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<b>Document Title:</b>	Comments in Response to ESRG - Technical Clarifications on Modern Utility-Scale BESS Design, Safety Emergency Response-Part 2
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*Comment Received From: Ruthie Brock  
Submitted On: 2/25/2026  
Docket Number: 25-OPT-02*

**Comments in Response to ESRG - Technical Clarifications on  
Modern Utility-Scale BESS Design, Safety Emergency Response-  
Part 2**

Ruthie Brock Comments - Comments in response to ESRG - Technical Clarifications on  
Modern Utility-Scale BESS Design, Safety and Emergency Response

*Additional submitted attachment is included below.*

**IN THE CIRCUIT COURT OF THE TWENTY SECOND JUDICIAL CIRCUIT  
MCHENRY COUNTY, ILLINOIS**

MARENGO BATTERY STORAGE LLC, )  
and USGEM, INC. )  
 )  
Plaintiffs, ) Case No. 2023 LA 000253  
v. )  
 )  
LG ENERGY SOLUTION, LTD. )  
 )  
Defendant. )

**COMPLAINT**

Plaintiffs, Marengo Battery Storage LLC (“Marengo”) and USGEM, Inc. (“USGEM”) (collectively “Plaintiffs”), by their undersigned attorneys, Nixon Peabody LLP, respectfully submit this Complaint against Defendant LG Energy Solution, Ltd. (“LG Energy” or “Defendant”), and state as follows:

***Introduction***

1. This action arises out of Defendant LG Energy’s sale and delivery of materially defective lithium-ion battery products for use in an energy storage facility, and related misconduct, causing at least two separate thermal (fire) events and causing Plaintiffs to suffer over \$10 million in damages.

2. Marengo was commissioned by non-party Leclanché SA (“Leclanché”), a battery energy storage solution company, to build a storage facility in Marengo, Illinois utilizing LG Energy manufactured batteries that are used to regulate the power grid.

3. Marengo has had to take its facility offline for two lengthy periods (the latter of which is ongoing) because LG Energy’s batteries are defective and have self-combusted creating fires (at the facility and elsewhere per Defendant’s and public reports), have caused damages to

the facility and its contents, and further have caused dangerous conditions to individuals and property.

4. The lengthy offline periods include (1) April 2019 to December 2020, after which LG Energy provided Marengo with Replacement Batteries (as discussed below) [REDACTED] that LG falsely represented would resolve LG’s defective battery issue; and (2) April 2022 to the present, after the Replacement Batteries failed as well. Plaintiffs have incurred millions in damages due to LG’s misconduct.

5. LG Energy fraudulently induced Marengo (and non-party Leclanché) to [REDACTED] by concealing material facts including, critically, that the Replacement Batteries also were defective including thermal/fire events.

6. Plaintiffs bring this action to recover their damages caused by LG Energy’s misconduct including Defendant’s defective products and fraud, and to rescind any provisions of [REDACTED]

***Parties and Jurisdiction***

7. Marengo Battery Storage LLC (“Marengo”) is a Delaware limited liability company with its principal place of business in the city of Marengo, Illinois. As more fully explained below, Marengo owns the Marengo Battery Energy Storage System facility located in Marengo, Illinois (the “MBESS”).

8. USGEM, Inc. (“USGEM”) is a Delaware corporation with a principal office in the city of Marengo, Illinois. USGEM is the Manager of Marengo.

9. LG Energy Solution, Ltd. (“LG Energy”) is a Korean company with principal offices in Seoul, Korea. As more fully explained below, at all relevant times LG Energy and its predecessor in interest, LG Chem, Ltd. (“LG Chem”), were engaged in the business of

manufacturing and selling lithium-ion battery system components, including for use at the MBESS.

