INTERNATIONAL CENTRE FOR SETTLEMENT

OF INVESTMENT DISPUTES

In the Matter of

DCM ENERGY GMBH & CO. SOLAR 1 KG,
DCM ENERGY GMBH & CO. SOLAR 2 KG,
EDISUN POWER EUROPE AG,
HANNOVER LEASING SUN INVEST 2 SPANIEN GMBH & CO. KG, &
HANNOVER LEASING SUN INVEST 2 SPANIEN BETEILIGUNGS GMBH,

Claimants

v.

THE KINGDOM OF SPAIN,

Respondent

REQUEST FOR ARBITRATION

October 17, 2017

KING & SPALDING

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France

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Houston, Texas 77002
United States

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Germany

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28046 Madrid
Spain

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1. DCM Energy GmbH & Co. Solar 1 KG ("**DCM 1**"), DCM Energy GmbH & Co. Solar 2 KG ("**DCM 2**"), Edisun Power Europe AG ("**Edisun Power**"), HANNOVER LEASING Sun Invest 2 Spanien GmbH & Co. KG ("**HL Sun Invest GmbH & Co. KG**"), and HANNOVER LEASING Sun Invest 2 Spanien Beteiligungs GmbH ("**HL Sun Invest GmbH**," and together with HL Sun Invest GmbH & Co. KG, "**HL Sun Invest**") (altogether, "**Claimants**") hereby request the initiation of an arbitration proceeding against the Kingdom of Spain ("**Spain**" or "**Respondent**") under the Convention and Rules of the International Centre for Settlement of Investment Disputes ("**ICSID**").

2. Claimants file this Request for Arbitration pursuant to Article 25 and 36 of the ICSID Convention, ICSID Institution Rules 1 and 2, and Article 26(4)(a)(i) of the Energy Charter Treaty ("**ECT**").[1]

I. PARTIES TO THE DISPUTE

3. DCM 1 and DCM 2 are limited partnerships duly formed under the laws of the Federal Republic of Germany and listed in the Munich Commercial Register under registration numbers HRA 81675 and HRA 81674, respectively.[2] Their corporate address is:

Tölzer Straße 16
82031 Grünwald
Germany

4. Edisun Power is a public corporation duly incorporated under the laws of the Swiss Confederation and listed in the Zurich Commercial Register under registration number CHE-112.680.241.[3] Its corporate address is:

Universitätsstrasse 51
8006 Zurich
Switzerland

5. HL Sun Invest GmbH & Co. KG is a limited partnership duly established under the laws of the Federal Republic of Germany and listed in the Munich Commercial Register under registration number HRA 92866.[4] HL Sun Invest GmbH is a limited liability company duly incorporated under the laws of the Federal Republic of Germany and listed in

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1 *See* Energy Charter Treaty and Related Documents, Claimants' Exhibit ("C-") 1.

2 *See* DCM 1's and DCM 2's Registration Certificates in the Munich Commercial Register, C-2.

3 *See* Edisun Power's Registration Certificate in the Zurich Commercial Register, C-3.

4 *See* HL Sun Invest GmbH & Co. KG's Registration Certificate in the Munich Commercial Register, C-4.1.

the Munich Commercial Register under registration number HRB 140991.[5] Both companies have their corporate address at:

Wolfratshauser Straße 49
82049 Pullach
Germany

6. Claimants are represented in this proceeding by King & Spalding and Gómez-Acebo & Pombo.[6] All correspondence and communications with Claimants should be directed to Claimants' counsel as follows:

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[5] *See* HL Sun Invest GmbH's Registration Certificate in the Munich Commercial Register, C-4.2.

[6] *See* Claimants' Authorizations and Powers of Attorney to King & Spalding and Gómez-Acebo & Pombo, C-5.

7. The Respondent is the Kingdom of Spain. The governmental authority likely to represent Spain in this proceeding is the *Abogacía General del Estado* (Attorney General's Office) of the Ministry of Justice, which is located at the following address:

Calle San Bernardo, 45
28015 Madrid
Spain

II. BRIEF SUMMARY OF THE LEGAL DISPUTE

A. Claimants' Investments in Spain

1. DCM 1 and DCM 2

8. DCM 1 and DCM 2 own fifty-eight photovoltaic power plants in Spain, comprising six major projects: Projects Bovera, Cam Mestre, Sevilla, Alicante, Huescar Energia, and Granada Energia. All of these facilities benefited from Spain's tariff guarantees under Royal Decree 661/2007 ("**RD 661/2007**").[7]

9. DCM 1 owns two of those projects through its Spanish branch, which fully owns twenty project companies. Project Bovera consists of a single 1.0 MW photovoltaic plant that started operation on September 23, 2008.[8] Through its Spanish branch, DCM 1 purchased Project Bovera on August 13, 2009. Project Cam Mestre consists of nineteen 100 kW plants that started operation on July 31, 2008. Through its Spanish branch and subsidiaries, DCM 1 purchased those facilities on October 7, 2009.

10. DCM 1 also wholly owns two German companies, Solarpark Alicante GmbH & Co. KG and Solarpark Sevilla GmbH & Co. KG, each of which has its own Spanish branch. Project Sevilla consists of a single 720 kW photovoltaic plant that began operating on September 25, 2008, while Project Alicante comprises a 600 kW facility that began operation on September 26, 2008. Through its Spanish branches, DCM 1 acquired Project Alicante on August 31, 2008 and Project Sevilla on December 29, 2008.

11. DCM 2 owns two photovoltaic projects in Granada, Spain.[9] Through its Spanish branch, DCM 2 owns thirty-six subsidiaries in Spain. Through eighteen of those

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[7] Royal Decree 661/2007, of May 25, regulating the electricity generation activity under the special regime.

[8] Claimants are attaching at Annex A charts illustrating their investment structures. DCM 1's investment structure is provided at p. 1.

[9] DCM 2's investment structure is illustrated at p. 2 of Annex A.

project companies, DCM 2 fully owns eighteen 100 kW photovoltaic plants that comprise Project Huescar Energia. Through the other eighteen project companies, DCM 2 fully owns a further eighteen 100 kW facilities that comprise Project Granada Energia. All of DCM 2's facilities were connected to the grid on September 23, 2008. Through its Spanish branch and its Spanish subsidiaries, DCM 2 purchased all thirty-six facilities on October 1, 2008.

12. DCM 1 and DCM 2 have invested more than €58 million in these six projects, the combined capacity of which is almost 8 MW. DCM 1 and DCM 2 acquired their interests in the six photovoltaic projects described above with the expectation that those facilities would benefit from the remuneration regime established in RD 661/2007.

