

NINTH LL.M. INTERNATIONAL COMMERCIAL AND INVESTMENT MOOT COMPETITION

Washington, D.C., April 8 - 9, 2022

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1. In accordance with Articles 32 and 33 of the ASEAN Comprehensive Investment

- Beginning in the mid-2000s, the Autonomous Government of Nogi in Lanakai began
 adopting policies to encourage investment in renewable energy sources to increase Nogi
 energy production capacity and replace fossil fuel-based, non-renewable energy sources.
 On June 30, 2016, the Nogi Regional Legislature enacted the
 - and amended related legislation. The Government of Nogi promulgated additional regulations and rules, creating a Feed-in-
 - established a 17-year fixed premium price to be paid by the Nogi Power Authority (the NOPA -profit corporation controlled by the Government of Nogi, for energy from rendendable sources, including wind, hydroelectric, solar, biogas, biomass and landfill gas. The FIT Program created standard sets of bidding rules, standard pricing, and standard FIT contracts that applied to renewable energy applicants.
- 10VOn stelver & octanonts, @ averning this wild of the was to create certainty for investors to invest in renewable power in Nogi and thereby create jobs -- more than 15,000 new jobs between 2016 and 2020. Nogi

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- 14. In March 2017, on the basis of the actions and representations on the part of the Government of Nogi, Warm's subsidiary HYNO submitted to the DNR Public Land HYNO
 - of Palang area of the King River. Beginning in 2017, HYNO spent heavily on resource evaluation, engineering and technical reviews with respect to the HYNO Project. When the FIT Program was announced in 2017, HYNO focused its efforts on ensuring it would meet the FIT Contract requirements.
- 15. In a letter to HYNO dated August 24, 2017, the DNR made it clear that in order for HYNO to maintain the priority position of its Public Land applications, HYNO had to submit an application to the FIT program within the initial FIT application period. In a subsequent phone call between HYNO and DNR executives on

develop the HYNO Project in accordance with the FIT Contract granted to it by the NOPA.

20. When the Government of Nogi implemented the FIT Program in September 2018, it

- generated from hydroelectric energy projects was 15.0 cents per kilowatt hour compared to 11.5 cents per kilowatt hour for electricity generated by solar projects.)
- 29. Although internal Government of Nogi documents show that the Department of Energy would have preferred to allow the HYNO Project to proceed, the Department was ultimately overruled, and the HYNO Project was included in the moratorium, even despite the fact that it had a FIT Contract. In a telephone conversation with representatives of Warm and

34. Lanakai

- Warm and HYNO has also been arbitrary and unfair. Contrary to the representations it made in its March 12, 2020 teleconference call with representatives of Warm and HYNO, the Government of Nogi has failed to take steps to protect Warm and HYNO from being penalized as a result of the moratorium.
- 42. Lanakai also failed to enter into any discussion with Warm about alternative energy projects, as proposed on several occasions by Warm. Since Warm is an energy provider with a wide range of products, the company would have accepted to switch the hydroelectric project for one or several solar projects in the province of Nogi. However, the government of Nogi and NOPA consistently rejected such proposals.
- 43. These measures, among others, constitute violations of the principle of fair and equitable treatment under Article 11, and have caused damage to Warm and HYNO.
- 44. ACIA Articles 5 and 6 prohibit discrimination against investors of the other State Parties, vis-a-vis both nationals and investors of other States. Under Article 5, each Party shall
 - accords, in like circumstances, to its own investors with respect to the admission, establishment, acquisition, expansión, management, conduct, operation and sale or other
 - comparison to investors from other Member States (most-favored nation treatment).
- 45. In this case, Lanakai, through the Government of Nogi, has granted special, more favorable treatment under the FIT program to investments made by Cheng P & S Corp., a company from Laos, than investments made by Warm. In addition, none of the developers from Lanakai or other jurisdictions who have been provided a FIT Contract to date have been subject to a moratorium and are unable to proceed with their projects, in contrast to Warm and HYNO. The Government of Nogi has also recently arranged to relocate two gas-fired electricity generation facilities and to pay compensation to the U.S. and Australian investors that own them after the two projects were canceled by the Government of Nogi as a result of civil society opposition. The Government of Nogi has made no similar efforts to relocate the HYNO Project, despite Warm

 Warm and HYNO for their costs or the loss of their rights to develop the HYNO Project.
- 46. These measures, among others, have violated the rights of Warm and HYNO not to be subject to discrimination under ACIA Articles 5 and 6, and have caused damage to Warm and HYNO.
- 44. Warm Energy Holding daims:
 - (a) damages in the amount of at least US\$400,000,000, including for lost profits and other damages incurred as a result of the moratorium and related measures;