12 April.<sup>45</sup>
30. BEU’s Project Director, Dr. Vladić, “expressed satisfaction with Friday’s site visit and progress to date.”<sup>46</sup>

## **3. NE Area Access Claim**

31. The parties were working toward amicable resolution of the NE area access claim caused by BEU’s failure to provide complete site possession.<sup>47</sup> SPCC estimated additional costs of EUR 15,000-20,000.<sup>48</sup> The target resolution date was 31 March 2019.<sup>49</sup>

## **G. Summary of Key Factual Points Favorable to SPCC**

32. The documentary record establishes the following key facts:
33. **First**, SPCC demonstrated exceptional diligence from the outset of the Project, proposing a comprehensive kick-off meeting agenda within two days of commencement.<sup>50</sup>
34. **Second**, SPCC fulfilled all its commitments from the kick-off meeting in a timely manner, including submission of the Design Deliverables Schedule<sup>51</sup>, detailed site establishment requirements<sup>52</sup>, and comprehensive procurement status reporting<sup>53</sup>.

<sup>42</sup> **Exhibit C-6:** Project Management Meeting No. 002, 2019-02-26, dated 26 February 2019.

<sup>43</sup> **Exhibit C-6:** Project Management Meeting No. 002, 2019-02-26, dated 26 February 2019.

<sup>44</sup> **Exhibit C-6:** Project Management Meeting No. 002, 2019-02-26, dated 26 February 2019.

<sup>45</sup> **Exhibit C-6:** Project Management Meeting No. 002, 2019-02-26, dated 26 February 2019.

<sup>46</sup> **Exhibit C-6:** Project Management Meeting No. 002, 2019-02-26, dated 26 February 2019.

<sup>47</sup> **Exhibit C-6:** Project Management Meeting No. 002, 2019-02-26, dated 26 February 2019.

<sup>48</sup> **Exhibit C-6:** Project Management Meeting No. 002, 2019-02-26, dated 26 February 2019.

<sup>49</sup> **Exhibit C-6:** Project Management Meeting No. 002, 2019-02-26, dated 26 February 2019. **Exhibit C-1:** Email from Miroslav Horák to Ivana Petrović re Proposed kick-off meeting agenda, 2019-01-17, dated 17 January 2019.

<sup>50</sup> **Exhibit C-3:** Email from Dr. Wilhelm Braun to Dragan Kostić re Design deliverables schedule - initial proposal, 2019-01-23, dated 23 January 2019.

<sup>51</sup> **Exhibit C-4:** Email from Pavel Novotný to Branko Simić re Site establishment requirements and access, 2019-01-25, dated 25 January 2019.

<sup>52</sup> **Exhibit C-5:** Email from František Kučera to Ivana Petrović re Long-lead item procurement status, 2019-01-29, dated 29 January 2019.

35. **Third**, SPCC's procurement activities demonstrated forward planning, with purchase orders for critical long-lead equipment placed before the Contract commencement date.<sup>54</sup>
36. **Fourth**, BEU failed to provide complete Site possession on 1 February 2019, excluding approximately 2.1 hectares due to an unresolved boundary easement matter with an adjacent facility.<sup>55</sup> This was a matter within BEU's control that should have been resolved before the Site possession date.
37. **Fifth**, despite BEU's breach, SPCC continued to perform diligently, achieving mobilisation completion, 75% completion of ground investigation (ahead of schedule), and good progress on design submissions.<sup>56</sup>
38. **Sixth**, BEU acknowledged SPCC's good performance, with Dr. Vladić expressing satisfaction with site progress.<sup>57</sup>
39. **Seventh**, the NE area access issue caused SPCC additional costs estimated at EUR 15,000-20,000, which BEU disputed, estimating only EUR 5,000-10,000.<sup>58</sup> This demonstrates that BEU's breach caused quantifiable harm to SPCC.

## H. Conclusion

40. The contemporaneous documentary evidence overwhelmingly supports SPCC's position as a diligent, professional, and well-organized contractor that fulfilled its contractual obligations while BEU failed to provide complete Site access as required under the Contract. SPCC is entitled to recover its additional costs arising from BEU's breach.

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<sup>54</sup> **Exhibit C-5:** Email from František Kučera to Ivana Petrović re Long-lead item procurement status, 2019-01-29, dated 29 January 2019.

<sup>55</sup> **Exhibit R-3:** Letter from BEU to SPCC re BORDURIA COMBINED CYCLE POWER PLANT PROJECT – NOTICE OF SITE POSSESSION, 2019-02-01, dated 1 February 2019.

<sup>56</sup> **Exhibit C-6:** Project Management Meeting No. 002, 2019-02-26, dated 26 February 2019.

<sup>57</sup> **Exhibit C-6:** Project Management Meeting No. 002, 2019-02-26, dated 26 February 2019.

<sup>58</sup> **Exhibit C-6:** Project Management Meeting No. 002, 2019-02-26, dated 26 February 2019.

## II. LIST OF CLAIMANT'S EXHIBITS

<b>Exhibit</b>	<b>Title</b>	<b>Date</b>
C-1	Email from Miroslav Horák to Ivana Petrović re Proposed kick-off meeting agenda, 2019-01-17	17 January 2019
C-2	Project Management Meeting No. 001, 2019-02-25	25 February 2019
C-3	Email from Dr. Wilhelm Braun to Dragan Kostić re Design deliverables schedule - initial proposal, 2019-01-23	23 January 2019
C-4	Email from Pavel Novotný to Branko Simić re Site establishment requirements and access, 2019-01-25	25 January 2019
C-5	Email from František Kučera to Ivana Petrović re Long-lead item procurement status, 2019-01-29	29 January 2019
C-6	Project Management Meeting No. 002, 2019-02-26	26 February 2019