INTERNACIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

IN THE MATTER OF

RICARDO FILOMENO DUARTE VENTURA LEITÃO MACHADO

(Portugal)

Claimant

and

REPUBLIC OF ANGOLA

Respondent

ICSID Case No. ARB/24/8

Respondent's Submission on Manifest Lack of Legal Merit under Rule 41

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15 November 2024

VIEIRA DE ALMEIDA cfa advogados haag LAW FIRM

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GLOSSARY OF TERMS AND ABBREVIATIONS

AMENDED COLUMBIA COMPLAINT	Pleading submitted by AEnergy on 15 February 2023, before the District Court for the District of Columbia in Case No. 22-CV-02514, AEnergy, S.A. v. Republic of Angola, et al., amending the original complaint
AMENDED VERSION OF THE BIT (OR AMENDED VERSION OF THE ANGOLA-PORTUGAL BIT)	Amended version of the Agreement between the Republic of Portugal and the Republic of Angola on the Reciprocal Promotion and Protection of Investments, dated 16 July 2021, with entry into force on 22 December 2021
ANGOLA-PORTUGAL BIT (OR BIT)	Agreement between the Republic of Portugal and the Republic of Angola on the Reciprocal Promotion and Protection of Investments, dated 22 February 2008, which entered into force on 24 April 2020, and was amended on 16 July 2021, with the amendment entering into force on 22 December 2021
ANGOLAN SOEs	ENDE and PRODEL
ARSIWA	Articles on the Responsibility of States for Internationally Wrongful Acts
CLAIMANT	Ricardo Filomeno Duarte Ventura Leitão Machado
COLUMBIA COMPLAINT	Complaint filed by AEnergy on 22 August 2022 before the District Court of Columbia (AEnegy v. Republic of Angola, et al, Case No. 22-CV-02514)
FACILITY AGREEMENT	Agreement between the Republic of Angola, represented by the Ministry of Finance, and GE Capital Limited, signed on 21 August 2017, for the purpose of funding the 13 Contracts
FIFTH AMERICAN DECISION	Order issued by the United States District Court for the District Court of Columbia on 27 October 2023 (AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514)
FIRST AMERICAN DECISION	Opinion and order issued by the United States District Court for the Southern District of New York on 19 May 2021 (AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case No. 20 cv 3569)
FOURTH AMERICAN DECISION	Memorandum of Opinion issued by the United States District Court for the District of Columbia on 20 June 2023 (AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514)

FAKE LETTERS	Fake Letters allegedly created by Mr Wilson da Costa from PRODEL and ENDE, dated 12 October 2017, which falsely indicated that the Respondent had agreed to acquire the Four Unsolicited Turbines
FOUR UNSOLICITED TURBINES	Four turbines with the serial number #7266027, #7267025, #7267575; and #7267577 acquired with the Respondent's funds, without its consent or knowledge
ENDE	*Empresa Nacional de Distribuição de Eletricidade*
FET	Fair and Equitable Treatment
GE CAPITAL	GE Capital EFS Financing, INC.
ICSID ARBITRATION RULES	Arbitration Rules apply to proceedings under the ICSID Convention, version of 2022
IGAPE	*Instituto de Gestão de Activos e Participações do Estado* – Institute for the Management of the State's Assets and Shares
ILC	International Law Commission
INVOICE SUMMARY	Document drafted on 22 December 2017, by GE and AEnergy, detailing the allocation of withdrawal funds from the Facility Agreement related to the 13 Contracts between them
MAIN ACTION	Action brought by the Respondent before the Luanda Provincial Court on 2 March 2020 against AEnergy requesting the recognition of the State's ownership right over the Four Unsolicited Turbines, compensation for damages and subsidiarily, the return of the amount used by AEnergy under the Facility Agreement (Case No. 034/2020-D).
MINEA	Ministry of Energy and Water of Angola
MINFIN	Ministry of Finance of Angola
MR WILSON DA COSTA	CEO of GE Power Angola and allegedly responsible for the Fake Letters, as claimed by AEnergy
NON-BINDING LETTERS	Letters from PRODEL and ENDE dated 12 October 2017 stating that they would consider amending Contracts 7 and 11 in order to purchase the Four Unsolicited Turbines
NY COMPLAINT	Complaint filed by AEnergy on 7 May 2020 before the SDNY (AEnergy v. Republic of Angola, et al, Case No. 22-CV-3569)

PREVENTIVE SEIZURE PROCEEDINGS	Interim measures brought on 4 October 2019 by the Respondent against AEnergy, requesting an *ex-parte* seizure of the Four Unsolicited Turbines (Case No. 074/2019-E)
PRODEL	*Empresa Pública de Produção de Eletricidade*
REQUEST FOR ARBITRATION	Request for Arbitration dated 20 February 2024
RESPONDENT	The Republic of Angola
SDNY	Southern District Court of New York
SECOND AMERICAN DECISION	Decision on Appeal from the United States District Court for the Southern District of New York issued by the United States Court of Appeals for the Second Circuit on 13 April 22 (AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case No. 21-1510-CV and Case No. 21-1752-CV)
THIRD AMERICAN DECISION	Order issued by the United States Supreme Court on 9 January 2023 (AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al, Case No.22-463)
TRUSTEE	*Instituto de Gestão de Activos e Participações do Estado* (Institute for the Management of the State's Assets and Shares). The entity designated by Luanda Provincial Court in Case No. to be the trustee of the seized Four Unsolicited Turbines.
U.S. PROCEEDINGS	Legal proceedings brought by AEnergy agains the Respondent before the courts of New York and Columbia, as well as the Supreme Court
VCLT	Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969. Entered into force on 27 January 1980
13 CONTRACTS	13 Contracts awarded by MINEA to AEnergy worth USD 1,148,531,741.00 covering services and supply of electric generating equipment, turbines, generators, transformers, rotors, other accessory equipment, consumables, and spare parts
2008 VERSION OF THE BIT (OR 2008 VERSION OF THE ANGOLA-PORTUGAL BIT)	Agreement between the Republic of Portugal and the Republic of Angola on the Reciprocal Promotion and Protection of Investments, dated 22 February 2008, which entered into force on 24 April 2020

1. INTRODUCTION

1. The Republic of Angola (the "**Respondent**") submits this application requesting the dismissal of all claims brought by Ricardo Filomeno Duarte Ventura Leitão Machado (the "**Claimant**") in his Request for Arbitration dated 20 February 2024 (the "**Request for Arbitration**"), in accordance with Rule 41 of the 2022 Arbitration Rules of the International Centre for Settlement of Investment Disputes (the "**ICSID Arbitration Rules**").

2. This case is an example of a claim that manifestly lacks legal merit and highlights the Claimant's improper attempt to exploit the protections of the Agreement between the Republic of Portugal and the Republic of Angola on the Reciprocal Promotion and Protection of Investments (the "**Angola-Portugal BIT**" or the "**BIT**"). By attempting to establish the State's consent to arbitration, which otherwise does not exist, the Claimant seeks to unduly extend both substantive and temporal protections granted under the BIT, which cannot be allowed.

3. In fact, even if the Claimant's claims had merit – which they do not – they fall outside the temporal scope of the BIT. Therefore, the *ratione temporis* requirement is not met. This is the basis for this request, as it is so manifest that it should be summarily dismissed by the Tribunal at the earliest opportunity.

4. The Respondent points out that there are several other procedural and substantive objections that could be raised against the Claimant's claims. However, the Respondent believes that the *ratione temporis* objection, based on the alleged facts by the Claimant, is so compelling that the Tribunal and the parties should not spend additional time and resources on other issues. If the Tribunal does not dismiss the case entirely based on this objection, the Respondent reserves the right to submit additional procedural and substantive objections as provided for in Rule 41(4) of the ICSID Arbitration Rules.

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5. The Claimant brings two claims against the Respondent. The first relates to the alleged expropriation of four turbines, and the second concerns a breach of the fair and equitable treatment standard. Both claims involve four turbines that, according to the Claimant, are his property and were unlawfully taken by the State.

6. Firstly, the Claimant claims that the Republic of Angola unlawfully expropriated the turbines, having seized, installed, and used the four turbines. For the claim to stand, the events leading up to the expropriation would necessarily have to have occurred after the BIT's entry into force, i.e., after 22 December 2021. However, they did not.

7. Consequently, the Arbitral Tribunal does not have jurisdiction to hear this case. Simply put, the Republic of Angola did not consent to arbitrate investment disputes concerning events arising before 22 December 2021.

8. But there is more. The Claimant himself has consistently stated that the events, erroneously characterized as expropriation, occur before the relevant date. In fact, the Claimant has argued at different times in previous court proceedings against the Respondent that the relevant expropriation event was (i) a presidential order issued in August 2019; (ii) the seizure of the turbines in December 2019; (iii) the deployment of the turbines by state-owned power companies around May/June 2021; and (iv) the installation of the turbines into the power grid around June 2021. The Claimant's constant changes of the alleged timings are remarkable.

9. Be that as it may, it is manifest that every single one of these events occurred before the entry into force of the amendment to the Angola-Portugal BIT on 22 December 2021, and consequently, cannot be adjudicated by this Arbitral Tribunal.

10. Aware that his claims manifestly lack legal merit, the Claimant now submits two different facts in support of the alleged fulfilment of the *ratione temporis* criterion: the publication of a presidential order dated 16 March 2022, and a press release dated 18 March 2022. A mere cursory analysis of these facts shows that they cannot be considered a decision to expropriate. They manifestly do not constitute stand-alone breaches of international law and cannot establish the jurisdiction of this Tribunal.

11. The same conclusion applies to the Claimant's allegations of a breach of the fair and equitable treatment standard. For the Claimant's claim to stand, the events leading to the violation of the fair and equitable treatment obligation would necessarily have to have occurred after the BIT's entry into force, i.e., after 22 December 2021 and constitute a stand-alone breach. However, as the Respondent will easily prove, they did not.

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12. To establish that the events arose before the BIT between Portugal and Angola came into force, the Respondent will first contextualize the facts of the case, namely those that are relevant to assess the manifest lack of merit of the current proceedings (**Section 2**).

13. Secondly, the Respondent will show that the claims are manifestly without legal merit by demonstrating that the alleged breaches of the BIT occurred before it came into force. The Respondent will start by outlining the applicable standard under Rule 41 of the ICSID Arbitration Rules (**Section 3**). Next, the Respondent will address the interpretation of Article 2 of the BIT, which specifies the temporal coverage of disputes protected under the BIT (**Section 3.1**).

