

**UNDER THE 1976 ARBITRATION RULES OF THE UNITED NATIONS
COMMISSION ON INTERNATIONAL TRADE LAW**

PJSC DTEK KRYMENERGO

Claimant

v.

THE RUSSIAN FEDERATION

Respondent

REQUEST FOR ARBITRATION

16 February 2018

Table of Contents

I. INTRODUCTION.....1

II. THE PARTIES..... 2

 A. Claimant..... 2

 B. Respondent 2

III. THE ARBITRATION AGREEMENT 3

IV. FACTUAL BACKGROUND..... 4

 A. DTEK Krymenergo’s Electricity Distribution Business in Crimea..... 4

 B. The Russian Federation’s Exercise of Effective Control and Jurisdiction Over Crimea. 5

 C. The Russian Federation Unlawfully Expropriated and Interfered with Claimant’s Investments in Crimea..... 7

 1. The Russian Federation Adopted Legislative and Administrative Measures Seizing DTEK Krymenergo’s Assets in Crimea. 8

 2. The Russian Federation Physically Interfered with and Seized Claimant’s Investments in Crimea..... 10

 3. The Russian Federation Adopted Judicial Decisions Expropriating Claimant’s Rights Over Debts Owed to It 11

V. JURISDICTION AND ADMISSIBILITY.....12

 A. The Dispute Is Between a Contracting Party to the Treaty and an Investor of the Other Contracting Party.12

 B. The Dispute Arose in Connection with Claimant’s Investments.....13

 1. Claimant’s Business in Crimea is an Investment within the Meaning of Article 1(1) of the Treaty.13

 2. Claimant’s Investments Were “in the Territory” of the Russian Federation within the Meaning of the Treaty.....14

 3. Claimant’s Investments Were in Accordance with Russian Legislation at the Time of the Expropriation.....15

 C. Claimant Provided to the Russian Federation a Written Notice of the Existence of a Dispute in Connection with Its Investments.....15

D.	More Than Six Months Have Elapsed Since Claimant Served the Notice of Dispute on the Russian Federation.	16
VI.	THE RUSSIAN FEDERATION HAS BREACHED ITS OBLIGATIONS UNDER THE TREATY.....	17
A.	The Russian Federation Failed to Provide Claimant’s Investments with Full and Unconditional Protection.	17
B.	The Russian Federation Engaged in Discriminatory Measures Against DTEK Krymenergo.....	17
C.	The Russian Federation Denying Claimant’s Investments Fair and Equitable Treatment.....	18
D.	The Russian Federation Unlawfully Expropriated Claimant’s Investments.....	18
VII.	RELIEF SOUGHT.....	19
VIII.	PROCEDURAL ISSUES.....	19
IX.	RESERVATION OF RIGHTS.....	20

I. INTRODUCTION

1. Pursuant to Article 9(2) of the Agreement between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the Encouragement and Mutual Protection of Investments (the “**BIT**” or “**Treaty**”)¹ and in accordance with Article 3 of the 1976 Arbitration Rules of the United Nations Commission on International Trade Law (the “**UNCITRAL Rules**”), PJSC “DTEK KRYMENERGO” (“**DTEK Krymenergo**” or “**Claimant**”) submits this Request for Arbitration (the “**Request**”) and hereby demands arbitration of its dispute with the Russian Federation (“**Russian Federation,**” “**Russia**” or “**Respondent**”). According to Article 3 of the UNCITRAL Rules, the arbitral proceeding is deemed to commence on the date on which the Request is received by the Russian Federation.

2. This Request concerns a dispute that arises out of the Russian Federation’s expropriation of the Claimant’s investments in electricity distribution in Crimea, following the Russian Federation’s occupation of that region. By virtue of its effective control and jurisdiction over Crimea, the Russian Federation has assumed obligations under the Treaty to protect Ukrainian investors, such as the Claimant, and their investments in Crimea. DTEK Krymenergo, formerly the main distributor of electricity in Crimea, owned some of the most valuable energy assets in Crimea until it was targeted for expropriation by the Russian Federation. As explained below, the Russian Federation’s actions have deprived the Claimant of its investments, in breach of Russia’s obligations under the Treaty and international law.

¹ Agreement between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the Encouragement and Mutual Protection of Investments (signed 27 November 1998, entered into force 27 January 2000) (C-1). The Claimant’s unofficial translation of the Treaty into English, based on both the official Russian and Ukrainian language versions, is included with the exhibit. All subsequent references to the Treaty herein rely on this translation.

II. THE PARTIES

A. Claimant

3. Claimant is a public joint stock company organized under the laws of Ukraine.

Claimant's registered addresses is:

PJSC "DTEK Krymenergo"
57 Lva Tolstoho Street,
Kyiv, Ukraine, 01032

4. DTEK Krymenergo is one of the largest privately-owned electricity distribution companies in Ukraine. Prior to the events described in this Request, DTEK Krymenergo maintained investments in Crimea as described in Section V(B) below.