2. Edisun Power

13. Edisun Power has invested in Spain since November 2006.[10] Edisun Power owns twenty-two photovoltaic facilities in Spain that are involved in this dispute, comprising six projects. Ten of these plants benefited from the tariffs Spain guaranteed under RD 661/2007, while the remaining twelve plants were entitled to receive the tariffs Spain promised under Royal Decree 1578/2008 ("**RD 1578/2008**").[11]

14. Edisun Power owns its twenty-two photovoltaic facilities through eight subsidiary companies in Spain. Those Spanish companies own Edisun Power's twenty-two Spanish photovoltaic facilities through the following project structure:

- Project El Tesoro, which is comprised of five photovoltaic plants in Alcolea del Rio with an aggregate capacity of 500 kW. Five of Edisun Power's Spanish subsidiaries each own one 100 kW facility in the project, and purchased their rights on February 19, 2007. The El Tesoro plants obtained their registration under RD 661/2007 and started operation in July 2008;

- Project El Trujillo, which consists of five photovoltaic plants located in Cantillana with an aggregate capacity of 500 kW. Five of Edisun Power's Spanish subsidiaries each own one 100 kW facility in the project, and purchased their rights on September 8, 2008. The plants entered into operation in September 2008, and are also registered under RD 661/2007;

- Project Salinas, which is comprised of nine photovoltaic rooftop installations with a total capacity of 658 kW. On January 12, 2009, Edisun Power purchased Project

[10] Edisun Power's investment structure is illustrated at p. 3 of Annex A.

[11] Royal Decree 1578/2008, of September 26, on the remuneration of electricity generation by means of photovoltaic solar technology for facilities after the deadline for maintaining the remuneration provided under Royal Decree 661/2007, for such technology.

Salinas through one of its subsidiaries. The Project Salinas plants obtained their registration under RD 1578/2008;

- Project Valle Hermoso II, a solar rooftop installation in Alcolea del Rio with an aggregate capacity of 200 kW. Edisun Power purchased the project through one of its subsidiaries on March 4, 2009. The plant is registered under RD 1578/2008 and has been in operation since July 2010;

- Project Cortadeta, a solar plant in Llucmajor with a capacity of 1.98 MW. Edisun Power purchased Project Cortadeta through one of its subsidiaries on September 7, 2011. The Project Cortadeta plant is registered under RD 1578/2008; and

- Project Huelva, a solar rooftop installation located in Gibraleon, which has a capacity of 800 kW. Edisun Power purchased Project Huelva through one of its subsidiaries on December 13, 2011. The Project Huelva facility is also registered under RD 1578/2008.

15. Furthermore, Edisun Power began but was unable to complete its plan to construct a 1.8 MW photovoltaic plant due to Spain's abolition of the Pre-Allocation Registry under RD 1578/2008 in 2012. To minimize its losses related to the costs it incurred to develop that project under Spain's original regulatory regime, in 2015, Edisun Power sold its rights associated with the project and currently leases the land to a company managing that facility.

16. Edisun Power has invested approximately €22 million in those investments in Spain, the combined capacity of which is over 4.6 MW. Edisun Power acquired its interests in the six photovoltaic projects described above with the expectation that those facilities would benefit from the remuneration regime established in RD 661/2007 and RD 1578/2008.

3. HL Sun Invest

17. Claimant HL Sun Invest GmbH & Co. KG wholly owns Claimant HL Sun Invest GmbH.[12] Since early 2009, HL Sun Invest GmbH has owned and managed the following three photovoltaic plants in Catalonia, Spain. It owns those projects through the following three Spanish companies:

- Parsosy Alamus, S.L.U. owns a 1.5 MW photovoltaic plant in Alamus, which obtained its registration under RD 661/2007 on September 3, 2008. HL Sun Invest GmbH purchased Project Alamus on May 7, 2009;

[12] HL Sun Invest's investment structure is illustrated on p. 4 of Annex A.

- Parsosy Borges Blanques 2, S.L.U. owns a 1.5 MW photovoltaic plant located in Borges Blanques, which obtained its registration under RD 661/2007 on September 3, 2008. HL Sun Invest GmbH purchased Project Borges on May 7, 2009; and

- Parsosy Cervia II, S.L.U. owns a 1.0 MW photovoltaic plant located in Cervia de les Garrigues, which obtained its registration under RD 661/2007 on August 29, 2008. HL Sun Invest GmbH purchased project Cervia on May 7, 2009.

18. HL Sun Invest invested over €29 million in those three photovoltaic plants, which have a combined capacity of 4.0 MW. HL Sun Invest acquired its interest in the facilities described above with the expectation that they would benefit from the remuneration regime established in RD 661/2007.

B. Spain Implemented RD 661/2007 and RD 1578/2008 to Induce Investments in Renewable Energy

19. The production of electricity from renewable energy sources has been an important policy objective in Spain. The European Union and numerous other states share these interests, and promotion of investment in the renewable energy sector has been embodied in international agreements such as the United Nations Framework Convention on Climate Change.

20. Policies to promote renewable energy investments are generally based on the understanding that the production of electricity from conventional resources such as coal and oil relies on limited resources and imposes substantial externalized costs on society through pollution and contribution to climate change. In contrast, renewable energy produced by sources such as photovoltaic plants generally avoid these negative externalities.

21. Because the cost of producing electricity from renewable resources is substantially higher than the cost of producing electricity from fossil fuels, however, encouraging private investment in renewable energy projects requires financial incentives to make the industry competitive. Consequently, for more than two decades, Spain has enacted various incentive schemes to promote investment in its renewable energy sector, both to satisfy international commitments regarding environmental protection and to reduce its dependence on nonrenewable energy sources.

22. Starting in 1994, Spain enacted several legislative schemes to encourage investments in renewable energy, although its early programs were insufficient to achieve the results that Spain needed to meet its domestic and international policy goals. The first regime that Spain implemented, through Royal Decree 2366/1994, contained financial incentives for

electricity generated from renewable sources.[13] That legislation, however, contained no stability clause or fixed duration and thus was not successful in attracting significant new investment in the sector.

23. In 1997, Spain enacted a new law on electricity, Law 54/1997, which de-regulated the electricity market and established rules for the "special regime" governing electricity generating facilities from renewable, cogeneration, and waste sources.[14] To meet its international commitments and domestic policy goals, however, Spain still needed a significant influx of private investment in facilities covered by the special regime. Thus, in 1998, through Royal Decree 2818/1998, Spain enacted a premium pricing program that applied to electricity generated from facilities in the special regime.[15] However, while Royal Decree 2818 did offer price incentives, those incentives were not adequate to cover the fixed costs of renewable energy production. Moreover, the legislation itself contained no specific duration, and the offered rates were subject to discretional review every four years. The possibility for fluctuation in the incentivized pricing offered by Royal Decree 2818/1998 meant that few investors could rely on it for long-term investments, and few banks were willing to finance investments in costly renewable energy facilities without additional guarantees.