14. Lastly, the Republic of Angola will demonstrate that both alleged breaches fall outside the BIT's temporal scope.

15. Regarding the alleged expropriation, the Claimant's claim requires expropriation events to occur after the BIT's effective date, 22 December 2021. However, the State's alleged actions—seizing, installation, and deployment of the turbines—took place between 2019 and 2021 -, a timeline the Claimant has acknowledged in court proceedings. Additionally, none of the post-BIT actions cited by the Claimant qualify as individual expropriations under Article 7 of the BIT (**Section 3.2**).

16. In relation to the breach of the fair and equitable treatment standard, the Claimant's first alleged violation shares the same theory as the expropriation claim and must, therefore, have the same outcome: it is untenable. Lastly, the Claimant's second FET allegation is a blatant attempt to fabricate a claim (**Section 3.3**).

17. For the foregoing reasons, the Claimant's claims in this arbitration should be summarily dismissed in their entirety, as reflected in the Respondent's Prayer for Relief (**Section 4**).

2. FACTUAL BACKGROUND

18. In this section, the Respondent offers a brief description of the facts it considers relevant for this submission, largely based on the Claimant's factual background submitted in the Request for Arbitration and its pleadings in the legal proceedings before the courts of New York and

Columbia, as well as the Supreme Court (the "**U.S. proceedings**").[1]

19. Like the Claimant in its Request for Arbitration, the Respondent begins by outlining the preliminary facts related to the Claimant's claim. These pertain to the contractual background between the Claimant (via AEnergy), the Respondent (through the Ministry of Energy and Water and the Ministry of Finance), and GE, where a Facility Agreement was signed to fund 13 Contracts related to services and the supply of electricity generating equipment, turbines, generators, transformers, rotors, and other accessory equipment (the "**13 Contracts**") (**Section 2.1.**). This is followed by a description of the payments related to these contracts, which resulted in the financing of four unsolicited turbines (the "**Four Unsolicited Turbines**") with the Respondent's funds, without its consent or knowledge. This financing was acknowledged by the Claimant (**Section 2.2**).

20. These events prompted the Respondent to initiate legal proceedings in Angola to establish the ownership of the Four Unsolicited Turbines or, alternatively, to seek compensation for the use of the Respondent's funds. The case is still pending a decision (**Section 2.3**). These proceedings led the Claimant to file harassment suits against the Respondent in U.S. courts, alleging expropriation and violation of due process. Tellingly, all the alleged facts and violations occurred before the Angola-Portugal BIT (**Section 2.4**).

2.1. The Facility Agreement between GE and MINFIN was aimed at funding the scope of the 13 Contracts between AEnergy and MINEA

21. On 5 July 2017, Presidential Decree No. 161/17 authorized the signing of a Facility Agreement ("**Facility Agreement**") to be entered into between the Republic of Angola, represented by the Ministry of Finance ("**MINFIN**"), and GE Capital EFS Financing, INC. ("**GE Capital**") for USD 1,100,000,000.00. The purpose of this agreement was to fund the Energy and Water Sector Project approved by the Angolan Government.[2] The Facility Agreement was eventually signed

[1] Considering the summary nature of the proceedings under Rule 41 of the ICSID Arbitration Rules, the Respondent primarily references the factual narrative provided by the Claimant in its Request for Arbitration. However, the Respondent emphasizes that it retains the right to dispute these facts if the arbitration proceedings advance.

[2] Request for Arbitration, pp. 6-7, §28; **C-6**, Presidential Decree No. 161/17, 5 July 2017.

on 21 August 2017.[3]

22. The financing under the Facility Agreement was exclusively intended to fund the 13 Contracts awarded by the Angolan Ministry of Energy and Water ("**MINEA**") to AEnergy,[4] worth USD 1,148,531,741.00. These contracts covered services and the supply of electricity generating equipment, turbines, generators, transformers, rotors, other accessory equipment, consumables, and spare parts. [5]

23. AEnergy was required to be supplied the equipment by the GE group, which included the supply and installation of eight GE TM2500 turbines.[6] To ensure that the Facility Agreement was solely used to finance these contracts, Clause 6 and Schedule 3 specify that disbursements could only occur upon withdrawal requests submitted by MINFIN.[7]

2.2. The Respondent did not consent to the Facility Agreement being used to purchase the Four Unsolicited Turbines

24. The Claimant's Request for Arbitration states that in December 2018, AEnergy's contractual relationship with the Respondent deteriorated due "*to certain irregularities involving Mr Wilson da Costa, the CEO of GE Power Angola*" [8] ("**Mr Wilson da Costa**"). This led to the termination of the 13 Contracts on 23 August 2019, due to AEnergy's breach of the principles of good faith and contractual trust.[9]

25. The Claimant chose not to detail the reasons for the termination of the agreements,[10] merely mentioning certain irregularities involving GE. However, these irregularities are key to the claims

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3 **R-0001**, Facility Agreement, dated 21 August 2017.

4 **R-0001**, Facility Agreement, dated 21 August 2017, Clause 3 (Purpose), p. 17.

5 Request for Arbitration, p. 6, § 26.

6 Request for Arbitration, p. 6, § 27.

7 **R-0001**, Facility Agreement, dated 21 August 2017, Clause 6 (Utilisation), pp. 20-22 and Schedule 3, pp. 81-82.

8 Request for Arbitration, p. 7, § 31.

9 Request for Arbitration, p. 7, § 31; **C-11**, Presidential Order No. 155/19, regarding the unilateral termination of the 13 Contracts between AEnergy and Angola, 23 August 2019.

10 Request for Arbitration, p. 7, § 32.

of alleged expropriation by the Respondent. This omission likely relates to the fact that these relevant events occurred before the Angola-Portugal BIT came into effect.

26. In fact, the 13 Contracts were terminated because AEnergy and/or GE used the Facility Agreement to fund Four Unsolicited Turbines[11] not included in the contracts without the Respondent's consent or knowledge. These four turbines are the ones that the Claimant alleges were purchased from GE with their own resources during 2016 and 2017; and were subsequently expropriated.[12]

27. This unauthorized acquisition occurred due to two key facts: (i) the funding for the 13 Contracts was based on an Invoice Summary drafted by the Claimant and GE, not the 39 invoices approved by MINEA, making it particularly difficult for the Respondent to monitor the Facility Agreement (the "**Invoice Summary**"), and (ii) fake letters that falsely indicated that the Respondent had agreed to acquire the Four Unsolicited Turbines (the "**Fake Letters**"):

28. *First*, on 30 July 2017, AEnergy issued 50 invoices with a due date of 30 August 2017, reflecting the total amount corresponding to the 13 Contracts. In December 2017, MINEA approved 39 of AEnergy's invoices for USD 643,314,360.00 worth of goods and services (out of the USD 1,100,000,000 Facility Agreement). These invoices contained descriptions of the services and goods supplied.[13]

29. To ensure the payment of the approved 39 invoices, MINFIN submitted a single withdrawal request dated 24 December 2017.[14] On 28 December 2017, an addendum was sent with the Supplier's and Purchaser's confirmation in accordance with Clause 6.2 of the Facility Agreement.[15]

30. Without the Respondent's intervention, on 22 December 2017 AEnergy and GE made an internal,

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11 With the serial number #7266027, #7267025, #7267575; and #7267577. See Request for Arbitration, p. 1, § 3.

12 Request for Arbitration, p. 1, §3; p. 7, § 29; pp. 8-9, §§ 34-38; pp. 11-12, §§ 53-54; and p. 15, § 68.

13 **R-0002**, Invoices approved by MINEA, 30 August 2017.

14 **R-0003**, Utilization Request dated 24 December 2017.

15 **R-0004**, Addendum of the Utilization Request dated 28 December 2017.

separate and distinct Invoice Summary,[16] allocating at their own discretion the funds received under the withdrawal request.

31. For example, regarding Contract 1, MINEA approved a total payment of USD 48,278,703.00,[17] but AEnergy and GE allocated USD 67,859,863.86 to themselves (USD 19,027,863.86 was paid to AEnergy and USD 48,832,000.00 was paid to GE).[18] This disregard for the MINEA-approved invoices occurred across all the 13 Contracts. As shown in the table below, the total amounts of the approved invoices for each contract do not match the fund allocation made by AEnergy and GE in their invoice summary:

Contract	MINEA-approved Invoices (USD)	GE-AEnergy Invoice Summary: Total (USD)	GE-AEnergy Invoice Summary: Paid to AE (USD)	GE-AEnergy Invoice Summary: Paid to GE (USD)
1	48,278,703.00	67,859,863.86	19,027,863.86	48,832,000.00
2	17,772,136.00	32,772,136.00	32,772,136.00	0
3	132,925,276.00	132,942,104.82	86,052,104.82	46,890,000.00
4	61,098,438.00	35,440,407.38	6,249,515.99	29,190,891.39
5	85,905,944.00	85,905,944.00	5,993,437.95	79,912,506.05
6	52,500,000.00	0	0	0
7	71,925,355.00	119,302,574.29	27,008,447.29	92,294,127.00
8	4,932,900.00	30,426,670.00	30,423,670.00	0
9	4,851,294.00	4,861,076.07	3,570,096.07.00	1,290,980.00
10	11,448,702.00	11,448,702.00	11,448,702.00	0
11	97,127,042.00	66,140,066.00	17,140,066.00	49,000,000.00

16 **R-0005**, Invoice Summary by On-Sale Contract, dated 22 December 2017.

17 **R-0002**, Invoices approved by MINEA, 30 August 2017, Invoices no. 001, 002 and 003, pp. 1-3 of the PDF.

18 **R-0005**, Invoice Summary by On-Sale Contract, dated 22 December 2017, p. 1.

12	50,000,000.00	26,500,000.00	26,500,000.00	0
13	4,548,570.00	30,009,444.10	593,444.10	29,416,000.00
Total	**643,314,360.00**	**643,605,988.52**	**266,779,484.10**	**376,826,504.40**

32. This Invoice Summary does not specify how the funds would be allocated to services and goods, but merely and internally allocates sums to each contract for both AEnergy and GE. This lack of detail hindered transparency and accountability. In fact, while maintaining the total amount of the withdrawal, this internal, separate and distinct allocation allowed AEnergy to use the Facility Agreement to pay GE the Four Unsolicited Turbines not included in the scope of the 13 Contracts.

