

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AES Solar Energy Coöperatief U.A. and
Ampere Equity Fund B.V.,

Petitioners,

v.

The Kingdom of Spain,

Respondent.

Civil Action No. 1:21-cv-03249-RJL

**Petitioners’ Emergency Motion for Expedited Briefing
and Consideration of Motion for Substitution**

Petitioners AES Solar Energy Coöperatief U.A. (“AES”) and Ampere Equity Fund B.V. (“Ampere”) (collectively, “Petitioners”) respectfully request that the Court enter an order setting an expedited briefing schedule on their Motion for Substitution, which Petitioners have filed contemporaneously with this motion. Petitioners respectfully request that the Court order Respondent the Kingdom of Spain (“Spain”) to respond to the Motion for Substitution by tomorrow, Friday, March 3, with Petitioners’ reply due Monday, March 6. Petitioners also request that the Court rule on their Motion for Substitution by Tuesday, March 7, or as soon as reasonably possible thereafter. Pursuant to Local Rule 7(m), Petitioners have conferred with counsel for Spain, who have indicated that Spain opposes this motion.

Although Petitioners recognize that this request presents a truncated timeline for briefing and decision, expedited consideration is warranted in light of the threat to this Court’s jurisdiction posed by Spain’s recent extraordinary actions in the Dutch courts seeking to bring a premature end to this case by enjoining Petitioners from enforcing the arbitral award at issue in this proceeding. Immediate substitution of Blasket Renewable Investments LLC (“Blasket”)—a United States

entity presumably beyond the jurisdictional reach of the Dutch courts, and to whom Petitioners have assigned all their rights under the Award, *see* ECF No. 31—is a necessary first step to neutralizing Spain’s efforts.

Spain is currently engaged in a brazen attack on this Court’s jurisdiction. On December 22, 2022, nearly two months after this Court held argument on the merits of this case, Spain—without any prior notice to this Court or to Petitioners—served a writ of summons on Petitioners, commencing an urgent application in the District Court of Amsterdam (the “Dutch Action”) seeking an interlocutory decree requiring Petitioners to suspend proceedings before this Court. In its first request for relief in the Dutch Action, Spain seeks an order requiring Petitioners “to take all actions necessary to suspend the proceedings currently pending in the United States District Court for the District of Columbia under case number 1:21-cv-03249-RJL”—*i.e.*, this case. Writ of Summons (“Dutch Writ”) at 30 (Claim A), ECF No. 31-1 (Ex. C).

That action is of a piece with a number of other actions Spain has recently filed in European courts against arbitral award holders who have enforcement proceedings against Spain pending in this Court, *see* ECF No. 30—each of which seeks an anti-suit injunction that would bar award holders from maintaining their actions here. In two such cases, the award holders successfully thwarted Spain’s assault on this Court’s jurisdiction by obtaining *anti-anti-suit* injunctions prohibiting Spain from pursuing its anti-suit injunction requests in the European courts. *See id.* (discussing *NextEra Energy Global Holdings B.V. v. Kingdom of Spain*, 2023 WL 2016932 (D.D.C. Feb. 15, 2023), and *9Ren Holding S.À.R.L. v. Kingdom of Spain*, 2023 WL 2016933 (D.D.C. Feb. 15, 2023)). In granting that relief, Judge Chutkan reasoned that because Spain’s “express and primary purpose” in pursuing its suits abroad was “to *terminate*” the cases at hand and “deprive this [C]ourt of jurisdiction,” the Court was “justif[ied]” in issuing anti-anti-suit

injunctions “to protect its own jurisdiction.” *NextEra*, 2023 WL 2016932, at *9-10, *9 n.5 (quoting *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 930 (D.C. Cir. 1984)).

Obviously anticipating that Petitioners would seek their own anti-anti-suit injunction against Spain’s Dutch Action here given the Court’s holdings in *NextEra* and *9Ren*, Spain filed a separate, *ex parte* application in the Dutch court on February 28, 2023—this time against both Petitioners and Blasket—that sought a preliminary injunction and temporary restraining order against an anti-anti-suit injunction motion. *See* Declaration of Johannes Biezenaar ¶ 5 (“Biezenaar Decl.”), attached hereto as Exhibit 1. The very next day, Spain—without any participation by Petitioners or Blasket—secured from the District Court of Amsterdam an order (the “Order,” Exhibit A to Biezenaar Decl.) that temporarily restrains Petitioners and Blasket from requesting an anti-anti-suit injunction in this Court, pending a March 13 hearing on Spain’s request for a preliminary injunction against an anti-anti-suit injunction. By its terms, the Order “prohibits the defendants, each of them individually and jointly, with immediate effect from the service of this judgment and the writ of summons . . . until 13 March 2023, from seeking an anti-suit injunction in the United States with the (direct or indirect) aim of requiring the [Dutch Action] . . . to be withdrawn or suspended or . . . thwarted in any way.” Biezenaar Decl., Ex. A ¶ 3.1. That directive is enforceable under penalty of “EUR 2,000,000.00, to be increased by a penalty sum of EUR 100,000.00 for every day . . . on which the violation or non-compliance continues.” *Id.* ¶ 3.2.