24. By 2004, Spain was clearly not on track to meet its renewable energy targets. Consequently, it implemented a new feed-in tariff program under Royal Decree 436/2004.[16] That decree was an improvement on earlier incentives programs, because it offered a choice between a feed-in tariff and an above-market premium price for electricity generated from facilities in the special regime, both of which would apply for a fixed period of time. It also stated that subsequent reviews of the program would not apply retroactively to reduce the rates guaranteed to existing facilities. But while Royal Decree 436/2004 contained the legal guarantees that investors needed to feel secure in their investments, the feed-in tariff and premium pricing rates in Royal Decree 436/2004 were not transparent and, in some cases, not high enough to attract the amount of investment that Spain needed to meet its renewable energy targets.

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[13] Royal Decree 2366/1994, of December 9, on electricity generation by hydraulic, cogeneration and other facilities fed by renewable sources.

[14] Law 54/1997, on the Spanish Electricity Sector.

[15] Royal Decree 2818/1998, of 23 December, on electricity generation by renewable facilities, waste and cogeneration.

[16] Royal Decree 436/2004, of 12 March, which established the methodology for updating and systematizing the legal and economic regime of the production of electricity in the special regime.

25. Finally, in 2007, after more than a decade of failed attempts to spawn substantial investment in renewable energy facilities, Spain enacted RD 661/2007. RD 661/2007 was a critical component of Spain's efforts to reduce its dependence on nonrenewable energy sources, improve its pollution rating, and comply with its obligations under European Union and international law. In particular, Spain had undertaken to ensure that, by 2010, 29.4% of its electricity would be generated from renewable energy sources. To achieve that ambitious goal, Spain needed far more private investment in new renewable energy facilities than previous regulatory schemes had generated. In other words, Spain needed a much more robust incentives program, which it implemented in RD 661/2007.

26. RD 661/2007 included target capacities for different types of renewable technologies that Spain hoped to achieve by 2010. For photovoltaic technology, Spain's capacity target was 371 MW. It was 500 MW for solar-thermal facilities; 20,155 MW for wind facilities, 2,400 MW for so-called "mini"-hydro facilities, and more than 1,300 MW for biomass and biogas facilities. To achieve these ambitious goals, RD 661/2007 contained attractive remuneration schemes that made the development, construction, financing, and operation of renewable energy facilities in Spain worthwhile and economically viable.

27. Critically, Spain guaranteed that 100% of the attractive feed-in tariffs offered in RD 661/2007 would remain available to photovoltaic plants registered under the regime for twenty-five years. Thereafter, photovoltaic plants would be entitled to 80% of the initial feed-in tariff throughout the remainder of their operating lives.

28. To track progress toward Spain's target capacity objectives and to monitor the effectiveness and viability of the incentives regime, RD 661/2007 specified that when installed capacity of a given technology reached 85% of the target objective, Spain would establish a period of time of at least twelve months for final enrollment in the RD 661/2007 program. All projects registered before the end of that period would benefit from the incentives in RD 661/2007. But after that deadline, the regulatory scheme would be "closed" to new entrants. In other words, Spain designed RD 661/2007 to attract a significant influx of new renewable energy projects to meet certain targets, but Spain tempered that growth by creating a cut-off period that it would announce at least a year in advance, once the program was achieving its intended results.

29. The enrollment period and target capacities were not the only monitoring mechanisms in the RD 661/2007 regime, which also contained provisions for periodic

reviews and adjustments to the price incentives. Importantly, however, RD 661/2007 expressly stated that any future revisions that Spain might make to the legislation would not apply to facilities already commissioned, operating, and benefiting from the feed-in tariffs granted under it. Specifically, Article 44.3 of RD 661/2007 stated: "The revisions to the regulated tariff … shall not affect facilities for which the deed of commissioning shall have been granted prior to 1 January of the second year following the year in which the revision shall have been performed." In other words, future changes to RD 661/2007's tariffs would not impact already commissioned and operating facilities that had obtained their registration under the regime, or facilities whose construction and commissioning would be completed in the year following the announcement of the revision.

30. To attract the investments it desired in the renewable energy sector, Spain widely promoted the new incentives program in RD 661/2007, both within Spain and abroad. Spain regularly highlighted the principal advantages of RD 661/2007, which included the promises that (i) the new legal framework was stable; (ii) future changes would not apply retroactively to existing plants; and (iii) the incentives Spain granted under the regime would remain available throughout the operating lives of the facilities enrolled in the program.

31. The official press release from the Ministry of Industry, Tourism and Commerce regarding RD 661/2007 was unequivocal, stating that the regime "provides legal certainty for producers, providing stability to the sector and promoting their development" and confirming that future "new rules will not be retroactive."[17] Spain's General Secretary of Energy echoed those sentiments by stating simply that RD 661/2007 provides "total legal certainty."[18]

32. Spain was successful in achieving its goal of encouraging significant investment in renewable energy projects, both to maintain its existing renewable energy capacity and to generate new installed capacity. Thousands of investors with highly diverse backgrounds—including large utility companies, independent renewable energy companies, banks, and private equity firms—invested billions of euros in reliance on Spain's guarantees in RD 661/2007, particularly in the photovoltaic sector. By September 27, 2007—only four

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[17] "El Gobierno prima la rentabilidad y la estabilidad en el nuevo Real Decreto de energías renovables y cogeneración. Apuesta gubernamental por las energías limpias y autóctonas," Ministry of Industry, Tourism and Commerce, May 25, 2007, available at http://www.minetur.gob.es/es-ES/GabinetePrensa /NotasPrensa /2007/ Paginas/nprdregimenespecial.aspx.

[18] "Nieto dice que la nueva regulación eólica ofrece 'total seguridad jurídica,'" Cinco Días, May 10, 2007, available at http://cincodias.com/cincodias/2007/05/10/empresas/1178804382_850215.html.

months after Spain had published RD 661/2007 in its Official Gazette—investment in photovoltaic facilities had reached 85% of the 371 MW capacity target. Thus, as stated in the legislation, on September 29, 2007, Spain established a one-year, final enrollment period, during which all photovoltaic investors who completed the construction and permitting phases of their plants would benefit from the price guarantees in RD 661/2007.

