INTERNATIONAL CENTRE FOR SETTLEMENT

OF INVESTMENT DISPUTES

In the Matter of

ACF RENEWABLE ENERGY LIMITED,

Claimant

v.

THE REPUBLIC OF BULGARIA,

Respondent

REQUEST FOR ARBITRATION

February 7, 2018

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Counsel for Claimant

1. ACF Renewable Energy Limited ("**ACF**" or "**Claimant**") hereby requests the initiation of an arbitration proceeding against the Republic of Bulgaria ("**Bulgaria**" or "**Respondent**") under the Convention and Rules of the International Centre for Settlement of Investment Disputes ("**ICSID**").

2. Claimant submits 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. ACF Renewable Energy Limited is a company duly incorporated under the laws of the Republic of Malta and listed in the Maltese Registry of Companies under registration number C 56625.[2] Its corporate address is:

Vincenti Buildings
28/19 (Suite 1174) Strait Street
Valletta VLT 1432
Malta

4. Claimant is represented in this proceeding by King & Spalding LLP and CMS Cameron McKenna LLP.[3] All correspondence and communications with Claimant should be directed to Claimant's counsel as follows:

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[1] Energy Charter Treaty and Related Documents, Claimant's Exhibit ("C-") 1.

[2] ACF Renewable Energy Limited's Registration Certificate in the Maltese Registry of Companies, November, 29, 2017, C-2.

[3] Claimant's Authorization and Power of Attorney to King & Spalding and CMS Cameron McKenna Nabarro Olswang LLP, C-3.

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5. The Respondent is the Republic of Bulgaria. Bulgaria is likely to be represented in this proceeding by Mr. Vladislav Goranov, Minister of Finance of Bulgaria, and by Mr. Ivan Kondov, Head of the Litigation Directorate of the Ministry of Finance of the Republic of Bulgaria, located at the following address:

102 G. S. Rakovski str.
1040 Sofia
Bulgaria

II. BRIEF SUMMARY OF THE LEGAL DISPUTE

A. Background to Claimant's Investments in Bulgaria

6. ACF owns a photovoltaic plant located in Karajalovo, Plovdiv Region, Bulgaria, with a peak installed capacity of 60.4 MW (the "**Karad Project**"). ACF owns the Karad Project through a Bulgarian project company now known as Acwa Power CF Karad PV Park EAD ("**Acwa Power**").[4] ACF made its investment in Bulgaria in the following legal and regulatory context.

7. The production of electricity from renewable energy sources ("**RES**") has been an important policy in Bulgaria, in line with the country's international commitments. The European Union and numerous other states share these policy interests, and promotion of investment in the renewable energy sector has been embodied in international agreements such as the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

[4] Acwa Power CF Karad PV Park EAD is a company duly incorporated under the laws of Bulgaria and listed in the Commercial Register under registration number 201940814.

8. 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 such negative externalities.

9. As the cost of producing electricity from renewable resources is substantially higher than the cost of producing electricity from traditional sources, encouraging private investment in renewable energy projects requires financial incentives to render the industry competitive.

10. Following its ratification of the Kyoto Protocol in 2002, which imposed non-binding targets on Bulgaria to reduce greenhouse gas emissions, Bulgaria adopted the Energy Act ("**ESA**") in 2003. The ESA established general conditions for efficient use and generation of energy from renewable sources. However, the ESA failed to attract the necessary investments, because it contained no incentives for investors.

11. Pursuant to its accession to the European Union on January 1, 2007, Bulgaria accepted mandatory obligations for the development of renewable energy production. In line with a pre-existing EU directive, the country undertook the obligation to achieve an 11% share of RES electricity in the national gross consumption of electricity by 2010.[5]

12. Accordingly, in 2007, Bulgaria adopted the Renewable and Alternative Energy Sources and Biofuels Act ("**RAESBA**") to establish a system for producing RES electricity and create a favorable investment climate.[6]

13. Under the RAESBA, RES electricity was supported primarily through a feed-in tariff ("**FiT**") scheme. Eligible producers of electricity were entitled to enter into long-term power purchase agreements ("**PPAs**") with the State-owned National Electricity Company EAD ("**NEK EAD**") or directly with end suppliers. The duration of the PPAs was established by law at 12 years, during which time the suppliers undertook to purchase all electricity produced by renewable sources, other than that sold on the free market or used for the plant's own consumption.