33. *Second*, although the 13 Contracts only covered the purchase of eight turbines, Fake Letters were created in October 2017 to enable the inclusion of the Four Unsolicited Turbines in the withdrawals from the Facility Agreement.

34. The facts related to the Fake Letters, which will be described below, make up a murky story in which the Respondent has not been involved. These facts are almost entirely based on the allegations made by the Claimant in the U.S. proceedings.

35. According to the Claimant, prior to the signing of the 13 Contracts, AEnergy voluntarily agreed to purchase 14 turbines from GE between June 2016 and June 2017.[19] However, the 13 Contracts signed between AEnergy and MINEA only provided for the acquisition of eight turbines.[20]

36. AEnergy claims that despite this, GE somehow believed that the 13 Contracts covered 12 turbines and therefore the Facility Agreement would allow the purchase of 12 turbines, with the MINEA likely purchasing two more, totaling 14 turbines.[21] AEnergy argues that GE's senior executives only discovered that MINEA had agreed to buy only eight turbines after the Facility

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19 Request for Arbitration, p. 7, § 29.

20 Request for Arbitration, p. 6, § 27.

21 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, § 77.

Agreement was signed.[22] Therefore, AEnergy had a surplus of 6 turbines in stock that it needed to sell.

37. AEnergy contends that upon discovering the discrepancy, GE asked for help to resolve it. Specifically, GE requested AEnergy to find a way to sell the additional turbines to Angola, beyond the eight covered by the 13 Contracts. AEnergy asserts that GE pressured them to address GE's short-term needs, insisting it would benefit AEnergy in the long run due to their commercial partnership.[23]

38. AEnergy argues that it decided to cooperate with GE and began negotiating with MINEA to include the additional turbines in the scope of the 13 Contracts covered by the Facility Agreement.[24]

39. On 12 October 2017, Empresa Nacional de Distribuição de Eletricidade ("**ENDE**") and Empresa Pública de Produção de Eletricidade ("**PRODEL**") (together "**Angolan SOEs**") responded to AEnergy's requests for the inclusion of the Four Unsolicited Turbines. The Angolan SOEs stated in two letters that they would consider the proposed amendment to two existing projects (two additional turbines in Contract 7 and two additional turbines in Contract 11) ("the "**Non-Binding Letters**"). However, ENDE and PRODEL stressed that any purchase would be subject to completing a technical analysis and satisfying certain legal requirements necessary to amend the scope of the work.[25]

40. According to AEnergy, the Non-Binding Letters did not reflect the proposed text that GE and GE Capital wanted. Allegedly, GE wanted the letters to reflect that ENDE and PRODEL would unconditionally agree to take Four Unsolicited Turbines in exchange for a reduction of services

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22 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, § 83.

23 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, § 91.

24 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, § 92.

25 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, §§ 101-102; **R-0007**, ENDE's letter, dated 12 October 2017; **R-0008**, PRODEL's letter, dated 12 October 2017.

under Contracts 7 and 11.[26]

41. AEnergy claims that on 12 October 2017, GE employees, directed by Mr Wilson da Costa, secretly photoshopped those letters to fake ENDE's and PRODEL's agreement to amend the 13 Contracts and buy the Four Unsolicited Turbines. According to AEnergy, Mr Wilson da Costa and other GE employees had then passed the Fake Letters on internally at GE, by email, and used them to support GE's financial and accounting objectives (thus earning Mr Wilson da Costa a promotion and a sizeable bonus at the end of 2017).[27]

42. AEnergy further claims that at the time, the Fake Letters were sent by email to an AEnergy employee who was in AEnergy's offices in Luanda.[28] In this regard, GE took the position that this employee counter-signed the Fake Letters.[29] However, the AEnergy employee denied this assertion, stating that he was not involved in the creation or use of the Fake Letters.[30] Additionally, AEnergy claimed that it was also unaware of them and asserted that neither the company nor any of its employees were involved.[31] Be that as it may, the fact is that the Fake Letters contain the signature of AEnergy's employee: Pedro Bento.[32]

43. Moreover, one cannot deny that the Fake Letters served the interests of AEnergy and GE, as they falsely indicated that the supply of the Four Unsolicited Turbines was authorized and that the contracts had been modified accordingly. This allowed for their payment to be covered by

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26 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, § 102.

27 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, §§ 104-105, 107-108 and 127; **R-0009**, ENDE's Fake Letter, dated 12 October 2017; **R-0010**, PRODEL's Fake Letter, dated 12 October 2017.

28 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, § 106.

29 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, § 106.

30 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, § 106.

31 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, § 111.

32 **R-0009**, ENDE's Fake Letter, dated 12 October 2017; **R-0010**, PRODEL's Fake Letter, dated 12 October 2017.

the Facility Agreement.

44. While claiming ignorance about the forgery of the letters, AEnergy acknowledged that it received "word" from GE on 13 October 2017, reporting that the amendments to the contracts were duly signed.[33] AEnergy claimed that it interpreted that the Non-Binding Letters "*were sufficient for GE's purposes*".[34]

45. This allegation does not withstand scrutiny. If one were to believe AEnergy's theory, no further negotiations were needed to amend the contracts. However, the truth is that AEnergy continued trying to convince the Respondent to amend the contracts and include the Four Unsolicited Turbines in their scope.

46. On 9 August 2018, MINEA held an in-person meeting with AEnergy and Mr Wilson da Costa. During the meeting, MINEA informed that it would not amend the 13 Contracts. Specifically, MINEA clarified that (i) it was not willing to reduce the scope of services in Contracts 7 and 11; and (ii) it wanted AEnergy to complete all the works and services outlined in these contracts, as per the approved and paid invoices under the Facility Agreement.[35]

47. Consequently, whoever forged the Fake Letters still needed to justify the use of the Facility Agreement to buy the Four Unsolicited Turbines.

48. AEnergy and MINEA discussed various scenarios, and the Claimant ended up proposing an amendment to Contract 6, which was a five-year contract for the provision of services in a power facility. In accordance with this proposal, Angola would reduce the scope of Contract 6 by approximately USD 154 million and would use the credit to purchase four turbines.[36]

49. If AEnergy managed to convince ENDE and PRODEL to amend the contracts, then the content of

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33 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, § 112.

34 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, § 112.

35 **R-0011**, Minutes of Meeting, dated 9 August 2017.

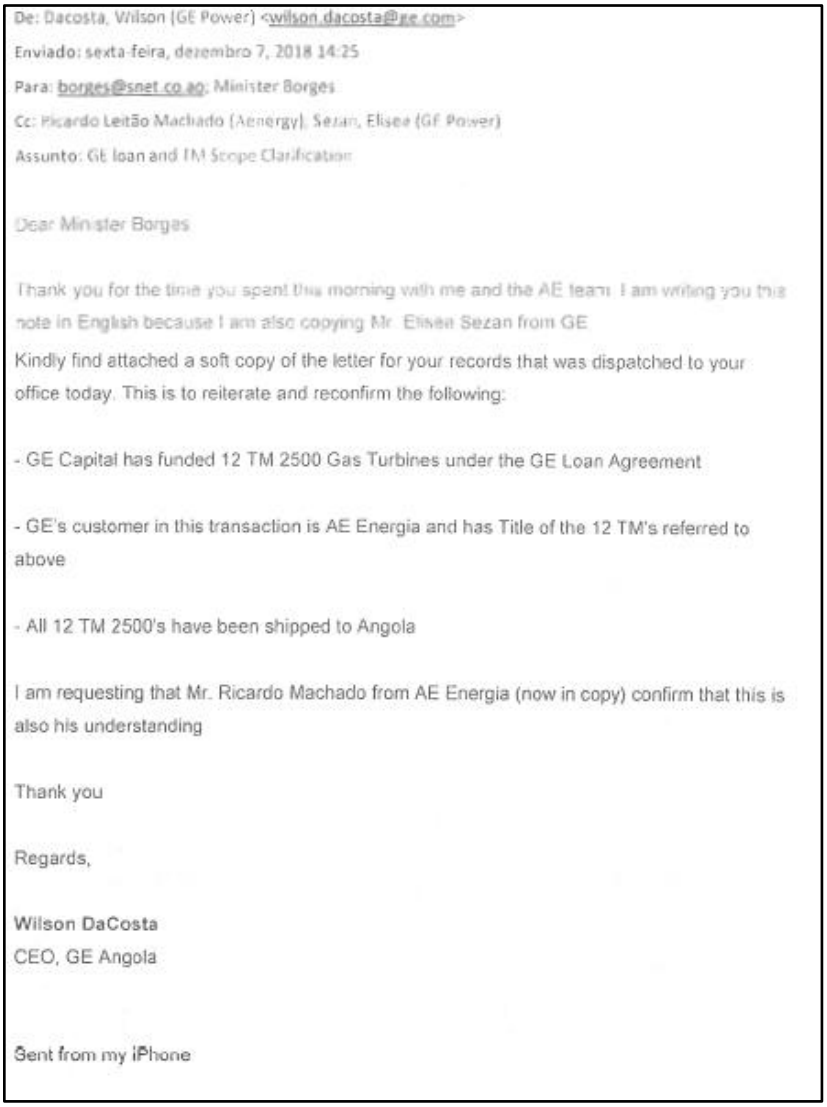
36 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, § 134.

the Fake Letters would become real (although the forgery would remain an inexcusable behavior).

50. On 5 and 7 December 2018, there were meetings between MINEA, AEnergy, and GE to discuss the amendment to Contract 6, among other things. However, according to AEnergy, things started to unravel when GE's representative, Mr Wilson da Costa, claimed that Angola had already paid AEnergy for the Four Unsolicited Turbines through the December 2017 withdrawal, as the contracts had already been amended. To the Respondent's utter surprise, he showed Angola's representatives the Fake Letters dated 12 October 2017 on his mobile phone.[37]

[37] **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, § 141.