10. This Court has personal jurisdiction over LG Energy under the Illinois Long-Arm Statute, 735 ILCS 5/2-209, because this action arises out of LG Energy’s activities in the state of Illinois including, without limitation, LG Energy’s execution and performance of contracts in Illinois, LG Energy’s sale and delivery of products to persons in this State, and LG Energy’s commission of tortious acts which caused injury to property within Illinois. The Court also has personal jurisdiction over LG Energy because LG Energy otherwise purposely availed itself of the benefits of transacting business in this State and should reasonably expect to be haled into Court here.

11. Venue is appropriate in McHenry County, Illinois pursuant to 735 ILCS 5/2-101 because the causes of action asserted herein arose out of a transaction that occurred, in whole or in part, in Marengo, Illinois in McHenry County.

***Facts Common to All Counts***

12. The MBESS is a utility-scale battery storage facility located in Marengo, Illinois. The MBESS utilizes lithium-ion battery modules to supply frequency regulation to the PJM market, which corrects for short-term changes in electricity use that might affect grid stability.

13. Marengo owns the MBESS, and Leclanché operates the MBESS pursuant to a certain O&M Services Agreement between Marengo and Leclanché dated December 21, 2018.

14. On or about June 20, 2018, Leclanché and LG Chem entered into that certain Master Supply Agreement (the “MSA”), a true and correct copy of which is attached as Exhibit A. Pursuant to the MSA, LG Chem agreed to supply certain lithium-ion battery system components for use at the MBESS including, of relevance, lithium-ion batteries (the “Original Batteries”).

15. LG Chem agreed to certain representations and warranties regarding their obligations and remedies for [REDACTED]

16. Under the MSA, [REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

17. LG Chem also agreed in the MSA to [REDACTED]

[REDACTED]  
[REDACTED]

18. As part of the transaction reflected in the MSA, LG Chem and Leclanché also executed a certain LG Chem Battery Warranty (the “Revised Warranty”) dated July 5, 2018, a true and correct copy of which is attached as Exhibit B.

19. Under the Revised Warranty, LG Chem [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

20. Thereafter, LG Chem supplied the Original Batteries to the MBESS where they were installed and taken online.

21. The MBESS was declared operational and was taken “online” in late 2018.

22. Although known to LG Chem, but unknown to Leclanché and Plaintiffs, the Original Batteries supplied by LG Chem suffered from latent design and manufacturing defects that rendered them unsafe and unfit for any use.

23. On February 19, 2019, LG Chem alerted Leclanché that it should reduce the maximum “state of charge” for certain of the Original Batteries as a precautionary measure while LG Chem investigated the root cause of certain fire incidents involving LG Chem’s battery products that occurred in Korea (the “SOC Reduction Request”).

24. Leclanché and Marengo complied with this request.

25. Nonetheless, on April 18, 2019, a thermal incident occurred at the MBESS involving ignition of at least one battery module of LG Chem’s Original Batteries (the “Initial Incident”).

26. The Initial Incident occurred as a direct and proximate result of the defects in the LG Chem’s design and manufacture of the Original Batteries.

27. As a result of the Initial Incident, the MBESS suffered physical damages to its facility. Moreover, Leclanché was required to take steps to secure the facility to mitigate the risk of another thermal event and damage to persons and property. Due to LG’s supply of defective batteries, the MBESS also was required to be taken offline. It remained offline for most of 2020 and was only restarted in December 2020, after LG Chem agreed to and supplied replacement batteries as more particularly described below. In other words, the MBESS sat idle for more than 20 months during which time it generated no revenues due to LG Chem’s breaches and misconduct.

28. Leclanché timely submitted claims to LG Chem, including under the MSA and the Revised Warranty, for damages on account of the Incident, wherein Leclanché alleged the Original Batteries were defective (the “Original Claims”).

29. LG Chem later provided replacement batteries (the “2019 Replacement Batteries”) for some, but not all, of the Original Batteries.

30. On information and belief, LG Chem assigned the MSA to LG Energy pursuant to a spin-off of LG Chem’s battery business division effective December 1, 2020, and Leclanché provided written consent to the assignment, [REDACTED]. Thus, LG Energy became the successor-in-interest to LG Chem for purposes of the MSA and Revised Warranty as of December 1, 2020.

