

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION**

GREENTECH ENERGY SYSTEMS A/S  
(NOW KNOWN AS ATHENA  
INVESTMENTS A/S), NOVENERGIA  
GENERAL PARTNER S.A. (ACTING AS  
LIQUIDATOR OF NOVENERGIA II  
ENERGY & ENVIRONMENT (SCA)  
SICAR), NOVENERGIA II ITALIAN  
PORTFOLIO,

Petitioners,

v.

**Index No.** \_\_\_\_\_

ITALIAN REPUBLIC

Respondent.

**AFFIRMATION OF ENRIQUE J. MOLINA**

Enrique J. Molina, an attorney duly admitted to practice before the courts of the State of New York, affirms the following to be true under penalty of perjury:

1. I am an associate at King & Spalding LLP, counsel to Petitioners herein. I am a member in good standing of the Bar of the State of New York. I have personal knowledge of the facts set forth herein and could and would testify to them if called upon to do so.

2. This affirmation is provided in support of Petitioners' Petition to Confirm Arbitral Award (the "Award") captioned SCC Arbitration V (2015/095) and rendered on December 23, 2018 in an arbitration between Petitioners and Respondent, the Italian Republic ("Italy") under the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce,

pursuant to the United Nations Convention for the Recognition and Enforcement of Foreign Arbitral Awards, 21 U.S.T. 2517, 330 U.N.T.S. 38 (the “New York Convention”) and Chapter 2 of the Federal Arbitration Act, 9 U.S.C. §§ 201 *et seq.* (the “FAA”).

3. Attached hereto as Exhibit A is a true and correct copy of the Award.

4. On February 28, 2019, the shareholders of NovEnergia II Energy & Environment (SCA) SICAR held a general meeting at which they resolved to dissolve and liquidate the investment fund, and to appoint NovEnergia General Partner S.A. as its liquidator. In its capacity as liquidator, NovEnergia General Partner S.A. was empowered by the shareholders of NovEnergia II Energy & Environment (SCA) SICAR to “take all actions necessary during the liquidation period and in the best interest of the fund”; “continue the activities of the Fund until the appropriate time for the divestment of the investment of the Fund”; and to “initiate, pursue, carry out and settle any existing, outstanding or new claims procedures that may be deemed adequate at the level of the Fund.” Attached hereto as Exhibit B is a true and correct copy of the Notarial Deed recording the resolutions of NovEnergia II Energy & Environment (SCA) SICAR’s shareholders.

5. Attached hereto as Exhibit C is a true and correct copy of the Energy Charter Treaty (“ECT”), Article 26 of which provides that any disputes arising under the ECT may be submitted to arbitration “under the Arbitration Institute of the Stockholm Chamber of Commerce.” Italy signed the ECT on December 17, 1994 and ratified it on December 5, 1997. The ECT entered into force in the Italian Republic on April 16, 1998. In accordance with Article 1(2) of the ECT, Italy was a Contracting Party to the ECT at the time the arbitration underlying the Award was commenced. Italy gave notice of its withdrawal from the ECT on December 31, 2014 and its withdrawal became effective on January 1, 2016. Pursuant to Article 47(3) of the

ECT, the post-withdrawal period during which the ECT continues to apply to pre-existing qualifying investments like Petitioners,' is twenty years. In other words, all investments existing at the time of Italy's renunciation of the ECT remain protected, and investors in Italy are allowed to use the Dispute Settlement Provisions of the ECT against Italy until 2036.

6. Attached hereto as Exhibit D is a true and correct copy of Petitioners' Request for Arbitration ("RFA"), dated July 7, 2015. Collectively, the ECT and the RFA constitute the agreement by the parties to arbitrate.

Dated: New York, New York

April 5, 2019



Enrique J. Molina