51. On 7 December 2018, Mr Wilson da Costa sent an email to MINEA on behalf of GE Power. He reaffirmed that GE Capital financed 12 turbines under the Facility Agreement, that AEnergy acquired these turbines, and that they were shipped to Angola:[38]



De: Dacosta, Wilson (GE Power) <wilson.dacosta@ge.com>
Enviado: sexta-feira, dezembro 7, 2018 14:25
Para: borges@snet.co.ao; Minister Borges
Cc: Ricardo Leitão Machado (AEnergy); Sezan, Elisee (GE Power)
Assunto: GE loan and TM Scope Clarification

Dear Minister Borges

Thank you for the time you spent this morning with me and the AE team. I am writing you this note in English because I am also copying Mr. Elisee Sezan from GE

Kindly find attached a soft copy of the letter for your records that was dispatched to your office today. This is to reiterate and reconfirm the following:

- GE Capital has funded 12 TM 2500 Gas Turbines under the GE Loan Agreement

- GE's customer in this transaction is AE Energia and has Title of the 12 TM's referred to above

- All 12 TM 2500's have been shipped to Angola

I am requesting that Mr. Ricardo Machado from AE Energia (now in copy) confirm that this is also his understanding

Thank you

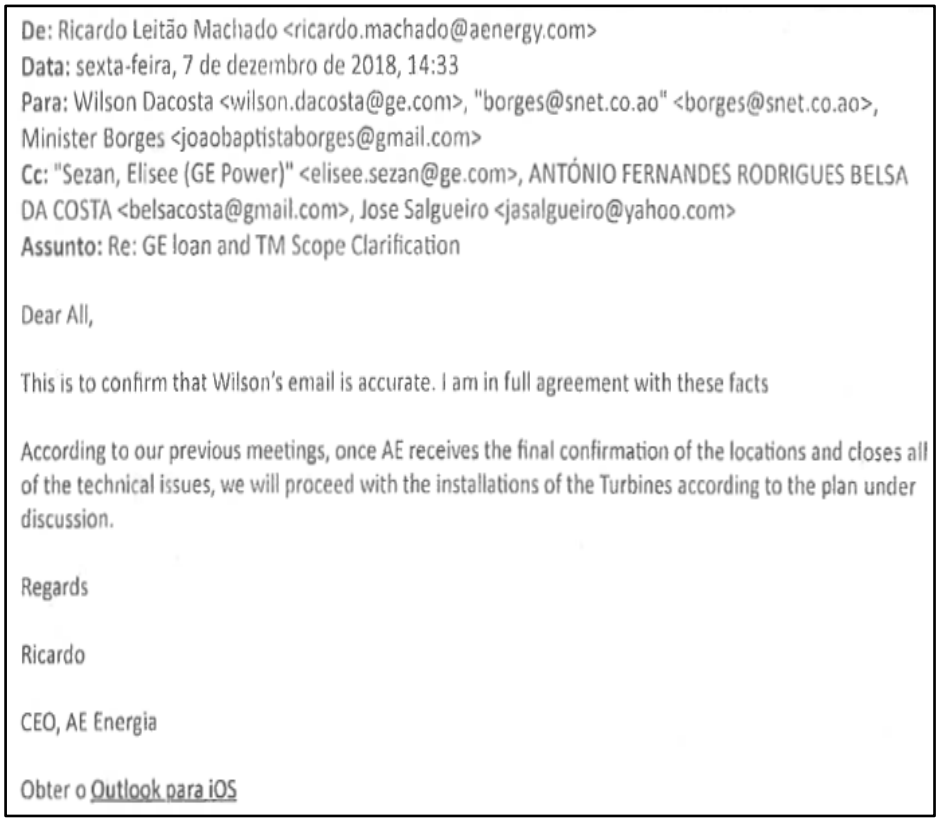
Regards,

Wilson DaCosta
CEO, GE Angola

Sent from my iPhone

[38] **R-0012**, Emails exchanged between GE Power (Wilson da Costa), AEnergy (Ricardo Machado) and MINEA, between 07.12.2018 and 17.12.2018.

52. As shown below, the Claimant confirmed this version in an email dated 7 December 2018. The email, addressed to Mr Wilson da Costa and the Minister of Energy and Water, stated that Mr Wilson da Costa's statements were correct and expressed full agreement with the stated facts: the turbines had been paid for and would be delivered to the State.[39]



De: Ricardo Leitão Machado <ricardo.machado@aenergy.com>
Data: sexta-feira, 7 de dezembro de 2018, 14:33
Para: Wilson Dacosta <wilson.dacosta@ge.com>, "borges@snet.co.ao" <borges@snet.co.ao>, Minister Borges <joaobaptistaborges@gmail.com>
Cc: "Sezan, Elisee (GE Power)" <elisee.sezan@ge.com>, ANTÓNIO FERNANDES RODRIGUES BELSA DA COSTA <belsacosta@gmail.com>, Jose Salgueiro <jasalgueiro@yahoo.com>
Assunto: Re: GE loan and TM Scope Clarification

Dear All,

This is to confirm that Wilson's email is accurate. I am in full agreement with these facts

According to our previous meetings, once AE receives the final confirmation of the locations and closes all of the technical issues, we will proceed with the installations of the Turbines according to the plan under discussion.

Regards

Ricardo

CEO, AE Energia

Obter o Outlook para iOS

53. Ten days after acknowledging the truth of Mr Wilson da Costa's statements, the Claimant attempted to retract. In an email dated 17 December 2018, the Claimant argued that it was GE who included the 12 turbines in the scope of the GE Capital financing without their consent, based on the Non-Binding Letters from October 2017.[40]

54. After learning the above-mentioned facts, the Respondent issued a presidential decree on 23

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39 **R-0012**, Emails exchanged between GE Power (Wilson da Costa), AEnergy (Ricardo Machado) and MINEA, between 07.12.2018 and 17.12.2018.

40 **R-0012**, Emails exchanged between GE Power (Wilson da Costa), AEnergy (Ricardo Machado) and MINEA, between 07.12.2018 and 17.12.2018.

August 2019, authorizing MINEA to terminate the 13 Contracts.[41] On 2 September 2019, MINEA sent a letter to AEnergy announcing their termination due to the misuse of financing without their prior consent, which violated principles of good faith and contractual trust.[42]

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55. In sum, the Four Unsolicited Turbines were unduly funded by the Facility Agreement. This was possible due to AEnergy's and GE's lack of transparency and accountability in the allocation of the funding provided under the December 2017 withdrawal and the Fake Letters from October 2017. Deceived and manipulated, the Respondent lawfully decided to terminate all 13 Contracts for breach of good faith and contractual trust.

2.3. The Respondent Filed Proceedings in Angola to Determine Ownership and Prevent Deterioration or Sale of the Four Unsolicited Turbines

56. As stated by the Claimant, on 4 October 2019, the Respondent initiated a preventive seizure proceeding against AEnergy, requesting an *ex-parte* seizure of the Four Unsolicited Turbines stored in AEnergy's warehouse in Viana-Luanda ("**Preventive Seizure Proceedings**").[43]

57. The Claimant asserts that the preventive seizure request was based on "alleged irregularities that Aenergy might have committed within the context of GE Capital's loan to Angola."[44]

58. In the Respondent's request for seizure, it is alleged that AEnergy paid for the Four Unsolicited Turbines using GE Capital financing to benefit the Respondent, but without formal authorization. The Respondent argued that MINEA ratified AEnergy's actions by expressing a desire to retain the turbines and credit AEnergy. If the Court does not agree with this, the Request for Seizure should be considered a ratification of AEnergy's actions. The Respondent also argued that this

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41 Request for Arbitration, p. 7, § 31; **C-11**, Presidential Order No. 155/19, 23 August 2019.

42 **R-0013**, Termination letter, dated 2 September 2019.

43 Request for Arbitration, p. 8, § 34, **C-15**, Statement of Claim regarding the seizure of the 4 turbines, dated 4 October 2019.

44 Request for Arbitration, p. 8, § 34 (unofficial translation).

ratification transferred ownership of the Four Unsolicited Turbines to the Respondent.[45]

59. Furthermore, the Four Unsolicited Turbines were at significant risk due to AEnergy's financial instability, overdue payments, and potential asset liquidation. As easily movable goods, the turbines were vulnerable to being quickly sold or relocated. Immediate seizure without prior hearing of AEnergy was deemed necessary to prevent their loss and ensure their availability for judicial confirmation of the State's right.[46]

60. Lastly, the Respondent also requested that either the State or MINEA be appointed as trustees of the seized goods, or alternatively the Angola's Institute for the Management of the State's Assets and Shares ("**IGAPE**").[47]

61. On 5 December 2019, the Provincial Court of Luanda, in *ex parte* proceedings, ordered the preventive seizure of the Four Unsolicited Turbines and other equipment, appointing IGAPE ("**Trustee**") as the Trustee of the turbines.[48]

62. The Court based its decision on multiple findings under Angolan law that align with international standards, specifically *fumus boni iuris* (likelihood of a valid claim) and *periculum in mora* (urgency and the risk of irreparable or substantial harm).[49]

63. Regarding the *fumus boni iuris* requirement, the Court established that, *prima facie*, the existence of a debt from AEnergy to the Respondent was proven, as the records showed that AEnergy acknowledged such debt. The Court found, based on documents and the hearing, that AEnergy intermediated the purchase of turbines using GE Capital financing, but MINEA was

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45 **C-15**, Statement of Claim regarding the seizure of the 4 turbines, dated 4 October 2019, §§ 41-47.

46 **C-15**, Statement of Claim regarding the seizure of the 4 turbines, dated 4 October 2019, §§ 67-82.

47 **C-15**, Statement of Claim regarding the seizure of the 4 turbines, dated 4 October 2019, p. 17 (Original version) and p. 34 (English translation).

48 **C-17**, Judgment of the Provincial Court of Luanda on the freezing of Anergy's four turbines, dated 5 December 2019, p. 15 (Original version) and p. 31 (English translation).

49 **C-17**, Judgment of the Provincial Court of Luanda on the freezing of Anergy's four turbines, dated 5 December 2019, pp. 12-13 (Original version) and pp. 28-29 (English translation).

unaware that the turbines had been paid for with such financing.[50] When approached by the Respondent, AEnergy acknowledged that it had proceeded in this manner. Meetings were held to facilitate the return of the Four Unsolicited Turbines, but since the judgment was rendered, AEnergy had either refused to deliver them or remained silent.[51]

64. Regarding the *periculum in mora* requirement, the Court found a clear risk of irreparable harm to Angola's assets. The Court noted that (i) the high value of the turbines and their need for special care during prolonged inactivity to prevent deterioration increased the risk of damage; and (ii) failing to protect the current situation could render the decision in the main action ineffective.[52]

65. On 9 December 2019, the Four Unsolicited Turbines were seized and removed from AEnergy's warehouse.[53]

66. On 2 March 2020, Angola initiated declaratory proceedings against AEnergy ("**Main Action**"), requesting (i) the recognition of the State's ownership right over the Four Unsolicited Turbines as well as goods removed from them; (ii) an order for AEnergy to deliver the seized and non-seized goods to the Angolan State; and (iii) compensation for damages in an amount to be determined by the Court. Subsidiarily, the Angolan State requested the return of the amount paid to AEnergy under the Facility Agreement, which shall be no less than USD 100,000,000.00.[54]

67. In these proceedings, the Respondent reiterated the claims made during the Preventive Seizure Proceedings, noting that since the Respondent paid for the Four Unsolicited Turbines, AEnergy had already received payment. And in the unlikely event that ownership was not confirmed,

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50 **C-17**, Judgment of the Provincial Court of Luanda on the freezing of Anergy's four turbines, dated 5 December 2019, pp. 12-13 (Original version) and pp. 28-29 (English translation).