5. Claimant is represented by:

Marney L. Cheek
Jonathan Gimblett
Covington & Burling LLP
One CityCenter
850 Tenth Street NW
Washington, DC 20001
mcheek@cov.com
jgimblett@cov.com
+1 202 662 6000

6. All correspondence addressed to Claimant should be sent to its counsel at the address set forth above.

B. Respondent

7. The Respondent is the Russian Federation. This Request is being served on the following representatives of the Russian Federation:

His Excellency Dmitry A. Medvedev
Prime Minister of the Russian Federation
Government of the Russian Federation Building
2 Krasnopresnenskaya Naberezhnaya
103274, Moscow
Russian Federation

His Excellency Sergei V. Lavrov
Minister of Foreign Affairs
Ministry of Foreign Affairs of the Russian Federation
32/34 Smolenskaya-Sennaya Pl.
119200, Moscow G-200
Russian Federation

His Excellency Alexander V. Shulgin
Ambassador of the Russian Federation to the Netherlands
Andries Bickerweg 2
2517 JP Den Haag
The Netherlands

III. THE ARBITRATION AGREEMENT

8. In Article 9 of the BIT, the Russian Federation has made a standing offer to arbitrate disputes that arise with Ukrainian investors in connection with their investments on the territory of the Russian Federation:

1. Any dispute between one Contracting Party and an investor of the other Contracting Party arising in connection with investments, including disputes concerning the amount, terms, and payment procedures of the compensation provided for by Article 5 hereof, or the payment transfer procedures provided for by Article 7 hereof, shall be subject to a written notice, accompanied by detailed comments, which the investor shall send to the Contracting Party involved in the dispute. The parties to the dispute shall endeavor to settle the dispute through negotiations if possible.

2. If the dispute cannot be resolved in this manner within six months from the date of the written notice mentioned in paragraph 1 of this article, it shall be referred to: a) a competent court or arbitration court of the Contracting Party in the territory of which the investments were made; b) the Arbitration Institute of the Stockholm Chamber of Commerce; c) an “ad hoc” arbitration tribunal, in accordance with the Arbitration Rules of the United Nations Commission for International Trade Law (UNCITRAL).

3. The arbitral award shall be final and binding upon both parties to the dispute. Each Contracting Party agrees to execute such award in conformity with its respective legislation.²

² BIT, art. 9.

9. Claimant accepts the Russian Federation's standing offer to arbitrate, and chooses to submit this dispute to ad hoc arbitration under the UNCITRAL Rules.³

IV. FACTUAL BACKGROUND

A. DTEK Krymenergo's Electricity Distribution Business in Crimea.

10. DTEK Krymenergo is a majority-owned subsidiary of DTEK, Ukraine's largest energy group. Beginning in 2006, DTEK acquired shares in the Ukrainian state-owned electricity distributor operating in Crimea, eventually acquiring control in 2012 and renaming the company DTEK Krymenergo.⁴ DTEK Krymenergo obtained all permits and licenses necessary for the supply and transmission of electricity. It carried out its business directly from Crimea and maintained its corporate seat in Simferopol, Crimea.

11. DTEK Krymenergo operated in Crimea through a network of distribution and sales units. It bought electricity from a Ukrainian state-owned wholesaler and then sold the electricity to industrial and domestic customers in Crimea under standard form contracts. For example, in 2012 DTEK Krymenergo purchased 5,005.7 mln. kWh of electricity from wholesalers and sold 4,155.6 mln. kWh of electricity to consumers in Crimea. DTEK Krymenergo also held a 46.0264 percent shareholding in Private Joint Stock Company "East Crimean Energy Company" ("**PJSC**

³ *Id.* at art. 9(2). Because the Russian Federation's offer to arbitrate was made before the effective date of the 2010 UNCITRAL Rules, the 1976 UNCITRAL Rules apply to this arbitration, unless the parties agree otherwise.

⁴ On 5 May 2012, DTEK Energy B.V., a Dutch company, and DTEK Holdings Limited, a Cypriot company, collectively acquired 45.00 percent of the shares of Krymenergo PJSC, a state owned entity, and thus took their total shareholding to 57.49 percent. The two companies are ultimately owned by SCM JSC, a Ukrainian financial and industrial company, which, in turn, is owned by Mr. Rinat Akhmetov, a Ukrainian citizen. The State Property Fund of Ukraine owns 25 percent of the shares of DTEK Krymenergo, and a further 12.37 percent are owned by Svarog Asset Management LLC, a Ukrainian asset management fund, and its affiliates. The remaining 5.14 percent of the shares are owned by a number of private individuals, none of which owns more than 1 percent of the company.

