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CERTIFIED TRANSLATION

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Date: September 08, 2021

A handwritten signature in black ink, appearing to read "Wolf Markowitz", is written over a horizontal line.

Wolf Markowitz

A handwritten signature in blue ink, appearing to read "Rochal Weiss", is written over a horizontal line.

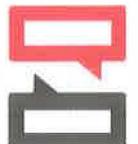
Signature of Notary Public
ROCHAL WEISS

NOTARY PUBLIC-STATE OF NEW YORK

No 01WE6293785

Qualified in Kings County

My Commission Expires 12-16-2021



**INTERNATIONAL COURT OF ARBITRATION OF THE
INTERNATIONAL CHAMBER OF COMMERCE**

ICC CASE NO. 23364/JPA

DOMINICANA RENOVABLES, S.L.

Claimant

Versus

THE DOMINICAN REPUBLIC

Respondent

PLEADINGS OF THE CLAIMANT

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January 18, 2019

[...] PPA contracts, and (iii) that the CDEEE has granted PPA contracts to companies that do not meet the requirements from Act 57-07 and the Regulations.

170. These undisputed facts constitute a violation of the contractual rights of Dominicana Renovables.

1. Breach of contract: the arbitrary suspension of the PPA contracts process after having begun negotiation of the PPA Contract with Dominicana Renovables.

171. The CDEEE is the body of the Dominican Government charged with coordinating and leading the actions of the state electric companies from the energy sector, its main functions being to establish the guidelines, strategies, and objectives to be followed by these companies, conduct oversight of energy purchase and procurement processes, whether made directly or by public tender, carry out negotiations regarding the benefits and obligations that the contracts will contain and the signing of the respective contracts. Its functions include signing PPA contracts on behalf and in representation of the Dominican Government with the holders of renewable energy concessions. This is confirmed by the Special Power of Attorney granted by the President of the Republic to the CDEEE for the negotiation of PPA contracts. The Special Power of Attorney provides that:

In the exercise of the powers granted to me by Article 128 of the Constitution of the Republic, and in adherence to the provisions from Act No. 1486 of March 20, 1938, on the Representation of the Government in Legal Acts, I hereby grant Special Power of Attorney to the Executive Vice President of the Dominican Corporation of State Electric Companies (CDEEE), in order that, on **behalf and in representation of the Dominican Government, he may proceed with the following:**

1) Negotiate the Power Purchase Agreements (PPA) with producers, based on wind and solar renewable sources, which have been signed to date by the CDEEE, as per the terms established in the corresponding legislation; as well as those that come to be signed in the future, so that new PPA Contracts are signed going forward.

(Emphasis added).¹⁶⁸

172. As we have explained before, under the Definitive Concession Contract, Act 57-07, and the Regulations, the CDEEE has the obligation to “formalize” the PPA Contract with Dominicana Renovables on behalf of the Dominican Government, and it has no authority to deny Dominicana Renovables the rights granted in the Definitive Concession Contract, provided that Dominicana Renovables accepts the applicable commercial terms.

173. As soon as Dominicana Renovables obtained the Definitive Concession Contract, Dominicana Renovables approached the CDEEE and expressed its interest in formalizing the PPA contract right away. Thus, on April 10, 2013, Dominicana Renovables sent a letter to the Executive Vice President of the CDEEE, informing him that Dominicana Renovables had the corresponding Definitive Concession Contract. In that same letter, Dominican Renovables requested that a PPA Contract be established according to the terms established by law and in current regulations.¹⁶⁹

174. After more correspondence and visits to the CDEEE by executives from Dominicana Renovables, Matilde Balcácer, the Contracts Manager of the CDEEE, sent a draft of the PPA Contract to Dominicana Renovables for review. In her e-mail, Mrs. Balcácer accepted Dominicana Renewable’s request to begin the process of formalizing the PPA Contract and negotiating the commercial terms not established in Act 57-07 or the Regulations. Specifically, the e-mail indicates the following:

We are sending you the draft of the power purchase agreement,

¹⁶⁸ See **D-007**.

¹⁶⁹ See **D-028**.

for your review, in order to begin the negotiations requested by your clients.

Once you have formulated any comments, we kindly ask that you notify us.