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[5] Directive 2006/108/EC of the European Parliament and of the Council of 20 November 2006, adapting Directives 90/377/EEC and 2001/77/EC in the field of energy, by reason of the accession of Bulgaria and Romania.

[6] Renewable and Alternative Energy Sources and Biofuels Act of June 19, 2007.

14. Furthermore, Bulgaria established preferential FiT prices for the purchase of RES electricity. Although the FiTs were subject to annual review by the Bulgarian Energy and Water Regulatory Commission ("**EWRC**"), they were calculated based on a pre-established formula, with a view to creating transparency in the system. According to that formula, the annual FiT was set at 80% of the average electricity sales price achieved by the public provider or end suppliers over the preceding year, plus an increment set annually by the EWRC. The RAESBA also provided an additional guarantee by limiting the potential decrease in FiT to 5% from year to year. These guarantees ensured stability for investors and enabled them to undertake long-term planning regarding their investments in the renewable energy sector.

15. In November 2008, Bulgaria extended the duration of the PPAs to 25 years for solar geothermal facilities and to 15 years for all other facilities, including PV plants, thus providing an additional incentive for investors.

16. Nevertheless, despite this relatively robust program, the potential for 5% annual decreases over the long-term made Bulgaria's program less attractive than other European markets at the time.

17. By 2011, it was clear that Bulgaria's existing legislation was not attracting enough serious investment to meet Respondent's renewable energy targets. In particular, Bulgaria had undertaken to ensure that 16% of total energy consumption would be supplied from renewable sources by 2020, pursuant to EU Directive 2009/28/EC.[7] As the regime instituted by the RAESBA was insufficient to meet EU obligations, Bulgaria adopted the Energy from Renewable Sources Act ("**ERSA**") on May 3, 2011, fully transposing Directive 2009/28/EC into its national legislation.[8]

18. The new Act sought to promote a more stable renewable energy market by favoring committed investors, and it introduced stricter monitoring provisions to ensure that would-be investors actually completed their plants. The ERSA maintained the principle of mandatory offtake of all RES electricity at established FiTs through long-term PPAs. However, the ERSA modified the duration of the future PPAs as follows: (i) 20 years for electricity generated from solar power, geothermal or biomass; (ii) 12 years for electricity

[7] Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the Promotion of the Use of Energy from Renewable Sources and Amending and Subsequently Repealing Directives 2001/77/EC and 2003/30/EC.

[8] Promulgated in the State Gazette No. 35 of May 3, 2011.

generated from wind power; and (iii) 15 years for electricity generated from mini-hydro and other renewable sources.

19. Critically, the ERSA introduced one necessary change from the 2007 regime. Instead of being subject to fluctuating FiTs every year, new investors in the renewable energy sector were entitled to receive a fixed FiT per mega-watt hour ("**MWh**") of electricity produced and delivered into the electricity grid for the full duration of their PPAs. Importantly, the ERSA also specifically confirmed that suppliers were required to purchase all the RES electricity at the fixed FiT, other than the electricity that producers elected to sell on the free market or any electricity used for the plants' own consumption.

20. Bulgarian legislators highlighted these essential features of the new regime during the discussion of the draft 2011 ERSA. For instance, the White Paper submitted with the draft ERSA stated that the Act "maintains the principle for the obligatory offtake of the electricity produced from renewable energy sources based on long-term power purchase agreements and on preferential (Feed-In) tariffs. The Feed-In Tariffs are fixed for the entire duration of the power purchase agreement…" Furthermore, to attract the required RES investments, Bulgaria widely promoted the regime, noting that it ensured predictability of returns in the sector.