East Crimean Energy Company”), another Ukrainian electricity distribution company in Crimea.⁵

12. DTEK Krymenergo modernized, renovated, and made extensive repairs to the electrical power distribution infrastructure in Crimea, including, but not limited to, constructing a new 110 kV Kubanska substation; replacing and upgrading high and low voltage power transmission lines, as well as transformer substations and heating systems; replacing oil-filled equipment with vacuum and gas-insulated units; retrofitting the Zhavoronki substation, Mayak substation, and Kubanska substation; and installing protective caps for high-voltage line insulators.

B. The Russian Federation’s Exercise of Effective Control and Jurisdiction Over Crimea.

13. In February 2014, the Russian Federation invaded and occupied Crimea. By 27 February 2014, the Russian Federation’s military forces and proxies, many operating without identifying insignia, had achieved physical control over Crimea, including by forcibly taking over the building of the Crimean Parliament and other government offices in Simferopol, the regional capital.⁶ Despite initial Russian denials of involvement in the aforementioned events, Russian President Putin later admitted that the invasion of Crimea was planned in advance and executed by the Russian military.⁷

14. On 16 March 2014, the Russian-controlled authorities in Crimea conducted a purported referendum on the “reunification” of Crimea with the Russian Federation.⁸ The

⁵ The State of Ukraine held the remaining 53.9736 percent of shares in Private Joint Stock Company “East Crimean Energy Company.”

⁶ See, e.g., BBC, *Putin Reveals Secrets of Russia’s Crimea Takeover Plot* (9 March 2015); International Criminal Court, *Report on Preliminary Examination Activities 2016* (14 November 2016), ¶ 158.

⁷ See, e.g., DW, *Putin reveals details of decision to annex Crimea* (9 March 2015).

⁸ Resolution No. 1702-6/14 of the Verkhovna Rada of the Autonomous Republic of Crimea, arts. 1-2 (6 March 2014). On the same day, the City Council of Sevastopol (the “**Sevastopol City Council**”), by Decision No. 7151, also purported to vote in favor of Sevastopol becoming part of

referendum was widely denounced as illegitimate and unlawful.⁹ Nonetheless, the Russian-controlled authorities in Crimea reported that 96 percent of those casting ballots had voted for Crimea to become a part of the Russian Federation. The next day, those same authorities purported to secede from Ukraine and declare the so-called Republic of Crimea as an independent sovereign state in which Sevastopol had a special status.¹⁰

15. On 18 March 2014, the Russian Federation purported to execute an agreement with the Republic of Crimea on its accession to the Russian Federation (the “**Annexation Treaty**”).¹¹ From that day, two new constituent entities were formed within the Russian Federation: the Republic of Crimea and the Federal City of Sevastopol.¹² On 21 March 2014, the Russian Federation adopted Federal Constitutional Law No. 6-FKZ (the “**Federal Law on Accession**”) which claimed to implement the Annexation Treaty and integrate the Republic of Crimea and the Federal City of Sevastopol into the Russian Federation as separate subjects,

the Russian Federation, and declared its support for the referendum approved by the Crimean Parliament. Decision No. 7151 of the Sevastopol City Council, arts. 1-2 (6 March 2014).

⁹ See, e.g., Territorial Integrity of Ukraine, G.A. Res. 68/262, U.N. Doc. A/RES/68/262 (27 March 2014) (providing that “the referendum [...], having no validity, cannot form the basis for any alteration of the status of the Autonomous Republic of Crimea or of the city of Sevastopol.”); *Case on Holding of Local Referendum in the Autonomous Republic of Crimea*, No. 1-13/2-14, Constitutional Court of Ukraine (14 March 2014) (finding the purported referendum to be in violation of the Ukrainian Constitution).

¹⁰ Resolution No. 1745-6/14 of the Verkhovna Rada of the Autonomous Republic of Crimea (17 March 2014). On the same day, under the control of the Russian Federation, the Sevastopol City Council purported to pass Decision No. 7156 on the Status of the Hero City of Sevastopol, which supported the Crimean Parliament’s declaration of the Republic of Crimea to become an independent state in which Sevastopol had a special status. Sevastopol City Council, Decision No. 7156 (17 March 2014).

¹¹ Treaty Between the Russian Federation and the Republic of Crimea on the Admission to the Russian Federation of the Republic of Crimea and the Formation of New Constituent Entities Within the Russian Federation (18 March 2014).