We inform you that this draft agreement is an informational document that serves the aforementioned purposes, and it is not binding to the parties and is not a definitive contract signed by our institution.

(Emphasis added).¹⁷⁰

175. Based on the common understanding that Dominicana Renovables was fully within the process of formalizing the PPA Contract, the CDEEE notified Dominicana Renovables that “[o]nce the indicated documents [are available] [...] [Dominicana Renovables would be able to] request a meeting to discuss and negotiate the commercial conditions, of a potential power purchase agreement.”¹⁷¹ These documents had already been sent by Dominicana Renovables on August 12, 2013, and we resubmitted.¹⁷²

176. Indeed, the initial process of negotiating the PPA Contract was proceeding more slowly than Dominicana Renovables anticipated, and in fact, Dominicana Renovables had to request extensions of the deadline to construct the windfarm, which extensions were granted based on the fact that the CDEEE had not yet completed the formalization of the PPA Contract for reasons that were not attributable to Dominicana Renovables.¹⁷³ Though slowly, the process was started and progressing.

¹⁶⁸ See **D-004**.

¹⁶⁸ Email from CDEEE to Dominicana Renovables, March 4, 2014, **D-034**. (Underlining is ours.)

¹⁶⁸ Fernández Declaration, paragraph 64.

¹⁶⁸ *Ibid.*

177. However, surprisingly and without any prior notice, on September 3, 2014, the CDEEE informed Dominicana Renovables that negotiations of PPA contracts had been halted until the Board of Directors of the CDEEE issued a protocol in order to “streamline the process of negotiating and reviewing the power purchase agreements...”.¹⁷⁴

178. Conscious of its right to establish the respective PPA Contract with the Dominican Government, Dominicana Renovables, in both November and December 2014, sent letters to CDEEE to inquire regarding the issuance of the CDEEE protocol that would allow its PPA Contract to be signed with the Dominican Government.¹⁷⁵ The CDEEE did not respond to these letters.

179. The arbitrary cancellation of the process for formalization of PPA Contracts is a breach of contract on the part of the Dominican Government. At the end of 2014, nearly two years after the signing of the Definitive Concession Contract, Dominicana Renovable’s right to execute a PPA Contract under the preferential framework from Article 65 has been infringed by the CDEEE’s decision to cancel the process of PPA Contracts and as a result, Dominicana Renovables has no other option but to wait for the CDEEE.

180. This suspension is the beginning of the injurious conduct that gives rise to this dispute consisting fundamentally of the infringement of the contractual rights and expectations of Dominicana Renovables.

2. Breach of Contract: The CDEEE refuses to send the protocol issued by the President to Dominicana Renovables.

¹⁶⁸ See D-005.

¹⁶⁸ See D-037; see also D-038.

181. Without waiving its rights, Dominicana Renovables accepted in good faith the CDEEE's decision to suspend negotiations of PPA contracts until issuance of a protocol with the applicable commercial terms. Contrary to its expectations, the good faith of Dominicana Renovables was never reciprocated by the CDEEE, which was unable to send the current protocol for issuance of PPA contracts to Dominicana Renovables.

182. On January 20, 2015, the CDEEE sent to Dominicana Renovables the Protocol containing the general conditions required for the execution of PPA Contracts.¹⁷⁶ This Protocol had been approved on September 9, 2014 (i.e., six [6] days after the letter from CDEEE informing Dominicana Renovables that the PPA Contracts had been suspended pending issuance of a protocol), but oddly, it was not officially published and was not sent to Dominicana Renovables until four (4) months after it was issued.

183. This delay had serious consequences for Dominicana Renovables, as on the same day that Dominicana Renovables received this protocol, the new executive director of the CNE informed Dominicana Renovables that all concessions were suspended until they could be reviewed and a new protocol was issued by the President of the Republic.

184. From that time to the present, Dominicana Renovables has repeatedly and diligently requested the new protocol, with no success. These requests were rejected with an unexplainable secrecy.

¹⁷⁶ See Protocol of General Conditions Required for Execution of Renewable Power Purchase Agreements by the Dominican Corporation of State Electric Companies (CDEEE), September 9, 2014, **D-039**.

185. On November 27, 2015, the President of the Republic issued a new protocol for PPA contracts, but this protocol was never sent to Dominicana Renovables.

