



BERKELEYenergía

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Submission of Request for Arbitration initiates Arbitration Proceedings against Spain

Berkeley Energia Limited (**Berkeley**) advises that its wholly owned subsidiary, Berkeley Exploration Limited (**BEL**), has now filed a Request for Arbitration (**Request**) for its investments in Spain through its Spanish subsidiary, Berkeley Minera España SA (**BME**), initiating arbitration proceedings against the Kingdom of Spain (**Spain**) before the International Centre for Settlement of Investment Disputes (**ICSID**).

As part of its Request, BEL alleges that Spain's actions against BME and the Salamanca project have violated multiple provisions of the Energy Charter Treaty (**ECT**) and that BEL is seeking preliminary compensation in the order of US\$1 billion (US\$1,000,000,000) for these violations.

As previously announced, in November 2022, BEL submitted a written notification of an investment dispute to the Prime Minister of Spain and the Ministry for the Ecological Transition and the Demographic Challenge (**MITECO**) informing them of the nature of the dispute and the ECT breaches, and that it proposed to seek prompt negotiations for an amicable solution pursuant to article 26.1 of the ECT. To date, the Spanish government has still not engaged in any discussions related to the dispute and BEL has now filed its Request in order to enforce its rights at the Salamanca project through international arbitration. The Request has jointly been submitted by specialist teams at Herbert Smith Freehills Spain LLP and LCS Abogados who will represent BEL in the arbitration proceedings.

Notwithstanding the investment dispute, BEL remains committed to the Salamanca project and continues to be open to a constructive dialogue with Spain. BEL is ready to collaborate with the relevant Spanish authorities to find an amicable resolution to the permitting situation and remains hopeful discussions can take place in the near term.

In the next phase of proceedings, tribunal members will be selected and appointed, and thereby formally establishing the tribunal.

Berkeley will provide a further update on the arbitration proceedings as required.

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This announcement has been authorised for release by the Board.



BACKGROUND TO THE DISPUTE

In April 2021, the Spanish Government approved an amendment to the draft climate change and energy transition bill relating to the investigation and exploitation of radioactive minerals (e.g. uranium). The Government reviewed and approved the amendment to Article 10 under which: (i) new applications for exploration, investigation and direct exploitation concessions for radioactive materials, and their extensions, would not be accepted following the entry into force of this law; and (ii) existing concessions, and open proceedings and applications related to these, would continue as per normal based on the previous legislation. The new law was published in the Official Spanish State Gazette and came into effect in May 2021.

BEL's wholly owned subsidiary, BME currently holds legal, valid and consolidated rights for the investigation and exploitation of its mining projects, including the 30-year mining licence (renewable for two further periods of 30 years) for the Salamanca project, however any new proceedings opened by BME is now not allowed under the aforementioned new law.

In November 2021, BME received formal notification from MITECO that it had rejected NSC II at the Salamanca project following and unfavourable report for the grant of NSC II issued by the Board of the Nuclear Safety Council (**NSC**) in July 2021.

BEL strongly refutes the NSC's assessment and, in its opinion, the NSC adopted an arbitrary decision with the technical issues used as justification to issue the unfavourable report lacking in both technical and legal support.

BME submitted documentation, including an 'Improvement Report' to supplement the its initial NSC II application, along with the corresponding arguments that address all the issues raised by the NSC, and a request for its reassessment by the NSC, to MITECO in July 2021.

Further documentation was submitted to MITECO in August 2021, in which BME, with strongly supported arguments, dismantled all of the technical issues used by the NSC as justification to issue the unfavourable report. BME again restated that the project is compliant with all requirements for NSC II to be awarded and requested its NSC II Application be reassessed by the NSC.

In addition, BME requested from MITECO access to the files associated with the Authorisation for Construction and Authorisation for Dismantling and Closure for the radioactive facilities at La Haba (Badajoz) and Saelices El Chico (Salamanca), which are owned by ENUSA Industrias Avandas S.A., in order to verify and contrast the conditions approved by the competent administrative and regulatory bodies for other similar uranium projects in Spain.

Based on a detailed comparison of the different licensing files undertaken by the BME following receipt of these files, it is clear that BME, in its NSC II submission, has been required to provide information that does not correspond to: (i) the regulatory framework, (ii) the scope of the current procedural stage (i.e., at the NSC II stage), and/or (iii) the criteria applied in other licensing processes for similar radioactive facilities). Accordingly, BEL considers that the NSC has acted in a discriminatory and arbitrary manner when assessing the NSC II application for the Salamanca project.

In BEL's strong opinion, MITECO has rejected the BME's NSC II Application without following the legally established procedure, as the Improvement Report has not been taken into account and sent to the NSC for its assessment, as requested on multiple occasions by BME.

In this regard, the BEL believes that MITECO have infringed regulations on administrative procedures in Spain but also under protection afforded to BEL under the ECT, which would imply that the decision on the rejection of BME's NSC II Application is not legal.

In April 2023, BME submitted a contentious-administrative appeal before the Spanish National Court in an attempt to overturn the MITECO decision denying NSC II.



Further, BME also received formal notifications in December 2023 which upheld appeals submitted by a non-governmental organisation, Plataforma Stop Uranio, and the city council of Villavieja de Yeltes (the **appellants**) to revoke the first instance judgements related to the Authorisation of Exceptional Land Use (**AEUL**) and the Urbanism License (**UL**), which annuled both the AEUL and UL

The AEUL and the UL were granted to BME in July 2017 and August 2020 by the Regional Commission of Environment and Urbanism, and the Municipality of Retortillo respectively (**Regional Government**).

The appellants subsequently filed administrative appeals against the AEUL and the UL at the first instance courts in Salamanca. The administrative appeals against the AEUL and UL were dismissed in September 2022 and January 2023 respectively.

One of the appellants subsequently lodged appeals before the High Court of Justice of Castilla y León (**TSJ**), with the TSJ delivering judgements in December 2023 to revoke the first instance judgements and declare the AEUL and the UL null.

BME strongly disagrees with the fundamentals of the TSJ's judgement and having submitted cassation appeals against the TSJ judgements before the Spanish Supreme Court, BME withdrew the appeals to preserve BEL's rights under international arbitration.