31. On December 11, 2020, LG Energy, Leclanché, and Marengo [REDACTED]  
[REDACTED] A copy of the [REDACTED] is attached as Exhibit C. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

32. The [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

33. In the [REDACTED]  
[REDACTED]  
[REDACTED]

34. In reliance and in consideration of LG Chem’s respective representations, promises and covenants, Marengo and Leclanché entered into [REDACTED]

35. As detailed further below, however, LG Chem’s representations, promises and covenants were false and fraudulently made to induce [REDACTED]

36. Unbeknownst to Leclanché and Marengo, the [REDACTED] also suffered from design and manufacturing defects and posed the same risks of fire and damage to persons and property.

37. In April 2022, due to these defects and risks, and further at the direction and recommendation of Leclanché’s top engineer, the operation of the MBESS was again halted due to these defects that demonstrated the failure of certain Replacement Batteries (the “New Incident”). An investigation revealed numerous battery cells that were bloated (evidence of outgassing) and at least one was leaking flammable electrolyte. These conditions create an imminent and/or unreasonable risk of fire and damage to persons and property.

38. The manufacturing and design defects afflicting the Replacement Batteries were the proximate cause of the New Incident.

39. Subsequent testing of the Replacement Batteries confirmed that their performance did not conform to the testing specifications represented by LG [REDACTED]

40. Internal lab results of LG similarly demonstrate these defects and that the Replacement Batteries were unsafe.

41. At all relevant times leading up to [REDACTED] LG Energy knew the Replacement Batteries suffered from design and manufacturing defects and/or acted in reckless disregard of the truth of that fact, including because it designed and manufactured the batteries and because it investigated other thermal occurrences involving its battery products.

42. LG Energy also knew the existence of the design and manufacturing defects in its battery products was a material fact that was unknown to Leclanché and Marengo.

43. LG Energy induced Leclanché and Marengo [REDACTED] by failing to disclose and otherwise fraudulently concealing that the Replacement Batteries suffered from design and manufacturing defects.

44. If Marengo had known that the Replacement Batteries suffered from design and manufacturing defects, it would not have [REDACTED]

45. If Leclanché had known that the Replacement Batteries suffered from design and manufacturing defects, it would not have [REDACTED]

46. Leclanché again submitted timely claims to LG Energy and LG Energy initially responded that it intended to conduct a “root cause investigation” [REDACTED]

47. Thereafter, LG Energy advised Leclanché and Marengo that it performed some investigation and testing but did not identify the root cause of the problem. Notwithstanding its failure to identify the cause of the problem, LG Energy advocated bringing the MBESS back online. LG Energy also “affirm[ed] its position that it will take responsibility for the damages and costs incurred by Leclanché as a result of safety event (sic) to the extent attributable to the [Replacement Batteries].” LG Energy also stated to Leclanché and Marengo that its investigation was ongoing.

48. Given the defects identified and LG Energy’s admission that it had not determined the cause of the New Incident, Leclanché and Marengo reasonably and responsibly refused LG Energy’s proposal and did not bring the MBESS back online, in order to avoid further property

damage and potentially catastrophic harm to persons and property. Instead, Leclanché and Marengo demanded that LG Energy provide a solution to its defective products.

49. Instead of providing a solution, LG Energy claimed that it needed to perform more testing. And while LG Energy has done intermittent testing, it has not acted in good faith and has chosen to delay and further conceal its fraudulent misconduct at every point.

50. LG's testing to date confirms that LG Chem's Replacement Batteries are and were defective.

51. As a direct and proximate result of the defective nature of the Replacement Batteries, the New Incident occurred in April of 2022, Leclanché and Marengo were forced to take the MBESS offline at that time, the MBESS has remained offline to the present, and Marengo has sustained more than \$10 million in lost revenues, in addition to other damages.

52. Leclanché has assigned its rights under both the MSA and Revised Warranty to Marengo. *See* Exhibit D for a true and correct copy of the Assignment of Warranty Rights.