186. There is no reasonable explanation for CDEE's refusal to send the new protocol to Dominicana Renovables, provided that the negotiation process of the PPA Contract with Dominicana Renovables had begun before the CDEEE made the decision to suspend issuance of new PPA contracts; Dominicana Renovables remained in contact with the CDEEE throughout this process; and Dominicana Renovables had sent all the required financial information to the CDEEE, including the required audited financial statements. Moreover, it is impossible to reconcile the fact that the CDEEE sent to Dominicana Renovables the protocol that was not in effect in January of 2015, while it refuses to send the protocol that was issued in November of the same year. There is no explanation for this arbitrary decision, given that Dominicana Renovables representatives held work meetings with officials from the CDEEE throughout the course of that year, and on each occasion it was informed that it had to wait for the issuance of the new protocol.

187. It is difficult to understand the Dominican Government's motivation in refusing to establish a PPA Contract with a successful company like Dominicana Renovables, after this company had completed all the feasibility and viability studies, obtained all corresponding permits, and was ready to develop and operate the La Isabela Windfarm, in addition to the fact that it had already reviewed and approved the draft of the PPA Contract that had initially been sent by the CDEEE.

3. **Breach of Contract: Entities that did not meet the requirements from Act 57-07 and the Regulations receive PPA contracts.**

188. Even more frustrating is the fact that the CDEEE sent the Protocol to new companies that had not met the requirements from Act 57-07 and the Regulations.

189. For example, the EGE Haina company, and its Larimar I project, was included on the list of beneficiaries of PPA contracts issued in January 2016, but it did not obtain its definitive concession until April 5, 2016.¹⁷⁷ Moreover, the Emerald Solar Energy S.R.L. company which was also included on the list from January 2016, signed the PPA Contract with the Dominican Government on December 27, 2016,¹⁷⁸ though the CNE did not recommend the awarding of a definitive concession until August 30, 2017.¹⁷⁹ The same thing happened with the IC Power DR Operaciones S.A.S. company. IC Power was included on the list from January 2016 and signed a PPA Contract with the Dominican Government on August 11, 2016,¹⁸⁰ though the CNE recommended it be granted the definitive concession on April 4, 2017.¹⁸¹

190. The timeline of these concessions is even more relevant when we consider that, as in all countries that generate power from renewable sources, the generation of renewable energy in the Dominican Republic is limited due to the fact that renewable energy cannot be managed or stored. As such, the 11 companies graced with PPA contracts cover the

¹⁷⁷ See **D-053**.

¹⁷⁸ See Excerpt of SIE Legal Technical Report, Emerald Solar Energy, SRL, **D-054**, p. 1, 16-17, 61.

¹⁷⁹ See Resolution CNE-CD-0007-2017, August 30, 2017, **D-055**.

¹⁸⁰ See Excerpt of SIE Legal Technical Report, IC Power DR Operations, S.A.S., **D-056**, p. 1, 70.

¹⁸¹ See Resolution CNE-CD-0003-2017, April 4, 2017, **D-057**.

capacity predetermined by the Dominican Government for renewable energy, and the 100 megawatts that corresponded to Dominicana Renovables are no longer available once the three companies awarded contract by the CDEEE receive their PPA contracts.

4. **Breach of Contract: CDEEE requirement that Dominicana Renovables participate in a public tender process to execute the PPA Contract.**

191. More than three years after the signing of the Definitive Concession Contract and the start of the negotiation of the PPA Contract with Dominicana Renovables, the CDEEE drastically changed its position and determined that, despite the explicit terms of the Regulations, the CDEEE would not add “new projects to the list of producers with which... [it has signed] renewable power purchase agreements...” and “that any future procurement for the purchase of renewable energy must result from a public tender process conducted in accordance with the applicable rules and regulations.”¹⁸²

192. The CDEEE initially notified Dominicana Renovables of this position on April 29, 2016, in response to several requests by Dominicana Renovables and after the CDEEE had arbitrarily selected the companies to receive the PPA contract, many of which, as we have already expressed, did not meet the requirements of the Law.¹⁸³ The CDEEE repeated this position in its response to the notification of delay by Dominicana Renovables.¹⁸⁴

193. The illegality of this position is clear. Act 57-07 and the Regulations establish a process that constitutes an exception to the applicable regulations,

¹⁸² See D-006.

