

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AUSTRALIAN-AMERICAN ENERGY
COMPANY, LLC AND AAEC MANY
STARS INVESTMENT GROUP, LLC,

Plaintiffs,

v.

THE CROW TRIBE (APSÁALOOKE
NATION) OF INDIANS OF THE CROW
RESERVATION AND APSÁALOOKE
ENERGY COMPANY, LLC,

Defendants.

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C.A. No. _____

**PLAINTIFFS' VERIFIED COMPLAINT
AND APPLICATION FOR TEMPORARY INJUNCTIVE RELIEF**

Plaintiffs Australian-American Energy Company, LLC and AAEC Many Stars Investment Group, LLC (collectively, "Plaintiffs" or "AAEC Parties"), by and through their undersigned counsel, file this complaint seeking injunctive relief against defendants The Crow Tribe (Apsáalooke Nation) of Indians of the Crow Reservation and Apsáalooke Energy Company, LLC (collectively, "Defendants") pending appointment of Arbitrators to decide the parties' dispute arising out of their Amended and Restated Project Agreement dated as of April 15, 2009 (the "Project Agreement," attached as Exhibit A). In support of this complaint, Plaintiffs allege as follows:

PARTIES

1. Plaintiff Australian-American Energy Company, LLC ("AAEC") is a Delaware limited liability company, with principal offices at 12 Greenway Plaza, Suite 1100, Houston, Texas 77046. AAEC is wholly owned by Australian-American Energy Group LLC, a

Delaware limited liability company, with principal offices at 12 Greenway Plaza, Suite 1100, Houston, Texas 77046, and it is not a citizen of Montana for diversity purposes.

2. Plaintiff AAEC Many Stars Investment Group, LLC (“Project Holdco”) is a Delaware limited liability company wholly owned by AAEC, with principal offices at 12 Greenway Plaza, Suite 1100, Houston, Texas 77046.

3. On information and belief, Defendant The Crow Tribe (Apsáalooke Nation) of Indians of the Crow Reservation (the “Crow Tribe”) is a federally-recognized Indian Tribe, whose address is P.O. Box 159, Crow Agency, Montana 59022.

4. On information and belief, Defendant Apsáalooke Energy Company, LLC (“Apsáalooke”) is a tribally-chartered limited liability company wholly owned by the Crow Tribe, with offices at 1 Bacheeitché Ave., Crow Agency, Montana 59022.

JURISDICTION

5. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

CHOICE OF FORUM AND CHOICE OF LAW

6. The parties have agreed that the federal and state courts of Delaware are the exclusive jurisdiction for any court action arising out of or relating to the Project Agreement, and the Project Agreement shall be governed by federal law (to the extent applicable) and supplemented with substantive Delaware law. *See* Ex. A, Sections 5.1 and 5.3(a).

7. Plaintiffs seek equitable relief from this Court in the form of a temporary restraining order and preliminary injunction. Plaintiffs allege that Defendants have breached the Project Agreement by wrongfully issuing a notice of intent to terminate the Project Agreement. Although this dispute will be decided through mandatory arbitration, no arbitrators have been

appointed, and Defendants may seek in the interim to terminate the Project Agreement, which would constitute a further breach of the Project Agreement and cause the Plaintiffs irreparable injury. Under such circumstances, a party has the right to seek temporary injunctive relief from any court of competent jurisdiction. *See* Ex. A, Section 5.4.

BACKGROUND FACTS

8. The Crow Tribe is the beneficial owner of coal resources, which are held in trust by the United States and located on the Crow reservation. The AAEC Parties employ key technical and commercial executives and consultants who have experience developing, financing, and operating coal gasification and petrochemical facilities for the production of specialty chemicals and transportation fuels. On April 15, 2009, Plaintiffs and Defendants entered into the Project Agreement, which provides for the development of certain coal resources held in trust by the United States for the Crow Tribe for use as feedstocks in a Coal-to-Liquid Plant to be developed within the Crow Reservation (the "Project").

9. Plaintiffs have invested and expended over \$10 million towards developing this complex project. Since the execution of the Project Agreement, however, circumstances beyond the parties' control, including the collapse of global equity markets, the unanticipated development in the United States of vast resources of shale gas, and regulatory uncertainty regarding support of coal to liquid projects, have materially and adversely affected the economic feasibility of the Project. In addition, agreements necessary to support the AAEC Parties' continued investment and development of the Project have yet to be executed by Defendants, including a lease for water rights, which is a key enabler of the Project and an additional concern for investors.