53. Accordingly, Marengo, both in its individual capacity and as the assignee to Leclanché, and USGEM seek relief on the basis of the foregoing.

## **CAUSES OF ACTION**

### **COUNT I** **(Fraudulent Inducement - Rescission)**

54. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 53.

55. Marengo and LG Energy previously entered into the [REDACTED]

56. LG Energy knew at the time it entered into the [REDACTED] with Marengo that the Replacement Batteries that would be provided to Marengo would include design and manufacturing defects.

57. LG Energy concealed these material facts when entering the [REDACTED] with Marengo and instead misrepresented the condition and specifications of the Replacement Batteries to Marengo.

58. Marengo reasonably relied on LG Energy's misrepresentations and omissions of material facts.

59. Had Marengo known that LG Energy's representations were false and fraudulent, Marengo would have never agreed to enter [REDACTED]

60. LG Energy's omissions of relevant and material facts to Marengo fraudulently induced Marengo to enter [REDACTED]

61. As a result, Marengo has been damaged, for which it is entitled to rescission of [REDACTED] and for all damages caused by LG Chem's misconduct.

WHEREFORE, Plaintiff, Marengo Battery Storage LLC respectfully requests that this Court respectfully requests that this Court enter a judgment in its favor against Defendant LG Energy Ltd. rescinding [REDACTED]

[REDACTED] and that the Honorable Court award Marengo a full recovery of its damages, including punitive damages and attorneys' fees, and such other and further relief that this Honorable Court deems fair and appropriate.

**COUNT II**  
**(Breach of Express Warranty – Third Party)**

62. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 61.

63. Leclanché and LG Energy executed a Revised Warranty, which provides [REDACTED]

[REDACTED]

64. The Revised Warranty extends to Marengo and USGEM under N.Y. U.C.C. 2-318.

65. In connection with the Revised Warranty [REDACTED] LG Energy provided Replacement Batteries which were purported to meet certain specifications.

66. Leclanché timely submitted a claim to LG Chem under the Revised Warranty under the coverage period in Section 2 of the Revised Warranty, as revised by the [REDACTED]

67. LG Energy breached the Revised Warranty including in the following ways:

- a. By knowingly providing defective Replacement Batteries that did not meet the performance conditions set forth in the Revised Warranty;
- b. By failing to provide a remedy for the defective Replacement Batteries, as required in Section 2-3 of the Revised Warranty.

68. As a result of LG Energy's breach of the Revised Warranty, Plaintiffs have suffered damages in the amount of approximately \$10 million dollars, which continues to accrue and represents the direct, incidental, and consequential damages to Plaintiffs.

WHEREFORE, Plaintiffs respectfully request that this Court respectfully requests that this Court enter a judgment in their favor against Defendant LG Energy Ltd., in an amount to be proven at trial not less than \$10 million, plus prejudgment interest, cost of suit, and such other and further relief that this Honorable Court deems fair and appropriate.

**COUNT III**  
**(Breach of Contract – Master Services Agreement)**

69. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 68.

70. Leclanché and LG Energy executed the MSA, whereby LG Energy agreed to, *inter alia*, certain representations, warranties, and remedies for LG Energy's defective Products experiencing a [REDACTED]

71. Leclanché assigned its rights to Marengo.

72. LG Energy provided Leclanché with defective Replacement Batteries that have otherwise experienced a [REDACTED]

73. LG Energy breached its obligations under the MSA by failing to take the required steps to remedy the [REDACTED] of the defective Replacement Batteries or otherwise providing Leclanché any remedy as required under the MSA.

74. LG Energy's breaches have caused Marengo, as assignee to Leclanché, damages in the amount of no less than \$10 million dollars which continues to accrue and represents the direct, incidental, and consequential damages to Marengo.

WHEREFORE, Plaintiffs respectfully request that this Court respectfully requests that this Court enter a judgment in their favor against Defendant LG Energy Ltd., in an amount to be proven at trial not less than \$10 million, plus prejudgment interest, cost of suit, and such other and further relief that this Honorable Court deems fair and appropriate.