21. On June 20, 2011, Bulgaria determined the FiT that would be applicable to various categories of RES plants. Decision No. C-18/20.06.2011 ("**Decision C-18**"), which was ultimately applicable to ACF's Karad Project, established a FiT of 485.60 BGN (approximately € 250) per MWh.

22. The FiT applicable to new projects enrolled under the ERSA before June 30, 2012 – backed by the promise that it would not change for 20 years (for PV plants) and that all the electricity produced by a plant would be eligible for that FiT – proved to be crucial in encouraging investments in the renewable energy sector, primarily in the solar sector.

23. Bulgaria was successful in achieving its goal of attracting serious, significant investments in renewable energy. By 2013, Respondent was ahead of schedule to meet its EU target and was ranked second among the top 10 emerging markets for renewable energy. It attracted investments of approximatively US$ 8 billion from 2009 to late 2012. The results of the ERSA were particularly visible in the solar sector, where total installed capacity increased from 150 MW to 1,000 MW between 2011 and 2012.

B. Claimant Invested in Reliance on Bulgaria's Incentive Regime

24. The Karad Project obtained a final connection agreement with the public electricity provider, the State-owned NEK EAD, on April 13, 2011. In June 2012, anticipating that the Karad Project would benefit from the guarantees described above, ACF finalized its acquisition of 100% of the Project and its operating company. The Project's connection agreement was amended on March 9, 2012, and on March 23, 2012, Acwa Power obtained an operating permit for the Karad Project, triggering the applicability of a FiT of BGN 485.6/MWh on all the electricity delivered to the grid for a period of 20 years pursuant to Decision C-18. Acwa Power was authorized to sell up to 50 MWh of electricity capacity into the grid at any given time, with no overall limitation on the amount eligible for purchase at the specified FiT.

25. On April 26, 2012, Acwa Power obtained a license for energy production pursuant to Decision No. L-383-01 (the "**License**"). The application process for obtaining the License required that Acwa Power submit a detailed business plan, among other documents, indicating the total capacity of the plant, projected production, projected revenue, and projected rates of return. By granting the License, the EWRC the economic and financial viability of the Karad Project based on the existing incentive program and its key features described above.

26. On June 11, 2012, the EWRC approved the start of operations for Project Karad, pursuant to Decision P-168. On June 13, 2012, Acwa Power entered into a PPA with NEK EAD for a period of 20 years. Thus, the Karad Project was successfully completed and connected by the end of June 2012, which entitled it to the full benefits of the incentive regime.

27. ACF was confident that Bulgaria would honor its undertaking to provide stable, predictable financial incentives throughout the established 20 year period to photovoltaic facilities such as Karad enrolled under the ERSA incentive regime. In reliance on Bulgaria's promises in its incentive regime, specifically the undertaking that all the electricity an eligible plant could produce would be purchased at the fixed FiT price for twenty years, the Karad Project was designed to have a peak capacity of 60.4 MWh, which enabled the plant to achieve 50 MWh of production for longer periods of time throughout the year.

28. As Claimant came to discover, however, and as discussed below, Bulgaria has failed to abide by the clear terms of its own legislation, by substantially altering the FiT regime applicable to Claimant's Karad Project.

C. Respondent Wrongfully Altered the Incentive Regime

29. Despite the legal guarantees and economic incentives granted in the ESA and the ERSA, Bulgaria subsequently adopted several measures amending the incentives framework for Claimant's photovoltaic facility, substantially altering the economic regime on which ACF had based its investment. Bulgaria's alterations to the ESA and the ERSA breach the ECT and international law and entitle Claimant to compensation for the damages it has suffered. The measures implemented by Bulgaria and discussed hereafter are illustrative, rather than exhaustive.