51 **C-17**, Judgment of the Provincial Court of Luanda on the freezing of Anergy's four turbines, dated 5 December 2019, pp. 12-13 (Original version) and p. 29-30 (English translation).

52 **C-17**, Judgment of the Provincial Court of Luanda on the freezing of Anergy's four turbines, dated 5 December 2019, p. 14 (Original version) and p. 30 (English translation).

53 **C-18**, Ruling of the Provincial Court of Luanda on the freezing of AEnergy's four turbines, dated 6 December 2019; **R-0014**, Term of delivery, dated 9 December 2019.

54 **C-19**, Statement of Claim in the Declaratory Proceedings, 2 March 2020.

AEnergy owed the State the amount paid for the Four Unsolicited Turbines.[55]

68. On 27 September 2020, AEnergy filed its Statement of Defence on the Main Action. AEnergy claimed, among other things, that it did not represent the Respondent in the management of its business or in any other capacity. Instead, AEnergy had purchased the Four Unsolicited Turbines for itself, as a future investment for potential resale to the Respondent.[56]

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69. In short, the Respondent sought a court declaration due to the dispute over the ownership of the Four Unsolicited Turbines. The Respondent argued that AEnergy initially acted on its behalf without consent, but the act was subsequently ratified, making the Respondent the rightful owner of the turbines. To prevent irreparable harm from potential sale and deterioration of the turbines, the Respondent requested their seizure, ensuring they were placed with a trustee.

70. As the Respondent will demonstrate below, unhappy with the seizure of the Four Unsolicited Turbines, AEnergy began a harassment campaign against Angola in US courts, presenting legal and factual arguments that contradict those made in these arbitration proceedings.

2.4. The Claimant alleged before US courts that the Four Unsolicited Turbines were expropriated without due process prior to December 2021

71. In the Request for Arbitration, the Claimant states that the Respondent, through MINEA, physically took possession of the Four Unsolicited Turbines and transported them to various power plants across the country, where they were installed permanently during 2022, as if they were the Respondent's property.[57]

72. However, the Respondent will demonstrate that the Claimant initiated lawsuits in US courts alleging that these same Four Unsolicited Turbines had already been expropriated without due process based on events that occurred before December 2021.

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55 **C-19**, Statement of Claim in the Declaratory Proceedings, dated 7 May 2020, §§ 48-60 and § 89.

56 **R-0015**, Statement of Defence in the Declaratory Proceedings, dated 27 September 2020, §§ 29 and 420.

57 Request for Arbitration, p. 1, § 5.

73. First, the Claimant filed a civil complaint before the District Court for the Southern District of New York ("**SDNY**") (the "**NY Complaint**"), alleging initially that the Four Unsolicited Turbines were expropriated without due process when Angolan authorities took all AEnegry's property in December 2019. In a second pleading it claimed that the Four Unsolicited Turbines were expropriated by Presidential Decree 155/19. After the NY Complaint was dismissed on the grounds of *forum non conveniens*, the Claimant, in a volte-face, appealed the decision, asserting that the Respondent expropriated the Four Unsolicited Turbines when they were connected into the national grid in May/June 2021, with the collusion of the Angolan Court and the Trustee. This appeal was also dismissed (**Section 2.4.1.**).

74. After losing in New York, the Claimant tried its luck in the District Court of Columbia, once again alleging that the Respondent expropriated the Four Unsolicited Turbines without due process when they were connected into the grid with the collusion of the Angolan Court and the Trustee in May/June 2021. Even after the District Court of Columbia dismissed the case on the grounds of *forum non conveniens*, the Claimant appealed the decision. These proceedings are still pending (**Section 2.4.2.**).

2.4.1. The Claimant Alleged Before New York Courts that the Four Unsolicited Turbines Were Expropriated Without Due Process Prior to December 2021

75. Following Angola's filing of the Main Action with the Angolan Courts, on 7 May 2020, AEnergy and Combined Cycle Power Plant Soyo, S.A. brought an action against the Respondent, PRODEL, ENDE and GE in the SDNY. The Claimant, through its companies, alleged that Angola unlawfully expropriated AEnergy's property without due process. Regarding GE, the Claimant alleged that GE tortiously interfered with the contracts and prospective business relations. AEnergy claimed damages from the Respondent and GE.[58]

76. AEnergy's NY Complaint included a Chapter (IV) entitled "Angola Expropriates AE's Property in Violation of International Law." In that chapter AEnergy claimed that, in 2019, Angola escalated its control over its Four Unsolicited Turbines by initiating an abusive *ex parte* preventive seizure

[58] **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, see Counts one to eight, pp. 71-82.

proceeding before the Luanda Provincial Court.[59]

77. Additionally, AEnergy asserted that Angolan authorities "showed up at AE's warehouses, with the police, and took all the property that was there, including not just the turbines, but also spare small engines, oil, equipment, parts, etc".[60]

78. AEnergy concluded that:

a. as of the time of the filing of the NY Complaint, it has been entirely deprived of the control, use, and economic value of the Four Unsolicited Turbines, without compensation;[61] and

b. the property of the Four Unsolicited Turbines was taken arbitrarily and without due process, by means of an illegal, corruptive and abusive *ex-parte* preventive seizure proceeding designed to brush over the *de facto* expropriation, which followed the illegal termination of the 13 Contracts.[62]

79. The Respondent and GE submitted a motion to dismiss on the grounds, among others, that the Court should exercise its power under the doctrine of *forum non conveniens* and dismiss the case in favour of a more convenient forum.[63]

80. On 2 November 2020, AEnergy submitted its Memorandum of Law in Opposition to the Defendants' Motion to Dismiss. As described above, in its complaint, AEnergy had claimed that the expropriation occurred with the taking of their property by the police. However, in this

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59 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, p. 64, § 212 and Count four, pp. 75-77.

60 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, p. 65, § 216.

61 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, May 2020, p. 65, § 216.

62 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, pp. 65-66, §§ 219 and Count four, pp. 75-77.

63 **R-0016**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Opinion and Order Southern District of New York, 19 May 2021, pp. 1-2.

Memorandum, AEnergy backtracked on its allegation, now claiming that "*the taking occurred by Presidential decree and when MINEA declared, on behalf of PRODEL and ENDE, that it 'holds the property' and would repossess the turbines 'unlawfully' being held by AE*"[64]. In AEnergy's view, the Presidential decree is an executive action that unilaterally and discriminatorily declared ownership over the Four Unsolicited Turbines. [65]

81. On 19 May 2021, the SDNY dismissed AEnergy's NY Complaint based on the doctrine of *forum non conveniens* ("**First American Decision**"). The Court noted that AEnergy was unsuccessful in the Angolan proceedings and subsequently filed a suit with the SDNY, which appears to be an instance of forum shopping. The SDNY considered that this type of tactical manoeuvre is not protected by the deference generally afforded to a plaintiff's choice of forum.[66]

82. Furthermore, the SDNY assessed whether Angola is a suitable alternative forum by examining AEnergy's claims of procedural inadequacies and corruption in the Angolan judicial system. The SDNY rejected AEnergy's allegations by noting that U.S. courts also hold *ex parte* hearings in similar situations. Moreover, the SDNY noted that AEnergy's litigation in Angolan courts had not been unreasonably delayed. And that other branches of the Angolan government had already rejected AEnergy's claims. Additionally, the SDNY criticized AEnergy for selectively citing reports on political influence in Angola's judicial system, noting that these reports also state that the courts base their judgments on legislation, and the Angolan constitution guarantees judicial independence.[67]

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64 **R-0017**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss, 2 November 2020, pp. 32-33.

65 **R-0017**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss, 2 November 2020, p. 30.

66 **R-0016**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Opinion and Order Southern District of New York, 19 May 2021, pp. 2, 19 and 24.

67 **R-0016**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Opinion and Order Southern District of New York, 19 May 2021, pp. 27-30.

83. On 8 September 2021, the Claimant's companies appealed the decision.[68] In this appeal, AEnergy raised several questions, one of which was: "*Do foreign courts provide an adequate alternative forum if (…) the foreign courts are alleged to have participated in an expropriation violating international law?*"[69]

84. To support its claim that Angolan courts would not provide due process, AEnergy argued that in June 2020, the Angolan court refused to consider AEnergy's evidence or set aside the *ex parte* order, disregarding its own appeal rules, due process, and international law.[70]

85. Moreover, AEnergy argued that days after the First American Decision dated 19 May 2021, the seized turbines were moved by Angolan-state-owned utilities to power plant sites and were connected to the power grid.[71] AEnergy concluded that the First American Decision considered only the temporary possession of the Four Unsolicited Turbines by Angola, but that the deployment of the goods via the Angolan judiciary "*cement*[ed] *Angola's control over expropriated turbines*".[72]

86. In sum, AEnergy argued again that Angolan courts violated international law through a sham proceeding that made Angola's expropriation permanent and that these allegations should be

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68 **R-0018**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case No. 21-1510-CV and Case No. 21-1752-Cv, Brief on Appeal from the United States District Court for the Southern District of New York, 8 September 2021.

69 **R-0018**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case No. 21-1510-CV and Case No. 21-1752-Cv, Brief on Appeal from the United States District Court for the Southern District of New York, 8 September 2021, p. 2, § 4.

70 **R-0018**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case No. 21-1510-CV and Case No. 21-1752-Cv, Brief on Appeal from the United States District Court for the Southern District of New York, 8 September 2021, p. 9.

71 **R-0018**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case No. 21-1510-CV and Case No. 21-1752-Cv, Brief on Appeal from the United States District Court for the Southern District of New York, 8 September 2021, p. 9.