33. Once the enrollment period for new photovoltaic facilities under RD 661/2007 ended in September 2008, Spain raised its photovoltaic capacity target and enacted a second incentives regime to further encourage investments specific to the photovoltaic sector. RD 1578/2008 offered reduced, but still attractive premiums to new photovoltaic facilities that had not obtained their registration by the deadline applicable under RD 661/2007. Importantly, RD 1578/2008 did not eliminate or otherwise affect the application of RD 661/2007 to projects registered under that decree. As it had done with RD 661/2007, Spain also promoted RD 1578/2008, stating that it too would benefit investors by providing predictable future remuneration.

34. RD 1578/2008 established a tariff assignment system for the sale of electricity from photovoltaic sources based on a newly-created Photovoltaic Compensation Pre-Allocation Registry (the "**Pre-Allocation Registry**"). That registry was designed to further monitor the incentives regime and to ensure that the prices offered to investors did not overly burden Spain's electricity system, both with the aim of maintaining investor confidence in the system. Spain imposed limits for subscribing to the Pre-Allocation Registry, which were reported quarterly.

35. Spain assured investors that the pricing available under RD 1578/2008 would be paid to facilities enrolled in the regime for a period of twenty-five years. In absolute terms, the feed-in tariff Spain established in RD 1578/2008 was somewhat lower than the tariff it had established by RD 661/2007. Due to declines in the price for photovoltaic facility components such as modules and inverters, however, the incentives under RD 1578/2008 resulted in total project economics that were comparable to the RD 661/2007 tariff regime, and thus, RD 1578/2008 was still adequate to encourage additional foreign and domestic investment in photovoltaic facilities in Spain. Indeed, this drop in component prices had been one of Spain's goals in enacting RD 661/2007. Consequently, the incentives in RD 1578/2008 resulted in further growth in the photovoltaic sector, and the upper limits for registration in the Pre-Allocation Registry for ground-mounted photovoltaic projects were achieved in all annual rounds under the regime.

36. Like RD 661/2007, RD 1578/2008 was successful in achieving Spain's goal of encouraging further significant investment in renewable energy projects. Spain's efforts to encourage renewable energy investments were particularly successful in the photovoltaic sector. In 2001, before Spain had established any meaningful incentives program, Spain's photovoltaic sector had a total installed capacity of less than 5 MW. By 2006, however, the installed capacity slightly exceeded 100 MW, and the reaction to RD 661/2007 in 2007 spurred projections of more than doubling that figure. As it turned out, by the end of 2007, Spain's installed capacity of photovoltaic facilities had reached 690 MW. By 2008, installed capacity increased to well over 3,000 MW, while Spain continued to promote further investment in its PV sector.

C. Claimants Invested in Reliance on Spain's Incentive Regimes

1. DCM 1 and DCM 2

37. DCM 1 and DCM 2 are closed-end funds that were promoted to private investors in Germany. In 2007 and 2008, more than 4,800 private investors invested approximately €57 million in DCM 1 and DCM 2.

38. DCM 1, which also owns a substantial photovoltaic portfolio in Germany, and DCM 2 invested in Spain as a result of Spain's efforts to encourage investment in this sector through feed-in tariffs in RD 661/2007. Those incentives were instrumental in DCM 1's and DCM 2's decision to acquire the projects described above in Section II.A.1. When making those investment decisions, DCM 1 and DCM 2 were confident that Spain would abide by its promises to provide stable financial incentives to photovoltaic facilities registered under RD 661/2007 throughout their operating lives.

39. Through their Spanish branches and subsidiaries, between August 2008 and October 2009, DCM 1 and DCM 2 acquired a 100% interest in the fifty-eight photovoltaic power plants described above, for a total capacity of almost 8 MW. Each of those power plants had been properly registered under RD 661/2007, thus entitling them to the rights to the incentives available under the regime. DCM 1 and DCM 2 expected Spain to honor its commitments to support investments in renewable energy, and to faithfully apply the terms of RD 661/2007 to those projects throughout their operating lives.

2. Edisun Power

40. Edisun Power has been active in the field of photovoltaic power since 1997. Based in Zurich, Switzerland, the company owns subsidiaries in several European countries. The company has been listed on the SIX Swiss Exchange since September 2008 and has posted consistent growth.

41. Edisun Power invests in medium-sized photovoltaic projects. Currently, the group operates thirty-four photovoltaic power plants in Switzerland, Germany, Spain, and France. Edisun Power's global projects have a total capacity of approximately 18 MW. The photovoltaic plants that Edisun Power owns in Spain, as described above, comprise over one-quarter of that portfolio. Edisun Power made those investments in reliance on the lifetime tariff guarantee that Spain made under RD 661/2007 and the right to a feed-in tariff for twenty-five years under RD 1578/2008, as confirmed in that Decree's Pre-Allocation Registry.

42. Through its Spanish subsidiaries, between 2006 and 2012, Edisun Power purchased a 100% interest in the twenty-two photovoltaic facilities described above, for a total capacity of about 5 MW. Edisun Power acquired ten of those plants in reliance on the lifetime tariff guarantee Spain made in RD 661/2007, and it acquired the remaining twelve plants in reliance on the twenty-five year tariff guarantee found in RD 1578/2008 and its Pre-Allocation Registry. Edisun Power expected Spain to abide by the commitments it made to investors in both Decrees. Further, in reliance on Spain's promises in its incentive regime, Edisun Power began investing in a plan to construct a 1.8 MW photovoltaic plant. Spain's unlawful and premature abolition of RD 1578/2008 deprived Edisun Power of the opportunity to fully realize that project. Thus, in 2015, Edisun Power sold the rights to that project and leased the real estate in an effort to minimize its losses.

3. HL Sun Invest

43. On March 3, 2009, HL Sun Invest GmbH & Co. KG purchased 100% of the shares in HL Sun Invest GmbH from the German company Hannover Leasing GmbH & Co. KG ("**Hannover Leasing**"). Founded in 1981, Hannover Leasing manages more than 200 closed-end equity funds and public funds. Over more than three decades, Hannover Leasing has established itself as one of Germany's leading initiators of closed-end private equity funds investing in a variety of different types of assets.

44. Hannover Leasing has more than 69,700 private and institutional investors, with approximately €10.1 billion in equity capital divided up among more than 200 closed-end equity investments. Hannover Leasing manages approximately €12.6 billion in assets. The photovoltaic plants that HL Sun Invest owns, as described above, form part of Hannover Leasing's investment portfolio. Spain's guarantee of a lifetime tariff under RD 661/2007 was the fundamental reason why HL Sun Invest decided to invest in Spain's photovoltaic sector. Without those specific guarantees, HL Sun Invest's investments would not have been economical.