30. First, on September 14, 2012, without previous announcement or public discussion, the EWRC adopted decision C-33/2012, which introduced a temporary **grid access fee** for all RES facilities connected to the grid since 2010.[9] Due to the manner in which the fee was calculated, photovoltaic facilities (such as ACF's) that were commissioned in the first half of 2012 were affected more severely than other RES plants. Acwa Power was required to pay as much as 39% of the preferential FiT to which it was entitled as this "fee," which significantly reduced Claimant's cash flows. Almost a year later, by a decision dated 19 June 2013, the Supreme Administrative Court of Bulgaria ("**SAC**") ultimately repealed the measure as discriminatory and unfair.

31. On March 13, 2014, however, the EWRC had introduced a similar, but permanent, grid access fee applicable only to solar plants and wind farms ("**Decision C-6**").[10] Bulgaria initially established the fee at BGN 2.45 (approximately € 1.25) per MWh, without VAT, which was subsequently increased by 190% to BGN 7.14 per MWh in July 2015. It was BGN 7.02 per MWh as of July 2016. The new fee imposed an additional financial burden on ACF, which also reduced Claimant's expected cash flows.

32. Second, Bulgaria's incentive regime was further altered through the adoption of Electricity Trading Rules in July 2013, which affected Bulgaria's balancing market and required RES producers to participate in a balancing group and pay monthly settlements to

[9] EWRC Decision C-33/2012.

[10] EWRC Decision C-6 of March 13, 2014.

the coordinator of the balancing group.[11] Since the start of operation of the balancing market in June 2014, disproportionate and irregular **balancing fees** have been imposed on RES producers, including ACF's Karad Project.

33. Third, on several occasions in 2013 and 2014, the State-owned NEK EAD – which was also the contracting party to Claimant's PPA – failed to honor its **payment obligations in relation to the FiTs** owed for the electricity produced. These delays also reduced Claimant's cash flows, thus harming ACF's Karad Project.

34. Fourth, on several occasions during 2013 and 2014, the Bulgarian grid operator and the State-owned transmission system operator **limited the daily electricity production** of solar and wind power plants across the country. PV producers were particularly affected by this measure, as the limitations typically occurred in the spring between 10 a.m. and 6 p.m., when solar plants normally run at full capacity. Thus, Bulgaria reduced the remuneration guaranteed under the incentive regime and legitimately expected by Claimant.

35. Fifth, Bulgaria further reduced Claimant's FiT remuneration in July 2015 when Respondent required RES producers to pay a **monthly fee to the Security of Electrical Power System Fund** amounting to 5% of their revenue, VAT excluded.[12]

36. The foregoing acts and omissions of Bulgaria materially altered the legal and economic regime guaranteed in the ESA and ERSA – in reliance on which ACF made its investments – and reduced the revenues Claimant reasonably expected when deciding to invest in Bulgaria (as confirmed in Karad's License). On 20 December 2013, Bulgaria violated the ECT and international law again by adopting even more egregious measures when it amended the ERSA through the 2014 State Budget Act, which entered into force on January 1, 2014.[13] This amendment effectively destroyed the value of Claimant's investments in Bulgaria.

37. First, Bulgaria introduced a fee on the revenues of solar plants and wind farms generated under the FiT system, which amounted to a direct deduction of 20% (VAT excluded) of the applicable FiT. Although in July 2014 the Constitutional Court ruled that the **20% fee on revenues** was unconstitutional, Bulgaria did not reimburse the fees paid between

[11] Promulgated in the State Gazette No. 66 of July 26, 2013.

[12] ESA, Articles 36(b), (e) and (f) as of July 2015.

[13] State Budget Act of December 20, 2013.

January 1 and August 10, 2014. The sums illegally withheld by Respondent – and which it refused to refund –represent a direct reduction of the revenues legitimately expected by Claimant when it invested in Bulgaria.

