

The Force Majeure definition in both the Energy Supply Agreement and the Lease has the same core meaning in the operative provision:

*"In respect of any party any event or circumstance which is beyond the reasonable control of such party and which results in or causes the failure of that party to perform any of its obligations under this agreement"*

In the Lease however, the definition of Force Majeure is not mutual and is defined as being only in favour of Tenant. We quote from page 7 of the Lease ("Definitions"):

*"means any event or circumstance which is beyond the reasonable control of Tenant and which results in or causes failure of the Tenant to perform on any of its obligations under this Lease"*

### **Chapter 13 - The delay of Force Majeure – The turbine could not lawfully operate**

From 23rd September 2013 through until 23rd December 2014 EW suffered an unreasonable delay beyond its reasonable control that prevented the turbine from lawful operation until the situation was resolved. It was however proven, EW had done what was required to discharge the condition on 23rd September 2013 and the delay of Force Majeure was as a result of failure of the Planning Authority to act in accord with planning law and discharge condition 7 of the planning permission (nonfeasance). \*It was later admitted by the LPA that it did not have the expertise to do what it was required to do in discharging the condition. (\*See: [MBC email chain 23/09/2013](#) pages 2 & 3, [Planning Decision Notice, DTVA Notification of Decision](#) and [MBC Complaint Assessment Response](#) of 19th May 2015).

Notably, it was all of those key documents referred to above that \*MFC later fraudulently withheld from the ex-parte hearing of 9th January 2017, because those documents proved that the delay was of Force Majeure, entirely beyond reasonable control of EW, although EW did single headedly resolve the issue at no small cost to its financial and project timing resources

By 23rd December 2014 EW had successfully resolved the defective planning permission whilst MFC "sat on the fence" and did absolutely nothing to assist contrary to its requirement to assist. The delay of Force Majeure lasted 457 days, (15 months and 1 day), costing EW over £150,000 in legal and technical fees to resolve.