

TO THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT  
DISPUTES ESTABLISHED UNDER THE CONVENTION ON THE  
SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND  
NATIONALS OF OTHER STATES

**BAYWA R.E. RENEWABLE ENERGY GMBH**  
**(Germany)**

**BAYWA R.E. ASSET HOLDING GMBH**  
**(Germany)**

**Claimants**

**v.**

**THE KINGDOM OF SPAIN**

**Respondent**

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**REQUEST FOR ARBITRATION**

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*Counsel for Claimants*

**CUATRECASAS, GONÇALVES PEREIRA**

Almagro, 9  
28010 Madrid  
(Spain)

Madrid, April 16, 2015

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## I. INTRODUCTION

1. Pursuant to Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of other States (**ICSID Convention**),<sup>1</sup> Rule 1 of the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (**Institution Rules**), and Article 26(4)(a)(i) of the Energy Charter Treaty (**ECT**),<sup>2</sup> this Request for Arbitration is submitted to the Secretary-General of the International Centre for Settlement of Investment Disputes (**ICSID** or the **Centre**).
2. The dispute to which this Request for Arbitration refers arises from a series of breaches by the Kingdom of Spain of its obligations under the ECT and international law, which have caused substantial damages to the Claimants.
3. The Claimants respectfully request the Secretary-General of the Centre to register this Request for Arbitration as soon as possible in accordance with Rule 6 of the ICSID Institution Rules and to issue a Notice of Registration of this Request in accordance with Rule 7 of the Institution Rules.

## II. THE PARTIES

### II.1. The Claimants

4. The Claimants in this dispute are:

- (i) **BAYWA R.E. RENEWABLE ENERGY GMBH**  
Herzog-Heinrich-Strasse 9  
80336 - Munich  
Germany

BAYWA R.E. RENEWABLE ENERGY GMBH (**BAYWA RENEWABLE ENERGY**) is a limited liability company (GmbH as per its acronym in German) incorporated and existing under the laws of the Federal Republic of Germany.

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<sup>1</sup> Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, DC on March 18, 1965. 575 U.N.T.S. 159. For Spain, Spanish Official Gazette (*Boletín Oficial del Estado*) No. 219, of 13 September 1994.

<sup>2</sup> The Energy Charter Treaty was signed at Lisbon on December 17, 1994. 2080 U.N.T.S. 95. For Spain, Spanish Official Gazette no. 117, of May 17, 1995; no. 167, July 14, 1995 (corrections); no. 65, March 17, 1998 (instrument of ratification); no. 191, August 11, 1999 (amendments to commercial provisions of the treaty). See *infra* n. 31.

The official chronological extract from the Commercial Register of the Munich Local Court of BAYWA RENEWABLE ENERGY is annexed as **Exhibit C-1**.

(ii) **BAYWA R.E. ASSET HOLDING GMBH**

Am Haag 10  
82166 - Gräfelfing  
Germany

BAYWA R.E. ASSET HOLDING GMBH (**BAYWA ASSET HOLDING**) is a limited liability company incorporated and existing under the laws of the Federal Republic of Germany. BAYWA R.E. ASSET HOLDING is wholly owned and controlled by BAYWA RENEWABLE ENERGY.

The official chronological extract from the Commercial Register of the Munich Local Court of BAYWA ASSET HOLDING is annexed as **Exhibit C-2**.<sup>3</sup>

5. The Claimants are represented in this arbitration by:

Mr. Pedro Claros Alegría  
Ms. María Isabel Rodríguez Vargas  
Ms. Lucía Montes Saralegui  
Mr. José Ángel Rueda García  
Ms. Mónica Lasquibar Rodríguez  
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[pedro.alvarezchicote@cuatrecasas.com](mailto:pedro.alvarezchicote@cuatrecasas.com)

6. The Powers of Attorneys granted by the Claimants to the above-mentioned lawyers are annexed as **Exhibit C-3** (for BAYWA RENEWABLE ENERGY) and

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<sup>3</sup> BAYWA R.E. ASSET HOLDING GMBH is the legal successor of RENERCO RENEWABLE ENERGY CONCEPTS AG, which was renamed from RENERCO RENEWABLE ENERGY CONCEPTS AG into BAYWA R.E. ASSET HOLDING AG on March 21, 2013 and converted into BAYWA R.E. ASSET HOLDING GMBH on December 13, 2013.

**Exhibit C-4** (for BAYWA ASSET HOLDING). All communications in relation to this arbitration shall be delivered to the above-mentioned attorneys.

7. Each Claimant has taken all internal actions necessary to authorize this Request for Arbitration. Certificates of the resolutions passed by the Boards of Directors of each Claimant authorizing the presentation of this Request are annexed as **Exhibit C-5** (for BAYWA RENEWABLE ENERGY) and **Exhibit C-6** (for BAYWA ASSET HOLDING).

## **II.2. The Respondent**

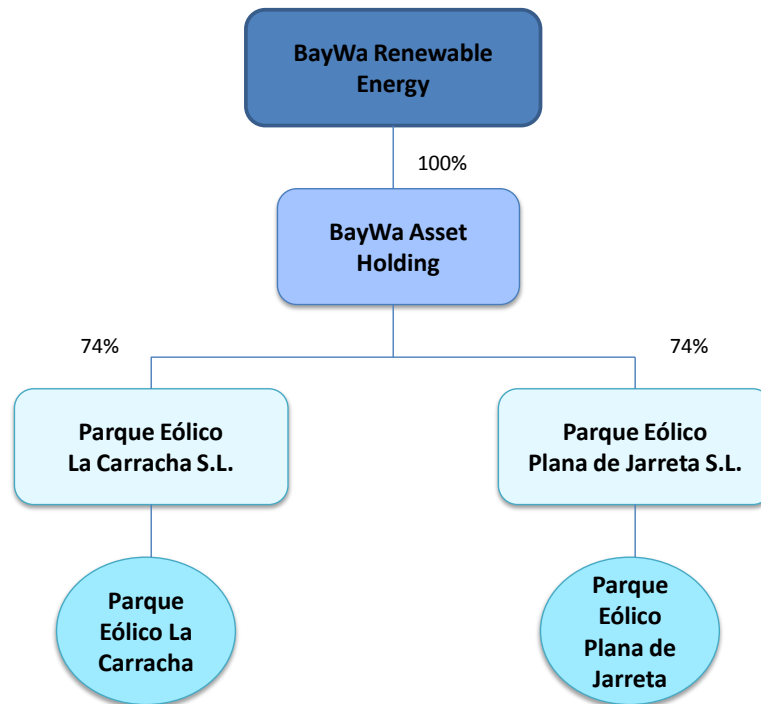
8. The Respondent in this arbitration is the Kingdom of Spain and is represented, pursuant to international law, by the President of the Spanish Government:

H.E. Mr. Mariano Rajoy Brey  
President of the Spanish Government  
Complejo de la Moncloa  
Avenida Puerta de Hierro, s/n  
28071 - Madrid  
Spain

9. As it will be explained in Section V below, the Respondent is a Contracting Party to the ECT and a Contracting State to the ICSID Convention. The Claimants and the Respondent will be jointly referred to as the **Parties**.

