

**International Centre for Settlement of Investment Disputes**

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Telephone: (202) 458-1534 Faxes: (202) 522-2615 / (202) 522-2027  
Website: www.worldbank.org/icsid

**CERTIFICATE**

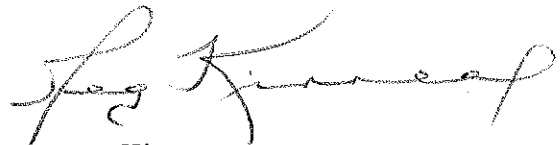
**VATTENFALL AB, VATTENFALL EUROPE AG, VATTENFALL EUROPE  
GENERATION AG**

**v.**

**FEDERAL REPUBLIC OF GERMANY**

(ICSID Case No. ARB/09/6)

I hereby certify that the attached is a true copy of the Award of the Arbitral Tribunal,  
dated March 11, 2011.



Meg Kinnear  
Secretary-General

Washington, D.C.  
March 11, 2011

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES  
WASHINGTON, D.C.

IN THE PROCEEDING BETWEEN

VATTENFALL AB, VATTENFALL EUROPE AG, VATTENFALL EUROPE  
GENERATION AG  
(CLAIMANTS)

- AND -

FEDERAL REPUBLIC OF GERMANY  
(RESPONDENT)

(ICSID Case No. ARB/09/6)

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AWARD

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*Members of the Tribunal*

The Honorable Marc Lalonde, PC, OC, QC, *President*  
Sir Franklin Berman, KCMG, QC, *Arbitrator*  
Professor Gabrielle Kaufmann-Kohler, *Arbitrator*

*Secretary of the Tribunal*

Ms. Eloïse Obadia

*Representing the Claimants*

Professor Dr. Kaj Hobér,  
Mr. Fredrik Andersson,  
Dr. Johann von Pachelbel,  
and Dr. Nils Eliasson  
Mannheimer Swartling Advokatbyrå  
and  
Dr. Ulrich Theune  
and Dr. Richard Happ  
Luther Rechtsanwaltsgesellschaft mbH

*Representing the Respondent*

Dr. Sabine Konrad  
K&L Gates  
and  
Mr. Joachim Steffens,  
Dr. Nils Weith and  
Mrs. Gabriele Löbert  
International Investments and Finance,  
Debt Rescheduling, World Bank,  
Development Banks  
Federal Ministry of Economy and  
Technology

*Date of Dispatch to the Parties:* March 11, 2011

## I. Procedural History

1. On April 2, 2009, the International Centre for Settlement of Investment Disputes ('ICSID') received a request for arbitration of Vattenfall AB, Vattenfall Europe AG, Vattenfall Europe Generation AG & Co. KG ('the Claimants') submitted against the Federal Republic of Germany ('the Respondent'). Vattenfall AB is a Swedish company, while Vattenfall Europe AG and Vattenfall Europe Generation AG & Co. KG are German companies. The Request was registered by the Acting Secretary-General of ICSID on April 17, 2009, pursuant to Article 36(3) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.
2. The Tribunal was constituted on August 6, 2009, with Professor Gabrielle Kaufmann-Kohler (appointed by the Claimants), Sir Franklin Berman (appointed by the Respondent), as arbitrators, and the Honorable Marc Lalonde, as President (appointed by the two party-appointed arbitrators).
3. On May 18, 2009, the Claimants notified the Centre of the change of the corporate form and name of Claimant Vattenfall Europe Generation AG & Co. KG to Vattenfall Europe Generation AG. The Centre took note of the change and amended the name of the case accordingly.
4. The first session of the Tribunal was held with the Parties in Paris on September 17, 2009. The Parties confirmed that the Tribunal had been properly constituted and reached agreements on most procedural issues. Noting the Parties' respective comments with regards to the procedural calendar, the Tribunal deliberated and set forth a procedural calendar for the Parties' written pleadings.
5. On March 12, 2010, the Parties agreed to request the Tribunal to suspend the proceedings until September 12, 2010 and concurred that during such period, either Party could resume the proceedings at its own discretion by filing a request with the Secretary of the Tribunal.
6. Accordingly, on March 15, 2010, the Tribunal informed the Parties that the proceeding was suspended pursuant to the Parties' agreement.
7. By letter of August 25, 2010 from counsel for the Respondent and letters of August 26, 2010 from both counsel for the Claimants, the Parties advised the Tribunal that they had signed an agreement on August 25, 2010 for the final and binding resolution of their dispute and discontinuance of the proceedings ('the Agreement'). The Agreement called for a suspension of the proceedings for an indefinite period and stated that either Party could resume the proceedings unilaterally in two situations: (i) if all the conditions set out in the Agreement had been fulfilled; and (ii) if the conditions had not been fulfilled by March 31, 2011.
8. On August 27, 2010 the Tribunal informed the Parties that the proceeding was suspended for an indefinite duration and invited the Parties to update the Tribunal every three months of the status of the Agreement.

9. By letter of September 14, 2010, Respondent confirmed that the Parties would update the Tribunal as to the status of the Agreement every three months. Claimants concurred with Respondent's letter by email of September 15, 2010.
10. By separate emails of December 14, 2010, the Parties updated the Tribunal as to the status of the Agreement confirming that the implementation of the Agreement was ongoing in accordance with its terms.
11. By letter of February 7, 2011 from one counsel for the Claimants and by letters of February 8, 2011 from the other counsel for the Claimants and counsel for the Respondent, the Parties informed the Tribunal that the conditions agreed upon in their agreement of August 25, 2010 had been fulfilled. A full and signed copy of the Agreement was provided to the Secretariat and the Tribunal on February 8, 2011. The Tribunal was requested by the Parties to resume the proceedings and embody the terms of the Agreement and their letters of February 7 and 8, 2011 in an award pursuant to ICSID Arbitration Rule 43(2).

## **II. Award**

12. The Tribunal, pursuant to the Parties' request and in accordance with ICSID Arbitration Rule 43(2), unanimously decides that the Agreement of August 25, 2010, and the statements made by the Parties in their letters of February 7 and 8, 2011, as set out below, shall be recorded verbatim as an Award on agreed terms:

## AGREEMENT

between the parties to ICSID Case No. ARB/09/6 ("Parties"):

Vattenfall AB, Vattenfall Europe AG, Vattenfall Europe Generation AG ("**Vattenfall**" / "**Claimants**")

and

Federal Republic of Germany ("**Germany**" / "**Respondent**").

The Claimants are represented as follows:

**Vattenfall AB**,  
represented by Tuomo Hatakka

**Vattenfall Europe AG**,  
represented by members of the board ("Vorstand") Tuomo Hatakka and Stefan Dohler

**Vattenfall Europe Generation AG**,  
represented by members of the board ("Vorstand") Hartmuth Zeiß and Hubertus Altmann

(together "**Vattenfall's Representatives**").

The Respondent is represented by the Federal Ministry of Economics and Technology (*Bundesministerium für Wirtschaft und Technologie, BMWi*), represented in turn by State Secretary Jochen Homann.

Vattenfall's Representatives warrant and represent that this Agreement ("**Agreement**") has been approved by all the boards of directors of Vattenfall (i.e. of Vattenfall AB, Vattenfall Europe AG and Vattenfall Europe Generation AG). A copy of the board decisions approving this Agreement is attached to this Agreement as Appendix A.

## PREAMBLE

The Claimants have commenced an arbitration against the Respondent under the auspices of the ICSID Convention for alleged claims under the Energy Charter Treaty. These proceedings have been registered by ICSID as Case No. ARB/09/6 ("**Proceedings**") and are pending before a tribunal constituted under the ICSID Convention ("**Tribunal**").

Vattenfall's claims are contained in and defined by the Request for Arbitration of 30 March 2009 ("Claims"). Germany denies Vattenfall's Claims and reserves its right to raise objections to the jurisdiction of the Tribunal and the admissibility of the Claims. The Claims and Germany's denial and reservation constitute the dispute ("Dispute").

On 12 March 2010 Vattenfall and Germany agreed to suspend the Proceedings for six (6) months (until 11 September 2010), with the right for each party unilaterally to resume the Proceedings at any time. On 15 March 2010, the Proceedings were suspended for six months pursuant to the agreement of 12 March.