45. Thus, based on a financing structure established jointly with its parent company HL Sun Invest GmbH & Co. KG, on May 7, 2009, HL Sun Invest GmbH purchased the three Spanish project companies as described above, each of which owned a photovoltaic plant in Spain, which have a cumulative capacity of 4 MW. All three plants properly obtained their registrations under RD 661/2007, which granted the facilities the rights to incentive tariffs on all the electricity they produced throughout their operating lives. HL Sun Invest made these investments with the expectation that Spain would honor the commitments it made to investors under RD 661/2007 and in its public campaign promoting its support of photovoltaic investments for the full operating lives of the facilities.

46. As Claimants came to discover, however, and as discussed below, Spain has failed to abide by the clear terms of its own incentives framework and its promises to investors, first by substantially altering, and then by abrogating the feed-in tariff regimes that governed Claimants' photovoltaic facilities.

D. Spain Wrongfully Altered the Incentive Regimes

47. Despite the legal guarantees and economic incentives granted in RD 661/2007 and RD 1578/2008, Spain subsequently and retroactively amended the incentives framework applicable to Claimants' photovoltaic facilities, substantially altering the economic regime on which Claimants had based their investments. Spain's amendments to RD 661/2007 and RD 1578/2008 breach the ECT and international law and entitle Claimants to compensation for the damages they have suffered. The measures implemented by Spain and discussed below are illustrative, rather than exhaustive.

48. In 2010, Spain approved at least two pieces of legislation that reduced the remuneration that had been guaranteed to photovoltaic facilities operating under RD

661/2007 and RD 1578/2008. The first of those amendments was Royal Decree 1565/2010,[19] which cancelled the right of projects operating under RD 661/2007 to receive premium pricing after year 25 of their operating lives,[20] despite the clear wording in RD 661/2007 that the projects would be entitled to 80% of the incentivized remuneration throughout their operating lives after year 25. That amendment thus reduced the value of all four of DCM 1's projects, including Projects Bovera, Cam Mestre, Sevilla, Alicante, and both of DCM 2's projects, including Projects Huescar Energia and Granada Energia. This measure also affected all three of HL Sun Invest's projects, including Parsosy Alamus, Parsosy Borges Blanques 2, and Parsosy Cervia II, as well as two of Edisun Power's projects, Projects El Tesoro and El Trujillo. Spain later extended their time limit to thirty years.

49. Additionally, Royal Decree-Law 14/2010 placed limits on the annual operating hours of photovoltaic facilities that were eligible for incentivized compensation under both RD 661/2007 and RD 1578/2008. That amendment contained two levels of reductions on operating hours for the plants: a general reduction that applied to all photovoltaic facilities indefinitely and an "extraordinary" reduction that applied to facilities operating under RD 661/2007 for a period of three years. While Royal Decree-Law 14/2010 stated that electricity produced beyond the operating hour thresholds could be sold at market prices, those prices were far below the feed-in tariffs that Spain had originally guaranteed. Thus, Royal Decree-Law 14/2010 arbitrarily reduced the quantity of electricity that qualified for the guaranteed feed-in tariff, which further harmed Claimants' investments.

50. The effect of both Royal Decree 1565/2010 and Royal Decree-Law 14/2010 was a substantial reduction in the current and projected revenues and profits that Claimants expected from their photovoltaic projects when they invested in them.

51. In January 2012, Spain enacted Royal Decree-Law 1/2012, which imposed a moratorium on projects to be enrolled under RD 1578/2008, after Claimant Edisun Power had incurred costs in reliance on the promise of further support for investments.[21] Spain's moratorium was inconsistent with its further encouragement of developing projects under RD

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[19] Royal Decree 1565/2010, of November 19, regulating and amending certain aspects related to the activity of generating electricity under the special regime.

[20] That amendment was later extended to year 28 by Royal Decree-Law 14/2010, dated December 23, establishing urgent measures for the correction of the tariff deficit of the electricity sector, and finally to year 30 by Law 2/2011, of March 4, on Sustainable Economy.

[21] Royal Decree-Law 1/2012, of January 27, suspending the pre-allocation of remuneration procedures and abrogating the economic incentives for new facilities of electrical energy generation through cogeneration, renewable energy sources and waste.

1578/2008, and Spain's own Supreme Tribunal has ruled the measure violated investors' legitimate expectations.

52. On December 27, 2012, Spain enacted a further alteration to the economic regime established in RD 661/2007 and RD 1578/2008. Law 15/2012 reduced the incentives available to Claimants' photovoltaic facilities under RD 661/2007 and RD 1578/2008 through the guise of a so-called "tax on the value of electricity generation."[22] That purported "tax" is calculated at a rate of 7% of all revenue received from the production of electricity, including the incentive remuneration established in RD 661/2007 and RD 1578/2008. Thus, the "tax" does not operate as a tax at all, but instead as a direct reduction in the incentive remuneration promised under RD 661/2007 and RD 1578/2008. All of Claimants' photovoltaic plants have been wrongly subjected to that reduction since January 1, 2013.

53. Furthermore, in February 2013, Spain enacted Royal Decree-Law 2/2013, which retroactively amended the method for updating the incentivized pricing formulas in RD 661/2007 and RD 1578/2008 by de-linking it from the general Consumer Price Index and substituting a lower index.[23] This measure further reduced the remuneration to which Claimants' photovoltaic facilities were entitled and that Claimants reasonably expected when deciding to invest in those facilities in Spain.

54. Each of the measures described above constitutes a wrongful repudiation of Spain's guarantees of stable, incentivized pricing in RD 661/2007 and RD 1578/2008, which should have applied to Claimants' facilities, unmodified, for a period of at least twenty-five years (and for the remaining life of the facilities in the case of RD 661/2007). Spain is liable under the ECT and international law for significantly and retroactively altering RD 661/2007 and RD 1578/2008 only three to four years after enacting that legislative program, thereby failing to fulfill its commitments to Claimants. As discussed below, however, these were not the only violations of the ECT and international law that Spain has committed.[24]

E. Spain Wrongfully Abrogated the Incentive Regimes

55. The foregoing material alterations to the legal and economic regimes guaranteed in RD 661/2007 and RD 1578/2008—in reliance on which Claimants made their

[22] Law 15/2012, of December 27, on tax measures for energy sustainability.

[23] Royal Decree-law 2/2013, of February 1, on urgent measures in the electricity system and in the financial sector.