## **III. THE CLAIMANTS' INVESTMENTS IN THE SPANISH WIND SECTOR**

10. The Claimants hold stakes (shareholding interest and participative debt interest) in two wind parks located in La Muela, province of Zaragoza (Spain): "Parque Eólico La Carracha" and "Parque Eólico Plana de Jarreta" (the **Wind Farms**).
11. The Claimants' investment structure in the Spanish wind sector is drawn as follows (from top to bottom):



12. On November 3, 2009, BAYWA RENEWABLE ENERGY acquired an 87.7% shareholding interest of BAYWA ASSET HOLDING (formerly RENERCO RENEWABLE ENERGY CONCEPTS AG). Since late 2012, BAYWA RENEWABLE ENERGY is the sole shareholder of BAYWA ASSET HOLDING.
13. At the same time, and since December 28, 2001, BAYWA ASSET HOLDING (formerly RENERCO RENEWABLE ENERGY CONCEPTS AG) owns shareholding and debt interests in the two Spanish entities that own the Wind Farms:
  - (i) To date, BAYWA ASSET HOLDING (formerly RENERCO RENEWABLE ENERGY CONCEPTS AG) holds a 74% shareholding interest in PARQUE EÓLICO LA CARRACHA S.L., together with a participative debt interest worth EUR 534,820.40.

PARQUE EÓLICO LA CARRACHA, S.L. is a limited liability company incorporated and existing under the laws of Spain. A certificate from the

Secretary of the Board of Directors of PARQUE EÓLICO LA CARRACHA, S.L. showing BAYWA ASSET HOLDING's shareholding in PARQUE EÓLICO LA CARRACHA, S.L. is annexed as **Exhibit C-7**. An online Excerpt issued by the Spanish Commercial Registries on the file of PARQUE EÓLICO LA CARRACHA, S.L. is also enclosed as **Exhibit C-8**.

PARQUE EÓLICO LA CARRACHA, S.L. owns the "Parque Eólico La Carracha", a 49,500 kW wind park located in La Muela, Zaragoza, Spain.

- (ii) To date, BAYWA ASSET HOLDING (formerly RENERCO RENEWABLE ENERGY CONCEPTS AG) holds a 74% shareholding interest in PARQUE EÓLICO PLANA DE JARRETA, S.L., together with a participative debt interest worth EUR 1,030,666.14.

PARQUE EÓLICO PLANA DE JARRETA, S.L. is a limited liability company incorporated and existing under the laws of Spain. A certificate from the Secretary of the Board of Directors of PARQUE EÓLICO PLANA DE JARRETA, S.L. showing BAYWA ASSET HOLDING's shareholding in PARQUE EÓLICO PLANA DE JARRETA, S.L. is annexed as **Exhibit C-9**. An online Excerpt issued by the Spanish Commercial Registries on the file of PARQUE EÓLICO PLANA DE JARRETA, S.L. is also enclosed as **Exhibit C-10**.

PARQUE EÓLICO PLANA DE JARRETA, S.L. owns the "Parque Eólico Plana de Jarreta", a 49,500 kW wind park located in La Muela, Zaragoza, Spain.

#### IV. SUMMARY OF THE DISPUTE

- 14. The present dispute arises out of the numerous and drastic changes to the legal framework applicable to the Wind Farms adopted by the Respondent between late 2012 and 2014. These changes (separately and in combination) (i) have caused substantial harm to the Claimants, and (ii) are in violation of the Respondent's obligations owed to the Claimants under the ECT and applicable rules and principles of international law, including the violation of the obligations the Respondent entered into in connection with the agreement concluded between the Spanish Government and the wind industry (the **Agreement with the wind industry**).
- 15. We provide below a preliminary summary of the present dispute.

#### **IV.1. A favorable framework established by Spain to attract investment in the wind renewable energy sector**

##### **1. The Electric Power Act of 1997**

16. In the 1990s, the Respondent decided to put in place a specific legal and economic regulatory framework to promote power generation from renewable energies in general, and wind energy in particular. Towards this end, and during the following decade, it established (and further expanded) a regime that provided for specific incentives aimed at inducing investors to engage in renewable generation projects in Spain, including wind farms in particular.
17. During all this time until 2013, the incentives for electricity production from renewable sources have been articulated through the so-called “Special Regime” (*Régimen Especial*) for electricity production, sanctioned by Act 54/1997, of November 27, on the Electric Power Sector (**Electric Power Act of 1997**),<sup>4</sup> effective until December 28, 2013. In this regard, the Electric Power Act of 1997 differentiated between two regimes for the remuneration of power production:
  - (i) The Ordinary Regime, mainly referred to power production facilities using traditional (non-renewable) sources of energy; and,
  - (ii) The Special Regime, chiefly associated with power production facilities of a specific installed capacity using renewable sources of energy.<sup>5</sup>
18. The Special Regime defined in the Electric Power Act of 1997 was initially developed under Royal Decree 2818/1998, of December 23 (**RD 2818/1998**). This favorable framework for the Special Regime was based on, among others, the following relevant principles:
  - (i) An incentive-led economic regime through a feed-in remuneration scheme (i.e., guaranteed remuneration above the market price), designed to provide predictable revenue streams based on the energy generated (kWh) by each renewable producer; and,

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<sup>4</sup> Published on the Spanish Official Gazette of 28 November 1997. The Electric Power Act of 1997 provided the legal and economic regime for several electricity-related activities: power generation, transmission, distribution and supply.

<sup>5</sup> Electric Power Act of 1997, Article 27(1).

- (ii) The right to sell the full net amount of the electricity power generated during the installation's entire operational life.<sup>6</sup>
19. In all, the feed-in remuneration regime that Spain established was designed to provide renewable generators with long-term, stable and predictable revenue streams that depended on the volume of generated power (measured in kWh), thereby inducing investors to **(i)** invest in sophisticated and capital intensive renewable energy projects, and **(ii)** optimize the operation of the plants to maximize output.
  20. It was under this framework designed by Electric Power Act of 1997 and developed by RD 2818/1998 that the Wind Farms were commissioned as Special Regime producers and began operating. BAYWA ASSET HOLDING (formerly RENERCO RENEWABLE ENERGY CONCEPTS AG) accomplished its investment in the Spanish wind sector under this framework.
  21. The principles of the "feed-in" scheme in place under the Electric Power Act of 1997 were further developed under Royal Decree 436/2004, of March 12 (**RD 436/2004**), and later on, under Royal Decree 661/2007, of May 25 (**RD 661/2007**).

## 2. Royal Decree 436/2004

22. Similarly to RD 2818/1998, RD 436/2004 articulated the feed-in remuneration regime legally provided under two alternative remuneration options:
  - (α)** A regulated tariff; or,
  - (β)** The pool price<sup>7</sup> plus premium and incentive.
23. Both remuneration options were characterized as follows:
  - (i) As intrinsic to any feed-in system, the regulated tariff and the pool price plus premium and incentive were both higher than the average pool prices, so that producers under the Special Regime received values higher than the market price.
  - (ii) The right to elect one of these two options could be exercised freely '*as best suited the producer*', so producers could change from option **(α)** to **(β)**

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<sup>6</sup> Electric Power Act of 1997, Article 30(2)(a). In contrast, Ordinary Regime facilities could not sell all the power they produced and had to submit hourly bids to the organized electricity market.