By virtue of the present Agreement, the Parties have agreed a mechanism for the final and binding resolution of all of the Claims and of their Dispute in its entirety as well as the discontinuance of the Proceedings.

#### **Article 1 - Settlement and Release**

(1) The fulfilment of the conditions set out in Article 2 of this Agreement ("Conditions") shall constitute a full and final satisfaction and settlement of all of the Claims. The Claimants confirm that upon the fulfilment of the Conditions any ground for complaint or cause of action ("Beschwer") related to the Claims which may have existed under the Energy Charter Treaty shall cease to exist.

(2) Upon fulfilment of the Conditions, automatically and without the need for any further action of any of the Parties, all and any claims that the Claimants or any of them or any of their shareholders ever had, may have or hereafter can, shall or may have against the Respondent in relation to the Dispute, shall be released and forever discharged. The Claimants shall hold harmless and indemnify the Respondent for any claims raised against it by any of the Claimants' shareholders.

(3) For the sake of clarity, the Parties agree that paragraphs 1 and 2 of this Article do not apply to any claims based on facts coming into existence after the conclusion of this Agreement, in particular any claims which might arise out of or in relation to the performance of this Agreement or the OVG-Settlement (as defined in Article 2 (a)).

(4) For the sake of clarity, the Parties also agree that, in case this Agreement is not fully performed and the Claims are not discharged under paragraphs 1 or 2 of this Article, this Agreement does not prejudice any Party with respect to the question whether the Claims and/ or the Beschwer have ceased to exist or have been diminished by the conclusion and/or the partial or complete performance of the OVG-Settlement (as defined in Article 2 (a)).

*[Handwritten signatures]*

*[Handwritten signature]*

## Article 2 - Conditions

The Parties have defined the following Conditions:

- (a) A court settlement agreement ("Prozessvergleich") having been agreed between Vattenfall Europe Generation AG and the Free and Hanseatic City of Hamburg recorded by the Hamburgisches Obergerverwaltungsgericht ("OVG") in proceedings File No. 5 E 4/08.P, thereby terminating the said OVG proceedings regarding the water use permit No. 4/5 AI 43 issued by the Free and Hanseatic City of Hamburg to Vattenfall Europe Generation AG on 30 September 2008 ("OVG-Settlement");
- (b) A modified water use permit having been issued to Vattenfall Europe Generation AG in accordance with the annex to the OVG-Settlement and declared immediately enforceable ("wasserrechtliche Erlaubnis unter Anordnung des Sofortvollzugs");
- (c) A confirmation in writing by the Free and Hanseatic City of Hamburg that Vattenfall Europe AG has been released from its undertakings pursuant to § 6 and § 7 of the agreement between Vattenfall Europe AG and the Free and Hanseatic City of Hamburg dated 26 November / 4 December 2007, to set up district heating pipelines and to build and operate a discharge cooler ("Ablaufkühler") at the Moorburg power plant;
- (d) The permits set out in § 2 (1) 1st sentence of the OVG-Settlement having been issued to Vattenfall Europe Generation AG and having been declared immediately enforceable to the extent that this is required by and pursuant to § 2 (1) 2nd sentence of the OVG-Settlement; it being understood that this Condition (d) shall also be deemed fulfilled if Vattenfall fails to comply with its obligations set out in § 2 (2) (a) to (c) of the OVG-Settlement.

## Article 3 - Suspension of the Proceedings

(1) The Parties have agreed to derogate from Rule 45 of the ICSID Arbitration Rules dated April 2006 ("ICSID Arbitration Rules") and have further agreed on a suspension of the Proceedings of indefinite duration and that neither of the Parties may resume the Proceedings unilaterally, except

- (a) in accordance with Article 4; or
- (b) in accordance with this Article 3, if the Conditions set out in Article 2 have not been satisfied on or before 31 March 2011.

Upon signature of this Agreement, the Parties will inform ICSID by a joint letter attached to this Agreement as Appendix B.



(2) Before applying to ICSID for the resumption of the Proceedings, the Party wishing to resume must notify the other Parties in writing. An application to resume may not be submitted unless the Parties are unable to agree on a prolongation of the period set out in paragraph 1 (b) above, which agreement may not unreasonably be withheld, and one or more of the Conditions remains unfulfilled 90 days after the notification has been received.

#### **Article 4 - Discontinuance of Proceedings**

(1) No later than 14 days after fulfilment of the Conditions, the Parties shall jointly apply to the Tribunal in the form of Appendix C to this Agreement for the resumption and at the same time for the discontinuance of the Proceedings by way of an award on agreed terms (Rule 43 (2) of the ICSID Arbitration Rules).

(2) Should one of the Parties refuse to make such a joint application, any Party may unilaterally apply to the Tribunal and the Tribunal shall decide whether or not the Conditions have been fulfilled. If it finds that the Conditions have been fulfilled, the Tribunal shall make an order that the Proceedings are discontinued.

#### **Article 5 - No Admission/Acknowledgement**

For the avoidance of doubt, this Agreement and its terms and provisions are made and agreed without any admission by the Parties of liability, obligation (except for obligations assumed pursuant to this Agreement) or fact of any nature or kind whatsoever and it is not, and shall not be represented and/ or construed by the Parties as, an admission of liability or wrongdoing on the part of either Party or any other person.

#### **Article 6 - Costs**

In case of discontinuance of the Proceedings pursuant to this Agreement, the Parties shall each bear their own legal costs for the Proceedings, the Dispute and this Agreement. The costs of the Proceedings shall be shared between the Claimants and the Respondent in two equal parts and be paid out of the advance payments made by the Parties to ICSID. Any remaining funds shall be refunded by ICSID to the Parties.

#### **Article 7 - Coordination of Communications with Third Parties and the Public**

Before a Party, orally or in writing, discloses this Agreement or its content or information relating to its content, as the case may be, such Party will notify the other Parties.





### Article 8 - Entire Agreement and No Representations

This Agreement constitutes the entire understanding and agreement between the Parties in relation to the subject matter of this Agreement, and supersedes and extinguishes all previous understandings, undertakings, representations, warranties, conditions, arrangements and agreements of any nature, whether in writing or oral, between the Parties or their related persons relating to its subject matter.

This Agreement is intended to resolve finally the rights and liabilities of the Parties in connection with the Dispute and the Proceedings and neither of the Parties shall seek to reopen this Agreement on the grounds that it in the future becomes aware of any mistake of law (including any such mistake arising as a subsequent change of law) or mistake of fact relating to this Agreement.

### Article 9 - Governing Law and Dispute Resolution

- (1) This Agreement shall be governed by the laws of Germany (excluding its conflict of law rules).
- (2) As long as the Proceedings are pending any dispute arising out of or in connection with this Agreement shall be decided by the Tribunal. The Parties are in agreement that an application to the Tribunal to decide on a dispute under this Agreement by one of them or both, as the case may be, is not in conflict with the suspension of the Proceedings.
- (3) Any dispute arising out of or in connection with this Agreement after the discontinuance of the Proceedings shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules of 1976 by three arbitrators. The arbitration shall be administered by the Permanent Court of Arbitration, the Secretary General of which shall be the appointing authority. The language of the arbitration shall be English. The seat of the arbitration shall be The Hague, Netherlands.



This Agreement has been signed in six originals, of which Vattenfall has received four and Germany has received two.

*Jochen Homann*

Berlin, .....  
**Bundesministerium für Wirtschaft und Technologie**  
State Secretary Jochen Homann

*Tuomo Hatakka*

Berlin, .....  
**Vattenfall AB**  
Tuomo Hatakka

*Tuomo Hatakka*      *Stefan Dohler*

Berlin, .....  
**Vattenfall Europe AG**  
members of the board ("Vorstand") Tuomo Hatakka and Stefan Dohler

*Hartmuth Zeiß*      *Hubertus Altmann*

Berlin, .....  
**Vattenfall Europe Generation AG**  
members of the board ("Vorstand") Hartmuth Zeiß and Hubertus Altmann

Appendices:

A - Copies of the Decisions of the Boards of the Claimants

B - Joint Letter to the Tribunal regarding the Suspension of the Proceedings

C - Joint Application for an Award on Agreed Terms

**APOSTILLE****(Convention de La Haye du 5 octobre 1961)****1. Country : Sweden****This public document****2. has been signed by Anne-Marie Bonde****3. acting in the capacity of Notary Public****4. bears the seal/stamp of****Notary Public in Stockholm****Certified****5. at Stockholm****6. the 24.08.2010****7. by Björn Sandin****Notary Public****8. No 4079****9 Seal/stamp:****10. Signature:**

A handwritten signature in cursive script, appearing to read "Björn Sandin".

