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Antin awarded €112m after ‘unjustified’ Spanish solar cuts

The manager invested in the CSP sector in 2011 because it regarded it as ‘more sheltered from regulatory change’ than solar PV, which had been damaged by tariff cuts a year earlier.

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Antin Infrastructure Partners has been awarded €112 million in damages from the Spanish government on solar investments it made in 2011 following a ruling from an international court.

The decision by the Washington-based International Centre for Settlement of

Investment Disputes relates to the investments made by Antin and Deutsche Asset Management in 2011 in the Andasol I and II concentrated solar power plants, both generating 50MW capacity. DWS is pursuing its case separately through the ICSID.

However, the investment turned sour in 2012, when the Spanish government enacted further retroactive cuts to the subsidies paid to renewable energy assets. The government had, in the previous two years, already enacted cuts to solar PV and wind, as it sought to slash Spain’s electricity tariff deficit. An additional round of cuts was made in 2013.

While the tribunal recognised that, in 2012, laws were introduced impacting the investment which “stripped [it] of its key features,” Antin only received €112 million from the €218 million it sought from Spain, taking into account lost cashflows of €148 million. The ICSID rejected Antin’s claim for historical cashflows lost before the most radical measures introduced in June 2014, it rejected Antin’s argument for the plant’s useful life to be deemed 40 years and rejected a request for tax gross-up.

ICSID rulings cannot be appealed but the Spanish government can request an annulment, although it is not thought to be considering this. The Antin award is the third related to Spanish solar cuts following an award to EISER Infrastructure last year and Masdar in May, while investment fund Novenergia achieved a positive settlement in a separate court. However, the savings the Spanish government realised are understood to greatly exceed the compensation awarded thus far.

“We are of course delighted by the award and the final positive outcome for the Andasol investment,” Kasper Struve, director of private investments at Denmark’s Industriens Pension, an LP in Antin’s first fund, which made the investment, told Infrastructure Investor. “It shows the benefits of having a capable GP with enough resources to fight back on unjustified and retroactive tariff cuts.”

Documents from the Public Employees Retirement Association of New Mexico, dated June 2016, showed Antin Infrastructure Partners I generating a net IRR of 19.2 percent and money multiple of 2.1 times. Antin declined to comment on the ruling or its effect on the fund.

‘CSP will be more sheltered from regulatory change’

The Spanish government argued its CSP retroactive cuts were introduced to “avoid an overremuneration” while guaranteeing investors “a reasonable rate of return”, which it measured at 7.398 percent. Minutes from Antin’s April 2011 investment committee – contained in the tribunal’s decision and seen by Infrastructure Investor – show the firm invested with the expectation of a 15 percent return and a 1.7-2.0 times money multiple. The plants were trading at a 0.8 times money multiple as of June 2016, according to the New Mexico documents, and were subsequently sold to Cubico last July.

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Antin's minutes show it was aware retrospective cuts had been made to other parts of the renewables sector in 2010 when it decided to invest in solar CSP, but display a belief these were unlikely to hit the sector.

"Spanish regulation for renewables has recently changed, in particular affecting solar PV," meeting minutes from 9 March 2011 state. "The CSP sector is dominated by large Spanish contractors and their association has negotiated changes to regulation which did not have a significant negative impact on the projects (i.e. fixed tariff for 2011 and limitation of hours of production). Spain is a world leader in CSP and Spanish contractors are involved in exporting their technology to many countries abroad. Therefore, it is expected that CSP will be more sheltered from regulatory change."

Antin's position was backed up by market analysts Poyry, who in the same month said "the CSP industry has essentially remained unaffected" and that given the lobbying power of those involved, "the industry is in a far safer position than PV". Poyry would double down on this assessment two months later.

SPANISH RENEWABLES CUTS AT A GLANCE

Key dates leading to Antin's pursuit of compensation

2010

Spain enacts RDL14/2010, introducing cuts to the number of hours for which PV facilities would benefit from tariffs

2011

Antin and DWS buy the Andasol CSP plants from ACS

2012

Law 15/2012 is introduced, leading to a substantial reduction of the amount of electricity produced and a reduction in the revenues of the Andasol Plants

2013

Spain introduces further cuts through RDL 9/2013, which Antin claimed "a complete overhaul of the regulatory framework" for renewable energy

2014

Ministerial Order sets 'reasonable rate of return' for facilities existing before RDL 9/2013 as 7.398%

Source: ICSID

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Legal advisors Herbert Smith also told Antin, quoting the decree, that the 2010 regulation "guarantees that the current premiums, tariffs and the floors and caps will not be modified" for installations that had been registered by 7 May 2009, as was the case with Andasol.

Following this, an internal Antin presentation in April 2011 stated that the "regulatory framework is now more robust against retroactive changes" and the limited impact of the changes to the CSP sector "clearly show the commitment and support of this technology by the government (contrary to the PV sector)".

A meeting the following month between Antin partner Mauricio Bolaña and a legal representative of the Spanish government is alleged to have confirmed the assumptions, but this was disputed by Spain in the court. However, Antin's investment committee's conclusion, weeks before it confirmed its investment, said that "whilst changes to regulation can never be ruled out, the representatives [who we] met considered the CSP regulation review closed".