¹² *Id.* at art. 2.

effective from 18 March 2014.¹³ The Federal Law on Accession provided for the continued operation of business entities under Russian law, recognizing ownership rights, rights of use, and business licenses issued by Ukrainian authorities to persons and legal entities in Crimea. The law required no further confirmation by the Russian authorities of such rights.¹⁴

16. Ukraine and the international community in general are clear that Russia's occupation of Crimea, as well as the purported referendum and subsequent annexation of the region, are illegal under Ukrainian and international law.¹⁵ Nonetheless, the Russian Federation has since the spring of 2014 exercised effective control and jurisdiction over Crimea. For the reasons discussed in Section V below, by virtue of its effective control and jurisdiction over the territory, the Russian Federation has assumed obligations under the BIT to Ukrainian investors in Crimea, including Claimant.

C. The Russian Federation Unlawfully Expropriated and Interfered with Claimant's Investments in Crimea.

17. During the remainder of 2014, DTEK Krymenergo restructured its corporate presence in Crimea, moving its corporate seat to Kyiv and registering a branch office in Crimea with the Russian-controlled Crimean authorities (the "**Branch**"). These changes were introduced to comply with transitional arrangements for foreign investments in Crimea enacted by the Russian Duma in May 2014.¹⁶ Under this arrangement, the Branch was not a separate legal entity

¹³ Federal Constitutional Law, On the Admission of the Republic of Crimea into the Russian Federation, the Formation of New Constituent Entities of the Russian Federation: The Republic of Crimea and the Federal City of Sevastopol, No. 6-FKZ, Arts. 1.1, 1.3, 2.1, 21 March 2014.

¹⁴ *Id.* at arts. 10, 12.

¹⁵ See sources cited in footnote 9. See also Law of Ukraine No. 1207-VII, On Securing Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine, art. 3 (15 April 2014).

¹⁶ Federal Law No. 124-FZ, art. 1 (5 May 2014) (requiring that, by 1 January 2015, legal entities with their corporate seat located on the territory of the Republic of Crimea or Sevastopol either register as Russian legal entities or perform the functions of a branch of a foreign legal enterprise under Russian law).

distinct from DTEK Krymenergo. All property of the company belonged to DTEK Krymenergo, and the manager of the Branch was able to exercise all of the powers of DTEK Krymenergo by means of a power of attorney. The Branch had its own charter and a separate balance sheet for accounting purposes.

18. The Russian Federation's newly enacted laws in Crimea recognized the Branch's legal standing as an authorized electricity distributor with corresponding rights. On 11 August 2014, the Russian government issued a decree on the regulation of electricity in Crimea.¹⁷ The decree regulated the entities permitted to supply electricity to consumers in Crimea and the prices at which electricity would be supplied in Crimea. On 29 August 2014, the Russian-controlled Crimean authorities named the Branch as an authorized supplier of electricity in Crimea.¹⁸ The Branch continued to supply electricity to Crimean consumers under the newly established legal framework.

19. In the first few weeks of 2015, however, the Russian-controlled Crimean authorities abruptly seized DTEK Krymenergo's electricity distribution business in Crimea, placing the company's assets under the control of a newly-created state-owned company instead. This unlawful expropriation of DTEK Krymenergo's investment was achieved by a combination of legislative, administrative, physical, and judicial measures.

1. **The Russian Federation Adopted Legislative and Administrative Measures Seizing DTEK Krymenergo's Assets in Crimea.**

20. On 21 January 2015, the so-called State Council of the Republic of Crimea (the "**State Council**") included DTEK Krymenergo's immovable and movable property located in Crimea in a list of formally privately-owned property that was now to be "accounted as property of

¹⁷ Decree No. 792 of the Government of the Russian Federation (11 August 2014).

¹⁸ Decree No. 8/1 of the State Committee on Prices and Territories of the Republic of Crimea (29 August 2014).

the Republic of Crimea.”¹⁹ By the same measure, it authorized the so-called Council of Ministers of the Republic of Crimea to introduce temporary administrations to manage companies subject to nationalization, including DTEK Krymenergo.²⁰

21. The same day, the Council of Ministers transferred DTEK Krymenergo's movable and immovable property in Crimea into the control of the State Unitary Enterprise of the Republic of Crimea “Krymenergo” (the “**Russian Krymenergo**”).²¹ It further ordered the so-called Ministry of Fuel and Energy of the Republic of Crimea (“**Crimean Ministry of Fuel and Energy**”) to appoint a temporary administration to manage the Branch’s operations in Crimea.²²

22. On 21 January 2015, the Crimean Ministry of Fuel and Energy issued an order dismissing the management team of the Branch and appointing a new temporary administration which it purported to vest with authority to manage the Branch offices, its assets, and operations in Crimea.²³ For example, the order claimed to give the head of the temporary administration of the Branch authority to manage the Branch and its assets and to act on behalf of the Branch without any additional powers of attorney.²⁴ The members of the temporary administration appointed by the order were drawn from members of the management and other employees of the Russian Krymenergo.²⁵

¹⁹ Resolution No. 416-1/15 of the State Council of the Republic of Crimea (21 January 2015) (C-2).