**COUNT IV**  
**(Breach of Express Warranty)**

75. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 74.

76. Leclanché and LG Energy executed a Master Services Agreement, which provides

[REDACTED]

[REDACTED]

77. Leclanché and LG Energy executed a Revised Warranty, which provides a [REDACTED]

78. Leclanché assigned its rights to Marengo.

79. In connection with the Revised Warranty [REDACTED] LG Energy provided Marengo with Replacement Batteries, which were purported to meet certain specifications.

80. Leclanché timely submitted a claim to LG Chem under the coverage period in Section 2 of the Revised Warranty, as revised by the [REDACTED]

81. LG Energy breached the Revised Warranty in the following ways:

- a. By knowingly providing defective Replacement Batteries that did not meet the performance conditions set forth in the Revised Warranty;
- b. By failing to provide a remedy for the defective Replacement Batteries, as required in Section 2-3 of the Revised Warranty.

82. As a result of LG Energy's breach of the Revised Warranty, Plaintiffs have suffered damages in excess of \$10 million dollars, which continues to accrue and represents the direct, incidental, and consequential damages to Plaintiffs.

WHEREFORE, Plaintiffs respectfully request that this Court respectfully requests that this Court enter a judgment in their favor against Defendant LG Energy Ltd., which awards a full recovery of its damages; and awards such other and further relief that this Honorable Court deems fair and appropriate.

DATED: September 14, 2023

Respectfully submitted,

**NIXON PEABODY LLP**

By /s/ Keith E. Edeus, Jr.  
John T. Ruskusky (#6256605)  
Keith E. Edeus, Jr. (#6255882)  
Tammy P. Nguyen (#6334485)  
Nixon Peabody, LLP  
70 W. Madison St., Suite 5200  
Chicago, IL 60602

# Exhibit A

**Filed under seal pursuant to Court Order**

# Exhibit B

**Filed under seal pursuant to Court Order**

# Exhibit C

**Filed under seal pursuant to Court Order**

# EXHIBIT D

## ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT (this “Assignment”), dated as of September 7<sup>th</sup> 2023 (the “Effective Date”), is made and entered into by and between Leclanché S.A., a Swiss company with principal offices at Avenue des Découvertes, 14C, 1400 Yverdon-les-Bains, Switzerland (“Assignor”) and Marengo Battery Storage LLC, a Delaware limited liability company with a principal place of business in Chicago, Illinois (“Assignee” and, together with Assignor, the “Parties”).

### RECITALS

A. At all relevant times, Assignee was a Delaware limited liability company managed by USGEM, Inc. (“USGEM”), and owned the Marengo Battery Energy Storage System facility (the “Facility”) located in Marengo, Illinois, and Assignor operated the Facility pursuant to an O&M Services Agreement dated December 21, 2018;

B. Assignor and LG Chem, Ltd. (“LG Chem”) entered into a Master Supply Agreement (the “MSA”) effective June 20, 2018, whereby LG Chem agreed to supply certain lithium-ion battery system products (“Products”) for use at the Facility;

C. LG Chem made certain representations and warranties regarding its Products in the MSA and in a certain LG Chem Battery Warranty (the “Revised Warranty”) dated July 5, 2018;

D. On April 18, 2019, a thermal incident occurred at the Facility involving ignition of at least some of the Products supplied by LG Chem (the “Initial Incident”), which caused the Facility to be taken offline and resulted in substantial damages to Assignee and Assignor;

E. Assignor timely submitted claims to LG Chem, including under the MSA and Revised Warranty (the “Original Claims”), seeking to recover the Parties’ damages arising from the Initial Incident;

F. LG Chem then assigned the MSA to LG Energy Solution, Ltd. (“LG Energy”) effective December 1, 2020;

G. [REDACTED]

H. [REDACTED]

I. In April of 2022, operation of the Facility was again halted due to defective Products supplied by LG Energy, resulting in substantial damages to Assignor and Assignee (the “Second Incident”); and