¹⁸³ See D-006.

¹⁸⁴ See D-052.

normally requiring a public tender process, so that most concession holders can make sales to the Dominican Government. Article 65 confirms this. There is no mention in Act 57-07, the Regulations, or the Definitive Concession Contract of the need to participate in a tender process to exercise the contractual right to execute a PPA Contract under the Special Regime from the Regulations.

194. As such, the CDEEE's new position violates the Regulations, or failing that, it drastically modifies the applicable rules, thereby constituting a breach of contract, given that Articles 8.3 (c) and 8.4 of the Definitive Concession Contract make it clear that "any modification to the current law and regulations of the Dominican Republic that has a direct or indirect effect on the ability to continue economically viable operation of the Windfarm" constitutes a breach of contract on the part of the Dominican Government.

195. The guarantee of execution of a PPA contract with the rates from the Regulations, without the need to take part in a public tender process, in essence ensures the financial success of the investment once the existence of the necessary factors for energy production is established. This is the case because the CDEEE is not only the agency of the Dominican Government exclusively charged with coordinating the distribution of electricity to the various electricity consumption sectors in the country, but it also offers the guarantee of a defined market, at a specific price, and for a determined period of time.

196. The Dominican Government cannot arbitrarily change its position and decide that concession holders must participate in a public tender process in order

to execute PPA contracts. We emphasize that this is a drastic change in the regulations that brought Dominicana Renovables to request a concession in the first place. Articles 8.3 (c) and 8.4 of the Definitive Concession Contract make clear that this type of modification constitutes a breach of contract for which Dominicana Renovables must be compensated.

197. It is true that the Dominican Government can modify the incentives from Act 57-07 and the Regulations regarding “new” projects for which a concession is granted after the modification. However, Dominicana Renovables was not a new project, and the CDEEE was always aware of the efforts of Dominicana Renovables, over more than three years, to formalize a PPA Contract. The CDEEE was fully aware of the following facts: that Dominicana Renovables had obtained its Definitive Concession Contract on January 23, 2013, that since then it had dedicated tireless efforts to establishing its respective PPA Contract, that Dominicana Renovables had invested time and money in completing the respective analyses and studies that demonstrated the feasibility and viability of the La Isabela Windfarm, that Dominicana Renovables had obtained financing for the windfarm, that it had acquired the necessary permits and authorizations, and that it was ready to develop and operate the windfarm. In fact, as we have already established, by this time the CDEEE had already started the process of negotiating the PPA Contract with Dominicana Renovables.

198. In a clear attempt to justify the unjustifiable, the reply by the Dominican Government suggests, without any qualms, that Dominicana Renovables was a speculator.¹⁸⁵ This ignores the fact that Dominicana Renovables had the backing of its

¹⁸⁵ See Answer of the Dominican Government, paragraph 6

Partners, BTD and Grupo Solesfero, with successful experiences in the construction of windfarms in Uruguay and a variety projects in Spain and developing countries. In addition, Dominicana Renovables and its partners had audited investment capital and secured financing of up to 85% of the project.¹⁸⁶

199. It bears clarifying that all of this information was provided to the Dominican Government before the approval of the Definitive Concession and during the initial negotiation of the PPA Contract which, as we have established, was arbitrarily suspended by the CDEEE.

200. This analysis of the facts leads us to posit that it would be extremely difficult for the Dominican Government to defend the arbitrary decision taken by the CDEEE.

C. The CDEEE's Breach of Contract is a breach by the Dominican government under the Definitive Concession Contract.

1. The Dominican Government is liable for the conduct of its agencies.

201. The Dominican Government cannot hide behind the supposed discretion of its agencies to justify the infringement of the rights that that very Government granted to Dominicana Renovables.

202. The Dominican Republic is constitutionally organized as a "unitary republic", legally represented by a "unitary state",¹⁸⁷ and the Dominican Government signed the Definitive Concession Contract with Dominicana Renovables, without any limitation or restriction with regard to the government agencies bound by the contract in question. The CDEEE cannot assume a position [...]

¹⁸⁶ See Articles 7 and 193 of the Constitution of the Dominican Republic, **DL-003**.

¹⁸⁷ *Ibid.*