<sup>7</sup> The "pool price", to which the premium and the incentive were to be added, was the price resulting from the organized electricity market or the price freely negotiated by the owner or representative of the facility.

and *vice versa*, for each year, provided they notified their decision to the distributor and to the Spanish authorities one month in advance.

- (iii) Under both options **(α)** and **(β)**, renewable producers were entitled to sell the full net amount of the electricity power generated.
  - (iv) Under both options **(α)** and **(β)**, renewable producers were entitled to receive the so-called 'remuneration supplement (or penalty) for reactive energy', which was granted provided that the producer complied with technical specifications that measure the quality of the energy produced.
  - (v) Special Regime facilities were entitled to receive the feed-in remuneration (options **(α)** and **(β)**) at a particular rate during an initial operation period.<sup>8</sup> After the initial period expired, the values of the feed-in remuneration system would continue for the facility's remaining lifetime at a lower rate.
  - (vi) Finally, under Articles 40(2) and (3) of RD 436/2004, any future revision of the feed-in remuneration values (i.e., the regulated tariffs, premiums and incentives) would only affect *new* renewable facilities, since a revision would not affect facilities that had obtained their commissioning certificate prior to January 1 of the second year following the year in which any eventual revision were introduced.
24. To be entitled to the above-mentioned economic incentives, RD 436/2004 required renewable power plants to be finally registered in the 'State Register of Production Facilities under the Special Regime' (**RAIPRE**),<sup>9</sup> a register under the competence of the Spanish Ministry in charge of energy matters (**Ministry of Energy**).<sup>10</sup>
25. Under RD 436/2004, tariffs, premiums and incentives were calculated as a given percentage of the so-called 'Reference Average Tariff' (**TMR**). The TMR was annually calculated by the Spanish Government based on the relationship between the estimation of costs needed to remunerate the activities of

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<sup>8</sup> In the case of wind farms, RD 436/2004 defined two initial periods (the first 5 years of operation and the following 10 years of operation) applicable to the 'regulated tariff'. In contrast, the premiums and incentives remained constant throughout the wind farm's lifetime.

<sup>9</sup> 'RAIPRE' is the acronym for "*Registro Administrativo de Instalaciones de Producción en Régimen Especial*".

<sup>10</sup> Parque Eólico La Carracha and Parque Eólico Plana de Jarreta were of course already registered within the RAIPRE under Registration references RE-0692 and RE-0693, respectively.

electricity supply and the estimation of the final consumers' electricity demand.<sup>11</sup>

26. For onshore wind farms exceeding 5 MW of installed capacity (like the Wind Farms) the feed-in remuneration values defined under RD 436/2004 were as follows<sup>12</sup>:

Onshore wind farms exceeding 5MW of installed capacity	Term	Regulated tariff (EUR/kWh) <sup>13</sup>	Pool price plus premium and incentive (EUR/kWh)
	First 5 years of operation	90% of the annual TMR	➤ Premium equal to 40% of the annual TMR  ➤ Incentive equal to 10% the annual TMR
	From year 6 to year 15 of operation	85% of the annual TMR	
	From year 16 of operation onwards	80% of the annual TMR	

### 3. Royal Decree 661/2007

27. In 2007 the Respondent approved RD 661/2007, which entered into force on June 1, 2007. Again, the feed-in remuneration regime legally provided was articulated under two alternative remuneration options: renewable producers were allowed to opt for a regulated tariff or for the pool price plus premium. Again, the feed-in remuneration regime was also assured for the entire lifetime of the facilities, under the same principle that future revisions of the guaranteed values of this regime would not affect *existing* facilities, once more recognized in Article 44(3) of RD 661/2007.<sup>14</sup>
28. In a different way, RD 661/2007 established a remuneration system that:
- (i) Was not based on the TMR annual values. Instead, RD 661/2007 directly contained the values of the regulated tariffs and the premiums

<sup>11</sup> RD 1432/2002, Article 2.

<sup>12</sup> RD 436/2004, Article 34.

<sup>13</sup> To help understand the economic meaning of these percentages, note that the TMR value for year 2004 was 0.07202 EUR/kWh, i.e. 72.02 EUR/MWh.

<sup>14</sup> Under RD 661/2007, after the first 20 years of operation, wind farms were only offered the 'regulated tariff' option.

applicable to renewable technologies, and provided for its annual update according to the general CPI minus 0.25% until December 31, 2012 and according to the general CPI minus 0.5% thereafter; and,

- (ii) Included a cap & floor mechanism (also subject to the same updating criteria) applicable to the feed-in remuneration under the “pool price plus premium” option of wind farms among other renewable technologies. As the Spanish Government stated in the explanatory preamble of RD 661/2007, this cap & floor mechanism:
  - (a) Provided certainty to renewable energy producers, as it guaranteed a minimum level of remuneration per Kwh of energy produced (the lower limit or “floor”); and, at the same time,
  - (b) Served to manage and control remuneration to renewable energy producers, avoiding situations of overpayment to be borne by the electricity system, as it suppressed the payment of the premiums for situations in which the pool price was higher than the defined upper limit or “cap”.

29. For onshore wind farms (including the Wind Farms), Article 36 of RD 661/2007 established the following feed-in remuneration values for year 2007:

	<b>Term</b>	<b>Regulated tariff (EUR/kWh)</b>	<b>Reference premium (EUR/kWh)</b>	<b>Cap (EUR/kWh)</b>	<b>Floor (EUR/kWh)</b>
<b>Onshore wind farms</b>	Up to year 20 of operation	0.073228	0.029291	0.084944	0.071275
	From year 21 of operation onwards	0.061200	0	-	-

30. The Wind Farms, commissioned under RD 2818/1998, were subject to most of the regulatory provisions of RD 661/2007. However, pursuant to the First Transitional Provision of RD 661/2007, they were granted the right to opt among three alternatives with regard to remuneration for energy production:

- (i) Keep the regulated tariff option of RD 436/2004 and continue to receive this feed-in remuneration value during their remaining lifetime;
- (ii) Start receiving the feed-in remuneration values established in RD 661/2007 (instead of those in RD 436/2004); or,
- (iii) Opt for an intermediate solution that implied:
  - (a) First, a transitional period of more than 5 years (until December 31, 2012) during which the wind farms would be remunerated under the pool price plus premium and incentive option of RD 436/2004; and,
  - (b) Second, after completing this transitional period (from January 1, 2013 on), applying the feed-in remuneration scheme of RD 661/2007 (including the right of choosing, annually, between the regulated tariff and the pool price plus premium option).

31. The Wind Farms followed the third option, being remunerated under the pool price plus premium and incentive of RD 436/2004 until December 31, 2012. From January 1, 2013 on, the Wind Farms were supposed to start receiving the feed-in remuneration regime of RD 661/2007. However, it never came to happen as the Respondent completely altered the legal framework from January 1, 2013 onwards, including through retroactive changes adopted during 2013.