²⁰ *Id.*

²¹ Regulation No. 6-p of the Council of Ministers of the Republic of Crimea (21 January 2015) (C-3).

²² Regulation No. 7-p of the Council of Ministers of the Republic of Crimea (21 January 2015).

²³ Order No. 1 of the Ministry of Fuel and Energy of the Republic of Crimea (21 January 2015).

²⁴ *Id.*

²⁵ *Id.*

23. Less than a week later, on 26 January 2015, the Council of Ministers placed all bank accounts of DTEK Krymenergo in Crimea under the control of the temporary administration.²⁶

24. On 27 February 2015, the State Council updated the list of DTEK Krymenergo's property subject to seizure by the Republic of Crimea, adding the company's shareholding in PJSC East Crimean Energy Company.²⁷ On 10 February 2015, the Russian-controlled Crimean authorities excluded the Branch from the list of authorized suppliers of electricity in Crimea, replacing it with the Russian Krymenergo.²⁸

2. The Russian Federation Physically Interfered with and Seized Claimant's Investments in Crimea.

25. Simultaneously with the legislative and administrative acts described above, representatives of the Russian Krymenergo, supported by masked people wearing black and green uniforms, physically seized the main office building of the Branch at 74/6 Kyivskaya Street in Simferopol, and the other office in Simferopol operated by the Branch at 12 Gorkogo Street. The representatives of the Russian Krymenergo explained to the Branch's management that they were enforcing a decision of the Crimean government to take control of DTEK Krymenergo's assets in Crimea. They brought with them a list of managers who were purportedly dismissed from their positions and prohibited from entering the premises.

26. The management of the Branch called local police to prevent the unlawful actions of Russian Krymenergo's representatives and the masked and uniformed individuals

²⁶ Regulation No. 36-p of the Council of Ministers of the Republic of Crimea (26 January 2015).

²⁷ Resolution No. 500-1/15 of the State Council of the Republic of Crimea (27 February 2015). On 29 November 2016, the State Council further clarified the composition of the assets seized from DTEK Krymenergo pursuant to its earlier measures. It amended its earlier measure of 21 January 2015 with a longer list of the real property owned by the company in Crimea that was now deemed to be property of the Russian Krymenergo. Resolution No. 1338-1/16 of the State Council of the Republic of Crimea (29 November 2016).

²⁸ Decree No. 6/8 of the State Committee on Prices and Terrifies of the Republic of Crimea (10 February 2014).

accompanying them. Some time later, members of the local police arrived at the scene, observed the situation, and then left without taking any action.

27. The next day, 22 January 2015, representatives of the Russian Krymenergo, again with support from masked and uniformed individuals, blocked the entrance to the premises of the Branch at 3 Mendeleeva Street in Simferopol and refused to let most of the employees enter the building. Those employees of the Branch who were allowed in were informed that after 28 February 2015 they would be employed by the Russian Krymenergo.

28. Since 22 January 2015, DTEK Krymenergo has been unable to operate or to exercise any form of control over its assets in Crimea.

3. The Russian Federation Adopted Judicial Decisions Expropriating Claimant's Rights Over Debts Owed to It.

29. The Russian courts in Crimea have also deprived DTEK Krymenergo of its rights with regard to debts owed to it in Crimea under previously executed contracts and adjudicated claims.

30. In February 2015, the temporary administration of the Branch executed a series of fraudulent assignments under which DTEK Krymenergo allegedly assigned all its claims to debts in Crimea to the Russian Krymenergo. The Russian Krymenergo, relying on these assignments, subsequently intervened in a series of judicial enforcement proceedings in which DTEK Krymenergo had prevailed in claims against debtors. The Russian courts granted the Russian Krymenergo's various motions to intervene and recognized it as the legal successor of DTEK Krymenergo in each of these proceedings.²⁹

31. Although the relevant Russian court decisions refer to the assignments having been made on the basis of powers of attorney, neither DTEK Krymenergo nor its Branch has ever

²⁹ *DTEK Krymenergo. v. Aliance*, No. A83-2205/2012, Arbitration Court of the Republic of Crimea (granting the motion of the State Unitary Enterprise of the Republic of Crimea "Krymenergo" to be recognized as the legal successor of DTEK Krymenergo in the proceedings against Aliance)

executed any instrument empowering employees of the Russian Krymenergo to act on its behalf. Nor have they entered into any instrument assigning DTEK Krymenergo's rights to debts owed in Crimea to the Russian Krymenergo.

32. Notwithstanding its seizure of DTEK Krymenergo's investment in Crimea in January 2015, and its operation of those assets for its own benefit since that date, the Russian Federation has neither offered nor paid any compensation to the Claimant.