10. Thus, while Section 3.1(b)(ii) of the Project Agreement provides for Project Holdco to make certain minimum annual expenditures, that obligation is conditioned upon execution and approval of certain Tier I Agreements:

Other Tier I Agreements: *The Parties acknowledge and agree that the AAEC Parties' commitment to continue to expend the funds necessary to reach the Investment Decision Date. . . is subject to the approval of the Tribal Coal Lease and forms of Master Lease, Easement Agreement, **Water Lease** and CTL Plant Site Lease by the BIA, to the extent required by the IMDA, and the execution and delivery of any Tier I Agreements that have not yet been executed by the parties thereto as soon as reasonably practicable following the Execution Date of the Amended and Restated Project Agreement.*

11. It is undisputed that the parties have not executed a Water Lease, which is one of the Tier I Agreements, and thus, one of the conditions precedent to the AAEC Parties' commitment to expend the funds necessary to reach the Investment Decision Date has yet to be satisfied. Although Defendants had failed to satisfy all the conditions precedent necessary to trigger the AAEC Parties' obligation to continue to expend funds in development of the Project, Plaintiffs in good faith continued to invest substantial funds in the Project without waiving their right to insist on subsequent enforcement of their rights. *See* Ex A., Section 10.10.

12. As the United States continued to delay decisions regarding support for coal to liquids projects and related environmental regulations, and prior to expending substantial additional development funds on the Project, the AAEC Parties made a formal proposal to modify and supplement the Project on January 11, 2011 so as to enhance the value of the Project to the Crow Tribe and attract necessary third-party investors. After Plaintiffs sent the January 11 proposal, they relied on statements from Defendants' representatives that the Crow Tribe were interested in pursuing some of the alternatives Plaintiffs had proposed in early January, and specifically in continuing the relationship with AAEC under the Project Agreement framework.

13. Defendants advised Plaintiffs that the Crow Tribe intended to engage with Plaintiffs on these matters as soon as other pressing issues concerning the Crow Tribe's water rights were resolved. In reliance on these statements and based on their prior collaborative working relationship, the AAEC Parties delayed in making commitments with third parties for significant additional expenditures under the existing arrangements, particularly since some of those expenditures would not need to be made if the Plaintiffs' January 11 proposal were accepted.

14. Instead of following through on their representation to consider alternatives, Defendants, on the evening of April 4, 2011, sent Plaintiffs a Notice of Intent to Terminate the Project Agreement (the "Notice of Intent to Terminate," attached as Exhibit B). In this Notice, Defendants alleged that they were entitled to terminate the agreement pursuant to Section 9.1(h) because Plaintiffs "failed to make the Minimum Annual Development Commitment expenditures . . . in accordance with Section 3.1(b)(ii) of the Project Agreement." *See Ex. B.* Defendants alleged that Plaintiffs were in breach despite the fact that, among other things, the Water Lease had not been executed, and thus Defendants had failed to satisfy a condition precedent to any allegation of default by Plaintiffs under Section 3.1(b)(ii).

15. Plaintiffs responded to Defendants' Notice of Intent to Terminate on April 10, 2011, requesting a meeting at Defendants' earliest convenience to collaboratively discuss how the parties should go forward without terminating the Project Agreement. Plaintiffs also requested that Defendants temporarily suspend their Notice of Intent to Terminate until after such meeting could be held.

16. On April 20, 2011, Defendants finally responded to Plaintiffs' January 11 Proposal by submitting a counter-proposal that rejected the framework of the parties' prior

discussions and instead proposed a “term sheet” that included new provisions never before discussed in the 3 years following execution of the Project Agreement. Plaintiffs rejected Defendants’ proposal on April 25, 2011, but requested for a second time that a meeting take place. Defendants delayed scheduling the meeting until May 9, 2011. The purpose of the meeting was to collaborate in good faith towards finding a workable solution. At the May 9, 2011 meeting, however, Defendants refused to discuss the January 11 proposal or Defendants’ April 20 counter-proposal, and presented an onerous draft Settlement Agreement. Because the proposed Settlement Agreement was untenable, Plaintiffs refused to sign it.

17. Plaintiffs made considerable efforts in good faith to work with Defendants to find a mutually agreeable resolution. Their efforts were consistent with the requirements under Section 9.3(b) that the parties consult after a Notice of Intent to Terminate is issued. On May 17, 2011, Plaintiffs advised Defendants that the conditions precedent to Plaintiffs’ obligation to expend funds to meet the Minimum Annual Development Payment had not been met, and thus adequate grounds for issuing a Notice of Intent to Terminate did not exist. *See* May 17, 2011 letter, attached as Exhibit C. Plaintiffs proposed that Defendants suspend the Notice of Intent to Terminate until June 3, 2011 so that discussions could continue and a dispute could be avoided. After Defendants refused, on May 18, 2011, the AAEC Parties invoked the dispute resolution procedures under Section 5.2(c)(i) of the Project Agreement and filed this lawsuit to preserve the status quo pending appointment of the arbitrators.

