

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

MESA POWER GROUP, LLC)	
8117 PRESTON ROAD)	
SUITE 260 WEST)	Case No. 16-cv-1101
DALLAS, TEXAS 75225)	
)	
Petitioner,)	
)	
- against -)	
)	
GOVERNMENT OF CANADA)	
)	
Respondent.)	

PETITION AND MOTION TO VACATE ARBITRATION AWARD

Mesa Power Group, LLC (“Mesa Power”) petitions and moves this Court for an order vacating an Award by two members of a three-member tribunal award in favor of Respondent, the Government of Canada (“Canada”), in an arbitration rendered pursuant to Chapter Eleven of the North American Free Trade Agreement (“NAFTA”) involving the unfairness and abuse of the renewable energy regulatory process by the Government of Ontario. The arbitral tribunal issued corrections to the award aimed at certain errors in the Award. The Permanent Court of Arbitration, who administered this arbitration, served an authentic originally-signed Rectified Majority Award upon the disputing parties on June 6, 2016.

PARTIES

1. Petitioner Mesa Power is a Delaware limited liability corporation with its principal place of business in Texas. Its members are Mr. T. Boone Pickens, a U.S. citizen and resident of Texas, and Mesa Renewables MM, LLC, a Delaware limited liability company that is in turn owned by Mr. T. Boone Pickens.

2. Mesa Power owns Mesa Wind, LLC, which in turn owns and controls Mesa AWA, LLC (“Mesa AWA”). Mesa Power wholly owns and controls (through Mesa AWA) the following four wind farm investments in southwestern Ontario:

- TTD Wind Project ULC is an unlimited liability corporation incorporated in the Province of Alberta.
- Arran Project ULC is an unlimited liability corporation incorporated in the Province of Alberta.
- North Bruce Project, ULC is an unlimited liability corporation incorporated in the province of Alberta.
- Summerhill Project, ULC is an unlimited liability corporation incorporated in the Province of Alberta.

3. Respondent Canada is the government of Canada.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction based upon diversity of citizenship pursuant to 28 U.S.C. § 1332. Petitioner Mesa Power has the citizenship of Texas given the ultimate ownership of Mr. T. Boone Pickens noted above. Respondent Canada is of Canadian nationality. Accordingly, complete diversity exists.

5. This Court also has subject matter jurisdiction pursuant to 28 U.S.C § 1330 (a) (“The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605-1607 of this title or under any applicable international agreement”).

6. Service is being effectuated pursuant to 28 U.S.C. §1608. Accordingly, personal jurisdiction exists due to the effectuation of service on Canada pursuant to 28 U.S.C. §1608. 28 U.S.C § 1330 (a) (“Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made

under section 1608 of this title”).

7. This petition is brought pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 10(a), which provides that “the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration.” 9 U.S.C. §10(a). A “motion to confirm, vacate, or modify an arbitration award” under the Federal Arbitration Act (“FAA”) may be made “either where the award was made or in any district proper under the general venue statute.” Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co., 529 U.S. 193, 204 (2000). Accordingly, venue is proper pursuant to 28 U.S.C. § 1391(f), which provides that civil actions against a foreign state can be brought “in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.” 28 U.S.C. § 1391(f)(4).

GROUND FOR VACATING THE AWARD AND REMANDING IT

8. This petition is brought as a predicate for a formal motion to vacate to be made and heard by the Court pursuant to 9 U.S.C. § 6. See 9 U.S.C. § 6 (“Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided”).

9. Chapter 1 of Title 9 of the U.S. Code provides the statutory grounds for vacatur of an arbitral award. Specifically, pursuant to 9 U.S.C. §10, an award may be vacated for: (1) corruption, fraud, or undue means; (2) evident partiality or arbitrator corruption; (3) arbitrator misbehavior that prejudiced a party's rights; or (4) excess of authority. 9 U.S.C. §10.

10. The Majority’s Award here should be vacated pursuant to subsections (3) and (4) of 9 U.S.C. §10:

- Misbehavior --- “the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and

material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced” (9 U.S.C. §10(3)); and

- Excess of Powers -- “the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made” (9 U.S.C. §10(4)).

11. In addition, the Award should be vacated because it was rendered in manifest disregard of the law.

12. Mesa Power’s petition for an order vacating the Award in its entirety and seeking remand to a new arbitration tribunal is based on the accompanying motion, the memorandum points and authorities filed, the supporting evidenced filed herewith, the papers and pleadings to be filed in this proceeding and upon such other and further evidence or argument as may be presented hereafter and/or at any hearing upon this motion.

13. Pursuant to LCvR 7(f), Petitioner Mesa Power requests oral argument.

Dated: June 13, 2016

Respectfully submitted,

MESA POWER GROUP LLC

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