*Translation*

Extract of a decision taken at a Board Meeting in Vattenfall AB held on 24 August 2010

9. **Moorburg**  
Information and decision matter.

The Board was informed about the settlement negotiations regarding Moorburg.

The Board resolved

to agree to enter into a settlement with the Federal Republic of Germany essentially in accordance with the negotiated draft settlement agreement, dated 17 August 2010, regarding the arbitral proceedings under the Energy Charter Treaty. The arbitral proceedings will be discontinued only when a new water use permit and permits for a cooling tower have been received. The permits shall be immediately enforceable when granted.

to authorize the CEO or anyone appointed by him to sign the settlement agreement with the Federal Republic of Germany, or otherwise ensure that signing is carried out in due order.

Signed:

  
Lars Westerberg

  
Carl Gustaf Angelin

  
Eli Arnstad

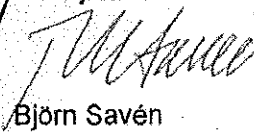
  
Johnny Bernhardsson

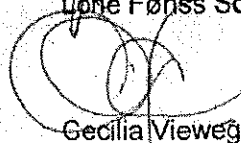
  
Christer Bådholm

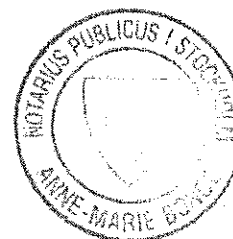
  
Roriny Ekwall

  
Lohé Føniss Schröder

  
Patrik Jönsson

  
Björn Savén

  
Cecilia Vieweg



I, the undersigned, Anne-Marie Bonde, Notary Public of the City of Stockholm, Sweden, hereby certify that LARS WESTERBERG, CARL GUSTAF ANGELIN, ELI ARNSTAD, JOHNNY BERNHARDSSON, CHRISTER BÅDHOLM, RONNY EKWALL, LONE FØNSS SCHRØDER, PATRIK JÖNSSON, BJÖRN SAVÉN and CECILIA VIEWEG,

duly authorized to sign for VATTENFALL AB

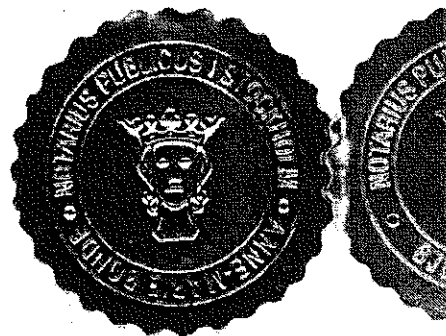
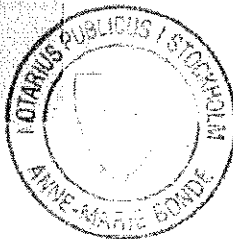
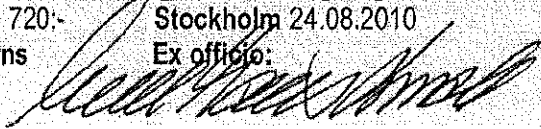
have issued and signed the foregoing document.

Fee 720:-

Stockholm 24.08.2010

Crowns

Ex officio:



**Extract****Minutes No. 41 (19 AUGUST 2010)**

The Board (Vorstand) of Vattenfall Europe AG takes the following decision:

To approve and sign the Draft Agreement dated August 17, 2010 between Vattenfall AB, Vattenfall Europe AG and Vattenfall Europe Generation AG on the one hand and Bundesrepublik Deutschland on the other hand regarding the arbitral proceedings under the Energy Charter Treaty (ICSID-Case No. ARB/09/6) as attached to this Board resolution.

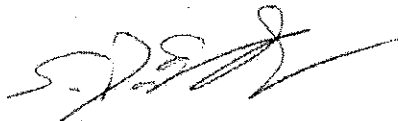
Andreas Metzenthin is given the mandate for possible final improvements/ clarifications of the wording and information to the Board.



Tuomo J. Hatakka



Udo Bekker



Stefan Dohler

**Enclosure:**

Draft Agreement dated August 17, 2010

**AGREEMENT**

between the parties to ICSID Case No. ARB/09/6 ("Parties"):

Vattenfall AB, Vattenfall Europe AG, Vattenfall Europe Generation AG ("**Vattenfall**" / "**Claimants**")

and

Federal Republic of Germany ("**Germany**" / "**Respondent**").

The Claimants are represented as follows:

**Vattenfall AB,**  
represented by .....

**Vattenfall Europe AG,**  
represented by .....

**Vattenfall Europe Generation AG,**  
represented by .....

(together "**Vattenfall's Representatives**").

The Respondent is represented by the Federal Ministry of Economics and Technology (*Bundesministerium für Wirtschaft und Technologie, BMWi*), represented in turn by State Secretary Joehen Homann.

Vattenfall's Representatives warrant and represent that this Agreement ("**Agreement**") has been approved by all the boards of directors of Vattenfall (i.e. of Vattenfall AB, Vattenfall Europe AG and Vattenfall Europe Generation AG). A copy of the board decisions approving this Agreement is attached to this Agreement as Appendix A.

**PREAMBLE**

The Claimants have commenced an arbitration against the Respondent under the auspices of the ICSID Convention for alleged claims under the Energy Charter Treaty. These proceedings have been registered by ICSID as Case No. ARB/09/6 ("**Proceedings**") and are pending before a tribunal constituted under the ICSID Convention ("**Tribunal**").

17 August 2010



Vattenfall's claims are contained in and defined by the Request for Arbitration of 30 March 2009 ("Claims"). Germany denies Vattenfall's Claims and reserves its right to raise objections to the jurisdiction of the Tribunal and the admissibility of the Claims. The Claims and Germany's denial and reservation constitute the dispute ("Dispute").

On 12 March 2010 Vattenfall and Germany agreed to suspend the Proceedings for six (6) months (until 11 September 2010), with the right for each party unilaterally to resume the Proceedings at any time. On 15 March 2010, the Proceedings were suspended for six months pursuant to the agreement of 12 March.

By virtue of the present Agreement, the Parties have agreed a mechanism for the final and binding resolution of all of the Claims and of their Dispute in its entirety as well as the discontinuance of the Proceedings.

#### Article 1 - Settlement and Release

- (1) The fulfilment of the conditions set out in Article 2 of this Agreement ("Conditions") shall constitute a full and final satisfaction and settlement of all of the Claims. The Claimants confirm that upon the fulfilment of the Conditions any ground for complaint or cause of action ("Beschwer") related to the Claims which may have existed under the Energy Charter Treaty shall cease to exist.
- (2) Upon fulfilment of the Conditions, automatically and without the need for any further action of any of the Parties, all and any claims that the Claimants or any of them or any of their shareholders ever had, may have or hereafter can, shall or may have against the Respondent in relation to the Dispute, shall be released and forever discharged. The Claimants shall hold harmless and indemnify the Respondent for any claims raised against it by any of the Claimants' shareholders.
- (3) For the sake of clarity, the Parties agree that paragraphs 1 and 2 of this Article do not apply to any claims based on facts coming into existence after the conclusion of this Agreement, in particular any claims which might arise out of or in relation to the performance of this Agreement or the OVG-Settlement (as defined in Article 2 (a)).
- (4) For the sake of clarity, the Parties also agree that, in case this Agreement is not fully performed and the Claims are not discharged under paragraphs 1 or 2 of this Article, this Agreement does not prejudice any Party with respect to the question whether the Claims and/ or the Beschwer have ceased to exist or have been diminished by the conclusion and/ or the partial or complete performance of the OVG-Settlement (as defined in Article 2 (a)).