V. JURISDICTION AND ADMISSIBILITY

33. There is jurisdiction over this dispute under Article 9 of the BIT.

A. The Dispute Is Between a Contracting Party to the Treaty and an Investor of the Other Contracting Party.

34. Article 9 provides for arbitration of “[a]ny dispute between one Contracting Party and an investor of the other Contracting Party.”³⁰ Article 1(2)(b) of the BIT defines “investor of a Contracting Party” as “any legal entity constituted in accordance with the legislation in force in the territory of that Contracting Party, provided that the said legal entity is competent in accordance with legislation of that Contracting Party to make investments in the territory of the other Contracting Party.”³¹

35. DTEK Krymenergo is a legal entity duly incorporated in Ukraine under Ukrainian law and is competent under the laws of Ukraine to make investments in the territory of the Russian Federation. DTEK Krymenergo thus satisfies the definition set out in Article 1(2)(b) and is therefore an investor for the purposes of the Treaty.

36. A dispute has plainly arisen between the Claimant and the Russian Federation. The Russian Federation, including through Russian-controlled authorities in Crimea, have expropriated Claimant's investment without offering or paying compensation. Claimant has

³⁰ BIT, art. 9(1).

³¹ *Id.* at art. 1(2)(b).

demanded the return of the investment or the payment of compensation, as required by the BIT. The Russian Federation has not acceded, or even responded, to this demand.

B. The Dispute Arose in Connection with Claimant’s Investments.

37. Under Article 9 of the BIT, the Tribunal has jurisdiction over disputes “arising in connection with investments.”³² Article 1(1) of the BIT defines “investments” as follows:

“[A]ny kind of tangible and intangible assets which are invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with its legislation, including:

- a) movable and immovable property, as well as any other related property rights;
- b) monetary funds, as well as securities, commitments, stock and other forms of participation;
- c) intellectual property rights, including copyrights and related rights, trademarks, rights to inventions, industrial designs, models, as well as technical processes and know-how;
- d) rights to engage in commercial activity, including rights to the exploration, development and exploitation of natural resources.”

38. DTEK Krymenergo’s electricity distribution business in Crimea is comprised of tangible and intangible assets. At the time of the expropriation, those assets were invested in the “territory” of the Russian Federation, within the proper meaning of that term under applicable principles of treaty interpretation, and in accordance with Russian legislation.

1. Claimant’s Business in Crimea Is an Investment within the Meaning of Article 1(1) of the Treaty.

39. DTEK Krymenergo’s electricity distribution business in Crimea is comprised of tangible and intangible assets including, among other things, movable and immovable property, monetary funds, securities, and rights to engage in commercial activity.

³² *Id.* at art. 9(1).

40. At the time of the expropriation, DTEK Krymenergo owned 30,581 kilometers of transmission lines and 9,053 substations with an aggregate capacity of 6,178 MVA in Crimea, satisfying more than 57 percent of the electricity needs of the region. Its movable and immovable property included, by way of example and without limitation, electrical equipment, electric power grids, substation power grids, office buildings, repair facilities, warehouses, and transportation vehicles.

41. The company maintained monetary funds and securities in a variety of forms, including cash on hand, bank deposits, receivables, and shares in other companies.

42. DTEK Krymenergo also owned important rights to engage in commercial activity. The company possessed all the government-issued rights and permits required to operate an electricity distribution business, namely supply and transmission of electricity. It maintained contracts with electricity wholesalers, on the one hand, and with industrial and domestic customers on the other, as well as a variety of other contracts for goods and services integral to its business activity.

43. Notwithstanding that DTEK Krymenergo operated its business in Crimea through a Branch in order to comply with Russian regulatory requirements, DTEK Krymenergo continued to own its assets in Crimea and the Branch managed the Crimean assets based on a power of attorney. Those assets qualify as an “investment” under Article 1(1) of the Treaty.

2. Claimant’s Investments Were “in the Territory” of the Russian Federation within the Meaning of the Treaty.

44. At the time of the expropriation, DTEK Krymenergo’s investment was located in the “territory” of the Russian Federation, as that term must be interpreted in the context of the Treaty, notwithstanding Russia’s lack of a valid claim to sovereignty over Crimea.

45. Through a series of acts beginning in February 2014, Russia established effective control and jurisdiction over the territory of Crimea long before January 2015. It did so, *inter alia*, by exercising physical and administrative control over Crimean territory, adopting legislative and

administrative acts that mandate the application of Russian laws in that territory, and assuming control of or establishing institutions charged with enforcing those acts.

