

Vattenfall v Germany (Energy Charter Treaty)

AREAS OF POLICY AFFECTED: energy (coal), resource management (water, rivers), environmental protection (wildlife conservation), local government (environmental approvals, municipal elections).

CASE SUMMARY: A Swedish energy company, Vattenfall, sued Germany under the Energy Charter Treaty (ECT). Vattenfall planned to construct and operate a coal-fired power plant in Hamburg. The plant would produce electricity and heating.

Local opposition to the plant emphasized its impacts on climate change and on the Elbe River. According to Vattenfall, this contributed to delays in the issuance of required permits for emissions control and water use and to the eventual denial of a water use permit. The approvals process took place alongside local elections in which the plant was a major campaign issue. The results of the election boosted the position of the Green Party in the Hamburg government.

After litigation in domestic courts, the permits were issued to Vattenfall with restrictions. Vattenfall then filed a notice of intent to arbitrate the dispute under the ECT, seeking €1.4 billion in compensation. Germany and Vattenfall settled the case in August 2010 by an agreement, among other things, that the Hamburg government would (1) issue permits required for the plant to proceed and (2) relieve Vattenfall of earlier commitments to the Hamburg government that aimed to reduce the plant's environmental impact on the Elbe River.

COMMENT: This was the first known investment arbitration against Germany. It highlights the role of national officials in representing other levels of government in investment arbitration. It also raises questions about the impact of investment arbitration on the ability of governments to adopt or alter environmental measures, especially following elections. Here, previously-agreed environmental requirements for the power plant were withdrawn, and the disputed permit was issued, as conditions of the investor's agreement to withdraw the ECT claim.

Source: www.iiapp.org (May 2011), based on information in publicly-available awards and materials in known investment arbitrations (for texts of awards, see www.italaw.com). This report was produced by a research team coordinated by professor Gus Van Harten (gvanharten@osgoode.yorku.ca) of Osgoode Hall Law School of York University in Toronto, Canada. Please see the disclaimer and statement on terms of use available at www.iiapp.org. © Gus Van Harten 2011. *You may forward or re-publish the information in this report with attribution to www.iiapp.org.*