17 August 2010

## Article 2 - Conditions

The Parties have defined the following Conditions:

- (a) A court settlement agreement ("Prozessvergleich") having been agreed between Vattenfall Europe Generation AG and the Free and Hanseatic City of Hamburg recorded by the Hamburgisches Obergerverwaltungsgericht ("OVG") in proceedings File No. 5 E 4/08.P, thereby terminating the said OVG proceedings regarding the water use permit No. 4/5 AI 43 issued by the Free and Hanseatic City of Hamburg to Vattenfall Europe Generation AG on 30 September 2008 ("OVG-Settlement");
- (b) A modified water use permit having been issued to Vattenfall Europe Generation AG in accordance with the annex to the OVG-Settlement and declared immediately enforceable ("wasserrechtliche Erlaubnis unter Anordnung des Sofortvollzugs");
- (c) A confirmation in writing by the Free and Hanseatic City of Hamburg that Vattenfall Europe AG has been released from its undertakings pursuant to § 6 and § 7 of the agreement between Vattenfall Europe AG and the Free and Hanseatic City of Hamburg dated 26 November / 4 December 2007, to set up district heating pipelines and to build and operate a discharge cooler ("Ablaufkühler") at the Moorburg power plant;
- (d) The permits set out in § 2 (1) 1st sentence of the OVG-Settlement having been issued to Vattenfall Europe Generation AG and having been declared immediately enforceable to the extent that this is required by and pursuant to § 2 (1) 2nd sentence of the OVG-Settlement; it being understood that this Condition (d) shall also be deemed fulfilled if Vattenfall fails to comply with its obligations set out in § 2 (2) (a) to (c) of the OVG-Settlement.

## Article 3 - Suspension of the Proceedings

(1) The Parties have agreed to derogate from Rule 45 of the ICSID Arbitration Rules dated April 2006 ("ICSID Arbitration Rules") and have further agreed on a suspension of the Proceedings of indefinite duration and that neither of the Parties may resume the Proceedings unilaterally, except

- (a) in accordance with Article 4; or
- (b) in accordance with this Article 3, if the Conditions set out in Article 2 have not been satisfied on or before 31 March 2011.

Upon signature of this Agreement, the Parties will inform ICSID by a joint letter attached to this Agreement as Appendix B.

17 August 2010

(2) Before applying to ICSID for the resumption of the Proceedings, the Party wishing to resume must notify the other Parties in writing. An application to resume may not be submitted unless the Parties are unable to agree on a prolongation of the period set out in paragraph 1 (b) above, which agreement may not unreasonably be withheld, and one or more of the Conditions remains unfulfilled 90 days after the notification has been received.

#### **Article 4 - Discontinuance of Proceedings**

(1) No later than 14 days after fulfilment of the Conditions, the Parties shall jointly apply to the Tribunal in the form of Appendix C to this Agreement for the resumption and at the same time for the discontinuance of the Proceedings by way of an award on agreed terms (Rule 43 (2) of the ICSID Arbitration Rules).

(2) Should one of the Parties refuse to make such a joint application, any Party may unilaterally apply to the Tribunal and the Tribunal shall decide whether or not the Conditions have been fulfilled. If it finds that the Conditions have been fulfilled, the Tribunal shall make an order that the Proceedings are discontinued.

#### **Article 5 - No Admission/Acknowledgement**

For the avoidance of doubt, this Agreement and its terms and provisions are made and agreed without any admission by the Parties of liability, obligation (except for obligations assumed pursuant to this Agreement) or fact of any nature or kind whatsoever and it is not, and shall not be represented and/ or construed by the Parties as, an admission of liability or wrongdoing on the part of either Party or any other person.

#### **Article 6 - Costs**

In case of discontinuance of the Proceedings pursuant to this Agreement, the Parties shall each bear their own legal costs for the Proceedings, the Dispute and this Agreement. The costs of the Proceedings shall be shared between the Claimants and the Respondent in two equal parts and be paid out of the advance payments made by the Parties to ICSID. Any remaining funds shall be refunded by ICSID to the Parties.

#### **Article 7 - Coordination of Communications with Third Parties and the Public**

Before a Party, orally or in writing, discloses this Agreement or its content or information relating to its content, as the case may be, such Party will notify the other Parties.

17 August 2010

### Article 8 - Entire Agreement and No Representations

This Agreement constitutes the entire understanding and agreement between the Parties in relation to the subject matter of this Agreement, and supersedes and extinguishes all previous understandings, undertakings, representations, warranties, conditions, arrangements and agreements of any nature, whether in writing or oral, between the Parties or their related persons relating to its subject matter.

This Agreement is intended to resolve finally the rights and liabilities of the Parties in connection with the Dispute and the Proceedings and neither of the Parties shall seek to reopen this Agreement on the grounds that it in the future becomes aware of any mistake of law (including any such mistake arising as a subsequent change of law) or mistake of fact relating to this Agreement.

### Article 9 - Governing Law and Dispute Resolution

(1) This Agreement shall be governed by the laws of Germany (excluding its conflict of law rules).

(2) As long as the Proceedings are pending any dispute arising out of or in connection with this Agreement shall be decided by the Tribunal. The Parties are in agreement that an application to the Tribunal to decide on a dispute under this Agreement by one of them or both, as the case may be, is not in conflict with the suspension of the Proceedings.

(3) Any dispute arising out of or in connection with this Agreement after the discontinuance of the Proceedings shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules of 1976 by three arbitrators. The arbitration shall be administered by the Permanent Court of Arbitration, the Secretary General of which shall be the appointing authority. The language of the arbitration shall be English. The seat of the arbitration shall be The Hague, Netherlands.

\_\_\_\_\_

This Agreement has been signed in four originals, of which the Parties have received one each.

Berlin, .....  
**Bundesministerium für Wirtschaft und Technologie**  
 [Name]

Stockholm, .....  
**Vattenfall AB**  
 [Name]

17 August 2010

Berlin, .....  
**Vattenfall Europe AG**  
[Name]

Cottbus, .....  
**Vattenfall Europe Generation AG**  
[Name]

17 August 2010

Appendices:

A - Copies of the Decisions of the Boards of the Claimants

B - Joint Letter to the Tribunal regarding the Suspension of the Proceedings

C - Joint Application for an Award on Agreed Terms

17 August 2010

**Appendix B**

Dear Sirs,

**ICSID Case No. ARB/09/06, Vattenfall AB, Vattenfall Europe AG, Vattenfall Europe Generation AG v. Federal Republic of Germany**

Please be informed that the Parties have signed an agreement on \_\_\_\_\_ [Date], which provides for a mechanism for the final and binding resolution of their dispute and discontinuance of the proceedings ("Agreement").

In this Agreement, the Parties have agreed on a suspension of the proceedings of indefinite duration. Neither of the Parties may resume the proceedings unilaterally, except in two situations:

- (a) the fulfilment of a number of conditions set out in the Agreement, the fulfilment of which constitutes a full and final satisfaction and settlement and automatic release in accordance with the Agreement;
- (b) the non-fulfilment of said conditions within the time period stipulated in the Agreement; that is on or before 31 March 2011.

Before applying to ICSID for the resumption of the proceedings, the Party wishing to resume must notify the other Parties in writing. An application to resume may not be submitted unless the Parties are unable to agree on a prolongation of the period set out in paragraph 1 (b) above, which agreement may not unreasonably be withheld, and the conditions remain unfulfilled 90 days after the notification has been received.

The Parties hereby derogate from Rule 45 of the ICSID Arbitration Rules in accordance with Article 44 of the ICSID Convention to the effect that Rule 45 shall not apply to the suspension set out in the Agreement.

Yours sincerely,

17 August 2010

## Appendix C

Dear Sirs,

**ICSID Case No. ARB/09/06, Vattenfall AB, Vattenfall Europe AG, Vattenfall Europe Generation AG v. Federal Republic of Germany**

The conditions agreed upon between the Parties in their agreement of \_\_\_\_\_ [Date] ("Agreement") as conditions for a full and final settlement and automatic release have been fulfilled.