#### **IV.2. Further commitments by the respondent: the agreement concluded in 2010 between the respondent and the wind industry**

- 32. In 2010 the Respondent expressed its intention to limit feed-in remuneration payments on a temporary basis, for 2010, 2011 and 2012. At the same time, the Respondent was aware that the adoption of any measures aimed at curtailing the applicable regime for qualified wind producers would face strong opposition and might give rise to the State's responsibility.
- 33. On this basis, the Spanish Government entered into negotiations with, among others, the wind sector, which resulted in the entry into an **Agreement** in July 2010. The Government expressly affirmed that this Agreement aimed at fostering *predictability* and *stability* for the economic regime applicable to wind farms.

34. The contents of the Agreement were subsequently –and in compliance with them– reflected by the Spanish Government in Royal Decree 1614/2010, of December 7 (**RD 1614/2010**).
35. In brief, RD 1614/2010 ensured immediate savings for the Respondent in consideration for further reconfirming the maintenance of, and thus shielding, the existing economic regime for qualified wind producers, including the Wind Farms.
36. In particular, and according to the Agreement, RD 1614/2010 established a limit on the feed-in remuneration that wind farms would receive by limiting the number of ‘equivalent hours of operation’.
37. On the Spanish Government’s side, and also in fulfillment of the Agreement, RD 1614/2010:
  - (i) Confirmed again in Article 5(3) that any future revision of the elements of the feed-in remuneration regime contained in RD 661/2007 (i.e., the tariffs, premiums and cap & floor limits) referred to in Article 44(3) of RD 661/2007 would not affect, among others, the wind farms that were finally registered on the RAIPRE before May 7, 2009 (as the Wind Farms);
  - (ii) Confirmed again in Article 5(2) that from January 1, 2013 onwards, the wind farms under the First Transitional Provision of RD 661/2007 (as the Wind Farms) would receive the tariffs or premiums of the said RD 661/2007, duly updated on an annual basis according to the system thereby established (general CPI minus a percentage).

#### **IV.3. The Respondent’s unlawful conduct in violation of its obligations under the energy charter treaty and international law**

38. Instead of maintaining the guaranteed legal and economic framework described above, and despite its commitments to respect it, between 2012 and 2014 the Respondent made continuous drastic changes to the regulatory framework applicable to the Wind Farms:
  - (i) First, in 2012 and 2013, it significantly modified the feed-in remuneration regime and applied these modifications retroactively to the Claimants’ investments, to the Claimants’ detriment (Section IV.3.1 below); and,
  - (ii) Since July 2013, the Respondent has totally demolished the feed-in remuneration regime, including the assurances and guarantees

enshrined in, *inter alia*, the Agreement and RD 1614/2010, setting an entirely new regime which completely departs from the previous regulatory framework, resulting in the Wind Farms not receiving any specific remuneration whatsoever (Section IV.3.2 below).

39. Each change has caused substantial damage to the Claimants and has violated the Respondent's obligations under the ECT and applicable rules and principles of international law, including a violation of the Respondent's obligations in connection with the Agreement.
40. We summarize below some measures that, in the words of the distinguished tribunal in *PSEG v. Turkey*, have had a "'roller-coaster' effect of the continuing legislative changes"<sup>15</sup> and that the Respondent adopted in breach of its obligations under international law.

**1. The Respondent's radical alteration of the legal and economic regime in 2012 and early 2013 and its application to the Wind Farms**

41. On December 27, 2012 the Respondent passed Act 15/2012 (**Act 15/2012**),<sup>16</sup> which entered into force on January 1, 2013. By virtue of Act 15/2012, the Respondent created a new measure levying 7% on all revenues obtained by energy producers for the total amount of electricity generated and introduced into the electricity grid by each facility.
42. In practice, this new measure entails an additional cut in each facility's expected remuneration and has been having a disproportionate and discriminatory effect on renewable facilities.
43. Shortly thereafter, the Respondent passed Royal Decree-Law 2/2013, of February 1 (**RD-L 2/2013**)<sup>17</sup> which, despite entering into force the following day, produced legal effects from January 1, 2013. RD-L 2/2013 modified the feed-in remuneration regime offered under RD 661/2007, to which the Wind Farms were fully subject with effect from January 1, 2013, introducing, among others, the following substantial changes affecting the Wind Farms:

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<sup>15</sup> See *PSEG Global Inc. and Konya Ilgin Elektrik Üretim ve Ticaret Limited Şirketi v. Republic of Turkey* (ICSID Case No. ARB/02/5), Award, January 19, 2007, at para. 250.

<sup>16</sup> Published in the Spanish Official Gazette on December 28, 2012.

<sup>17</sup> Published in the Spanish Official Gazette on February 2, 2013.

(i) Total cancellation of the premium under the ‘pool price plus premium’ option

The Spanish Government established a “new value” for all the reference premiums in RD 661/2007 equal to “0” EUR/kWh. It also suppressed the cap & floor limits that applied under the now-vanished ‘pool price plus premium’ option.

(ii) The right to choose, on an annual basis, between ‘pool price’ (now without premium) or ‘regulated tariff’ was also suppressed

As a result of RD-L 2/2013, wind energy producers opting to sell their electricity under the ‘pool price’ option –now without premium– were not entitled to subsequently choose to sell their electricity output at the ‘regulated tariff’. The right of election enshrined in RD 661/2007 was thus eliminated.

(iii) Replacement of the general CPI as updating rate

The updating rate for tariffs and premiums which, according to Article 44(1) of RD 661/2007 were linked to the general CPI, was also replaced with effects from January 1, 2013, with a so-called, *ad hoc* “CPI at constant tax rates and excluding unprocessed foods and energy products”.

This change seriously decreased the updating rate and, accordingly, the remuneration of all renewable facilities subject to the Special Regime. Unsurprisingly, the change introduced by the Government resulted in an updating rate close to 0 for 2013.

44. On February 14, 2013, the Respondent implemented the abovementioned modifications through Ministerial Order IET/221/2013,<sup>18</sup> which established the following remuneration values for the Wind Farms:

Onshore wind farms	Term	Regulated tariff (EUR/kWh)	Reference premium (EUR/kWh)	Cap (EUR/kWh)	Floor (EUR/kWh)
<u>(after RD-L 2/2013)</u>	Up to year 20 of operation	0.081247	0	--	--
	From year 21 of operation onwards	0.067902	0	--	--

<sup>18</sup> Published in the Spanish Official Gazette on February 16, 2013.

45. These values of the “regulated tariffs” were set out in Ministerial Order IET/221/2013 by applying the new updating (close-to-zero) index introduced by RD-L 2/2013.
46. At this stage, the Claimants had already suffered huge damages:
  - (i) The premium had been completely wiped out;
  - (ii) The right to choose annually between ‘regulated tariff’ and ‘pool price plus premium’ was, subsequently, deleted;
  - (iii) The right to obtain annual updates of the values pursuant to the general CPI, minus 0.25% (until 2013) or minus 0.5% (thereafter), had been changed to a lower, *ad hoc*, so-called “CPI at constant tax rates and excluding unprocessed foods and energy products”; and,
  - (iv) An additional charge of 7% on all revenues obtained from power generation by each facility was imposed on each producer.
47. Nevertheless, this radical alteration of the legal and economic regime applicable to the Wind Farms accomplished by the Respondent did not stop here.

