

NAME: Ohore victor david

Department: Elect/Elect

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**Force majeure** is a common clause in contracts that essentially frees both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties, such as a war, strike, riot, crime, epidemic or an event described by the legal term *act of God*, prevents one or both parties from fulfilling their obligations under the contract. In practice, most force majeure clauses do not excuse a party's non-performance entirely, but only suspend it for the duration of the force majeure.

*Force majeure* is generally intended to include occurrences beyond the reasonable control of a party, and therefore would **not** cover:

- effect on the ability of such party to perform its obligations
- Any result of the usual and natural consequences of external forces.

As a an Electrical engineer force majeure can be applied through

- **Supply Chain Delays** Supply chain delays may impact existing power contracts and new projects under development. Fuel source shortages have not yet been a problem for power suppliers in part due to the collapse of the natural gas demand and pricing,
- **Increased Market Risk** Electric power stakeholders face increased market uncertainty as demand patterns shift in response to shelter-in-place orders and in the areas hardest hit by COVID-19, to the degradation in demand due directly to spread of the virus. Power prices shift in response to demand changes and falling oil prices, while at the same time credit markets are tightening. However, parties should be aware that courts may view market price fluctuations as foreseeable market risks and be reluctant to construe price fluctuations as force majeure events
- **Workforce Shortages** Workforce shortages pose a threat to all sectors of the economy and the power industry is no exception. As discussed above, the power sector has thus far been largely exempted from government-mandated shelter-in-place orders. The Federal Energy Regulatory Commission (FERC) and the National Association of Regulatory Utility Commissioners (NARUC) have jointly urged all states to designate utility workers as providers of essential services and the various shelter-in-place orders specifically exclude electricity service providers. As a result, electricity service providers, including power generators, retail service providers and utilities, should they experience workforce shortages, will not be able to point to government shelter-in-place orders as a cause of workforce shortages. Instead, staffing shortages will need to be proven up on a case by case basis as having been directly caused by COVID-19. It is critical that utility service providers document employee absenteeism. Documentation will also have to be provided of the actions taken to prevent the spread of COVID-19 among employees to support potential force majeure claims by demonstrating that the claiming party complied with the requirement to exercise due diligence to avoid and minimize the force majeure. Companies that are subject to shelter-in-place orders would be well advised to maintain similar records and to document all attempts to implement robust remote work arrangements and mitigate the negative effects of social distancing orders.

- Reasonable Mitigation Steps Many force majeure provisions in all manner of wholesale, project development and retail electric service and utility power contracts including interconnection agreements, impose a duty on the party claiming force majeure to exercise reasonable diligence or efforts to prevent, avoid, or mitigate the effects of a force majeure event. The electric power industry is built on redundancy and risk reduction.

#### Reference

<https://www.haynesboone.com/-/media/files/alert-pdfs/2020/force-majeure-issues-impacting-the-power-sector.ashx?la=en&hash=3F0A2A37DC77874C09C6C18371E9690CB88BBE8E>