46. Ukraine and the Russian Federation have agreed to protect the investments of one Contracting Party “in the territory of the other Contracting Party.”³³ As Claimant will establish in this arbitration, within the meaning of the Treaty, “territory of the Russian Federation” presently includes Crimea because it is occupied and administered by the Russian Federation, regardless of whether such territory is the sovereign territory of the Russian Federation. Consequently, for the purpose of this arbitration the Claimant’s investments must be treated as being located in Russian territory when the relevant Treaty breaches occurred.

3. Claimant’s Investments Were in Accordance with Russian Legislation at the Time of the Expropriation.

47. DTEK Krymenergo’s investments were in accordance with Russian law when that law became applicable to them through the enactment of the Federal Law on Accession. The Federal Law on Accession recognized property rights in Crimea as a matter of Russian law, including business licenses previously created or issued under Ukrainian law.³⁴

C. Claimant Provided to the Russian Federation a Written Notice of the Existence of a Dispute in Connection with Its Investments.

48. Claimant has complied with Article 9(1) of the Treaty by serving the Russian Federation with written notice of this dispute. On 5 April 2017, DTEK Krymenergo, through its counsel, sent a letter formally notifying competent representatives of the Russian Federation of an investment dispute under Article 9(1) of the Russia-Ukraine BIT (the “**Notice**”).³⁵ The Notice

³³ BIT, art. 1(1).

³⁴ The Federal Law on Accession, *supra* note 13, at arts. 10, 12.

³⁵ Letter from Jonathan Gimblett, Covington & Burling LLP, to Mr. Sergei Lavrov, Foreign Minister of the Russian Federation (5 April 2017) (C-4). In advance of this formal notice under Article 9(1), DTEK Krymenergo’s Acting General Director wrote to Mr. Lavrov bringing the expropriation to his attention, requesting compensation and advising him that the company was consulting with counsel on its legal options should Russia fail to provide adequate

contained a detailed description of the dispute between DTEK Krymenergo and the Russian Federation, including, *inter alia*, a description of DTEK Krymenergo's operations and investments in Crimea, the Russian Federation's assumption of obligations under the BIT as a result of its exercise of effective control and jurisdiction over Crimea, the acts of the Russian-controlled authorities in Crimea resulting in the expropriation of DTEK Krymenergo's assets, and the provisions of the Treaty that the Russian Federation has violated. In the Notice, DTEK Krymenergo also requested consultations with the Russian Federation for the purpose of reaching an amicable resolution of the dispute.³⁶

49. The Russian Federation received the Notice on 10 April 2017. Upon such notice, the Russian Federation was obliged to "endeavor to settle the dispute through negotiations if possible."³⁷ The Russian Federation has not acknowledged receipt of or otherwise responded to that letter, nor has it endeavored to settle this investment dispute through negotiations, as required by Article 9(1) of the Treaty.³⁸ DTEK Krymenergo has satisfied the notification condition of Article 9(1) of the Treaty.

D. More Than Six Months Have Elapsed Since Claimant Served the Notice of Dispute on the Russian Federation.

50. Article 9(2) provides that the Claimant may commence arbitration "[i]f the dispute cannot be resolved in this manner within six months from the date of the written notice." The Russian Federation has not responded to the Notice, much less engaged in negotiations to attempt to resolve the dispute. DTEK Krymenergo has therefore initiated arbitration more than six months after Notice was received by the Respondent under Article 9(2) of the Treaty.

compensation. Letter from Igor Maslov, DTEK Krymenergo, to Mr. Sergei Lavrov, Foreign Minister of the Russian Federation (14 March 2017) (C-5).

³⁶ *Id.*

³⁷ BIT, art. 9(1).

³⁸ *Id.*

VI. THE RUSSIAN FEDERATION HAS BREACHED ITS OBLIGATIONS UNDER THE TREATY

51. The Russian Federation is bound by obligations under the BIT with respect to Ukrainian investments in Crimea. Its expropriation of DTEK Krymenergo's investments in Crimea violates numerous provisions of the Treaty, as set forth below.

A. The Russian Federation Failed to Provide Claimant's Investments with Full and Unconditional Protection.

52. Article 2(2) of the Treaty requires that the Russian Federation "guarantee[], in accordance with its legislation, the full and unconditional legal protection of investments" by Ukrainian investors.³⁹ The Russian Federation breached these obligations. Rather than protect DTEK Krymenergo's investments after assuming effective control and jurisdiction over Crimea, the Russian Federation authorized and oversaw the physical invasion and seizure of DTEK Krymenergo's operations in Crimea.

B. The Russian Federation Engaged in Discriminatory Measures Against DTEK Krymenergo.

53. Article 3(1) of the Treaty requires the Russian Federation to provide Ukrainian investors in Russian territory, and activities in connection with such investments, "treatment no less favorable than that which it accords to its own investors or to investors of any third state, which precludes the use of measures discriminatory in nature that could interfere with the management and disposal of the investments."⁴⁰

54. The Russian Federation breached these obligations. The Russian Federation targeted Claimant and its investments in Crimea as part of a widespread, well-orchestrated and discriminatory campaign against Ukrainian investors in Crimea while showing more favorable treatment to Russian investors.