The Proceedings are therefore hereby resumed and the Parties therefore jointly apply for an award on agreed terms in accordance with Rule 43 (2) of the Arbitration Rules ("Award") attaching the Agreement of \_\_\_\_\_ [Date] and stating the following:

- (1) The conditions set out in Article 2 of the Agreement ("Conditions") have been fulfilled.
- (2) The fulfilment of the Conditions constitutes a full and final satisfaction and settlement of all of the Claims. The Claimants confirm that upon the fulfilment of the Conditions any ground for complaint or cause of action ("Beschwer") related to the Claims which may have existed under the Energy Charter Treaty have ceased to exist.
- (3) All and any claims that the Claimants or any of them or any of their shareholders ever had, may have or hereafter can, shall or may have against the Respondent in relation to the Dispute, automatically have been released and forever discharged without the need for any further action of any of the Parties.
- (4) The Claimants shall hold harmless and indemnify the Respondent for any claims raised against it by any of the Claimants' shareholders.
- (5) For the sake of clarity, the Parties agree that Numbers 2 to 4 of this Award do not apply to any claims based on facts coming into existence after the conclusion of the Agreement, in particular any claims which might arise out of or in relation to the performance of the Agreement or the OVG-Settlement.
- (6) For the avoidance of doubt, the Agreement and its terms and provisions were made and agreed without any admission by the Parties of liability, obligation (except for obligations assumed pursuant to the Agreement) or fact of any nature or kind whatsoever and it is not, and shall not be represented and/ or construed by the Parties as, an admission of liability or wrongdoing on the part of either Party or any other person.

17 August 2010



- (7) The Parties shall each bear their own legal costs in relation to the Dispute, the Proceedings and the Agreement.
- (8) ICSID shall pay its own fees and expenses as well as the Tribunal's in two equal parts from the monies advanced by the Parties, ICSID shall refund any remaining funds to the Parties.
- (9) For the avoidance of doubt, capitalized terms in this Award shall have the same meaning as defined in the attached Agreement.

Yours sincerely,

17 August 2010

**Deed Roll No. CS 175/2010**

I hereby certify the foregoing signatures which were affixed in my presence today at the premises of Vattenfall Europe AG, Chausseestraße 23, 10115 Berlin, where I went as requested, by:

Mr. Udo Bekker, born on 12 January 1959,  
with business address at Chausseestraße 23, 10115 Berlin,  
personally known to the Notary,


and

Mr. Stefan Dohler, born on 25 October 1966,  
with business address at Chausseestraße 23, 10115 Berlin,  
personally known to the Notary.

The acting notary discussed a prior involvement within the meaning of section 3 (1) no. 7 of the German Notarisation Act with the persons appearing. Upon being questioned by the notary, the persons appearing denied such prior involvement.

Berlin, ~~23~~ August 2010




  
- Christian Steinke -  
Notary

**Statement of costs pursuant to §§ 140, 141, 154 of the Court and Notarial Costs Act  
(KostO)**

**Value of the subject matter: over 310.000,00 Euro**

2,5/10 Certification fee §§ 32, 45 I KostO	130,00 Euro
5/10 Transportation fee §§ 32, 58 I KostO	30,00 Euro
Fee for copies §§ 136, 152 I KostO (13 pages)	6,50 Euro
	-----
Subtotal	166,50 Euro
19 % VAT § 151a KostO	31,64 Euro
	-----
<b>Total</b>	<b>198,14 Euro</b>
	=====

  
- Christian Steinke -  
Notary

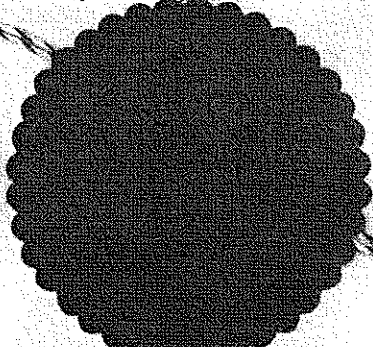
Deed Roll No. CS 181/2010


I hereby certify the foregoing signature which was affixed in my presence today at Capital Club, Mohrenstraße 30, 10117 Berlin, where I went as requested, by:

Mr. Tuomo J. Hatakka, born on 16 December 1956,  
with business address at Chausseestraße 23, 10115 Berlin,  
personally known to the Notary.

The acting notary discussed a prior involvement within the meaning of section 3 (1) no. 7 of the German Notarisation Act with the person appearing. Upon being questioned by the notary, the person appearing denied such prior involvement.

Berlin, 24 August 2010

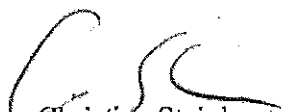


  
- Christian Steinke -  
Notary

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	166,50 Euro
Subtotal	31,64 Euro
19 % VAT § 151a KostO	-----
<b>Total</b>	<b>198,14 Euro</b>
	=====

  
Christian Steinke -  
Notary



Urkunde  
des Notars

**Dietmar Böhmer**

in 03046 Cottbus, Berliner Straße 18

Telefon 03 55 / 7 80 24 - 0 · Telefax 03 55 / 7 80 24 99

E-Mail [notar.boehmer.cottbus@notarnet.de](mailto:notar.boehmer.cottbus@notarnet.de)

[www.boehmer-cottbus.notar-in-brandenburg.de](http://www.boehmer-cottbus.notar-in-brandenburg.de)

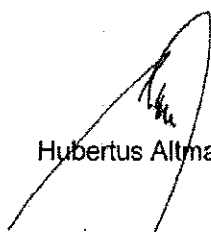
The Board (Vorstand) of Vattenfall Europe Generation AG takes the following decision:

To approve and sign the Draft Agreement dated August 17, 2010 between Vattenfall AB, Vattenfall Europe AG and Vattenfall Europe Generation AG on the one hand and Bundesrepublik Deutschland on the other hand regarding the arbitral proceedings under the Energy Charter Treaty (ICSID-Case No. ARB/09/6) as attached to this Board resolution.

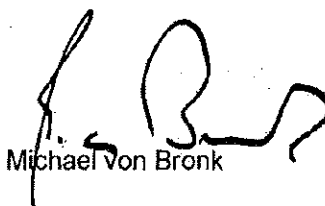
Andreas Metzenthin is given the mandate for possible final improvements/ clarifications of the wording and information to the Board.



Dr. Hartmuth Zeiß



Hubertus Altmann



Michael von Bronk

Klaus Aha, the fourth board member of Vattenfall Europe Generation AG approved to the decision in a written form attached to this protocol.

Enclosure:

Draft Agreement dated August 17, 2010

The Board (Vorstand) of Vattenfall Europe Generation AG takes the following decision:

To approve and sign the Draft Agreement dated August 17, 2010 between Vattenfall AB, Vattenfall Europe AG and Vattenfall Europe Generation AG on the one hand and Bundesrepublik Deutschland on the other hand regarding the arbitral proceedings under the Energy Charter Treaty (ICSID-Case No. ARB/09/6) as attached to this Board resolution.

Andreas Metzenthin is given the mandate for possible final improvements/ clarifications of the wording and information to the Board.

Dr. Hartmuth Zeiß

Hubertus Altmann

Michael von Bronk

Klaus Aha, the fourth board member of Vattenfall Europe Generation AG approved to the decision in a written form attached to this protocol.

  
Klaus Aha

Enclosure:  
Draft Agreement dated August 17, 2010

## AGREEMENT

between the parties to ICSID Case No. ARB/09/6 ("Parties"):

Vattenfall AB, Vattenfall Europe AG, Vattenfall Europe Generation AG ("**Vattenfall**" / "**Claimants**")

and

Federal Republic of Germany ("**Germany**" / "**Respondent**").

The Claimants are represented as follows:

**Vattenfall AB**,  
represented by .....

**Vattenfall Europe AG**,  
represented by .....

**Vattenfall Europe Generation AG**,  
represented by .....

(together "**Vattenfall's Representatives**").

The Respondent is represented by the Federal Ministry of Economics and Technology (*Bundesministerium für Wirtschaft und Technologie, BMWi*), represented in turn by State Secretary Jochen Homann.

Vattenfall's Representatives warrant and represent that this Agreement ("**Agreement**") has been approved by all the boards of directors of Vattenfall (i.e. of Vattenfall AB, Vattenfall Europe AG and Vattenfall Europe Generation AG). A copy of the board decisions approving this Agreement is attached to this Agreement as Appendix A.

## PREAMBLE

The Claimants have commenced an arbitration against the Respondent under the auspices of the ICSID Convention for alleged claims under the Energy Charter Treaty. These proceedings have been registered by ICSID as Case No. ARB/09/6 ("**Proceedings**") and are pending before a tribunal constituted under the ICSID Convention ("**Tribunal**").

17 August 2010



Vattenfall's claims are contained in and defined by the Request for Arbitration of 30 March 2009 ("Claims"). Germany denies Vattenfall's Claims and reserves its right to raise objections to the jurisdiction of the Tribunal and the admissibility of the Claims. The Claims and Germany's denial and reservation constitute the dispute ("Dispute").

