

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ACF RENEWABLE ENERGY LIMITED,

*Plaintiff,*

v.

Case No. 1:24-cv-01715-DLF

THE REPUBLIC OF BULGARIA,

*Defendant.*

**DECLARATION OF THOMAS C.C. CHILDS IN SUPPORT OF  
PLAINTIFF’S CROSS-MOTION FOR JUDGMENT ON THE  
PLEADINGS OR, IN THE ALTERNATIVE, SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746, I, THOMAS C.C. CHILDS, declare as follows:

1. I am an attorney admitted to practice law in New York and admitted in this Court. I am counsel at the law firm King & Spalding LLP and represent Plaintiff ACF Renewable Energy Limited (“ACF”) in the above-captioned matter. I respectfully submit this declaration in support of Plaintiff’s Cross-Motion for Judgment on the Pleadings or, in the Alternative, Summary Judgment and to place before the Court the exhibits attached hereto. The facts set forth herein are personally known to me, and, if called as a witness, I could and would testify competently thereto.

2. ACF is a corporation organized under the laws of Malta, having its principal place of business at Vincenti Buildings, 28/19 (Suite 1174) Strait Street, Valletta VLT 1432, Malta.

3. Defendant the Republic of Bulgaria (“Bulgaria”) is a foreign state within the meaning of the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1391(f), and 1602-1611.

4. Malta, Bulgaria, and the United States are contracting parties to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID

Convention”). *ACF Renewable Energy Limited v. Republic of Bulgaria*, ICSID Case No. ARB/18/1, Award, ¶¶ 1225, 1227 (Jan. 5, 2024), ECF No. 1-1; *see also* ICSID, List of Contracting States and Other Signatories of the Convention, <https://icsid.worldbank.org/en/Pages/about/Database-of-Member-States.aspx>.

5. Malta and Bulgaria are contracting parties to the Energy Charter Treaty (the “ECT”). Award, ¶¶ 1225, 1227, ECF No. 1-1. Article 26(4)(a)(i) of the ECT provides that disputes arising under the ECT may be submitted to the International Centre for Settlement of Investment Disputes for resolution under the rules of the ICSID Convention. ECT, art. 26(4)(a)(i), ECF No. 1-3.

6. The parties’ arbitration was conducted in accordance with the ICSID Convention and the ICSID Arbitration Rules and began on February 7, 2018, when ACF served its Request for Arbitration on Bulgaria, *ACF Renewable Energy Limited v. Republic of Bulgaria*, ICSID Case No. ARB/18/1, Request for Arbitration (Feb. 7, 2018), ECF No. 1-4, and ended on January 5, 2024, when the Award was issued by the ICSID tribunal (the “Tribunal”). *See* Award, cover page, ECF No. 1-1 at 2 (noting that Award was dispatched to parties on January 5, 2024).

7. On December 20, 2019, the Tribunal issued its Decision on the *Achmea* Preliminary Objection, in which it rejected Bulgaria’s *intra*-EU jurisdictional objection. *ACF Renewable Energy Limited v. Republic of Bulgaria*, ICSID Case No. ARB/18/1, Decision on the *Achmea* Preliminary Objection, ¶ 236(1) (Dec. 20, 2019), ECF No. 1-5.

8. On January 5, 2024, the Tribunal issued its unanimous, 540-page Award. *See* Award, ECF No. 1-1. The Tribunal held that Bulgaria breached Article 10(1) of the ECT by failing to accord fair and equitable treatment to ACF’s investment in a photovoltaic facility located in Karadzhalovo village within the municipality of Parvomay. *Id.* ¶¶ 1660, 1697-1698, 1717, 1750-