72 **R-0018**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case No. 21-1510-CV and Case No. 21-1752-Cv, Brief on Appeal from the United States District Court for the Southern District of New York, 8 September 2021, pp. 43-45.

accepted by the US courts.[73]

87. At the risk of stating the obvious, AEnergy's arguments of expropriation and violation of due process all relate to events prior to June 2021, at least 6 months before the entry into force of the Amended Version of the Angola-Portugal BIT ("**Amended Version of the Angola-Portugal BIT**" or ("**Amended Version of the BIT**"), as will be discussed in detail below.

88. On 13 April 2022, the Court of Appeals for the Second Circuit confirmed the First American Decision which dismissed AEnergy's NY Complaint (the "**Second American Decision**"). Regarding forum shopping, the District Court determined that AEnergy sought a tactical advantage in New York, as AEnergy initially chose Angola to litigate and had not been successful in those Angolan proceedings. Regarding due process issues, the Court of Appeal reaffirmed that American courts also hold *ex parte* hearings under appropriate circumstances. It also highlighted that it was undisputed that the Angolan court had only ordered a preliminary relief, and that the permanent relief is currently being addressed in the Main Action, an adversary proceeding. The Court also noted that AEnergy does not dispute the independence of the Angolan judiciary from the executive branch.[74]

89. Unrelentingly, on 14 November 2022, the Claimant's companies sought certiorari review by the United States Supreme Court. However, this petition was to no avail, as the Supreme Court denied the petition for writ of certiorari on 9 January 2023 ("**Third American Decision**").[75]

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90. In sum, AEnergy alleged expropriation without due process in the U.S. proceedings based on several different events, changing its position along the way. Tellingly, as Section 3 will demonstrate, all the alleged facts occurred before the Amended Version of the Angola-Portugal

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73 **R-0018**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case No. 21-1510-CV and Case No. 21-1752-Cv, Brief on Appeal from the United States District Court for the Southern District of New York, 8 September 2021, p. 43.

74. **R-0019**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case No. 21-1510-CV and Case No. 21-1752-CV, Decision on the Appeal, 13 April 2022, pp. 19-22.

75 **R-0020**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Memorandum of Points and Authorities in Support of the Angolan Defendants' motion to dismiss, 25 January 2023, p. 9.

BIT came into force.

2.4.2. The Claimant also alleged that the Four Unsolicited Turbines were expropriated without due process prior to December 2021 before the District of Columbia's Courts

91. After losing in New York courts, AEnergy filed a new "debt collection case" on 22 August 2022, before the District Court of Columbia (the "**Columbia Complaint**"). This lawsuit was only brought against the Republic of Angola, ENDE and PRODEL, and is based on the unilateral termination of the 13 Contracts that would allegedly have led to unpaid work and supplies.[76-77]

92. AEnergy rehashed its case to argue that the New York courts never addressed whether the claims could be brought in Angola. AEnergy asserted that no other forums were available since a 180-business-day procedural limitation period for filing such claims in Angola had already expired.[78]

93. Moreover, AEnergy acknowledged that the Second American Decision upheld the *forum non conveniens* dismissal from the First American Decision but argued that significant events had occurred since then. While the SDNY had determined the claims were more suitable for an Angolan court, AEnergy claimed that Angola originally argued the turbines were taken temporarily during litigation. However, AEnergy contends that after the First American Decision, Angola permanently connected the turbines to the power grid, as allegedly announced on 18 March 2022.[79]

94. On 25 January 2023, the Respondent submitted its Motion to Dismiss, claiming, among other things, that AEnergy's claim was precluded due to the decisions in the New York courts, i.e.,

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76 **R-0021**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Complaint, 22 August 2022, pp. 1-2, § 1.

77 Simultaneously with initiation of this action, AEnergy filed three complaint cases against General Electric for claims arising from the same transactions. See Cases No. 3:22-CV-1055, District Court of Connecticut; AEnergy v. GE Capital EFS Financing, Inc., Case No. 3: 22-cv-1054, District of Connecticut; and AEnergy v. General Electric Company, 0653025/2022, New York Supreme Court.

78 **R-0021**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Complaint, 22 August 2022, p. 3, § 5.

79 **R-0021**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Complaint, 22 August 2022, pp. 2-3 and 16-17, §§ 3-4 and 52.

collateral estoppel is applicable.[80]

95. On 15 February 2023, AEnergy submitted an Amended Complaint (the "**Amended Columbia Complaint**") for no apparent reason, again claiming that significant events had occurred since the New York decisions. AEnergy argued that, after the SDNY proceedings were dismissed, Angola permanently took possession of the Four Unsolicited Turbines by transferring them from the Angolan court-appointed Trustee to PRODEL, which installed them into the power grid in June 2021.[81]

96. Moreover, AEnergy acknowledged that Angola informed them that (i) the turbines were being used to generate electricity for the population in need, and (ii) keeping them active with proper maintenance would prevent deterioration that would occur if they remained inactive. All of this was done in accordance with Angolan law.[82]

97. Once again, all relevant events occurred before the Amended Version of the Angola-Portugal BIT came into effect.

98. On 8 March 2023, Angola requested the District Court of Columbia to stop AEnergy's persistent forum shopping. It also noted that the SDNY and the Second Circuit had already dismissed AEnergy's identical claim based on *forum non conveniens*.[83]

99. Angola further explained that the Angolan judiciary placed the Four Unsolicited Turbines in the temporary possession of a court-appointed Trustee to secure and preserve these goods pending adjudication of the parties' rights therein. Consequently, that order had not transferred any title to the property from AEnergy to the Angolan government. Lastly, Angola demonstrated that the

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80 **R-0020**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Memorandum of Points and Authorities in Support of the Angolan Defendants' motion to dismiss, 25 January 2023, pp. 21-24.

81 **R-0022**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, First Amended Complaint, 15 February 2023, pp. 3-4, § 6.

82 **R-0022**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, First Amended Complaint, 15 February 2023, p. 24, § 63. **C-016**, Angola's Answer to the Notice of Dispute of Mr. Machado, p. 5, § 25 (Original version) and p. 13, § 25 (English translation).

83 **R-0023**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Memorandum of Points and Authorities in Support of the Angolan Defendants' motion to dismiss plaintiff's first amended complaint, 8 March 2023, pp. 1-2.

Trustee had the authority to deploy and use the assets under its trustee to prevent their waste or dissipation. Accordingly, and with the approval of the attorney general, the Trustee determined that connecting these turbines to the grid in Angola was a necessary measure to prevent their deterioration.[84]

100. On 20 June 2023, the District Court of Columbia dismissed the Claimant's case ("**Fourth American Decision**"), concluding that AEnergy's new factual allegations were not materially different from those that determined the outcome of the NY Complaint.[85]

101. AEnergy's harassment tactics did not end here. On 18 July 2023, AEnergy filed a Motion for Reconsideration with the same legal trivialities.[86] On 1 August 2023, Angola had to submit its opposition,[87] and the court dismissed the motion for reconsideration on 27 October 2023 ("**Fifth American Decision**").[88] Not satisfied with its clear defeat, on 4 March 2024, AEnergy filed an appeal.[89] On 3 April 2024, Angola submitted its counterarguments,[90] and on 24 April 2024, AEnergy filed a reply.[91] The case is pending a decision.

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84 **R-0023**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Memorandum of Points and Authorities in Support of the Angolan Defendants' motion to dismiss plaintiff's first amended complaint, 8 March 2023, pp. 8-9, based on Mr Henrique Abecasis declarations in **R-0024**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Supplemental Declaration of Henrique Abecasis in Support of the Angolan Defendants' Motion to Dismiss Plaintiff's First Amended Complaint, 8 March 2023, p. 2, §§ 7-9.

85 **R-0025**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Memorandum of Opinion, 20 June 2023, pp. 1 and 8.

86 **R-0026**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, AE's Motion for Reconsideration, 18 July 2023.

87 **R-0027**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Angola's Opposition to Motion for Reconsideration, 1 August 2023.

88 **R-0028**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Order, 27 October 2023.

89 **R-0029**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 23-7160, AE's Brief for Plaintiff-Appellant on Appeal from the United States District Court for the District of Columbia, 4 March 2024.

90 **R-0030**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 23-7160, Angola's Brief for Defendants-Appellees on Appeal from the United States District Court for the District of Columbia, 3 April 2024.

91 **R-0031**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 23-7160, AE's Reply Brief for Plaintiff-Appellant on Appeal from the United States District Court for the District of Columbia, 24 April 2024.

102. In sum, this is a dispute that began in 2019 and involves the ownership of the Four Unsolicited Turbines. On the one hand, GE asserts that Angola paid AEnergy for 12 turbines through the December 2017 Withdrawal. On the other hand, AEnergy claims it is the rightful owner of the disputed assets. Angola, the innocent party in this mess between GE and AEnergy, acted in a diligent matter by seeking a decision from the Angolan courts to finally determine the rightful owner of the Four Unsolicited Turbines, a determination that is currently pending.

103. To prevent the sale of the Four Unsolicited Turbines by AEnergy, the Respondent has sought and obtained their seizure from Angolan courts. To prevent the deterioration of the Four Unsolicited Turbines, the Respondent has sought their temporary deployment into the national power grid, all under the approval of the Trustee and the Attorney General.[92]

104. In a failed attempt to circumvent the rightful Angolan jurisdiction, AEnergy decided to engage in international procedural harassment and filed multiple actions across various U.S. jurisdictions. Consequently, five consecutive U.S. federal decisions have dismissed AEnergy's repeated and identical claims.[93]

105. This approach cannot succeed. As the Claimant acknowledged multiple times and in multiple jurisdictions, all relevant events connected to the Four Unsolicited Turbines occurred well before 22 December 2021. Therefore, it is manifest that the Claimant's claims in this ICSID arbitration lack legal merit and should be dismissed.

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92 **R-0023**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Memorandum of Points and Authorities in Support of the Angolan Defendants' motion to dismiss plaintiff's first amended complaint, 8 March 2023, pp. 8-9, based on Mr Henrique Abecasis declarations in **R-0024**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Supplemental Declaration of Henrique Abecasis in Support of the Angolan Defendants' Motion to Dismiss Plaintiff's First Amended Complaint, 8 March 2023, §§ 7-9.

93 **R-0016**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Opinion and Order Southern District of New York, 19 May 2021; **R-0019**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case No. 21-1510-CV and Case No. 21-1752-CV, Decision on the Appeal, 13 April 2022; **R-0020**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Memorandum of Points and Authorities in Support of the Angolan Defendants' motion to dismiss, 25 January 2023, p. 9; **R-0025**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Memorandum of Opinion, 20 June 2023; and, **R-0028**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Order, 27 October 2023.