On 12 March 2010 Vattenfall and Germany agreed to suspend the Proceedings for six (6) months (until 11 September 2010), with the right for each party unilaterally to resume the Proceedings at any time. On 15 March 2010, the Proceedings were suspended for six months pursuant to the agreement of 12 March.

By virtue of the present Agreement, the Parties have agreed a mechanism for the final and binding resolution of all of the Claims and of their Dispute in its entirety as well as the discontinuance of the Proceedings.

#### **Article 1 - Settlement and Release**

(1) The fulfilment of the conditions set out in Article 2 of this Agreement ("Conditions") shall constitute a full and final satisfaction and settlement of all of the Claims. The Claimants confirm that upon the fulfilment of the Conditions any ground for complaint or cause of action ("Beschwer") related to the Claims which may have existed under the Energy Charter Treaty shall cease to exist.

(2) Upon fulfilment of the Conditions, automatically and without the need for any further action of any of the Parties, all and any claims that the Claimants or any of them or any of their shareholders ever had, may have or hereafter can, shall or may have against the Respondent in relation to the Dispute, shall be released and forever discharged. The Claimants shall hold harmless and indemnify the Respondent for any claims raised against it by any of the Claimants' shareholders.

(3) For the sake of clarity, the Parties agree that paragraphs 1 and 2 of this Article do not apply to any claims based on facts coming into existence after the conclusion of this Agreement, in particular any claims which might arise out of or in relation to the performance of this Agreement or the OVG-Settlement (as defined in Article 2 (a)).

(4) For the sake of clarity, the Parties also agree that, in case this Agreement is not fully performed and the Claims are not discharged under paragraphs 1 or 2 of this Article, this Agreement does not prejudice any Party with respect to the question whether the Claims and/ or the Beschwer have ceased to exist or have been diminished by the conclusion and/or the partial or complete performance of the OVG-Settlement (as defined in Article 2 (a)).

17 August 2010

## Article 2 - Conditions

The Parties have defined the following Conditions:

- (a) A court settlement agreement ("Prozessvergleich") having been agreed between Vattenfall Europe Generation AG and the Free and Hanseatic City of Hamburg recorded by the Hamburgisches Obergerverwaltungsgericht ("OVG") in proceedings File No. 5 E 4/08.P, thereby terminating the said OVG proceedings regarding the water use permit No. 4/5 AI 43 issued by the Free and Hanseatic City of Hamburg to Vattenfall Europe Generation AG on 30 September 2008 ("OVG-Settlement");
- (b) A modified water use permit having been issued to Vattenfall Europe Generation AG in accordance with the annex to the OVG-Settlement and declared immediately enforceable ("wasserrechtliche Erlaubnis unter Anordnung des Sofortvollzugs");
- (c) A confirmation in writing by the Free and Hanseatic City of Hamburg that Vattenfall Europe AG has been released from its undertakings pursuant to § 6 and § 7 of the agreement between Vattenfall Europe AG and the Free and Hanseatic City of Hamburg dated 26 November / 4 December 2007, to set up district heating pipelines and to build and operate a discharge cooler ("Ablaufkühler") at the Moorburg power plant;
- (d) The permits set out in § 2 (1) 1st sentence of the OVG-Settlement having been issued to Vattenfall Europe Generation AG and having been declared immediately enforceable to the extent that this is required by and pursuant to § 2 (1) 2nd sentence of the OVG-Settlement; it being understood that this Condition (d) shall also be deemed fulfilled if Vattenfall fails to comply with its obligations set out in § 2 (2) (a) to (c) of the OVG-Settlement.

## Article 3 - Suspension of the Proceedings

(1) The Parties have agreed to derogate from Rule 45 of the ICSID Arbitration Rules dated April 2006 ("ICSID Arbitration Rules") and have further agreed on a suspension of the Proceedings of indefinite duration and that neither of the Parties may resume the Proceedings unilaterally, except

- (a) in accordance with Article 4; or
- (b) in accordance with this Article 3, if the Conditions set out in Article 2 have not been satisfied on or before 31 March 2011.

Upon signature of this Agreement, the Parties will inform ICSID by a joint letter attached to this Agreement as Appendix B.

17 August 2010

(2) Before applying to ICSID for the resumption of the Proceedings, the Party wishing to resume must notify the other Parties in writing. An application to resume may not be submitted unless the Parties are unable to agree on a prolongation of the period set out in paragraph 1 (b) above, which agreement may not unreasonably be withheld, and one or more of the Conditions remains unfulfilled 90 days after the notification has been received.

#### **Article 4 - Discontinuance of Proceedings**

(1) No later than 14 days after fulfilment of the Conditions, the Parties shall jointly apply to the Tribunal in the form of Appendix C to this Agreement for the resumption and at the same time for the discontinuance of the Proceedings by way of an award on agreed terms (Rule 43 (2) of the ICSID Arbitration Rules).

(2) Should one of the Parties refuse to make such a joint application, any Party may unilaterally apply to the Tribunal and the Tribunal shall decide whether or not the Conditions have been fulfilled. If it finds that the Conditions have been fulfilled, the Tribunal shall make an order that the Proceedings are discontinued.

#### **Article 5 - No Admission/Acknowledgement**

For the avoidance of doubt, this Agreement and its terms and provisions are made and agreed without any admission by the Parties of liability, obligation (except for obligations assumed pursuant to this Agreement) or fact of any nature or kind whatsoever and it is not, and shall not be represented and/ or construed by the Parties as, an admission of liability or wrongdoing on the part of either Party or any other person.

#### **Article 6 - Costs**

In case of discontinuance of the Proceedings pursuant to this Agreement, the Parties shall each bear their own legal costs for the Proceedings, the Dispute and this Agreement. The costs of the Proceedings shall be shared between the Claimants and the Respondent in two equal parts and be paid out of the advance payments made by the Parties to ICSID. Any remaining funds shall be refunded by ICSID to the Parties.

#### **Article 7 - Coordination of Communications with Third Parties and the Public**

Before a Party, orally or in writing, discloses this Agreement or its content or information relating to its content, as the case may be, such Party will notify the other Parties.

17 August 2010

### Article 8 - Entire Agreement and No Representations

This Agreement constitutes the entire understanding and agreement between the Parties in relation to the subject matter of this Agreement, and supersedes and extinguishes all previous understandings, undertakings, representations, warranties, conditions, arrangements and agreements of any nature, whether in writing or oral, between the Parties or their related persons relating to its subject matter.

This Agreement is intended to resolve finally the rights and liabilities of the Parties in connection with the Dispute and the Proceedings and neither of the Parties shall seek to reopen this Agreement on the grounds that it in the future becomes aware of any mistake of law (including any such mistake arising as a subsequent change of law) or mistake of fact relating to this Agreement.

### Article 9 – Governing Law and Dispute Resolution

(1) This Agreement shall be governed by the laws of Germany (excluding its conflict of law rules).

(2) As long as the Proceedings are pending any dispute arising out of or in connection with this Agreement shall be decided by the Tribunal. The Parties are in agreement that an application to the Tribunal to decide on a dispute under this Agreement by one of them or both, as the case may be, is not in conflict with the suspension of the Proceedings.

(3) Any dispute arising out of or in connection with this Agreement after the discontinuance of the Proceedings shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules of 1976 by three arbitrators. The arbitration shall be administered by the Permanent Court of Arbitration, the Secretary General of which shall be the appointing authority. The language of the arbitration shall be English. The seat of the arbitration shall be The Hague, Netherlands.

This Agreement has been signed in four originals, of which the Parties have received one each.

Berlin, .....  
**Bundesministerium für Wirtschaft und Technologie**  
 [Name]

Stockholm, .....  
**Vattenfall AB**  
 [Name]

17 August 2010

Berlin, .....  
**Vattenfall Europe AG**  
[Name]

Cottbus, .....  
**Vattenfall Europe Generation AG**  
[Name]

17 August 2010

Appendices:

A - Copies of the Decisions of the Boards of the Claimants

B - Joint Letter to the Tribunal regarding the Suspension of the Proceedings

C - Joint Application for an Award on Agreed Terms

17 August 2010

**Appendix B**

Dear Sirs,

**ICSID Case No. ARB/09/06, Vattenfall AB, Vattenfall Europe AG, Vattenfall Europe Generation AG v. Federal Republic of Germany**

Please be informed that the Parties have signed an agreement on \_\_\_\_\_ [Date], which provides for a mechanism for the final and binding resolution of their dispute and discontinuance of the proceedings ("Agreement").

