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November 30, 2016

**VIA FEDEX AND**
**USPS GLOBAL EXPRESS GUARANTEED**

The Hon. Malcom Turnbull MP
Prime Minister
Parliament House
Canberra Act 2600
Australia

The Hon. George Brandis QC
Attorney-General
Robert Garran Offices
3-5 National Circuit
Barton Act 2600

**RE: Notice of Dispute under United States-Australia Free Trade Agreement**

Dear Prime Minister and Attorney-General:

Power Rental Asset Co Two, LLC ("AssetCo"), a Delaware limited liability company that carries out business in the United States; Power Rental Op Co Australia, LLC ("OpCo"), a Delaware limited liability company that carries out business in the United States; APR Energy, LLC ("APR Energy"), a Florida limited liability company that carries out business in the United States, and all other affiliates of APR Energy and branches of foreign affiliates of APR Energy that carry out business in the United States (collectively, "APR"), hereby submit to Australia a notice of dispute in connection with certain unlawful measures adopted by Australia in breach of the Australia-United States Free Trade Agreement ("AUSFTA") with respect to APR's investment in Australia, as described below.

APR makes two substantive claims: (1) violation of the fair and equitable standard of treatment that Australia owed to APR and (2) illegal expropriation of APR's Investment. The claim of failure to act in accordance with the fair and equitable standard of treatment is based on the most-favoured-nation clause, Article 11.4 of the AUSFTA, and paragraphs (1), (3) and (4) of Article 4 of the Agreement between the Government of Australia and the Government of the United Mexican States on the Promotion and Reciprocal Protection of Investments ("Mexico BIT"). The claim of expropriation is based on the violation of Article 11.7 of the AUSFTA.

By operation of the most-favoured-nation clause of the AUSFTA (Article 11.4), and the relationship with other dispute settlement procedures of the Mexico BIT (Article 20), APR hereby invokes the more favorable dispute resolution provisions in the Agreement between the

Government of Hong Kong and the Government of Australia for the Promotion and Protection of Investments ("Hong Kong BIT") and submits this Notice under Article 10 of the Hong Kong BIT. Article 10, Settlement of Investment Disputes, of the Hong Kong BIT provides for a three-month period for possible settlement of the claims identified in this Notice, as well as for discussion and agreement on dispute resolution procedures for any claims that APR and Australia cannot settle during the three-month period. Accordingly, APR accepts Australia's offer to arbitrate under the Hong Kong BIT and provides notice that, in the event APR and Australia are unable to reach an amicable resolution of this dispute within the next three months, APR will commence arbitration proceedings against Australia. Receipt of this Notice by Australia will trigger the running of the three-month negotiation period established in Article 10 of the Hong Kong BIT.

By way of background, APR generates and provides electricity around the world for large-scale electricity needs in cases of emergency, energy shortages, natural disasters, and in developing countries in need of power. For this purpose, APR owns and leases to third parties numerous turbines that are used for electricity generation.

On March 5, 2013, General Electric International, Inc. ("GEI"), a subsidiary of General Electric Company, entered into a lease for the rental of power generation equipment, including certain turbines and balance of plant, as specifically defined below, and the supply of associated services (the "Rental Agreement") with Forge Group Power Pty LTD ("Forge Group"), an Australian company with its principal place of business in Perth, Western Australia. The Rental Agreement contemplated the use of the equipment, including the turbines, and balance of plant in Australia, where the equipment and plant today provide power for a state-owned utility, Horizon Power, located in Australia. The Rental Agreement further provided for termination in the event of insolvency of the lessee, and it was always contemplated that the turbines and balance of plant would be located in Australia, at the site determined by Forge Group. Article 11.17(4) of AUSFTA classifies a lease as an investment protected by the Free Trade Agreement. *See* AUSFTA, Art. 11.17(4)(h). Consequently, the affected property satisfies the *ratione materiae* requirement of the AUSFTA.

On October 28, 2016, APR succeeded to GEI's rights and interests in relation to the turbines involved in the Rental Agreement and replaced GEI in all agreements relating to the turbines in question. Pursuant to the terms of the Rental Agreement, GEI, and subsequently APR, agreed to lease power generation equipment, including the turbines and balance of plant, to Forge Group and to provide the associated and necessary services to install, test and operate the leased power generation equipment and plant. Specifically, the leased property for the generation of power are four (4) large General Electric TM2500+ turbines and associated equipment, including gas turbines generators, air filtration and exhaust equipment, fuel systems and other balance of plant (together the "Turbines"). For your reference, we attach a photograph of the Turbines after their installation. You will note the size of the Turbines and the prominent location of the APR logo on each. (Attached as Exhibit 1).

