

# DRBF 15<sup>th</sup> Annual International Conference

## Enel's perspective on DRBs

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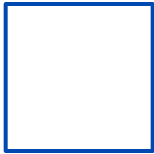
Global Generation

Enel Group

Genoa, 22 May 2015



ENERGY TO LIFE



# In-house Counsel and international arbitration



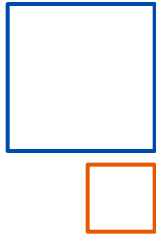
Decide whether to submit disputes to local court or national and/or international commercial arbitration



Manage various steps of arbitral proceedings until the enforcement of the award, consisting inter alia of:

- Careful studying of the case (parties, facts, law and procedure)
- Instructing the outside counsels on the overall strategy of the litigation, selection of the arbitrator and drafting the request for arbitration or statement of defense
- Preparing files and documents in the company for arbitration
- Preparing the hearings - real prior trials for managers involved in the facts under the dispute for rendering testimonies
- Attending the hearings and all steps of the arbitral proceedings until the enforcement of award

***“Art of Anticipation”***



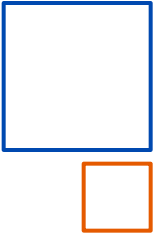
## An Enel case (Russian CCGT)



Bad performance of the Contractor of their obligations under the EPC Contract for the construction of a CCGT-600 MW in Russia led to severe delay in completion of works under the EPC Contract, and resulted in the delay of the commercial operation of the plant

Enel suffered substantial damages and losses and, due to Contractor's refusal to compensate such damages and losses, called the Performance Bond

The Contractor in order to prevent the payment under the Performance Bond filed a request for arbitration to the ICC (Paris, France) and the arbitral proceedings is still pending

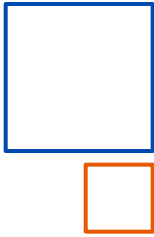


## Contractor's claim

- ✓ Additional fees and costs due under the Contract
- ✓ Damages for Enel's breaches of (i) the Contract and/or (ii) its duties and obligations under Russian law;
- ✓ Interests accrued on the delayed Contract Price payments
- ✓ Damages, losses and expenses resulting from the call of the Performance Bond by Enel
- ✓ Compensation of legal and other expenses incurred by the Contractor in connection with the arbitration

## Enel's counterclaim

- ✓ Liquidated damages
- ✓ Reimbursement of costs incurred by Enel due to Contractor's failure to perform its contractual obligations (e.g. defects in generator, defects in pipelines, Punch list defects, execution of the works instead of the Contractor)
- ✓ State penalties
- ✓ Interests

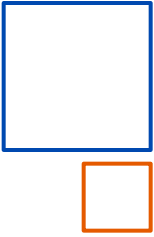


## An Enel case (Steam Turbine high blades defectiveness )



Date of Incident	Unit	Row	Failure Type	Unit Return to Service
9 <sup>th</sup> May 2010	1	3	Single blade broken at root	2 <sup>nd</sup> June 2010
30 <sup>th</sup> October 2010	2	4	Single blade broken at 2/3 blade length	8 <sup>th</sup> November 2010
8 <sup>th</sup> December 2010	2	4	Single blade broken at 2/3 blade length	16 <sup>th</sup> December 2010
17 <sup>th</sup> December 2010	2	4	Single blade broken at 2/3 blade length	6 <sup>th</sup> January 2011
2 <sup>nd</sup> January 2011	1	3	Single blade broken at root	20 <sup>th</sup> January 2011*

- The blades failures should be a consequence of an abnormality in the steam flow path and not a result of blade design
- Possible solution: blanking off the bled steam outlets on Unit 1 to assess its impact on the blades vibrations, assuming a positive effect they may request a further shutdown of Unit 2 to blank off the bled steam outlet, and this would result in an approximate 14 days shutdown of Unit 2
- It took approximately six months to achieve an agreement with the supplier to solve the blades defectiveness



## A crucial question

What if the parties had set forth a standing dispute board or an *ad hoc* dispute board?

# Pros & Cons of Dispute Boards

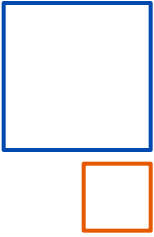


## PROS

- Dispute may be resolved immediately after it arose
- Technical and legal skills of the DB members
- Length of the proceedings
- Flexibility of the proceedings
- Compliance with the terms and conditions of the contracts
- Saving of time and costs

## CONS

- Lack of enforceability of the Dispute Board decisions
- Jeopardizing by the parties of the Dispute Board Decision



Thank you for your attention