38. Second, and more critically, Bulgaria eviscerated the value of Claimant's investments when it reduced the amount of energy eligible for purchase at preferential FiT prices to the quantity of electricity produced on average by the same category of RES facilities (the "**hourly FiT limitation**"). As explained above, one of the key features of the ERSA – and one that Bulgaria extensively highlighted when promoting investment in its renewable energy sector – was that RES producers were entitled to sell all the energy they produced at the applicable FiT. For the category of facilities corresponding to ACF's Karad Project, Bulgaria imposed an annual production limitation of 1,250 MWh. Electricity produced beyond that threshold could be sold only at a much lower price approved by the EWRC (which ultimately amounted to about 15% of the guaranteed, applicable FiT rate).

39. On July 24, 2015, Bulgaria further decreased the amount of energy eligible for purchase at the preferential FiT to the average annual electricity production of installations (1,250 MWh) minus the producer's own electricity consumption.[14] A week later, Bulgaria established that threshold at 1,188 MWh per annum for the majority of solar plants, including ACF's Karad Project.

40. These limitations severely affected Claimant's Karad Project. As explained above, the Karad Project was specifically designed to have a peak capacity of 60.4 MWh. The Karad Project typically reaches the annual production threshold of 1,188 MWh by around August every year. Thus, electricity produced during the following months could only be sold at free market prices, representing less than 15% of the guaranteed FiT. Bulgaria's hourly FiT limitations constitute arbitrary reductions in the quantity of electricity eligible for the preferential tariff, in violation of ACF's legitimate expectations when it invested.

41. The above-mentioned measures constitute repeated and illegal repudiations of the guarantees of stable, incentivized pricing that Bulgaria provided in the ESA and the ERSA to induce Claimant's investments. Bulgaria is liable under the ECT and international law for failing to honor its commitments to Claimant and for significantly altering the incentive program to Claimant's detriment. As a result of the multiple modifications of the

[14] ERSA, Article 31(5) as amended by the act Amending the ESA, promulgated in the State Gazette No. 56 of July 24, 2015.

legal and financial framework governing Claimant's investments, the Karad Project receives remuneration at levels far below Claimant's legitimate expectations when it made its investments. The substantial reduction in remuneration has eviscerated the value of ACF's investments and impaired its ability to service its debt.

III. JURISDICTION OF ICSID

42. As a Contracting Party to the ECT and a Contracting State to the ICSID Convention, Bulgaria agreed that Claimant could submit the dispute to ICSID arbitration. Article 26 of the ECT, governing the settlement of disputes between an 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
>
> (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).
>
> (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).
>
> (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.

43. 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."

44. 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.

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

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

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

47. Article 10 provides a number of guarantees and protections to Claimant and its 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. Article 13 of the ECT prohibits the illegal expropriation of Claimant's investments. Bulgaria violated each of the foregoing standards of protection in the present case.

B. The ECT Covers Claimant's Investments

48. 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.

49. Under this definition, there are a number of different investments of Claimant involved in this case, including, but not limited to: (i) Claimant's ownership of tangible and intangible property and property rights, including its ownership of the Karad Project; (ii) Claimant's ownership of shares and equity participation in a Bulgarian company as well as debt obligations; (iii) Claimant's right to returns and claims to money; (iv) rights conferred by law, including the rights to fixed feed-in tariff pricing and to mandatory purchase of all electricity produced conferred through the ESA and the ERSA; and (v) rights conferred by licenses and permits.

50. Claimant directly and indirectly owns 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

51. Bulgaria is a contracting party to the ECT. Bulgaria signed the ECT on December 17, 1994, and ratified it on July 31, 1996. Bulgaria deposited its instrument of ratification on November 15, 1996. The ECT entered into force for Bulgaria on April 16, 1998.[15]

52. Bulgaria is a Contracting State of the ICSID Convention. Bulgaria signed the ICSID Convention on March 21, 2000, and deposited its ratification on the Convention on April 13, 2001. The ICSID Convention entered into force for Bulgaria on May 13, 2001.[16]

D. Claimant Is a Covered Investor and a National of a Contracting Party to the ECT and a Contracting State to the ICSID Convention

53. 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."[17]

54. ACF is a business entity duly established in the Republic of Malta. It currently owns 100% of the Bulgarian company and PV plant discussed above, which it also owned on

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[15] Energy Charter: Members and Observers—Bulgaria, C-4; Status of Ratification of the Energy Charter Treaty as of June 2013, C-5.