[24] Such violations include but are not limited to breaches of Articles 10 and 13 of the ECT.

investments—caused significant damage to Claimants, principally by reducing the revenues Claimants reasonably expected when they decided to invest in Spain. On July 12, 2013, Spain again violated the ECT and international law again through the enactment of Royal Decree-Law 9/2013 ("**RDL 9**")[25] and its subsequent implementing acts.

56. Unlike the measures before it, which reduced the remuneration promised to Claimants' photovoltaic facilities through RD 661/2007 and RD 1578/2008, RDL 9 retroactively abolished the incentivized pricing system previously guaranteed to facilities operating under those Decrees. Instead of paying Claimants' facilities the remuneration promised in RD 661/2007 and RD 1578/2008, Spain declared that it would limit any future compensation to remuneration based on the electricity market price, plus payments of "specific remuneration" designed to provide, in Spain's view, a "reasonable return on the investment." RDL 9 did not state exactly how it would calculate those "specific remuneration" payments. Instead, it indicated that it would base the rate of return on the historical yield of ten-year Spanish government bonds and that it would base the amount of investment on its own estimates of the costs and revenues of a "standard" electricity-generating plant built and operated by an "efficient and well-managed company."

57. Some months later, Spain enacted Act 24/2013 of December 26, 2013, on the Electricity Sector ("**Act 24**"), which confirmed the scheme established in RDL 9 and added two significant modifications. First, Act 24 stated that the formula for calculating the specific remuneration payments under RDL 9 would take into account the revenues that a project already had earned when determining whether a given facility had reached Spain's notion of a "reasonable rate of return." Second, Act 24 provided that Spain could further reduce the specific remuneration payments owed under RDL 9 on an annual basis if necessary to balance the electricity system's revenues and expenses.

58. Nearly a full year after first announcing the premature termination of RD 661/2007 and RD 1578/2008, Spain finally issued formulas that served as guidance to what, if any, future remuneration would apply to Claimants' facilities. On June 6, 2014, Spain enacted Royal Decree 413/2014, and on June 16, 2014, Spain enacted Ministerial Order IET/1045/2014 to further implement both RDL 9 and Act 24 and establish specific

[25] Royal Decree-Law 9/2013, of July 12, enacting urgent measures to ensure the financial stability of the electricity system.

remuneration parameters for existing facilities.[26] Those acts included over 1500 different formulas, based on over 1500 different "standard facilities."

59. Spain's July 2013 announcement of RDL 9 caused a shock-wave in the Spanish renewables market. Existing and would-be investors alike rightly grew concerned about the future stability of the legal and business environment in Spain, as the legislation created uncertainty regarding the future profits of existing facilities and cast doubt on the credibility of any future legislative promises that Spain might make. RDL 9's implementing measures, the final installment of which was announced in June 2014, only exacerbated the situation by confirming the substantially reduced remuneration that would apply to existing facilities effective as of the July 2013 announcement of the end of the RD 661/2007 and RD 1578/2008 incentives. The new regime was unacceptable both in terms of the returns it ostensibly offered to investments and in terms of its reliability and legitimacy, as Spain could simply change the rules again the next day. The retroactive application of the new regime, as well as the lack of clarity and utter unfairness of the new legislation, decimated investor confidence in Spain's renewable energy sector.

60. The new remunerative regime now governed by RDL 9; Act 24; Royal Decree 413/2014; and Ministerial Order ETU/130/2017, which replaced Ministerial Order IET/1045/2014 for the period 2017-2020, (the "**New Regulatory Regime**") is extraordinarily complex and its impacts are devastating for the revenues of Claimants' photovoltaic facilities. Spain's notion of a "reasonable rate of return" is to be determined in relation to the historical yield of ten-year Spanish government bonds. Not only has that rate been well below what most investors expected from investments governed by RD 661/2007 and RD 1578/2008, but also as the Spanish economy improves, the yield on ten-year government bonds is decreasing, which will lead to further cuts in remuneration for renewable energy facilities.

61. Further, Spain's "reasonable rate of return" is purely theoretical. When assessing future remuneration, Spain bases its notion of what is reasonable on estimates of the costs and revenues of a "standard" electricity-generating plant built and operated by an "efficient and well-managed company." Those notions are of Spain's own making. In practice, Spain's hypothetical facility is conjured, to the detriment of investors.

[26] Royal Decree 413/2014, of June 6, regulating the activity of electrical power generation by means of renewable energy, cogeneration and waste sources; Order IET/1045/2014, of June 16, approving the remuneration parameters of standard facilities applicable to certain facilities of electrical power generation by means of renewable energy, cogeneration and waste sources.

62. Furthermore, the new remuneration formulas are set for partial review every three years (the first having occurred based on Ministerial Order ETU/130/2017), and full review every six years (beginning in 2019),[27] subjecting the remuneration of Claimants' plants to further uncertainty despite the original guarantees in RD 661/2007 and RD 1578/2008 that fixed feed-in tariffs for the full operating lives of qualifying projects. Thus, the new framework is virtually assured to lead to further damage to Claimants' investments.

63. Under Spain's dictate, Claimants' facilities receive remuneration at levels far below what Spain promised in RD 661/2007 and RD 1578/2008, which causes significant harm to Claimants. The substantial reduction in remuneration paid to Claimants' facilities continues to cause significant harm to those investments, decreasing their value, jeopardizing their future operation, and leading to cash-flow constraints that will have knock-on effects on Claimants' other business interests.

64. Claimants seek relief through arbitration under the ECT for all injuries caused by Spain's illegal measures.

III. JURISDICTION OF ICSID

65. As a Contracting Party to the ECT and a Contracting State to the ICSID Convention, Spain agreed that Claimants could submit this dispute to ICSID arbitration. Article 26 of the ECT, governing the settlement of disputes between and investor and a Contracting Party, provides:

> (1) Disputes between a Contracting Party and an Investor of another Contracting Party relating to an Investment of the latter in the Area of the former, which concern an alleged breach of an obligation of the former under Part III shall, if possible, be settled amicably.
>
> (2) If such disputes can not be settled according to the provisions of paragraph (1) within a period of three months from the date on which either party to the dispute requested amicable settlement, the Investor party to the dispute may choose to submit it for resolution:
>
> > (a) to the courts or administrative tribunals of the Contracting Party to the dispute;
> >
> > (b) in accordance with any applicable, previously agreed dispute settlement procedure; or

[27] The only parameters that are not subject to review are the estimated initial investment and the regulatory lifespan of the facility.

(c) in accordance with the following paragraphs of this Article.