³⁹ *Id.* at art. 2(2).

⁴⁰ *Id.* at art. 3(1).

C. The Russian Federation Denying Claimant's Investments Fair and Equitable Treatment.

55. Under the MFN provision of Article 3(1) of the BIT, DTEK Krymenergo is entitled to the benefit of more favorable treatment that the Russian Federation has extended to third-country investors under other investment treaties. Claimant invokes this provision to claim the benefit of the fair and equitable treatment that Russia has guaranteed to investors of numerous other countries under applicable bilateral investment treaties.⁴¹

56. The Russian Federation's treatment of DTEK Krymenergo's investments violates the standard of fair and equitable treatment. The measures by which DTEK Krymenergo was deprived of its investment were discriminatory and arbitrary and were implemented in a manner devoid of transparency and due process.

D. The Russian Federation Unlawfully Expropriated Claimant's Investments.

57. Article 5(1) of the Treaty bars expropriation and equivalent measures except when those measures "are taken in the public interest under due process of law, are not discriminatory and are accompanied by prompt, adequate and effective compensation."⁴²

58. The Russian Federation expropriated DTEK Krymenergo's investment in Crimea through the legislative measures, physical interference, and judicial actions described above. The expropriation was unlawful because it was not conducted in conformity with the requirement that expropriatory measures be in the public interest, under due process of law, and not be

⁴¹ See, e.g., Agreement Between the Government of Japan and the Government of the Russian Federation Concerning the Promotion and Protection of Investments (13 November 1998), art. 3(3) ("Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall receive the most constant protection and security within the territory of the other Contracting Party. Neither Contracting Party shall, within its territory, in any way impair by unreasonable or discriminatory measures the business activities in connection with the investments of investors of the other Contracting Party."). DTEK Krymenergo reserves the right to rely on any other more favorable treatment that the Russian Federation provides to investors of third states.

⁴² BIT, art. 5(1).

discriminatory. Furthermore, the Russian Federation has neither offered nor provided any compensation to DTEK Krymenergo for the expropriation of its assets, much less the “prompt, adequate and effective compensation” required by the Russia-Ukraine BIT.⁴³

VII. RELIEF SOUGHT

59. As a result of the Russian Federation’s breaches of the Treaty, DTEK Krymenergo has been completely deprived of its Crimean investments, without payment of any compensation. DTEK Krymenergo requests that the Tribunal grant it relief for these breaches, including, *inter alia*:

- 1.1 An award declaring that the Russian Federation has breached the Treaty;
- 1.2 An award of damages sufficient to compensate DTEK Krymenergo for the consequences of the Russian Federation’s illegal acts and to place DTEK Krymenergo in the position that would have existed had the Russian Federation not committed such illegal acts. The amount of damages to which Claimant is entitled will be proved in the arbitration, but is currently estimated in the hundreds of millions of U.S. dollars.
- 1.3 An award of interest and all costs and legal fees incurred by DTEK Krymenergo in connection with this arbitration in accordance with Article 40 of the UNCITRAL Rules; and
- 1.4 Any other relief deemed appropriate by the Tribunal.

VIII. PROCEDURAL ISSUES

60. In accordance with Article 3.3(g) of the UNCITRAL Rules, the Tribunal will consist of three arbitrators, one appointed by DTEK Krymenergo, one appointed by the Russian Federation, and the presiding arbitrator appointed by the two party-appointed arbitrators. In

⁴³ *Id.*

accordance with Article 3.4(b) of the UNCITRAL Rules, DTEK Krymenergo hereby appoints J. William Rowley QC to serve as its party-appointed arbitrator.

61. In accordance with Article 16 of the UNCITRAL Rules, DTEK Krymenergo proposes that the seat of the arbitration be The Hague. DTEK Krymenergo further proposes that the Permanent Court of Arbitration in the Hague (“PCA”) administer and serve as the registry for these proceedings.

62. In accordance with Article 17 of the UNCITRAL Rules, DTEK Krymenergo proposes that the language of the arbitration be English.

IX. RESERVATION OF RIGHTS

63. DTEK Krymenergo reserves the right to advance further arguments and produce additional evidence, both factual and legal, as may be necessary to complete or supplement the presentation of its claims or to respond to the arguments and allegations put forward by the Russian Federation.

16 February 2018

COVINGTON & BURLING LLP

By: _____


Marney L. Cheek
Jonathan Gimblett
Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
United States
mcheek@cov.com
jgimblett@cov.com
+1 202 662 6000