As Petitioners’ Motion for Substitution explains, however, Spain’s Dutch Action is not even directed at the proper parties—and is purely an effort to undermine this Court’s authority. Petitioners have therefore requested that the Court substitute Blasket as petitioner, so that Blasket can carry this case through to judgment regardless of whether Spain succeeds in the Dutch Action.

Although Blasket is named in the Order temporarily restraining Petitioners and Blasket from seeking an anti-anti-suit injunction, Biezenaar Decl. ¶ 5, Blasket is a Delaware entity that presumably lies beyond the jurisdictional reach of the Dutch courts and thus could not be enjoined from pursuing this action. Substitution would negate Spain's ability to use the Dutch Action to undermine the Court's authority and prevent enforcement of the Award.

Expedited consideration of the Motion for Substitution is essential under these circumstances. Spain's actions in the Netherlands are moving quickly: In Spain's Dutch Action—which, again, seeks to enjoin Petitioners from prosecuting this case at all—Petitioners must submit their defense by March 8, and briefing is likely to be completed by March 22. Biezenaar Decl. ¶¶ 3-4. Although Petitioners requested a two-week extension on their deadline to respond (which Spain opposed), the Dutch court denied their request. *Id.* And the court scheduled a hearing for March 13 on Spain's request for a preliminary injunction against any effort here to seek an anti-anti-suit injunction. *Id.* ¶ 6. Importantly, at present, the Order does not purport to bar this Court from denying Spain's pending motion to dismiss, entering judgment on the Award, or taking any other action it deems proper. *Id.* ¶ 8. It also does not bar Petitioners or Blasket from proceeding with this litigation or from taking any action other than seeking an anti-anti-suit injunction in the United States. *Id.* But given Spain's litigation tactics so far, it would hardly be surprising if Spain were to rush to the Dutch courts to seek further relief to enjoin this Motion for Substitution.

Relief is needed on an expedited basis to forestall any further action by Spain abroad to evade this Court's jurisdiction. And a prompt ruling granting substitution would enable Petitioners to more effectively fend off Spain's gamesmanship; they could represent to the Dutch court in their responsive filing due March 8 that AES and Ampere—the only defendants named in the

Dutch Action—are no longer parties to any enforcement action in the United States, thereby mooted Spain’s requests for an anti-suit injunction against them.

Spain would also not be seriously prejudiced by expedited briefing and consideration on the Motion for Substitution, because Spain recently briefed two nearly identical motions for substitution in virtually identical cases where Blasket has been assigned the rights of other award holders seeking to enforce judgments against Spain in this Court. *See RREEF Infrastructure (G.P.) Ltd. v. Kingdom of Spain*, No. 1:19-cv-03783 (D.D.C. Feb. 20, 2023), ECF No. 52; *InfraRed Env’t Infrastructure GP Ltd. v. Kingdom of Spain*, No. 1:20-cv-00817 (D.D.C. Feb. 20, 2023), ECF No. 57. There are no new issues here.

Accordingly, Petitioners respectfully request that the Court set a briefing schedule requiring Spain to respond by Friday, March 3, with Petitioners’ reply due Monday, March 6. Petitioners further respectfully request that the Court decide the Motion for Substitution by Tuesday, March 7, or as soon as reasonably possible thereafter.

Dated: March 2, 2023

Respectfully submitted,

AES SOLAR ENERGY COÖPERATIEF U.A.
AND AMPERE EQUITY FUND B.V.

By its attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2023, I caused a true and correct copy of the foregoing Motion for Expedited Consideration to be filed with the Clerk for the U.S. District Court for the District of Columbia through the ECF system. Participants in the case who are registered ECF users will be served through the ECF system, as identified by the Notice of Electronic Filing.

/s/ Matthew McGill

Matthew McGill