ARBITRATION INSTITUTE OF THE

STOCKHOLM CHAMBER OF COMMERCE

In the Matter of

FORESIGHT LUXEMBOURG SOLAR 1 S.À.R.L., FORESIGHT LUXEMBOURG SOLAR 2 S.À.R.L., GREENTECH ENERGY SYSTEMS A/S, GWM RENEWABLE ENERGY I S.P.A., AND GWM RENEWABLE ENERGY II S.R.L.,

Claimants

v.

The Kingdom of Spain,

Respondent

SCC Arbitration V 2015/150

CLAIMANTS' REPLY POST-HEARING BRIEF

June 13, 2018

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- Spain mischaracterizes Mr. Edwards' use of a simplified DCF analysis as a sanity check on his valuation in the Actual scenario, attempting to portray it as an inconsistent "rejection of DCF" because it resulted in a slightly higher valuation (which would have reduced damages by €3 million, *i.e.*, around 5%).[102] In his response that Spain omits, however, Mr. Edwards explained that his high-level DCF analysis was a sanity check that gave him some comfort: "I've basically used a relatively simple DCF as a cross-check, just to ensure that from an order of magnitude perspective it's in the same ballpark, and that gives me some comfort."[103] There is nothing inconsistent in Mr. Edwards' approach. He used evidence from arms' length transactions in the actual plants at issue when such evidence was available (confirmed by a sanity check using the DCF method), and used the DCF method in the Counterfactual scenario when no such evidence was available.

51. Additionally, Spain's argument that Claimants have not met their burden of proof because they did not separately quantify damages for each disputed measure is specious. Claimants assert that all of the disputed measures violate the ECT, whether considered separately or cumulatively, and thus that the damages should correspond to the losses attributable to all of the disputed measures. FTI's evidence quantifies those losses, and thus sustains Claimants' burden of proof. Tribunals routinely confront the situation in which they find liability based on a scope that differs from the scope in the claimant's expert submission. For example, the Tribunal need look no further than the *Masdar* award. Tribunals have various tools at their disposal to address that situation (including requesting additional submissions from the experts based on a narrowed scope of liability), and Spain points to no authority whatsoever to support its position that the Tribunal should award no damages at all in that situation.

52. Finally, Spain's argument that the Tribunal should deny damages because Claimants did not separately quantify losses based on different liability theories is baseless, and frankly, desperate. Spain cites no authority for the proposition that the quantum of damages differs depending on the theory of liability, and Claimants are aware of none. In fact, in their treatise on Damages in International Investment Law, Sergey Ripinsky and Kevin Williams conclude that "[f]or the purposes of determining the quantum of damages, the exact obligation breached by the respondent State appears to be irrelevant."[104]

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102 Respondent's Post-Hearing Brief, ¶¶ 224-226.

103 Hearing Transcript, Day 5, p. 57:19–22.

104 SERGEY RIPINSKY & KEVIN WILLIAMS, *Damages In International Investment Law*, p. 90 (2008), CL-143.