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Before applying to ICSID for the resumption of the proceedings, the Party wishing to resume must notify the other Parties in writing. An application to resume may not be submitted unless the Parties are unable to agree on a prolongation of the period set out in paragraph 1 (b) above, which agreement may not unreasonably be withheld, and the conditions remain unfulfilled 90 days after the notification has been received.

The Parties hereby derogate from Rule 45 of the ICSID Arbitration Rules in accordance with Article 44 of the ICSID Convention to the effect that Rule 45 shall not apply to the suspension set out in the Agreement.

Yours sincerely,

17 August 2010

## Appendix C

Dear Sirs,

**ICSID Case No. ARB/09/06, Vattenfall AB, Vattenfall Europe AG, Vattenfall Europe Generation AG v. Federal Republic of Germany**

The conditions agreed upon between the Parties in their agreement of \_\_\_\_\_ [Date] ("Agreement") as conditions for a full and final settlement and automatic release have been fulfilled.

The Proceedings are therefore hereby resumed and the Parties therefore jointly apply for an award on agreed terms in accordance with Rule 43 (2) of the Arbitration Rules ("Award") attaching the Agreement of \_\_\_\_\_ [Date] and stating the following:

- (1) The conditions set out in Article 2 of the Agreement ("Conditions") have been fulfilled.
- (2) The fulfilment of the Conditions constitutes a full and final satisfaction and settlement of all of the Claims. The Claimants confirm that upon the fulfilment of the Conditions any ground for complaint or cause of action ("Beschwer") related to the Claims which may have existed under the Energy Charter Treaty have ceased to exist.
- (3) All and any claims that the Claimants or any of them or any of their shareholders ever had, may have or hereafter can, shall or may have against the Respondent in relation to the Dispute, automatically have been released and forever discharged without the need for any further action of any of the Parties.
- (4) The Claimants shall hold harmless and indemnify the Respondent for any claims raised against it by any of the Claimants' shareholders.
- (5) For the sake of clarity, the Parties agree that Numbers 2 to 4 of this Award do not apply to any claims based on facts coming into existence after the conclusion of the Agreement, in particular any claims which might arise out of or in relation to the performance of the Agreement or the OVG-Settlement.
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17 August 2010



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- (9) For the avoidance of doubt, capitalized terms in this Award shall have the same meaning as defined in the attached Agreement.

Yours sincerely,

17 August 2010

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File No. 1410/2010

---

I hereby certify that the above is the true signature,  
subscribed in my presence, of

Mr.

Dr. Hartmuth Zeiß,  
born 11th of January 1955,  
business domicile: 03050 Cottbus, Vom-Stein-Str. 39, Germany,  
identified by identity card

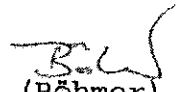
Mr.

Hubertus Altmann,  
born 21st of April 1961,  
business domicile: 03050 Cottbus, Vom-Stein-Str. 39, Germany,  
identified by identity card

Mr.

Michael von Bronk,  
born 21st of August 1957,  
business domicile: 03050 Cottbus, Vom-Stein-Str. 39, Germany,  
identified by identity card

Cottbus, 24th of August 2010

  
(Böhmer)  
Notary public

## Appendix B

Dear Sirs,

**ICSID Case No. ARB/09/06, Vattenfall AB, Vattenfall Europe AG, Vattenfall Europe Generation AG v. Federal Republic of Germany**

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Yours sincerely,

KO

FB [Signature]

## Appendix C

Dear Sirs,

**ICSID Case No. ARB/09/06, Vattenfall AB, Vattenfall Europe AG, Vattenfall Europe Generation AG v. Federal Republic of Germany**

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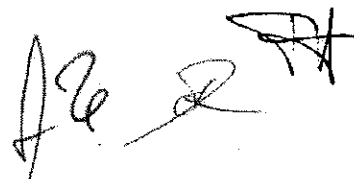
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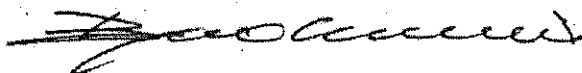
*[Handwritten signatures]*

*[Handwritten signature]*

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Yours sincerely,



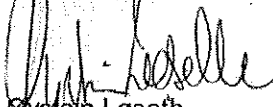
**APOSTILLE****(Convention de La Haye du 5 octobre 1961)****1. Country : Sweden****This public document****2. has been signed by Anne-Marie Bonde****3. acting in the capacity of Notary Public****4. bears the seal/stamp of****Notary Public in Stockholm****Certified****5. at Stockholm****6. the 24.08.2010****7. by Björn Sandin****Notary Public****8. No 4065****9 Seal/stamp:****10. Signature:**



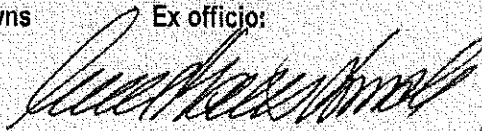
## POWER OF ATTORNEY

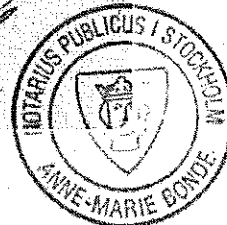
I hereby appoint Tuomo Hatakka to perform all actions that I am authorised to perform pursuant to the decision of the Board of Vattenfall AB dated 24 August 2010, concerning the signing of the settlement agreement with the Federal Republic of Germany regarding the arbitral proceedings under the Energy Charter Treaty.

Stockholm 24 August 2010

  
Øystein Løseth

I, the undersigned, Anne-Marie Bonde, Notary Public of the City of Stockholm, hereby certify that ØYSTEIN LØSETH, duly authorized to sign for VATTENFALL AB has issued and signed the foregoing document.  
Fee 340,- Stockholm 24.08.2010  
Crowns Ex officio:





### VATTENFALL AB

ADRESS	TELEFON	ORG NR
162 97 Stockholm	08 736 50 00	558030-2138
BESÖKSADRESS	FAX	PUBLIKT BOLAG (publ)
Störenävar 10	08-739 65 45	Stockholm
	www.vattenfall.se	

**APOSTILLE****(Convention de La Haye du 5 octobre 1961)****1. Country : Sweden****This public document****2. has been signed by Anne-Marie Bonde****3. acting in the capacity of Notary Public****4. bears the seal/stamp of**

Notary Public in Stockholm

**Certified****5. at Stockholm****6. the 24.08.2010****7. by Björn Sandin**

Notary Public

**8. No 4066****9. Seal/stamp:****10. Signature:**

A handwritten signature in black ink, appearing to read "Björn Sandin".



CERTIFICATE OF REGISTRATION

Registration number: 556036-2138  
 Date of registration: 1937-06-18  
 Company name: Vattenfall Aktiebolag  
 Address:  
 162 87 STOCKHOLM  
 Registered office: Stockholm  
 Share capital: SEK 6 585 000 000  
 Note: Acquisition by merger



The company is registered as a public limited liability company.

