



ICSID (INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES)

ICSID Case No. ARB/14/34

RWE INNOGY GMBH AND RWE INNOGY AERSA S.A.U. V. KINGDOM OF SPAIN

DECISION ON STAY OF ENFORCEMENT OF THE AWARD (WITH REASONS TO FOLLOW)

22 November 2021

Tribunal:

[Carita H. Wallgren-Lindholm](#) (President of the Ad Hoc Committee)

[Álvaro Rodrigo Castellanos Howell](#) (Member)

[Colm Ó hOisín](#) (Member)

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Decision on Stay of Enforcement of the Award (With Reasons to Follow)

I. INTRODUCTION AND PROCEDURAL BACKGROUND

1. This Decision addresses the Kingdom of Spain's (the "**Applicant**" or "**Spain**") request for the continuation of the stay of enforcement of the ICSID award (the "**Request**") rendered on December 18, 2020 in *RWE Innogy GmbH and RWE Innogy Aersa S.A.U. v. Kingdom of Spain*, ICSID Case No. ARB/14/34 (the "**Award**"), and the relevant procedural background.
2. RWE Innogy GmbH and RWE Innogy Aersa S.A.U. ("**Claimants**") and Spain are collectively referred to as the "**Parties**".
3. On April 17, 2021, Spain filed its Application for Annulment of the Award ("**Annulment Application**" or "**Application**"). In its Annulment Application, Spain requested, among other things: (i) a provisional stay of enforcement of the Award in accordance with [ICSID Convention Article 52\(5\)](#) and [ICSID Arbitration Rule 54\(2\)](#); and (ii) the continuation of the stay of enforcement until the *ad hoc* Committee renders its decision in this annulment proceeding.¹
4. On April 19, 2021, the ICSID Secretary-General registered the Annulment Application and informed the Parties of the provisional stay of the Award in accordance with [ICSID Arbitration Rule 54\(2\)](#).
5. On May 28, 2021, the *ad hoc* Committee was constituted in accordance with [ICSID Convention Article 52\(3\)](#). Its members are Ms. Carita Wallgren-Lindholm, a national of Finland (President); Mr. Alvaro Rodrigo Castellanos Howell, a national of Guatemala; and Mr. Colm Ó hOisín SC, a national of Ireland ("**ad hoc Committee**" or "**Committee**"). All Members appointed by the Chairman of the Administrative Council.
6. On June 3, 2021, the Committee proposed holding the First Session by video conference (Zoom) indicating the dates when the Committee would be available; and providing a draft Procedural Order No. 1 to the Parties, to facilitate the Parties' discussions on procedural matters, which would serve as the agenda for the First Session. The Parties were invited to confer concerning the items addressed in the draft order and to modify the contents as they saw fit. By June 24, 2021, the Parties were to submit a joint proposal advising the *Committee* of (i) the Parties' agreements on procedural matters, (ii) the Parties' respective positions regarding any items on which they do not agree, and (iii) any additional matters that the Parties would like to discuss during the First Session. The Parties were also invited to confer and jointly propose by June 10, 2021 a schedule of written submissions; to consider whether an extension of the [Rule 54\(2\)](#) 30-day deadline was necessary and could be

¹ Annulment Application, ¶ 55.

agreed between the Parties; and whether the Parties could agree on the language of their written submissions on the stay request.