**2. The Respondent’s dramatic redesign since July 2013 of the legal and economic regime applicable to the Wind Farms: the New Regime: the Wind Farms stop receiving any specific remuneration whatsoever.**

48. On July 12, 2013, the Spanish Government announced a new set of legislative and regulatory measures –the third package in fewer than 7 months– that would completely repeal and radically redesign the regime applicable to future but also *existing* renewable producers and facilities (**New Regime**).
49. The New Regime, as announced in July 2013:
  - (i) Wiped out entirely the already substantially altered feed-in remuneration scheme established under RD 661/2007;
  - (ii) Implied a blatant breach of the obligations provided in the Agreement; and,
  - (iii) Outlined an entirely new remuneration scheme to be also applied to *existing* renewable facilities, like the Wind Farms.
50. However, the new remuneration to be received by the renewable facilities was not defined until June 2014. Nonetheless, it was to be retroactively applied

since July 2013. When the time arrived in June 2014, the Claimants realized that the Wind Farms would be receiving no specific remuneration whatsoever.

a) *The law-making process leading to the New Regime has been chaotic. The remuneration to be received under the New Regime was not defined until June 2014, but it is retroactively applicable since July 14, 2013*

51. The Respondent has approved the New Regime through a waterfall of interwoven measures, adopted through a highly controversial, concealed, secretive and uncertain law-making process that has placed the Claimants' investments in an unsustainable situation of bewilderment, insecurity and unpredictability.
52. These measures include, *inter alia*:
- (i) Royal Decree-Law 9/2013, of July 12 (**RD-L 9/2013**),<sup>19</sup> which entered into force on July 14, 2013, fully abrogating the legal and economic regime applicable to existing renewable plants;
  - (ii) Act 24/2013, of December 26, on the Electric Power Sector (**Electric Power Act of 2013**),<sup>20</sup> which entered into force on December 28, 2013 and almost entirely repealed the Electric Power Act of 1997;
  - (iii) Royal Decree 413/2014, of June 6, regulating the activity of power production from renewable sources of energy, cogeneration and waste (**RD 413/2014**),<sup>21</sup> which entered into force on June 11, 2014; and,
  - (iv) Ministerial Order IET/1045/2014, of June 16, approving the remuneration parameters for standard plants applicable to certain facilities that produce power from renewable sources of energy, cogeneration and waste (**Order IET/1045/2014**),<sup>22</sup> which entered into force on June 21, 2014.
53. It is particularly noteworthy that the (eventual) remuneration to be received under the New Regime was not defined until Order IET/1045/2014, entered into force on June 21, 2014. However, this remuneration is nonetheless

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<sup>19</sup> Published in the Spanish Official Gazette on July 13, 2013.

<sup>20</sup> Published in the Spanish Official Gazette on December 27, 2013.

<sup>21</sup> Published in the Spanish Official Gazette on June 10, 2014.

<sup>22</sup> Published in the Spanish Official Gazette on June 20, 2014; as amended by virtue of the Correction of Errors published in the Spanish Official Gazette on August 12, 2014.

applicable *retroactively* from the entry into force of RD-L 9/2013 on July 14, 2013.

54. In other words, since July 14, 2013 until June 21, 2014, the Claimants' investments have been operating under an interim economic regime as provided for in the former regulatory framework. Obviously, this created an environment of total uncertainty. During this period, the Wind Farms have been obliged to generate power without knowing how much they would be finally paid or how much they should produce to optimize associated costs, among others.

b) *The New Regime represents a fundamental departure from the previous guaranteed framework: no remuneration whatsoever for the Wind Farms*

55. The New Regime set up by the Respondent represents a drastic departure from the previous guaranteed framework, on which the Claimants' investments were based. Even the regulated tariff (which was the only feature of the previous framework that had not been cancelled by RD-L 2/2013) was now suppressed.

56. Under the New Regime, the remuneration to wind farms (i) is no longer mainly based on energy production, (ii) does not incentivize optimization of the facilities' performance. Such a remuneration consists of the amount obtained through the sale of the energy generated, valued at market price (through the 'pool') plus, if applicable,<sup>23</sup> a 'Specific Remuneration' which:

- (i) Is significantly lower than the 'regulated tariff' or the 'pool price plus premium';
- (ii) Is -to a great extent- unrelated to the actual kWh of energy produced; and,
- (iii) Is subject to periodic changes discretionally decided by the Respondent, as the New Regime is subject to change every "regulatory period of six years" and "regulatory half-period of three years".
- (iv) Is in any case limited to a maximum period of 20 years of operation since commissioning.

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<sup>23</sup> According to the language of the regulations passed by the Spanish Government, the Specific Remuneration is casted as an *exceptional* figure that the Government *may* grant, where appropriate, on the basis of its unilateral assessment of whether renewable facilities are unable to participate in the market in equal conditions with respect to conventional producers.

57. Under the New Regime, the Specific Remuneration may include either or both of the following elements: *Remuneration to Investment* and *Remuneration to Operation*.
58. The values of *Remuneration to Investment* and *Remuneration to Operation* are based on specific remuneration parameters unilaterally designed by the Respondent. As advanced, some shall be subject to revision every three years at the end of each regulatory half-period,<sup>24</sup> while all remuneration parameters but two<sup>25</sup> shall be subject to revision every six years at the end of each regulatory period. Consequently, the Respondent has currently only published the values of *Remuneration to Investment* and *Remuneration to Operation* that shall apply to the Claimants' investments for the 2014-2016 period.
59. Furthermore, such remuneration parameters do not directly consider the *actual* renewable facilities currently operating in Spain, but several 'standard' (hypothetical) categories of facilities, again unilaterally defined by the Respondent. Each *actual* renewable facility is then matched to a *standard* category.
60. Accordingly, under Order IET/1045/2014, the Respondent (i) has determined several categories of standard (hypothetical) wind farms; and (ii) has classified the Wind Farms within these standard categories.<sup>26</sup>
61. For each standard category, Order IET/1045/2014 defines the remuneration parameters that result in the values of *Remuneration to Investment* and *Remuneration to Operation*. They shall apply to the Wind Farms for the first regulatory half-period (2014-2016) and also for the relevant part of 2013 (from July 14 to December 31).
62. Surprisingly, under Order IET/1045/2014, the Wind Farms receive the Specific Remuneration at the value of "0", as included in the chart below:

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<sup>24</sup> Every three years the Spanish Government may review (i) the estimations of revenues resulting from the sale of the energy produced, valued at market price; and (ii) the forecasts of hours of operation. As a result of these revisions, the values of *Remuneration to Investment* and *Remuneration to Operation* can be defined only for periods of three years, being subject to revision at the end of each regulatory half-period.

<sup>25</sup> The regulatory useful life of the facilities and the standard investment ratio.

<sup>26</sup> The Wind Farms fall within the standard category ('*Instalación Tipo*') IT-00652.