(3) (a) Subject only to subparagraphs (b) and (c), each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration or conciliation in accordance with the provisions of this Article.

(b) (i) The Contracting Parties listed in Annex ID do not give such unconditional consent where the Investor has previously submitted the dispute under subparagraph (2) (a) or (b).[28] …

(c) A Contracting Party listed in Annex IA does not give such unconditional consent with respect to a dispute arising under the last sentence of Article 10(1).[29]

(4) In the event that an Investor chooses to submit the dispute for resolution under subparagraph (2)(c), the Investor shall further provide its consent in writing for the dispute to be submitted to:

(a)(i) The International Centre for Settlement of Investment Disputes, established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, 18 March 1965 (hereinafter referred to as the "ICSID Convention"), if the Contracting Party of the Investor and the Contracting Party party to the dispute are both parties to the ICSID Convention; …

(5) (a) The consent given in paragraph (3) together with the written consent of the Investor given pursuant to paragraph (4) shall be considered to satisfy the requirement for:

(i) written consent of the parties to a dispute for purposes of Chapter II of the ICSID Convention …

(6) A tribunal established under paragraph (4) shall decide the issues in dispute in accordance with this Treaty and applicable rules and principles of international law.

66. Article 25 of the ICSID Convention states that "the jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State … and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre."

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[28] Spain is listed under Annex ID. However, Claimants have not previously submitted this dispute to the courts or administrative tribunals of Spain or in accordance with any previously agreed dispute settlement procedure. Consequently, Article 26(3)(b)(i) is irrelevant for purposes of this arbitration.

[29] Spain is not listed under Annex IA. Consequently, Claimants are entitled to assert a claim based on the last sentence of Article 10(1), the ECT's "umbrella clause," which they do.

67. The requirements for ICSID jurisdiction under Article 26 of the ECT as well as under Article 25 of the ICSID Convention may be summarized as follows: a) the dispute must be a legal dispute arising directly out of an investment and concerning an alleged breach of Part III of the ECT; b) the dispute must involve a covered "investment;" c) the Respondent must be a Contracting Party to the ECT and a Contracting State of the ICSID Convention; d) the opposing party must be a covered "investor" that is a national or company of another Contracting Party to the ECT and of a Contracting State of the ICSID Convention; e) the parties must have consented to ICSID jurisdiction; and f) the parties must have failed to amicably settle the dispute within a three-month period after the notice of dispute was given.

68. Each of these requirements is satisfied in the present case.

A. This is a Dispute Concerning a Breach of Part III of the ECT

69. As explained in the previous section, this dispute concerns Spain's failure to fulfill legislative and regulatory commitments it made relative to Claimants' photovoltaic facilities and related investments. The acts and omissions of Spain described above and to be developed further in the course of this proceeding constitute serious and repeated breaches of the protections accorded to Claimants' investments in Spain under Part III of the ECT. Those protections include, but are not limited to, those found in Articles 10 and 13 of the ECT.

70. Article 10 provides a number of guarantees and protections to Claimants and their investments, including: 1) fair and equitable treatment; 2) a requirement that the host state accord "the most constant protection and security" to investments; 3) a prohibition against unreasonable or discriminatory measures that impair the management, maintenance, use, enjoyment, or disposal of investments; 4) a prohibition against treatment less favorable than that required by international law, including treaty obligations; 5) a requirement to observe any obligations the host state has entered into with an investment or an investor; 6) most-favored nation treatment; and 7) national treatment. By way of example only, Spain treated Claimants' investments unfairly and inequitably by altering, and then abrogating, the incentives regimes governing those investments, in violation of its commitments and the clear terms of RD 661/2007 and RD 1578/2008. Spain's misconduct in that respect also unlawfully impaired Claimants' investments in an unreasonable or discriminatory manner.

71. Additionally, Article 13 of the ECT prohibits Spain from unlawfully expropriating Claimants' investments or subjecting them to measures having an equivalent effect. As Claimants will demonstrate during the course of this proceeding, Spain breached

Article 13 of the ECT by abrogating the rights granted to their investments through RD 661/2007 and RD 1578/2008. Since those rights, granted by law, formed part of Claimants' investments in this case, Spain's repudiation of those rights constitutes a measure tantamount to expropriation, if not a direct expropriation, under the ECT and international law.

72. Spain's violations of those provisions of the ECT, as well as its violations of international law, involve Claimants' legal rights and entitle them to legal remedies. This is a classic legal dispute.

B. The ECT Covers Claimants' Investments

73. The term "investment" is not defined in Article 25 of the ICSID Convention, but it is widely understood to have a broad definition such as that found in the ECT. Article 1(6) of the ECT defines "Investment" as:

> "Investment" means every kind of asset, owned or controlled directly or indirectly by an Investor and includes:
>
> (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;
>
> (b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise;
>
> (c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;
>
> (d) Intellectual Property;
>
> (e) Returns;
>
> (f) any right conferred by law or contract or by virtue of any licences and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector.
>
> A change in the form in which assets are invested does not affect their character as investments and the term "Investment" includes all investments, whether existing at or made after the later of the date of entry into force of this Treaty for the Contracting Party of the Investor making the investment and that for the Contracting Party in the Area of which the investment is made (hereinafter referred to as the "Effective Date") provided that the Treaty shall only apply to matters affecting such investments after the Effective Date.

> "Investment" refers to any investment associated with an Economic Activity in the Energy Sector.

74. Under this definition, there are a number of different investments of Claimants involved in this case, including, but not limited to: (i) Claimants' ownership of tangible and intangible property and property rights, including their ownership of the photovoltaic projects described herein; (ii) Claimants' ownership of shares and equity participation in Spanish companies and business enterprises as well as debt obligations; (iii) Claimants' right to returns and claims to money; (iv) rights conferred to Claimants' facilities by law, specifically, the rights to fixed feed-in tariff pricing conferred through RD 661/2007 and RD 1578/2008; and (v) rights conferred by licenses and permits.

75. Claimants thus own several covered "investments" under both the ECT and the ICSID Convention.

C. Respondent Is a Contracting Party to the ECT and a Contracting State to the ICSID Convention

76. Spain is a Contracting Party to the ECT. Spain signed the ECT on December 17, 1994, and ratified it on December 11, 1997. Spain deposited its instrument of ratification on December 16, 1997. The ECT entered into force for Spain on April 16, 1998.[30]

77. Spain is a Contracting State of the ICSID Convention. Spain signed the ICSID Convention on March 21, 1994, and deposited its ratification of the Convention on August 18, 1994. The ICSID Convention entered into force for Spain on September 17, 1994.[31]

D. Claimants Are Covered Investors and Nationals of Contracting Parties to the ECT and Contracting States of the ICSID Convention

78. For purposes of Article 25 of the ICSID Convention, nationality is determined by the domestic laws of each Contracting State. Article 1(7) of the ECT likewise provides that the term "investor" means "a company or other organization organized in accordance with the law applicable in that Contracting Party."[32]

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[30] *See* Energy Charter: Members and Observers—Spain, C-6; Status of Ratification of the Energy Charter Treaty as of June 2013, C-7.