7. On June 10, 2021, Claimants informed the Committee of certain agreements reached by the Parties, among them: (i) possible dates for the First Session; (ii) a calendar for the written submissions concerning the stay of enforcement; (iii) that such submissions would be filed only in English; (iv) that the deadline set forth under [ICSID Arbitration Rule 54\(2\)](#) for the *Committee* to decide on the stay shall be extended to 30 days following the Hearing on the Stay; and (v) "*that if necessary the ad hoc Committee may communicate its decision on the stay by that deadline with its full reasoning to follow thereafter*". Spain confirmed these agreements by a subsequent communication of the same date.
8. On June 11, 2021, the Committee confirmed that the First Session would be held on July 16, 2021 by Zoom; took note of the Parties' above-referenced agreements of June 10, 2021 on the stay of enforcement, including, "*that the Committee may communicate its decision on the stay by that deadline with its full reasoning to follow*". The Committee also informed the Parties of its availability for the Hearing on the Stay, inviting them to confirm their availability on the proposed dates, as well as certain aspects of that Hearing by June 18, 2021. The Parties proceeded accordingly.
9. On June 24, 2021, Spain submitted a Draft Procedural Order No. 1 reflecting the Parties' agreements and points of disagreement that were to be discussed during the First Session. Claimants subsequently confirmed that said document reflected the Parties' positions regarding Procedural Order No. 1.
10. On June 25, 2021, Spain filed a *Submission in Support of the Continuation of the Stay of Enforcement of the Award* (the "**Submission**").
11. On July 16, 2021, the Committee held a first session with the Parties by videoconference.
12. Also, on July 16, 2021, Claimants filed a *Response to Spain's Request for Stay of Enforcement* (the "**Response**").
13. On July 27, 2021, the Committee issued Procedural Order No. 1 concerning procedural matters ("PO 1"). The Committee recalls that as agreed by the Parties: (i) Annex B of PO 1 set out a Procedural Calendar on the Stay of Enforcement of the Award, fixing November 22, 2021 as the date for the Committee to issue its Decision on the Stay of Enforcement of the Award; and (ii) footnote 6 noted that "*The Committee shall endeavour to issue its Decision on the Stay of Enforcement within 30 days of the Hearing on the Stay of Enforcement of the Award, with its full reasoning to follow.*"
14. On September 7, 2021, Spain filed a *Reply on the Stay of Enforcement of the Award* (the "**Reply**").
15. On September 28, 2021, Claimants filed a *Rejoinder on the Continuation of the Stay of Enforcement* (the "**Rejoinder**").
16. As scheduled, on October 22, 2021, the Committee held the Hearing on the Stay of Enforcement of the Award (the "**Hearing**") by videoconference.

17. In accordance with Annex B- *Procedural Calendar on the Stay of Enforcement of the Award* and footnote 6 of Procedural Order No. 1, dated July 27, 2021, the Committee issues the present Decision on the Stay of Enforcement of the Award, with reasons to follow in due course.

II. DECISIONS AND ORDERS

18. The Committee has carefully considered the Parties' positions on the matter concerning the stay of enforcement of the Award, and has examined (i) the Parties' submissions, together with the Exhibits and Legal Authorities that each Party provided in support of its submissions; as well as (ii) the Parties' respective arguments, as expressed during the Hearing on the Stay of Enforcement of the Award, held on October 22, 2021.
19. After due deliberation, for the reasons to follow in due course in a fully reasoned Decision (as has been agreed by the Parties and reflected under Annex B and footnote 6 of PO 1) (the "**Fully Reasoned Decision**"), and taking into consideration Claimants' offer to "*provide a binding and unconditional undertaking promptly to repay Spain, if and to the extent the Award is annulled*"² as further developed by Claimants in the Hearing, the Committee:
- a. Decides to lift the stay of enforcement of the Award conditional on the provision of written undertakings by RWE Renewables Iberia, S.A.U and RWE Renewables GmbH (the "**Undertakings**"), to the Committee's satisfaction;
 - b. Invites the Parties to confer and agree on the terms of the Undertakings, and to inform the Committee of their agreement by **December 13, 2021**. Absent an agreement, the terms of the Undertakings shall be decided by the Committee;
 - c. Decides that upon the issuance of the Undertakings , as approved by the Committee, the Committee will issue the Fully Reasoned Decision on the lifting of the Stay of Enforcement of the Award;
 - d. By the issuance of the Fully Reasoned Decision, which may amend any aspects of the present Decision, the lifting of the stay will become effective; and
 - e. Reserves its decision on costs for the Request to a further order or decision.

² Claimants' Rejoinder, ¶¶ 4, 106(b).