Wind Farms	Standard Category ('IT')	2013 (since July 14)		2014-2016			
		R <sub>inv</sub> (EUR/MW installed)	R <sub>o</sub> (EUR/MWh produced)	Annual R <sub>inv</sub> (EUR/MW installed)	Annual R <sub>o</sub> (EUR/MWh produced)		
					2014	2015	2016
La Carracha and Plana de Jarreta	IT-00652	0	0	0	0	0	0

c) *The Respondent nonetheless maintains the damaging measures approved in December 2012*

63. Due to this drastic change and the definition *tout court* of an entirely new remuneration system for renewable power plants, the measures put in place under RD-L 2/2013 were applicable only from January 1 to July 14, 2013. After that date, they have been effectively superseded by the new regulatory framework.
64. However, this supersession does not include the measures introduced under Act 15/2012, since the annual 7% cut continues applying to the Wind Farms under the New Regime.
65. In other words, the Respondent has suppressed the feed-in remuneration regime applicable (and assured) to the Claimants' investments, thus affecting payments (i.e., *incomes*) that the facilities were entitled to receive for the production of energy, but has kept the cuts, levies and other restrictions, thus severely aggravating the damages suffered by the Claimants.

### 3. The Respondent has breached its obligations under the Energy Charter Treaty and international law

66. In all, through the measures above referred, the Respondent has removed the foundation upon which the Claimants' investments were made, thereby frustrating the Claimants' reasonable and legitimate expectations for its costly investments in the Wind Farms.
67. As a result of the Respondent's wrongful actions, the Claimants have (i) been unlawfully deprived of the benefit and enjoyment of its investments as reasonably and legitimately expected, and (ii) suffered serious damages.

68. As previously stated, the Claimants submit this Request for Arbitration pursuant to Article 26(4)(a)(i) ECT. The Claimants contend that the Respondent has incurred in several violations of its obligations under Part III of the ECT.
69. The ECT is an international treaty that establishes a legal framework for the promotion of long-term cooperation in the energy field. The ECT has been signed and ratified by, *inter alia*, Spain and the Federal Republic of Germany.
70. Part III of the ECT ("*Investment Promotion and Protection*") imposes a number of substantive obligations upon the Respondent for the protection of certain investments -like the ones at stake in this arbitration- held in Spain by investors of other Contracting Parties.
71. In particular, Article 10 of the ECT provides, *inter alia*, that:
  - (i) Each Contracting Party shall encourage and create stable, equitable, favorable and transparent conditions for Investors of other Contracting Parties in relation to Investments of the latter in its Area;
  - (ii) Investments of Investors of other Contracting Parties shall at all times be accorded fair and equitable treatment;
  - (iii) They shall enjoy the most constant protection and security; and,
  - (iv) No Contracting Party shall in any way impair by unreasonable or discriminatory measures their management, maintenance, use, enjoyment or disposal.
72. Article 10 of the ECT also provides that:
  - (i) Investments shall not be accorded treatment less favorable than that required by international law, including treaty obligations;
  - (ii) Treatment shall be no less favorable than that which the host State accords to its own Investors or to Investors of any other Contracting Party or any third State, whichever is the most favorable; and,
  - (iii) Each Contracting Party shall observe any obligations it has entered into with an Investor or an Investment of an Investor of any other Contracting Party.
73. Moreover, pursuant to Article 13 of the ECT, Investments may not be nationalized, expropriated or subjected to a measure or measures having

effect equivalent to nationalization or expropriation without the payment of prompt, adequate and effective compensation.

74. The different measures above mentioned –among others– unlawfully and unjustifiably adopted by Spain in relation to the Claimants’ Investments constitute, separately and in combination, violations of the Respondent’s obligations under Part III of the ECT, including a serious breach of the obligations it entered into in connection with the Agreement.
75. The Respondent’s violations of the ECT and other obligations under international law, as summarized above, have caused substantial losses to the Claimants.
76. The losses and the damage caused to them as a result of Spain’s unlawful actions and omissions shall be determined in subsequent stages of this arbitration. Accordingly, the Claimants hereby fully reserve their rights to elaborate on (and assert additional categories of) losses resulting from the Respondent’s continued violations of the ECT and international law.

## V. JURISDICTION

77. The Claimants are entitled both under the ECT and the ICSID Convention to submit this dispute to arbitration before the Centre. In Section V.1 we will show that the Claimants’ claim meets the jurisdictional requirements under the ECT. In Section V.2 we will illustrate how that the Claimants’ claim also satisfies the ICSID’s Convention jurisdictional requirements.

### **V.1. The Claimants’ claim meets the jurisdictional requirements under the ECT**

78. The Claimant is an Investor under the ECT having a legal dispute against a Contracting Party to the ECT in relation to an Investment of the former in the Area of the latter. The dispute concerns breaches of obligations of that Contracting Party under Part III of the ECT, including those stemming from the Agreement entered into by the Spanish Government and the wind industry in July 2010.
79. Article 26 of the ECT sets forth the jurisdictional requirements which need to be met. In the case at hand, the Claimants are entitled under the ECT to submit this dispute to arbitration before the Centre, since (1) the Claimants are Investors under the ECT; (2) the Respondent is another Contracting Party

to the ECT, and (3) the dispute refers to an Investment of the former in the Area of the latter. Furthermore, (4) both Parties have consented to arbitrate the dispute under the ECT, and (5) the negotiating period has been complied with.

**1. The Claimants are “Investor(s) of another Contracting Party”**

80. Pursuant to Article 1(7)(a)(ii) of the ECT, “Investor” (of a Contracting Party) means “a company or other organization organized in accordance with the law applicable in that Contracting Party.”
81. The Claimants are entities established under the laws of the Federal Republic of Germany, which is a “Contracting Party” to the ECT.<sup>27</sup> The Claimants are therefore “Investor[s] of another Contracting Party” (different from the Respondent) for the purposes of Article 26 of the ECT.

**2. The Respondent is a “Contracting Party” to the ECT**

82. Spain signed the ECT on December 17, 1994 and ratified it on December 11, 1997. The ECT entered into force with respect to Spain on April 16, 1998.<sup>28</sup> Spain is therefore a “Contracting Party” as defined in Article 1(2) of the ECT.

**3. The dispute relates to an “Investment” in the “Area” of Spain**

83. Article 1(6) of the ECT defines an “Investment” broadly as follows:

*“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;*

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<sup>27</sup> The Federal Republic of Germany signed the ECT on December 17, 1994 and ratified it on March 14, 1997. The ECT entered into force with respect to the Federal Republic of Germany on April 16, 1998. See **Exhibit C-11a**, publication of the ECT in Germany’s Official Journal (BGBl. 1998 II S. 3009), announcing the said entry into force. See also **Exhibit C-11b**, Registration information of the ECT in the United Nations Treaty Collection (I-36116), including the parties to it, together with the publication of the ECT in the United Nations Treaty Series, 2080 U.N.T.S. 95.

<sup>28</sup> **Exhibit C-12a**, publication of the ECT in the Spanish Official Gazette of May 17, 1995; and **Exhibit C-12b**, Instrument of ratification of the ECT, published in the Spanish Official Gazette of March 17, 1998.

