

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)
NOVENERGIA II – ENERGY &)
ENVIRONMENT (SCA),)
))
Petitioner,)
))
v.)
))
THE KINGDOM OF SPAIN,)
))
Respondent.)
_____)

Civil Action No. 1:18-cv-1148 (TSC)

_____)
FORESIGHT LUXEMBOURG SOLAR 1)
S.À.R.L., et al.,)
))
Petitioners,)
))
v.)
))
THE KINGDOM OF SPAIN,)
))
Respondent.)
_____)

Civil Action No. 1:20-cv-925 (TSC)

**JOINT STATUS REPORT REGARDING
SET ASIDE PROCEEDINGS PENDING IN THE SVEA COURT OF APPEAL**

Pursuant to the Court’s Order dated September 9, 2020, Petitioners Novenergia II – Energy & Environment (SCA) (“Novenergia”), Foresight Luxembourg Solar 1 S.À.R.L., Foresight Luxembourg Solar 2 S.À.R.L., Greentech Energy Systems A/S (now known as Athena Investments A/S), GWM Renewable Energy I S.P.A., and GWM Renewable Energy II S.P.A. (collectively, the “Foresight Petitioners”), and Respondent the Kingdom of Spain (“Spain”) submit this joint status report regarding the two separate proceedings brought by Spain in the

Svea Court of Appeal in Sweden (“Svea Court”) to set aside each of the two arbitral awards at issue in these actions.

I. Proceedings in Spain’s Action to Set Aside the Award in *Novenergia*

Spain and Novenergia last provided the Court with a joint status report regarding the *Novenergia* set aside proceedings in Sweden on September 3, 2020 (ECF No. 56).

The Svea Court held a case management conference on September 11, 2020. At the conference, the Svea Court presented Spain and Novenergia with a draft case summary, which will ultimately serve as the framework for the Court’s adjudication of Spain’s set aside application, and invited the parties to submit proposed amendments and revisions of the case summary. The Svea Court also established the following procedural deadlines leading up to a final hearing on the merits:

- Pursuant to the Svea Court’s order, on October 2, 2020, Spain and Novenergia submitted comments on the *amicus curiae* brief submitted by the European Commission and the European Commission’s request to submit oral observations to the Svea Court during a final merits hearing.
- On October 30, 2020, Spain will submit its comments on the parts of the Svea Court’s draft case summary addressing Spain’s case, and its statement of evidence, together with a legal opinion.
- On December 18, 2020, Novenergia will submit its comments on the parts of the Svea Court’s draft case summary addressing Novenergia’s case, any comments on the parts of the case summary addressing Spain’s case and Novenergia’s statement of evidence. Novenergia shall also inform the Svea Court whether it intends to submit a legal opinion.

- On January 22, 2021, Spain will submit any comments on the part of the Svea Court's case summary addressing Novenergia's submission.
- On February 12, 2021, Novenergia will make a final submission addressing Spain's comments on the Svea Court's case summary.
- On February 26, 2021, the Svea Court will issue its final case summary.

Following this written procedure, the Svea Court will formally close the preparatory phase of the case, barring all further merits submissions by Spain and Novenergia, except for any submissions warranted by exceptional circumstances. A final hearing on the merits is preliminarily scheduled for May 11-12 and 19-21, 2021.

II. Proceedings in Spain's Action to Set Aside the Award in *Foresight*

This is the first Court-ordered joint status report regarding the *Foresight* set aside proceedings in Sweden. Accordingly, Spain and the Foresight Petitioners hereby provide the Court with an accounting of the key developments to date in Spain's action in the Svea Court to suspend and set aside the arbitral award rendered against it in Stockholm Chamber of Commerce Case No. V 2015/150 on November 14, 2018 (the "Foresight Award"). That case is captioned *Kingdom of Spain v. Foresight Luxembourg Solar 1 S.à.r.l., Foresight Luxembourg Solar 2 S.à.r.l., GWM Renewable Energy I S.p.A., GWM Renewable Energy II S.r.l. and Athena Investments A/S (previously Greentech Energy Systems A/S)*, case number T 1626-19.

On February 14, 2019, Spain filed an Application for Summons (set aside application) and Request for Suspension of the Foresight Award. In that Application, Spain also requested that the Svea Court refer certain questions to the Court of Justice of the European Union ("CJEU") for a preliminary ruling.

On February 21, 2019, the Svea Court granted Spain's Request for Suspension.

On May 10, 2019, the Foresight Petitioners filed their Statement of Defense to Spain's Summons Application and responded to Spain's request that the Svea Court refer certain questions to the CJEU.

On October 16, 2019, Spain filed its response to the Foresight Petitioners' Statement of Defense, including its preliminary statement of evidence.

On December 13, 2019, the Foresight Petitioners submitted their preliminary statement of evidence and a reply submission regarding Spain's request that the Svea Court refer certain questions to the CJEU.

On March 11, 2020, the European Commission applied to the Svea Court for leave to intervene as an *amicus curiae*. On March 31, 2020, the Svea Court ordered the parties to comment on the European Commission's application. The Foresight Petitioners submitted their comments on April 15, 2020; Spain submitted its comments and response to the Foresight Petitioners' comments on April 29, 2020.

On May 21, 2020, Spain submitted additional comments regarding its request that the Svea Court refer certain questions to the CJEU.

The question of whether the Svea Court will make a referral to the CJEU for a preliminary ruling is scheduled to be presented before the judges on October 7, 2020. A decision on this question is expected shortly thereafter. The Svea Court has not set any future deadlines or dates by which it will rule on the European Commission's application to intervene as an *amicus curiae*, or Spain's set aside application.

Dated: October 5, 2020

NOVENERGIA II – ENERGY &
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By its attorneys,

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Respectfully submitted,

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