3. CLAIMANT'S CLAIMS ARE MANIFESTLY WITHOUT LEGAL MERIT

106. Under Rule 41(1) of the ICSID Arbitration Rules, a party may object to a claim on the grounds that it is manifestly without legal merit. This objection can pertain to the substance of the claim, the jurisdiction of the Centre, or the competence of the Tribunal. Its purpose is to enhance procedural efficiency and prevent the abusive use of the ICSID system by allowing the tribunal "*the early dismissal of patently unmeritorious claims*".[94]

107. The dismissal of claims pursuant to Rule 41 of the ICSID Arbitration Rules requires the fulfilment of two requirements. The claim must be: (i) manifestly without (ii) legal merit.

108. *First*, the term "*manifest*" is defined as an objection that is clear and obvious, which does not equate to being simple.

109. This definition was established in the Trans-Global v. Jordan case where the tribunal concluded that "*the ordinary meaning of the word requires respondent to establish its objection clearly and obviously, with relative ease and dispatch*".[95] This characterization of the term "*manifest*" has been followed by subsequent ICSID tribunals.[96] Similarly, the AHG Industry v. Iraq tribunal found that the "*manifest*" threshold is met "*if it appears that the Claimant has no tenable arguable case and that the absence of legal merit in each of the Claimant's claims to jurisdiction is clear and obvious*". In that case, the tribunal found that it manifestly lacked jurisdiction because the Iraq-Germany BIT had not entered into force, and because all the other grounds alleged by *AHG*

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94 **RL-0001**, ANTONIO R. PARRA, *The Development of the Regulations and Rules of the International Centre for Settlement of Investment Disputes*, ICSID Review – Foreign Investment Law Journal, Volume 22, Issue 1, p. 65; **RL-0002**, *Fengzhen Min v. Republic of Korea*, ICSID Case No. ARB/20/26, Decision on the Respondent's Preliminary Objection Pursuant Rule 41(5) of the ICSID Arbitration Rules, 18 June 2021, p. 24, § 73.

95 **RL-0003**, *Trans-Global Petroleum, Inc v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25, Tribunal's Decision on the Respondent's Objection Under Rule 41(5) of the ICSID Arbitration Rules, 12 May 2008, pp. 27-29, §§ 83-88.

96 **RL-0004**, *Global Trading Resource Corp. and Globex International, Inc. v. Ukraine*, ICSID Case No. ARB/09/11, Award, 1 December 2010, p. 10, § 35; **RL-0005**, *AHB Industry GmbH&Co.KG v. Republic of Iraq*, ICSID Case No. ARB/20/21, Award on the Respondent's Application Under ICSID Rule 41(5), 30 September 2022, pp. 15-17, § 57; **RL-0002**, *Fengzhen Min v. Republic of Korea*, ICSID Case No. ARB/20/26, Decision on the Respondent's Preliminary Objection Pursuant Rule 41(5) of the ICSID Arbitration Rules, 18 June 2021, p. 23, § 72.

Industry to uphold jurisdiction were manifestly meritless.[97]

110. The *Trans-Global v. Jordan* tribunal further noted that the term "*manifest*" should not be mistaken for "*simple*". This distinction is relevant because investment arbitrations typically deal with complex subjects. In that case, the tribunal concluded by saying that accessing what is "*manifest*" under Rule 41 (1) of the ICSID Arbitration Rules *"may thus be complicated; but it should never be difficult*".[98]

111. In conclusion, as aptly suggested by the tribunal in the *Mainstream v. Germany* case, to meet the "*manifest*" threshold "*the respondent must be able to show the Tribunal that the claim was lost before it left the start line*".[99]

112. *Second*, the wording of Rule 41 of the ICSID Arbitration Rules makes clear that the assessment of the standard for "*legal merit*" is distinct from ruling on the legal merits of the underlying dispute. This is because the objection can pertain to the substance of the claim, the jurisdiction of the Center, or the competence of the tribunal. Therefore, at this stage, the tribunal is not required to assess whether the merit of the dispute is clearly unfounded.

113. Moreover, as noted by the *Trans-Global* tribunal, the term "*legal*" contrasts with "*factual*", meaning that when applying Rule 41(1) arbitral tribunals should focus on the legal bearing of the claims (both in terms of jurisdiction and substance), rather than on their factual basis. The reasoning behind this provision stems from the fact that, at this early stage of the proceeding, tribunals do not yet have enough information to make a definitive decision on the facts of the

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97 **RL-0005**, *AHB Industry GmbH&Co.KG v. Republic of Iraq*, ICSID Case No. ARB/20/21, Award on the Respondent's Application Under ICSID Rule 41(5), 30 September 2022, pp- 70-71, § 225.

98 **RL-0003**, *Trans-Global Petroleum, Inc v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25, Tribunal's Decision on the Respondent's Objection Under Rule 41(5) of the ICSID Arbitration Rules, 12 May 2008, pp. 28-29, § 88.

99 **RL-0006**, *Mainstream Renewable Power Ltd and others v. Federal Republic of Germany*, ICSID Case No. ARB/21/21, Decision on Respondent's Application under ICSID Arbitration Rule 41 (5), 18 January 2022, pp. 27-28, § 96.

case.[100]

114. Hence, to make a legal assessment under Rule 41(1), arbitral tribunals tend to accept the factual premises as alleged by claimants,[101]unless they are "*incredible, frivolous, vexatious or inaccurate or made in bad faith*."[102]

115. The decision in the *Lotus v. Turkmenistan* demonstrates this point. In that case, *Lotus* submitted that the non-payment of sums due under a contract constituted either an expropriation, a breach of the most-favoured-nation clause or a breach of national treatment clauses. The tribunal dismissed these claims because it found that they were purely contractual and that "*the nature of a claim cannot be altered merely by describing it in different terms*."[103]

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116. As the Respondent will now demonstrate, the Claimant's claim meets the "*manifestly without legal merit*" standard under Rule 41 of the ICSID Rules and should be entirely dismissed. Specifically, the BIT does not apply to disputes or claims arising from facts that occurred before 22 December 2021 (**Section 3.1**) and the alleged (but inexistent) expropriation occurred before that date (**Section 3.2**), as did the alleged (but inexistent) unfair and inequitable treatment (**Section 3.3**).

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100 **RL-0003**, *Trans-Global Petroleum, Inc v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25, Tribunal's Decision on the Respondent's Objection Under Rule 41(5) of the ICSID Arbitration Rules, 12 May 2008, p. 31, § 97.

101 **RL-0007**, *Brandes Investment Partners v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/08/3, Decision on the Respondent's Objection Under Rule 41(5) of the ICSID Arbitration Rules, 2 February 2009, p. 7, § 61; **RL-0003**, *Trans-Global Petroleum, Inc v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25, Tribunal's Decision on the Respondent's Objection Under Rule 41(5) of the ICSID Arbitration Rules, 12 May 2008, p. 31, § 97.

102 **RL-0003**, *Trans-Global Petroleum, Inc v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25, Tribunal's Decision on the Respondent's Objection Under Rule 41(5) of the ICSID Arbitration Rules, 12 May 2008, p. 34, § 105; **RL-0008**, The Bank of Nova Scotia v. Peru, ICSID Case No. ARB/22/30, Decision on Respondent's Rule 41 Application, 31 May 2024, pp. 24-25 § 102.

103 **RL-0009**, *Lotus Holding Anonim Şirketi v. Republic of Turkemenistan*, ICSID Case No.ARB/17/30, Award, 6 April 2020, pp. 43, 55 and 56 §§ 171 and 207.

3.1. The Tribunal lacks *ratione temporis* jurisdiction

117. The wording of the Angola-Portugal BIT in combination with the principle of non-retroactivity limits this Tribunal's jurisdiction *ratione temporis*. As a result, both the Claimant's claims should be dismissed.

118. According to the Claimant, his investment (the Four Unsolicited Turbines) was made "*between June 2016 and June 2017*".[104]

119. As also alleged by the Claimant,[105] Article 2 of the 2008 Version of the Angola-Portugal BIT ("**2008 Version of the Angola-Portugal BIT**" or "**2008 Version of the BIT**") limited the application of the original treaty to investments made after its entry into force:[106]

> *1. This Agreement shall apply to investments made by investors of one Party in the territory of the other Party in accordance with its respective laws in force, that were made after its entry into force of this Agreement.*
>
> *2. Investments made or authorised before the entry into force of this Agreement shall be governed by the provisions of the legislation and the terms of the specific contracts under which the authorization was granted.*

120. However, the Claimant cleverly disregarded a crucial piece of evidence: the 2008 Version of the BIT only entered into force on 24 April 2020,[107] almost three years after the Claimant made his so-called investment in Angola.

121. The result is that the 2008 Version of the BIT did not protect the Claimant's alleged investments.

122. The Parties concur that the Amended Version of the BIT "*entered into force on 22 December 2021*"[108] and that it "*introduces a distinct temporal restriction* [… that] *excludes from the scope of application of the BIT the disputes and/or claims arising from facts that predate its entry into*

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104 Request for Arbitration, p. 7, § 29 (unofficial translation).

105 Request for Arbitration, p. 12, § 57.

106 **CLA-1**, 2008 version of the Angola-Portugal BIT, p. 2 (original version) and p. 7 (English translation).

107 **CLA-2**, Notice No. 23/2020, dated 7 May 2020 and published on 20 March 2020 in the Portuguese Official Gazette.

108 Request for Arbitration, pp. 12-13, § 58 (unofficial translation).

force".[109] The wording of Article 2(1) of the Amended Version of the Angola-Portugal BIT provides that:[110]

> *This Agreement applies to all investments made by investors of one Party in the territory of the other Party, in accordance with the applicable law of the latter. However, it does not apply to disputes and/or claims arising from facts that occurred before its entry into force.*

123. The substance of the amended Article therefore prescribes a double exclusion clause, precluding the Tribunal's jurisdiction over both pre- and post-BIT disputes based on pre-BIT acts.

124. Although more restrictive than most *ratione temporis* BIT provisions, Article 2(1) reflects the principle of the non-retroactivity of international treaties, a customary international rule. Accordingly, Article 28 of the Vienna Convention on the Law of Treaties ("**VCLT**") stipulates that:[111]

> *Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.*

125. Additionally, Article 13 of the International Law Commission's ("**ILC**")'s 2001 Articles on the Responsibility of States for Internationally Wrongful Acts ("**ARSIWA**") provides that "[a]*n act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs*".[112]

126. Conversely, an obligation arising from the Amended Version of the Angola-Portugal BIT will bind the host State only with respect to acts, facts, and/or events occurring after the BIT's entry into force, *i.e.*, 22 December 2021. In a recent investment case where the relevant treaty also did not apply to acts and facts that took place before the treaty's entry into force, the tribunal in *Astrida*

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109 Request for Arbitration, p. 13, § 60 (unofficial translation).