- (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.*"

84. Pursuant to Article 1(6) of the ECT, in order to enjoy protection under the ECT an investment must be "*associated with an Economic Activity in the Energy Sector.*" In this regard, Article 1(5) of the ECT defines "*Economic Activity in the Energy Sector*" as "*an economic activity concerning the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sale of Energy Materials and Products...*" Understanding 2 of the Final Act of the European Energy Charter Conference indicates that "*(b) The following activities are illustrative of Economic Activity in the Energy Sector: (...) (ii) construction and operation of power generation facilities, including those powered by wind and other renewable energy sources.*" Furthermore, Article 1(4) of the ECT defines "*Energy Materials and Products*" as the items included in Annex EM of the ECT, which include electrical energy.<sup>29</sup>
85. This dispute relates to the Claimants' direct shareholding and participative debt interest in the two Spanish companies that own Parque Eólico La Carracha and Parque Eólico Plana de Jarreta Wind Farms. Thus, each of the Claimants' investments falls within the ECT's definition of "*Investment*".
86. The Claimants' aforementioned interests in companies that own and run power generation facilities in Spain are clearly associated with "*an Economic Activity in the Energy Sector*" within the meaning of Articles 1(4) and (5) of the ECT as well as Understanding 2 of the Final Act of the European Energy Charter Conference.
87. Additionally, it should be noted that Article 1(6) of the ECT provides that qualifying investments are "*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.*"
88. To this effect, the "*Effective Date*" is April 16, 1998, as the date of entry into force of the ECT for Spain and the Federal Republic of Germany. As indicated

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<sup>29</sup> Exhibit C-11b, ECT, Annex EM, Item 27(16).

in Section III above, the Claimants invested in Spain well after the Effective Date.

89. Finally, the Claimants' investments are located within the territory of Spain, particularly in the municipality of La Muela (province of Zaragoza). Therefore, these investments are unquestionably in the "Area" of Spain (Article 1(10)(a) of the ECT).

#### **4. The Parties' consent under the ECT to arbitrate this dispute**

90. Pursuant to Articles 26(1), 26(2)(c) and 26(3)(a) of the ECT, the Contracting Parties to the ECT (including Spain) have given their *unconditional consent* for disputes relating to breaches of obligations under Part III of the ECT to be submitted to international arbitration under any of the options provided for in Article 26(4). As explained in Section IV.3.3 above, the present dispute relates to breaches of obligations under Part III of the ECT, and therefore meets the requirement set out at Article 26(1) of the ECT.

91. Moreover, Article 26(3)(b) and (c) does not apply in the present case because:
- (i) With regard to Article 26(3)(b), the Claimants have not submitted the current dispute to another dispute settlement procedure under Article 26(2)(a) (i.e., local courts) or Article 26(2)(b) (i.e., previously agreed contractual dispute settlement procedure); and
  - (ii) With regard to Article 26(3)(c), Spain is not included within Annex IA of the ECT.

92. This dispute thus clearly comes within the scope of Spain's consent to submit disputes under Article 26 of the ECT.

93. Pursuant to Article 26(4) of the ECT, when submitting the dispute to arbitration, the Investor is entitled to choose between different arbitration *fora*, among which the Claimants have chosen the option contained in Article 26(4)(a)(i) of the ECT:

*"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 Investor and the Contracting Party party to the dispute are both parties to the ICSID Convention."*

94. Therefore, pursuant to Article 26(4)(a)(i) of the ECT, the Claimants hereby provide their consent in writing for the dispute to be submitted to arbitration before the Centre.

#### **5. Compliance with the three-month cooling off period**

95. The ECT encourages disputing parties trying to settle their differences amicably by negotiation. In this regard, the Claimants have complied with the three-month negotiation period required by the ECT before the resort to arbitration.
96. In this regard and in accordance with Articles 26(1) and 26(2) of the ECT, the Claimants formally notified the Respondent of the present dispute and requested the initiation of the three-month negotiation period commencing on receipt of such notice in order to reach an amicable solution and avoid resorting to international arbitration.
97. On December 15, 2014, the Claimants sent appropriate triggering letters to the competent Spanish authorities. A copy of the Claimants' letter sent to the President of the Spanish Government, H.E. Mr. Mariano Rajoy Brey, with copies to H.E. Mr. José Manuel García-Margallo y Marfil, Minister of Foreign Affairs and Cooperation, and H.E. Mr. José Manuel Soria López, Minister of Industry, Energy and Tourism, are attached hereto as **Exhibit C-13(a-c)**.<sup>30</sup>
98. The Respondent has not answered the Claimants' letter, nor has it shown any intention of commencing negotiations with the Claimants during this three-month period to reach an amicable settlement. Therefore, as the three-month cooling off period has well elapsed, the Claimants are entitled to validly institute this arbitration proceeding (Article 26(2) of the ECT).

#### **V.2. The Claimants' claim also satisfies ICSID's jurisdictional requirements**

99. Under Article 25(1) of the ICSID Convention, ICSID jurisdiction extends to:
- (i) A legal dispute;

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<sup>30</sup> **Exhibit C-13a**, Acknowledgement of receipt at the President of the Spanish Government's office, dated December 16, 2014 of the Certified fax of Letter sent by the Claimants to the Government of the Kingdom of Spain dated December 15, 2014; **Exhibit C-13b**, Acknowledgement of receipt at the Minister of Foreign Affairs and Cooperation's office, dated December 16, 2014 of the Certified fax of Letter sent by the Claimants to the Government of the Kingdom of Spain dated December 15, 2014; and **Exhibit C-13c**, Acknowledgement of receipt at the Minister of Industry, Energy and Tourism's office, dated December 16, 2014 of the Certified fax of Letter sent by the Claimants to the Government of the Kingdom of Spain dated December 15, 2014.

- (ii) Arising directly out of an investment;
- (iii) Between a contracting State and a national of another Contracting State; and,
- (iv) Which the parties to the dispute have consented in writing to submit to the Centre.

100. These jurisdictional elements are present in the instant case. As further explained below, the Claimants submit to the jurisdiction of the Centre a legal dispute arising out of its investments in the renewable energy sector in Spain, which it and the Respondent have agreed in writing to submit to ICSID.

**1. The claim relates to a legal dispute**

101. The dispute submitted to the Centre in this Request is a legal dispute as it refers to the Respondent's breaches of its obligations under the ECT and international law, with respect to the Claimants and their investments.

**2. The dispute arises directly out of an investment**

102. The Claimants' investments in Spain, as described in Sections III and V.1.3 above, constitute an "*investment*" for the purposes of the ICSID Convention.

103. Article 25(1) of the ICSID Convention requires, in order for the Tribunal to have jurisdiction, which the dispute arises directly out of an investment. The term "*investment*" for the purpose of Article 25(1) of the ICSID Convention is widely understood to have a broad definition such as that found in the ECT.

104. Claimants' investment consists of the shareholding and participative debt interest they hold in PARQUE EÓLICO LA CARRACHA, S.L. and PARQUE EÓLICO PLANA DE JARRETA, S.L., i.e., the Spanish companies that own the Wind Farms. In the case at hand, it is clear that the Claimants hold an investment in the sense of Article 25(1) of the ICSID Convention.

**3. The Respondent is a Contracting State**

105. The Kingdom of Spain signed the ICSID Convention on March 21, 1994, and deposited its instrument of ratification on August 18, 1994. The ICSID Convention entered into force for Spain on September 17, 1994.<sup>31</sup>

106. Spain is therefore a "*Contracting State*" for the purposes of Article 25(1) of the ICSID Convention.

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<sup>31</sup> Spanish Official Gazette ("*Boletín Oficial del Estado*") No. 219, of September 13, 1994.