A few months after the delivery of the Turbines to the installation site in Australia, the directors of Forge Group appointed administrators, and ANZ Bank—the principal creditor of

Forge Group appointed receivers and managers for the purpose of recovering property for the payment of Forge Group's indebtedness to ANZ Bank. Almost immediately after the appointment of the receivers, a notice of termination of the Rental Agreement and demand for return of the Turbines was sent to the receivers.

The receivers of Forge Group replied by refusing to return the Turbines to APR and asserting that, by operation of Australian law, all right and title to the Turbines had vested in Forge Group. In February 2016, in an action commenced by the receivers, the Supreme Court of New South Wales (file number: 2014/226778) held that, under Australian law, Forge Group had right and title to the Turbines, and APR's rights were extinguished by operation of a combination of Australia's Personal Property Securities Act (PPSA) and its Corporations Act.

The transfer of title from a lessor to its lessee of the leased property by a simple decision of the lessee to appoint administrators is a characteristic unique to Australia's legal system, and which runs counter to the reasonable expectation that a foreign investor could have prior to making an investment in that country. More shocking is that the transfer of title is effected by Australia in order to satisfy private creditors of the lessee.

Moreover, the Court's decision was based on a description of the facts and circumstances relating to the Turbines which was absurd and bore no relationship to reality. Consequently, the decision constituted a denial of justice that resulted in unfair and inequitable treatment, a failure to accord APR full protection and security and fair and equitable treatment. Ultimately, the denial of justice resulting from the decision of the Supreme Court of New South Wales resulted in an expropriation because Australia has effected the transfer of title of the Turbines from APR to the receivers of the Forge Group, for which APR received no compensation. This expropriation was effected without due process and for a private rather than a public purpose.

The receivers required that APR enter into an Interim Arrangement Deed, whereby APR could continue to use the Turbines and even represent them as their own, in return for the issuance by APR of an irrevocable letter of credit in favor of the Forge Group in liquidation, as represented by the receivers. The receivers could draw on the letter of credit in the event of a final determination by the judiciary of Australia that Forge Group in liquidation possessed superior right, title and interest in the Turbines. In effect a draw down would require APR to repurchase the Turbines, which compounded the injury suffered by APR.

On October 17, 2016, APR made demand on Australia for prompt payment of the adequate and effective compensation that the AUSFTA requires in the event of an expropriation. Since APR has not received a response from Australia, Australia has failed to satisfy the prompt payment requirement of the AUSFTA in the event of an expropriation. Because APR has suffered significant damages as a result of Australia's treatment of APR's investments, APR has been left with no choice but to bring this matter to the Government of Australia in this notice of dispute.

For the avoidance of doubt, the measures described above violated the AUSFTA in the following manner:

a) The measures resulted in a failure to accord APR's investments with a minimum standard of treatment, including fair and equitable treatment, as required by Article 11.5 of the AUSFTA and the Mexico BIT, the latter protection applicable to APR's investment by operation of Article 11.4 of the AUSFTA. This breach includes the failure to provide the investments with full protection and security, and its denial of justice to APR; and

b) The measures resulted in the illegal expropriation of APR's investments in contravention of Article 11.7 of the AUSFTA.

This letter serves as a notice of dispute for the above breaches of the AUSFTA. We nevertheless hope that an amicable resolution to this dispute can be reached. The undersigned are available to conduct negotiations with representatives of Australia in this regard.

In the event the parties cannot settle this dispute, APR will be compelled to initiate arbitration against Australia in accordance with the dispute resolution provisions of Article 10 of the Hong Kong BIT (see also Article 20 of the Mexico BIT), is applicable to APR's investment by operation of Article 11.4 of the AUSFTA. APR seeks compensation for the illegal expropriation of APR's investments, as well as compensation for damages that APR has sustained as a consequence of Australia's violation of its obligations of fair and equitable treatment. APR estimates its damages at no less than $260,000,000.

Nothing in this letter should be considered a limitation of any kind on the facts, evidence or legal arguments APR may present or on the legal rights and remedies they may pursue in support of their claims before an international arbitration tribunal or otherwise.

Best regards,

SHUTTS & BOWEN LLP

Harold E. Patricoff

Exhibit 1: Photograph of the Turbines in situ.

cc: John Campion
Steve List
Michael B. Froman, U.S. Trade Representative

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