1757. The Tribunal also rejected Bulgaria’s renewed *intra*-EU jurisdictional objection. *Id.* ¶¶ 1512-1515.

9. The Tribunal held that ACF was entitled to damages and ordered Bulgaria to pay: (1) compensation in the amount of EUR 61,040,000; (2) pre-award interest on the amount of EUR 61,040,000 running from December 31, 2019 until the date of the Award (January 5, 2024) at the rate of “12m EURIBOR +2% as valid on 31 December 2019, to be compounded annually”; (3) post-award interest “over the awarded amount plus pre-award interest running from the date of the Award at the rate of 12m EURIBOR plus 2% as valid on the date of the Award, to be compounded annually”; (4) ACF’s legal costs incurred in connection with the arbitration in the amount of EUR 264,833.90 and USD 5,209,865.05; and (5) ACF’s share of the Tribunal’s and ICSID’s fees in the amount of USD 480,766.49. *Id.* ¶ 1843.

10. Bulgaria did not file any request for annulment of the Award before ICSID, and the deadline under the ICSID Convention for doing so expired on May 6, 2024.

11. Bulgaria has not satisfied any portion of the Award. The Award remains final and binding on the Parties. *See* ICSID Convention, art. 54, ECF No. 1-2.

12. Attached hereto as Exhibit 1 is a true and correct copy of the Court of Justice of the European Union’s Judgment of September 3, 2008 in Joined Cases C-402/05 P and C-415/05 P (*Kadi and Al Barakaat v Council and Commission*).

13. Attached hereto as Exhibit 2 is a true and correct copy of the Declaration of Professor George A. Bermann, submitted on behalf of NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. in *NextEra Energy Glob. Holdings B.V. v. Kingdom of Spain*, 2019 WL 8298067 (D.D.C. Dec. 19, 2019) (“*NextEra P*”).

14. Attached hereto as Exhibit 3 is a true and correct copy of the English High Court decision in *Infrastructure Services Luxembourg S.À.R.L. v Kingdom of Spain* [2023] EWHC 1226 (Comm) (Fraser, J.) (May 24, 2023).

15. Attached hereto as Exhibit 4 is a true and correct copy of the Vienna Convention on the Law of Treaties, May 23, 1969.

16. Attached hereto as Exhibit 5 is a true and correct copy of an excerpt of Antonin Scalia and Bryan A. Garner's book, *Reading Law: The Interpretation of Legal Texts* (2012).

17. Attached hereto as Exhibit 6 is a true and correct copy of an excerpt of the International Centre for Settlement of Investment Disputes' *History of the ICSID Convention*, Volume II-1 (1968).

18. Attached hereto as Exhibit 7 is a true and correct copy of the High Court of Australia's ruling in *Kingdom of Spain v. Infrastructure Servs. Luxembourg S.à.r.l.* [2023] HCA 11 (April 12, 2023).

19. Attached hereto as Exhibit 8 is a true and correct copy of the High Court of New Zealand's Judgment of Cooke J in *Sodexo Pass Int'l SAS v Hungary* [2021] NZHC 371 (December 10, 2021).

20. Attached hereto as Exhibit 9 is a true and correct copy of the European Commission's Notice of July 23, 2019 on the Recovery of Unlawful and Incompatible State Aid.

21. Attached hereto as Exhibit 10 is a true and correct copy of the Court of Justice of the European Union's Judgment of September 27, 1988 in Joined Cases 160 to 120/87 (*Asteris v Greece*).

22. Attached hereto as Exhibit 11 is a true and correct copy of the European Commission's Decision of March 30, 2015 on State Aid SA.38517 (2014/C) (ex 2014/NN)

implemented by Romania in the matter of Arbitral Award Micula v Romania of December 11, 2013.

23. Attached hereto as Exhibit 12 is a true and correct copy of the Court of Justice of the European Union's Judgment of January 25, 2022 in Case C-638/19 P (*Commission v European Food S.A.*).

24. Attached hereto as Exhibit 13 is a true and correct copy of Devas Multimedia Private Limited's Petition to the Supreme Court of the United States for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit (July 3, 2024).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 23, 2024

Respectfully submitted,

/s/ Thomas C.C. Childs

Thomas C.C. Childs (NY0449)

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