**4. The Claimants are nationals of another Contracting State**

107. The jurisdiction of the Centre extends to claims brought by investors that are nationals of another Contracting State.
108. The standard test to determine the nationality of a juridical person applied in ICSID case law is the place of incorporation.
109. The Claimants are two entities established and existing under the laws of the Federal Republic of Germany, which is a Contracting State to the ICSID Convention. Germany signed the ICSID Convention on January 1, 1966 and became a Contracting State on May 18, 1969.<sup>32</sup>
110. Each Claimant is thus a “*national of another Contracting State*” for the purposes of Articles 25(1) and 25(2)(b) of the ICSID Convention.

**5. Written consent of the Parties to submit the dispute to the Centre**

111. As stated above, the ECT was signed by Spain and the Federal Republic of Germany on December 17, 1994, and entered into force between the Contracting Parties on April 16, 1998. The ECT remains in force today between Spain and Germany.
112. As established in Article 26(5)(a)(i) of the ECT, the Respondent’s consent given in Article 26(3) of the ECT, together with the Claimants’ written consent given in this Request pursuant to Article 26(4) of the ECT, expressly satisfies the requirement for written consent of the Parties to a dispute for purposes of Article 25(1) of the ICSID Convention.
113. No act of consent on the part of the Respondent beyond the general requirement of written consent contained in Article 25(1) of the ICSID Convention is required for the present dispute to be submitted to the arbitration instituted by the Claimants.

**VI. PRELIMINARY RELIEF SOUGHT**

114. As a preliminary indication of the relief that will be sought, without limitation and reserving the Claimants’ rights as provided below, the Claimants will be respectfully requesting that the Arbitral Tribunal issues an Award in their favour and against the Respondent as follows:

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<sup>32</sup> Germany’s Official Journal (BGBl. 1969 II S. 1191), dated June 26, 1969, announcing the said entry into force.

- (i) DECLARING that the Respondent has violated its obligations towards the Claimants under Part III of the ECT and applicable rules and principles of international law, including the Agreement;
- (ii) DIRECTING the Respondent to pay full compensation to the Claimants for the injuries and losses they have suffered as a result of the Respondent's violations of the ECT and international law, including the Agreement;
- (iii) ORDERING the Respondent to pay the entire costs of the arbitration, including the arbitrators' costs and ICSID's fees and expenses, and all legal costs and other expenses incurred by the Claimants including but not limited to the fees of its legal counsel, experts and consultants and those of the Claimants' own employees, on a full indemnity basis;
- (iv) ORDERING the Respondent to pay to the Claimants pre- and post-award interest compounded monthly, on all the amounts awarded until full payment thereof; and,
- (v) ORDERING any such relief as the Arbitral Tribunal may deem just and appropriate in the circumstances.

115. The Claimants hereby reserve their rights to, *inter alia*, modify, amend, edit, supplement, and/or further develop its submissions and claims, including the relief sought, to present incidental or additional claims, or to respond to any allegations or defenses put forward by the Respondent.

## VII. CONSTITUTION OF THE ARBITRAL TRIBUNAL

116. At the date of this Request there is no agreement between the Parties on the number of arbitrators that shall constitute the Arbitral Tribunal or on the method of their appointment. Accordingly, pursuant to Article 37(2)(b) of the ICSID Convention and Rule 2(1)(a) of the ICSID Rules of Procedure for Arbitration Proceedings (**Arbitration Rules**), the Claimants hereby propose that the Tribunal shall consist of three arbitrators and the following method for their appointment:

- (i) The Claimants and the Respondent shall each appoint one member of the Arbitral Tribunal within 15 days from the date of the Parties' agreement on the method for the constitution of the Arbitral Tribunal.

- (ii) The Parties themselves, in consultation with their respective party-appointed arbitrator, shall jointly designate the President of the Arbitral Tribunal within 30 days from the date of the appointment of the last party-appointed arbitrator, or within that other period that may be jointly agreed by the Parties.
- (iii) Failing an appointment by a party of its respective party-appointed arbitrator, or failing an agreement between the Parties on the person to be appointed the President of the Arbitral Tribunal, within the above mentioned time-limits, the relevant appointment shall be made by the Secretary-General of the Centre.

117. The above should be taken as the Claimants' proposal for the purposes of Rule 2(1)(a) of the Arbitration Rules, for the sake of clarity and expeditiousness. If no reply is received from the Respondent or in case no agreement can be reached within 60 days of the date of registration of this Request for Arbitration, the Claimants hereby request in advance the Secretary-General to confirm that the Arbitral Tribunal shall be constituted in accordance with the method set out in Article 37(2)(b) of the ICSID Convention and Rule 3 of the Arbitration Rules.

#### **VIII. APPLICABLE LAW**

118. The Parties' choice of law, as allowed by and pursuant to Article 42(1) of the ICSID Convention, is contained in Article 26(6) of the ECT:

*"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."*

119. Accordingly, the Arbitral Tribunal to be appointed shall decide the issues in dispute in accordance with the ECT and applicable rules and principles of international law.

#### **IX. PLACE OF THE PROCEEDINGS**

120. Pursuant to Article 62 of the ICSID Convention, this arbitration shall be held at Washington, D.C. (United States of America), as the seat of the Centre.

**X. COPIES OF THE REQUEST FOR ARBITRATION**

121. Further to Rule 4(1) of the Institution Rules, the Claimants have sent to the Centre by courier one original and seven additional signed copies of the Request for Arbitration, including the abovementioned exhibits. An additional copy has been sent on this date by electronic means to [ICSIDsecretariat@worldbank.org](mailto:ICSIDsecretariat@worldbank.org).

122. Copies for the Respondent should be addressed to:

H.E. Mr. Mariano Rajoy Brey  
President of the Spanish Government  
Complejo de la Moncloa  
Avda. Puerta de Hierro, s/n  
28071 Madrid  
Spain

H.E. Mr. José Manuel García-Margallo y Marfil  
Minister for Foreign Affairs and Cooperation  
The Ministry of Foreign Affairs and Cooperation  
Plaza de la Provincia, 1  
28012 Madrid  
Spain

**XI. PAYMENT OF THE LODGING FEE**

123. The Claimants annex to this Request as **Exhibit C-14** a copy of the wire transfer for an amount of USD 25,000 made as payment of the required Lodging Fee. Therefore, pursuant to Rule 5(2) of the Institution Rules, the Claimants respectfully request that the Secretary-General transmit the copies of the Request and its accompanying documentation to the Respondent.

**XII. RESERVATION OF RIGHTS**

124. Irrespective of the claims, comments and submissions made by the Claimants in this Request for Arbitration, the Claimants hereby reserve their rights –and declare their willingness and intention– to modify, amend, edit, supplement, and/or further develop its submissions and claims, including the relief sought, to fulfill any requirements, to present incidental or additional claims,

to respond to any allegations or defenses put forward by the Respondent and to provide and request any evidence that they may deem appropriate.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Pedro Claros', with a large, stylized initial 'P' and a horizontal line extending across the bottom of the signature.

Pedro Claros

On behalf of BAYWA R.E. RENEWABLE ENERGY GMBH and BAYWA R.E. ASSET  
HOLDING GMBH