[31] *See* ICSID: List of Contracting States and Other Signatories of the Convention, April 12, 2016, C-13.

[32] *See* Energy Charter Treaty and Related Documents, C-1.

79. DCM 1, DCM 2, HL Sun Invest GmbH & Co. KG, and HL Sun Invest GmbH are business entities duly established in the Federal Republic of Germany. They currently own 100% of the investments related to the photovoltaic facilities in Spain discussed above, which they also owned on the date of consent to ICSID jurisdiction (discussed below) and immediately before the events giving rise to this dispute.

80. Germany is a Contracting Party to the ECT. Germany signed the ECT on December 17, 1994, and ratified it on March 14, 1997. Germany deposited its instrument of ratification on December 16, 1997. The ECT entered into force for Germany on April 16, 1998.[33]

81. Germany signed the ICSID Convention on January 27, 1966, and deposited its ratification on the Convention on April 18, 1969. The ICSID Convention entered into force for Germany on May 18, 1969.[34]

82. Edisun Power is a business entity duly established in the Swiss Confederation. It currently owns 100% of the investments related to the photovoltaic facilities in Spain discussed above, which they also owned on the date of consent to ICSID jurisdiction (discussed below) and immediately before the events giving rise to this dispute.

83. Switzerland is a Contracting Party to the ECT. Switzerland signed the ECT on December 17, 1994, and ratified it on May 28, 1996. Switzerland deposited its instrument of ratification on September 19, 1996. The ECT entered into force for Switzerland on April 16, 1998.[35]

84. Switzerland signed the ICSID Convention on September 22, 1967, and deposited its ratification on the Convention on May 15, 1968. The ICSID Convention entered into force for Switzerland on June 14, 1968.[36]

85. Thus, Claimants are covered "Investors" and nationals of Contracting Parties to the ECT.

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[33] *See* Energy Charter: Members and Observers—Germany, C-8; Status of Ratification of the Energy Charter Treaty as of June 2013, C-7.

[34] *See* ICSID: List of Contracting States and Other Signatories of the Convention, April 12, 2016, C-13.

[35] *See* Energy Charter: Members and Observers—Switzerland, C-9; Status of Ratification of the Energy Charter Treaty as of June 2013, C-7.

[36] *See* ICSID: List of Contracting States and Other Signatories of the Convention, April 12, 2016, C-13.

E. The Parties Have Consented to ICSID Arbitration

86. Spain consented to submit legal disputes like the present one to ICSID arbitration by signing and ratifying the ECT. Article 26(4) of the ECT expressly includes ICSID as a dispute settlement option for investors. As noted above, the ECT entered into force for Spain on April 16, 1998.[37]

87. Claimants consented to arbitrate this dispute pursuant to Article 26 of the ECT through letters to Spain dated May 16, 2014, September 17, 2014, and March 11, 2015.[38] Claimants further confirm their consent to settle this dispute through ICSID arbitration through this Request for Arbitration. Thus, Claimants have satisfied the "consent" requirement under the ICSID Convention.

F. Claimants Attempted to Settle This Dispute Amicably

88. Before submitting a dispute to arbitration, Article 26 of the ECT requires disputing parties to settle their disputes amicably, if possible. Claimants sent letters to Spain on May 16, 2014, September 17, 2014, and March 11, 2015, which described their various concerns regarding Spain's alterations to the legal and economic regimes applicable to their photovoltaic facilities, notifying it of this dispute and offering to settle the dispute amicably.[39] Spain has not responded to Claimants' offers to pursue a settlement and no resolution of the present dispute has been achieved.

89. Article 26 of the ECT permits an Investor to submit its dispute to ICSID arbitration if the dispute is not settled amicably within a three month period. As more than three months have passed since Claimants attempted to settle this dispute amicably with Spain, they are entitled to submit this Request for Arbitration with ICSID.

IV. PROCEDURAL MATTERS

90. In accordance with Article 37 of the ICSID Convention, Claimants request that a Tribunal be constituted to hear this matter as soon as possible. In view of the size and complexity of this case, the Arbitral Tribunal should consist of three arbitrators.

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[37] *See* Energy Charter: Members and Observers—Spain, C-6.

[38] *See* Edisun Power's Letter to Spain, May 16, 2014, C-10; DCM 1 and DCM 2's Letter to Spain, September 17, 2014, C-11; HL Sun Invest GmbH & Co. KG and HL Sun Invest GmbH's Letter to Spain, March 11, 2015, C-12.

[39] *See id.*, C-10, C-11, and C-12.

91. Pursuant to Rule 22(1) of the ICSID Rules of Procedure for Arbitration Proceedings, Claimants select English as the procedural language for this arbitration.

92. Pursuant to Article 62 and 63 of the ICSID Convention, and in view of the locations of Claimants and Respondent, Claimants request that the arbitration proceedings be held at ICSID's facilities in Paris, France.

93. The request is submitted in six (6) signed original paper copies, as well as an electronic copy, and it is accompanied by payment of the fee for lodging requests.

V. PRELIMINARY REQUEST FOR RELIEF

94. Claimants request an award granting them the following relief:

- a declaration that the dispute is within the jurisdiction of ICSID and the ECT;
- a declaration that Spain has violated Part III of the ECT, including but not limited to Article 10 and Article 13, as well as international law with respect to Claimants' investments;
- compensation to Claimants for all damages they have suffered, to be developed and quantified in the course of this proceeding but likely to include, by way of example and without limitation, sums invested by Claimants to acquire and develop the investments, lost profits, and consequential damages flowing from Spain's breaches;
- all costs of this proceeding, including Claimants' attorneys' fees;
- pre- and post-award compound interest until the date of Spain's final satisfaction of the award; and
- any additional relief the tribunal may deem just and proper.

95. Claimants reserve their rights to modify, amend, or supplement their claims during the course of the arbitration proceeding.

VI. CONCLUSION

96. For the reasons set forth above, Claimants respectfully request that ICSID register this arbitration against the Kingdom of Spain.

Dated: October 17, 2017

Respectfully submitted,

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