[16] ICSID: List of Contracting States and Other Signatories of the Convention, January 11, 2018, C-6.

[17] Energy Charter Treaty and Related Documents, C-1.

the date of consent to ICSID jurisdiction (discussed below) and immediately before the events giving rise to the dispute.

55. Malta is a Contracting party to the ECT. Malta signed the ECT on December 17, 1994, and ratified it on May 21, 2001. Malta deposited its instrument of ratification on May 30, 2001. The ECT entered into force for Malta on August 28, 2001.[18]

56. Malta signed the ICSID Convention on April 24, 2002, and deposited its ratification of the Convention on November 3, 2003. The ICSID Convention entered into force for Malta on December 3, 2003.[19]

57. Thus, Claimant is a covered "Investor" and a national of a Contracting Party to the ECT and a Contracting State of ICSID.

E. The Parties Have Consented to ICSID Arbitration

58. Bulgaria 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 Bulgaria on April 16, 1998.[20]

59. Claimant consented to arbitrate this dispute pursuant to Article 26 of the ECT through a letter to Bulgaria dated August 30, 2017.[21] Claimant further confirms its consent to settle this dispute through ICSID arbitration through this Request for Arbitration. Thus, Claimant has satisfied the "consent" requirement under the ICSID Convention.

F. Claimant Attempted to Settle This Dispute Amicably

60. Before submitting a dispute to arbitration, Article 26 of the ECT requires disputing parties to settle their disputes amicably, if possible. Claimant sent a letter to Respondent on August 30, 2017, which described its concerns regarding Respondent's alterations to the legal and economic regime applicable to its photovoltaic plant, notifying it of this dispute and offering to settle the dispute amicably.[22] Bulgaria has not responded to

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[18] Energy Charter: Members and Observers—Malta, C-7; Status of Ratification of the Energy Charter Treaty as of June 2013, C-5.

[19] ICSID: List of Contracting States and Other Signatories of the Convention, January 11, 2018, C-6.

[20] Energy Charter: Members and Observers—Bulgaria, C-4.

[21] ACF Renewable Energy Limited's Notice of Legal Dispute Arising Under the Energy Charter Treaty and Offer of Amicable Settlement to Bulgaria, August 30, 2017, C-8.

[22] *Id*., C-8.

Claimant's offer to pursue a settlement and no resolution of the present dispute has been achieved.

61. Article 26 of the ECT allows an Investor to submit its dispute to ICSID arbitration if the dispute is not settled amicably within a three-month period. As three months have passed since Claimant attempted to settle this dispute amicably with Bulgaria, ACF is entitled to submit this Request for Arbitration with ICSID.

IV. PROCEDURAL MATTERS

62. In accordance with Article 37 of the ICSID Convention, Claimant requests 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.

63. Pursuant to Rule 22(1) of the ICSID Rules of Procedure for Arbitration Proceedings, Claimant selects English as the procedural language for this arbitration.

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

65. 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

66. Claimant requests an award granting it the following relief:

- a declaration that the dispute is within the jurisdiction of ICSID and the ECT;
- a declaration that Bulgaria has violated Part III of the ECT, including but not limited to Articles 10 and 13, as well as international law with respect to Claimant's investments;
- compensation to Claimant for all damages it has 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 Claimant to acquire the investments, lost profits, and consequential damages flowing from Respondent's breaches;
- all costs of this proceeding, including Claimant's attorneys' fees;
- pre- and post-award compound interest until the date of Respondent's final satisfaction of the award; and

- any additional relief the tribunal may deem just and proper.

67. Claimant reserves its right to modify, amend, or supplement its claim during the course of the arbitration proceeding.

VI. CONCLUSION

68. For the reasons set forth above, Claimant respectfully requests that ICSID register this arbitration against the Republic of Bulgaria.

Dated: February 7, 2018

Respectfully submitted,

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