J. The Parties now desire that Assignor assign all of its rights under the Products’ warranty provisions contained in the MSA, the Revised Warranty, and the [REDACTED]

### AGREEMENTS

NOW, THEREFORE, in consideration of the Recitals, the representations, warranties, covenants, and agreements contained in this Assignment and for other good and valuable consideration, the receipt and adequacy of which hereby are acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. **Assignment.** As of the Effective Date, Assignor hereby grants, assigns, transfers, conveys, and delivers to Assignee all of its rights, title, interest, benefits, and privileges relating to the Facility or the Products under the warranty provisions set forth in the MSA, the Revised Warranty, and the [REDACTED] (collectively, the “Assigned Documents”), as defined herein, and Assignee hereby accepts such

assignment. It is understood and agreed that by virtue of this Assignment, Assignee and its manager, USGEM, shall be entitled to enforce the Assigned Documents against, *inter alia*, LG Energy.

2. **Successors and Assigns.** This Assignment shall be binding upon and enure to the benefit of the successors, assigns, personal representatives, heirs and legatees of the respective parties hereto.

3. **Governing Law.** The validity, interpretation, construction and performance of this Assignment and any and all actions, claims, disputes or controversies of any kind (whether at law, in equity, in contract, in tort, or otherwise) arising under or relating to this Assignment shall be governed by the laws of the State of New York without regard to any conflict of law provisions thereof, including New York's laws relating to applicable statute of limitations and burdens of proof and available remedies.

4. **Amendments.** No provisions of this Assignment may be amended or modified unless such amendment or modification is agreed to in a writing signed by all Parties hereto.

5. **Further Acts.** At any time and from time to time after the date hereof, each Party shall use commercially reasonable efforts to take all further actions and shall execute and deliver, or cause to be executed and delivered, to each other such other instruments of transfer or assignment as the other Party may reasonably request to carry out the intent and purposes of this Assignment.

6. **Counterparts.** The parties may execute this Assignment in multiple counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same agreement. The parties may deliver executed signature pages to this Assignment by facsimile, electronic (PDF) or other electronic transmission. No party may raise (a) the use of a facsimile, electronic (PDF) or other electronic transmission to deliver a signature or (b) the fact that any signature, agreement, or instrument was signed and subsequently transmitted or communicated through the use of a facsimile, electronic (PDF) or other electronic transmission as a defense to the formation or enforceability of a contract, and each party forever waives any such defense.

*[Signature Page to Immediately Follow]*

**IN WITNESS WHEREOF**, the parties have executed this Assignment effective as of the Effective Date.

**ASSIGNOR:**

**MARENGO BATTERY STORAGE, LLC**

By: **USGEM, INC. its manager**

By:  \_\_\_\_\_

Name: **Alexander Rhea**  
Title: **President**

By:  \_\_\_\_\_

Name: **Laurent Elkrief**  
Title: **Director**

**ASSIGNEE:**

**LECLANCHÉ S.A.**

By:  \_\_\_\_\_

Name: **Pierre Blanc**  
Title: **Group CEO Leclanché SA**

By:  \_\_\_\_\_

Name: **Phil Broad**  
Title: **CEO Leclanché E-Mobility**

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT  
McHENRY COUNTY

MARENGO BATTERY STORAGE

vs.

LG ENERGY SOLUTION LTD

Case Number 2023LA000253

Document Date: 10/6/2023  
Document Type: COMPLAINT - AMENDED  
Number of Pages: 22

CERTIFICATION

I, Katherine M. Keefe, Clerk of the 22nd Judicial Circuit Court, McHenry County, Illinois, do hereby certify the attached correct copy as it appears from the records and files in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Seal of the said Court.

DATE November 13, 2023

*Katherine M. Keefe*

KATHERINE M. KEEFE  
Clerk of the Circuit Court  
22nd Judicial Circuit  
McHenry County, Illinois