18. If Defendants are permitted to terminate the Project Agreement before the parties’ dispute can be resolved through mandatory arbitration, such an action will constitute a further breach of the Project Agreement and will irreparably harm Plaintiffs. Most importantly, termination of the Project Agreement will nullify Plaintiffs’ extensive efforts to raise equity

funds and investment proceeds for the Project from third-party investors, and cause Plaintiffs to lose unique and valuable development rights. Pursuant to Section 5.4 of the Project Agreement, “the Parties recognize[] that irreparable injury will result from a breach of any provision of [the] Agreement and that money damages will be inadequate to fully remedy the injury.” *See* Ex. A, Section 5.4. Thus, the parties have agreed that temporary injunctive relief is appropriate pending appointment of the arbitrators.

REQUEST FOR RELIEF IN THE FORM OF A TEMPORARY RESTRAINING ORDER

19. Plaintiffs restate each and every preceding allegation of this Complaint and incorporate each by reference as though set forth fully herein.

20. Pursuant to the Project Agreement, Plaintiffs have commenced this action for equitable relief and have commenced arbitration proceedings for breach of contract. Plaintiffs will establish that Defendants have breached the Project Agreement by issuing a wrongful Notice of Intent to Terminate prior to an Event of Default under the Project Agreement, and will seek permanent injunctive relief from the arbitrators to prevent Defendants from terminating the Project Agreement. Defendants’ Notice of Intent to Terminate was premised upon Plaintiffs’ failure to provide a Minimum Annual Development Commitment expenditure; however, all conditions precedent to this obligation have not been met. Specifically, the parties have not executed all of the Tier I Agreements required under Section 3.2(e) of the Project Agreement.

21. Plaintiffs request that this Court enter a temporary restraining order to preserve the status quo and prevent Defendants from issuing a Notice of Termination or terminating the Project Agreement until such time as ten (10) days after the appointment of the arbitrators or the passing of sixty (60) days, as set forth in Section 5.4 of the Project Agreement.

22. Plaintiffs face imminent, irreparable harm if such injunctive relief is not granted. Their damages cannot be adequately measured or compensated, and Plaintiffs have no other adequate remedy at law. *See* Ex. A, Section 5.4.

23. Moreover, Plaintiffs are substantially likely to prevail on the merits of their case in the arbitration proceeding. The Project Agreement is clear on its face that a Notice of Intent to Terminate may not issue until an Event of Default. Defendants have alleged that Plaintiffs failed to make the full Minimum Annual Development Commitment expenditures for the most recently completed 12 month development period under the Project Agreement. Plaintiffs, however, are not obligated to make any such expenditures until all conditions precedent have been met. It is undisputed that a Water Lease, one of the Tier I Agreements, has not been executed. Thus, the arbitration tribunal is likely to find that Defendants breached the Project Agreement and find for Plaintiffs on the merits of its case.

24. Also, the balance of equities favors the issuance of a temporary restraining order because Defendants will suffer no harm from being compelled to abide by the Project Agreement's provisions and have this dispute resolved in arbitration proceedings.

25. Finally, the requested relief would not adversely affect public policy or the public interest. Rather, the temporary restraining order promotes the interests of judicial efficiency and economy by enforcing the Project Agreement.

26. In light of the foregoing, it is appropriate that this Court issue a temporary restraining order to enjoin Defendants from issuing a Notice of Termination under the Project Agreement until such time as ten (10) days after the appointment of the Arbitrators or the passing of sixty (60) days, as stated in Section 5.4 of the Project Agreement.

REQUEST FOR RELIEF IN THE FORM OF EXPEDITED PRELIMINARY INJUNCTIVE RELIEF

27. Plaintiffs restate each and every preceding allegation of this Complaint and incorporates each by reference as though set forth fully herein.

28. For the reasons stated above, Plaintiffs request that the Court issue a preliminary injunction after notice and a hearing to preserve the status quo and prevent Defendants from wrongfully terminating the Project Agreement until such time as ten (10) days after the appointment of the arbitrators or the passing of sixty (60) days, as stated in Section 5.4 of the Project Agreement.

PRAYER FOR RELIEF

Plaintiffs prays that the Court enter judgment in their favor against Defendants granting a temporary restraining order and a preliminary injunction:

1. Enjoining Defendants (and / or their representatives) from issuing a Notice of Termination or terminating the Project Agreement until such time as ten (10) days after the appointment of the Arbitrators or the passing of sixty (60) days, as stated in Section 5.4 of the Project Agreement.
2. Awarding Plaintiffs all other relief, in law and in equity, both specific and general, to which they may show themselves justly entitled.

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VERIFICATION

Pursuant to 28 U.S.C. § 1746, I have reviewed the foregoing Verified Complaint and that the statements set forth therein, are, to the best of my knowledge, information and belief, true and correct.


Richard D. Lyon