**BOARD MEMBER, CHAIRMAN OF THE BOARD**

480626-1691 Westerberg, Lars Erik, Storgatan 38, 114 55 STOCKHOLM

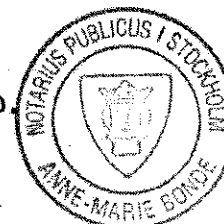
**BOARD MEMBERS**

510209-3373 Angelin, Carl-Gustaf Olof Fredrik, Kottgränd 4, 187 43 TÄBY  
 Employee representative  
 620504 Arnstad, Eli, Arnstad Vestre, 7510 SKATVAL, NORGE  
 520707-2918 Bernhardsson, Inge Johnny Henry, Nygatan 12,  
 722 14 VÄSTERÅS  
 Employee representative  
 431003-4519 Bådholm, Arne Christer, Märgelvägen 15, 428 35 KÄLLERED  
 530704-6937 Ekvall, Lars Ove Ronald, Svanboms väg 9, 815 75 SÖDERFORS  
 Employee representative  
 600402 Fonss Schroder, Lone, Klosterrisvej 6, 3100 HORNBAEK,  
 DANMARK  
 710918-0013 Jönsson, Patrik Anders, Hälsingevägen 3 B,  
 132 46 SALTSJÖ-BOO  
 550414-5144 Petersson Vieweg, Görel Cecilia G, Terrassvägen 14,  
 167 52 BROMMA  
 500929-0056 Savén, Björn Erik, c/o IK Investment Partners,  
 Birger Jarls gatan 4, 114 34 STOCKHOLM

**DEPUTY MEMBERS OF THE BOARD**

510118-3530 Carlsson, Lars Olof, Östergården 1, 540 15 VÄRING  
 Employee representative  
 530924-8937 Johansson, Lars-Göran, Berggatan 4 B 1 tr, 962 32 JOKKMOKK  
 Employee representative  
 611201-9010 Lööf, David Per-Ove, Bjurträsk 172, 935 93 NORSJÖ  
 Employee representative

CONTD



**CERTIFICATE OF REGISTRATION**

Registration number: 556036-2138  
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Company name: Vattenfall Aktiebolag

**MANAGING DIRECTOR**

580817 Löseth, Öystein, Plantage Kerklaan 61 A, 1018 CX AMSTERDAM,  
NEDERLÄNDERNA

**DEPUTY MANAGING DIRECTORS**

640421-1390 Andresen, Dag Gunnar, Kullavägen 4, 181 62 LIDINGÖ  
621002-0282 Biström, Hélène Margaretha Elisabeth, Sundsborgsvägen 133,  
194 57 UPPLANDS VÄSBY  
561216 Hatakka, Tuomo Juhani, Im Kamp 5, 14532 KLEINMACHNOW,  
TYSKLAND  
620130-1337 Wahlborg, Per Torbjörn, ul. Syta 106 N/4, 02-987 WARSZAWA,  
POLEN

**OTHER PERSONS AUTHORIZED TO SIGN ON BEHALF OF THE COMPANY**

640624-4126 Cederborg, Tove Cecilia, Dahlbergsstigen 8,  
182 64 DJURSHOLM  
540813-3535 Gejrot, Lars Ingvar, Markvadsgatan 6, 2 tr,  
113 53 STOCKHOLM  
501029-5599 Josefsson, Lars-Göran, Odengatan 33, 113 51 STOCKHOLM  
620818-1401 Ström, Helena Elisabeth, Carl Westmans väg 10,  
133 35 SALTSJÖBADEN  
710715 von Heyden, Harald, Eriksbergsgatan 1 B, 114 30 STOCKHOLM

**AUDITORS**

556053-5873 Ernst & Young Aktiebolag, Box 7850, 103 99 STOCKHOLM  
Represented by: 650215-1357  
490611-7595 Redemo, Per Arne, Brunngatan 48, 611 32 NYRÖPING

**DEPUTY AUDITORS**

570325-0232 Selander, Ernst Göran, Litsbyvägen 16, 187 46 TÄBY

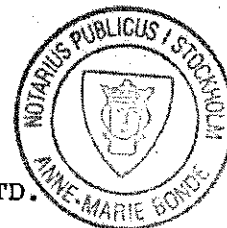
**PRINCIPALLY RESPONSIBLE AUDITOR**

650215-1357 Mabon, Hamish Stuart, Alvägen 22 A, 183 63 TÄBY

**SIGNATORY POWER**

In addition to the board of directors,  
any two jointly of

Andresen, Dag Gunnar  
Arnstad, Eli  
Biström, Hélène Margaretha Elisabeth  
Bådholm, Arne Christer  
Fonss Schroder, Lone  
Hatakka, Tuomo Juhani  
Jönsson, Patrik Anders  
Löseth, Öystein



CONTD.


**CERTIFICATE OF REGISTRATION**

Registration number: 556036-2138  
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Petersson Vieweg, Görel Cecilia G  
 Savén, Björn Erik  
 Wahlborg, Per Torbjörn  
 Westerberg, Lars Erik

or any one of them in combination with any one of  
 Cederborg, Tove Cecilia  
 Gejrot, Lars Ingvar  
 Josefsson, Lars-Göran  
 Ström, Helena Elisabeth  
 von Heyden, Harald

are entitled to sign on behalf of the company.

Furthermore, the Managing Director, in his normal business activities,  
 is also entitled to sign on behalf of the company.

**FINANCIAL YEAR**

Registered financial year: 0101 - 1231  
 Latest annual report submitted covers financial  
 period 20090101-20091231

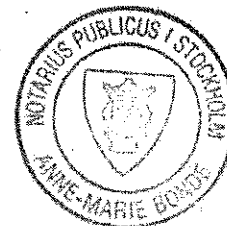
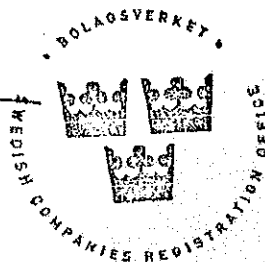
**DATE OF REGISTRATION OF CURRENT AND PREVIOUS COMPANY NAMES**

1990-11-20 Vattenfall Aktiebolag  
 1937-06-18 Björkö-Arholma Elektriska Aktiebolag

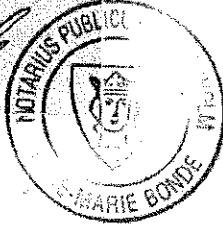
SUNDSVALL 2010-08-23

Ex officio

  
 Bente Ohlsson



I, the undersigned, Anne-Marie Bonde, Notary Public of  
the City of Stockholm, Sweden, hereby certify that  
BENTE OHLSSON,  
duly authorized to sign for  
BOLAGSVERKET,  
THE SWEDISH COMPANIES REGISTRATION OFFICE,  
has issued and signed the foregoing document in  
original, of which this is a true copy.  
Fee 340:- Stockholm 24.08.2010  
Crowns Ex officio



13. Parties' statements in their letters of February 7 and 8, 2011:

(1) The conditions set out in Article 2 of the Agreement ("Conditions") have been fulfilled.

(2) The fulfilment of the Conditions constitutes a full and final satisfaction and settlement of all of the Claims. The Claimants confirm that upon the fulfilment of the Conditions any ground for complaint or cause of action ("Beschwer") related to the Claims which may have existed under the Energy Charter Treaty have ceased to exist.

(3) All and any claims that the Claimants or any of them or any of their shareholders ever had, may have or hereafter can, shall or may have against the Respondent in relation to the Dispute, automatically have been released and forever discharged without the need for any further action of any of the Parties.

(4) The Claimants shall hold harmless and indemnify the Respondent for any claims raised against it by any of the Claimants' shareholders.

(5) For the sake of clarity, the Parties agree that Numbers 2 to 4 of this Award do not apply to any claims based on facts coming into existence after the conclusion of the Agreement, in particular any claims which might arise out of or in relation to the performance of the Agreement or the OVG-Settlement.

(6) For the avoidance of doubt, the Agreement and its terms and provisions were made and agreed without any admission by the Parties of liability, obligation (except for obligations assumed pursuant to the Agreement) or fact of any nature or kind whatsoever and it is not, and shall not be represented and / or construed by the Parties as, an admission of liability or wrongdoing on the part of either Party or any other person.

(7) The Parties shall each bear their own legal costs in relation to the Dispute, the Proceedings and the Agreement.

(8) ICSID shall pay its own fees and expenses as well as the Tribunal's in two equal parts from the monies advanced by the Parties, ICSID shall refund any remaining funds to the Parties.

(9) For the avoidance of doubt, capitalized terms in this Award shall have the same meaning as defined in the attached Agreement.

14. The Tribunal notes the agreement of the Parties in Article 6 of the Agreement and paragraphs 7 and 8 of their February 7 and 8, 2011 letters in accordance to which each Party shall bear its own legal costs and expenses and pay in equal shares the fees and expenses of the Tribunal and ICSID. Accordingly, the Tribunal so orders.

*Marc Lalonde*

The Honorable Marc Lalonde, PC, OC, QC, President

Date: *8 March 2011*

*Franklin Berman*

Sir Franklin Berman, KCMG, QC

Date: *1 March 2011*

*Gabrielle Kaufmann-Kohler*

Professor Gabrielle Kaufmann-Kohler

Date: *3 March 2011*