110 **RL-0010**, Article 2(1) of the consolidated version of the Angola-Portugal BIT, p. 1 (original version and English translation).

111 **RL-0011**, Article 28 of the Vienna Convention on the Law of Treaties, p. 11.

112 **RL-0012**, Article 13 of the International Law Commission's 2001 Articles on the Responsibility of States for Internationally Wrongful Acts, p. 4 of the PDF.

Benita Carrizosa v. Colombia stated that:[113]

> *It is indeed uncontroversial that, pursuant to the customary international law rule about non-retroactivity, a treaty does not bind the Contracting States in respect of their pre-treaty actions or omissions, unless it provides otherwise.*

127. The Parties agree (i) that the Amended Version of the BIT entered into force on 22 December 2021, and (ii) that it is not applicable to pre-treaty conduct. Hence, the legal issue at stake does not raise a difficult issue nor does it require a more thorough analysis of international legal principles. It therefore complies with the requirements of Rule 41 of the ICSID Arbitration Rules.

128. As a result, the only real disagreement between the Parties concerns determining which alleged operative events constitute stand-alone BIT violations. In other words, the Claimant claims that the events leading up to this dispute occurred after the current version of the BIT came into effect, [114] while the Respondent asserts that they occurred before its entry into force.

129. As stated by an ICSID arbitral tribunal in *Mabco Constructions SA v. Kosovo*, when addressing *ratione temporis* matters, each claim must be considered separately.[115] Following this approach, Respondent will first demonstrate that the relevant facts related to the alleged takeover of the control and use of the turbines without compensation by Angola [116] occurred before the Amended Version of the BIT came into force (**Section 3.2**). Then, the Respondent will show that the Claimant manipulated post-treaty facts leading up to an alleged breach of the duty to act

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113 **RL-0013**, *Astrida Benita Carrizosa v Republic of Colombia*, ICSID Case No ARB/18/5, Award dated 19 April 2021, pp. 40-41, § 124.

114 Request for Arbitration, p. 13, § 62.

115 **RL-0014**, *Mabco Constructions SA v. Kosovo*, ICSID Case No. ARB/17/25, Decision on jurisdiction, 30 October 2020, p. 132, § 463: ("*In applying BIT Article 2, and thereby determining when the operative events occurred, it is necessary to distinguish clearly among Mabco's various BIT claims. These are expropriation, denial of fair and equitable treatment and denial of justice*.").

116 Request for Arbitration, p. 15, § 68: ("*The actions of the Angolan State in seizing, permanently installing, and using the equipment seized from Aenergy constitute a measure equivalent to expropriation, without any legal procedure and without any appropriate and effective compensation …*") (unofficial translation).

fairly and equitably[117] (**Section 3.3**).

3.2. The alleged expropriation took place before the current BIT's entry into force

130. As should be clear by now, the Claimant has been consistently alleging different facts in different jurisdictions to fabricate the same expropriation claim (**Section 3.2.1**). Regardless of these allegations, the relevant conduct giving rise to the alleged expropriation necessarily predates 22 December 2021 (**Section 3.2.2**). Finally, the State's post-date acts were rooted in its pre-treaty conduct (**Section 3.2.3**).

3.2.1. The Claimant has been consistently alleging different relevant events in different jurisdictions to fabricate an expropriation claim based on the same Four Unsolicited Turbines

131. By repeatedly changing the key events for its alleged expropriation, the Claimant has unsuccessfully tried his case five times before the US courts and is now trying his luck before this ICSID Tribunal. However, the Tribunal will inevitably conclude that the Claimant's expropriation claim is not new; it dates to May 2020, with relevant facts daring to as far as August 2019.

132. As detailed in **Section 2.4.1.**, on 7 May 2020, the Claimant filed a civil complaint in the District Court for the Southern District of New York (Case No. 20 CV 3569). Before that Court, the Claimant alleged that the Four Unsolicited Turbines, along with spare small engines, oil, equipment, and parts, were expropriated in December 2019. The Claimant identified the seizure and the taking of control of these materials from AEnergy's warehouse as the relevant event for the expropriation.[118] Additionally, the Claimant argued that "*Angola's conduct violated international law*".[119]

133. On 2 November 2020, in this Memorandum of Law in Opposition to Defendants' Motion to

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117 Request for Arbitration, p. 15, § 69: ("*...the conduct of the Republic of Angola, through its various public entities whose actions are attributable to the State under public international law, has failed to uphold its duty to treat the Investor's investments in a fair and equitable manner and to refrain from subjecting them to arbitrary or discriminatory measures.*") (unofficial translation).

118 **R-0006**, Aenergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, pp. 65-66, § 219.

119 **R-0006**, Aenergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, 7 May 2020, p. 65, § 218.

Dismiss, AEnergy changed its expropriation version, claiming now that expropriation occurred in August 2019 "*by Presidential decree and when MINEA declared, on behalf of PRODEL and ENDE, that it 'holds the property' and would repossess the turbines 'unlawfully' being held by AE*".[120] The District Court dismissed the civil complaint for *forum non-conveniens* (the First American Decision), finding that the Claimant's decision to file suit "*smacks of forum shopping rather than a genuine pursuit of convenience*", comparing it to a "*tactical maneuver*".[121]

134. The Claimant appealed the decision. On 8 September 2021, it introduced a third version before the US Court of Appeals for the Second Circuit: the expropriation would have occurred with the collusion between the Angolan judiciary and the Trustee,[122] and the relevant event for the expropriation would be the connection of the Four Unsolicited Turbines into a power grid in May/June 2021.[123] This appeal was also dismissed (the Second American Decision).[124]

135. After losing at every stage in the New York courts, **Section 2.4.2.** demonstrates that since August 2022, the Claimant has been trying its luck (and failing) before the Columbia Courts. In these proceedings, the Claimant alleges that after placing the disputed turbines on hold, the Respondent would have "*quickly t*[aken] *steps to install the turbines that had been in dispute and to hook them to the power grid there*";[125] and that the MINEA would have revealed this

120 **R-0017**, Aenergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss, 2 November 2020, p. 32.

121 **R-0016**, Aenergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Opinion and Order Southern District of New York, 19 May 2021, p. 19.

122 **R-0018**, Aenergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case No. 21-1510-CV and Case No. 21-1752-Cv, Brief on Appeal from the United States District Court for the Southern District of New York, 8 September 2021, pp. 9 and 43.

123 **R-0018**, Aenergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case No. 21-1510-CV and Case No. 21-1752-Cv, Brief on Appeal from the United States District Court for the Southern District of New York, 8 September 2021, p. 9.

124 **R-0019**, Aenergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case No. 21-1510-CV and Case No. 21-1752-CV, Decision on the Appeal, 13 April 2022, p. 28.

125 **R-0022**, Aenergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, First Amended Complaint, 15 February 2023, p. 22, § 60(a).

information by the press-release dated 18 March 2022.[126]

136. The table below summarizes the multiple allegations made by the Claimant relating to the same expropriation of the Four Unsolicited Turbines:

STATE COURT	ALLEGED DATE OF THE EXPROPRIATION	RELEVANT EVENT	RELEVANT STATE ENTITY
SDNY Proceedings (Complaint of 07.05.2020)	December 2019	a) Seizure of the turbines; and b) Taking of the turbines, spare small engines, oil, equipment, parts, etc from AEnergy's warehouse.	The Angolan Republic; MINEA, PRODEL, and ENDE.
SDNY Proceedings (Memorandum of 02.11.2020)	August 2019	a) Issue of Presidential Order enabling the termination of the Claimant's contracts; and b) Declaration of the State's ownership of the turbines.	President of Angola and MINEA
US Court of Appeals (08.09.2021)	Around May/June 2021	Deployment of the turbines by state-owned power companies.	PRODEL, ENDE, IGAPE and the Angolan judiciary
District Court of Columbia (15.02.2023)	a) Around June 2021; and b) 18 March 2022	a) Installation of the turbines into the power grid; and b) Press article mentioning the installation by the Angolan government of the Four Turbines.	a) IGAPE and PRODEL; b) Angolan Ministry of Energy
ICSID proceedings (20.02.2024)	During the course of 2022	a) Seizing, permanently installing, and using the seized equipment from AEnergy; b) Publication of Presidential Order No. 60/22; and c) Press article mentioning the installation by the Angolan government of the Four Turbines.	All of the above

126 **R-0022**, Aenergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, First Amended Complaint, 15 February 2023, p. 22, § 60(a); **C-20**, MINEA's press-release, dated 18 March 2022.

137. In sum, the Claimant has stated before US Courts that Angola's conduct constituting the alleged expropriation in violation of international law occurred (i) in December 2019 with the seizure of the turbines; (ii) in August 2019 with the issue of a Presidential Order; (iii) around May/June 2021 with the deployment of the turbines into the power-grid, and (iv) by a press-article published on 18 March 2022. However, all the relevant dates (seizing, installation, and deployment of the equipment) are prior to the "critical date" of 22 December 2021. In other words, this ICSID proceeding represents the Claimant's latest attempt to conjure a non-existent international jurisdiction, which must be halted by this Tribunal.

3.2.2. The alleged State conduct relating to the Four Turbines pre-dates the BIT's entry into force

138. By interpreting the provisions of Article 7 of the BIT, the Tribunal will reach the clear conclusion that (i) the events leading up to the dispute occurred before the BIT's entry into force, as acknowledged by the Claimant; and that (ii) the applicable standard for an expropriation is the date of the decision – as opposed to its execution –, with both occurring before 22 December 2021.

139. Article 7(1) of the Angola-Portugal BIT establishes that:[127]

> *The investments of investors of a Party shall not be nationalised, expropriated or otherwise subject to any other measure having equivalent effect to nationalisation or expropriation (hereinafter referred to as " in the territory of the other Party, except for purposes of public interest and against prompt, adequate and effective compensation. Expropriation shall be carried out on a non-discriminatory basis and in accordance with legal procedures.*

140. The Claimant's Request for Arbitration sets out the State conducts that would allegedly characterize the expropriation of his investment pursuant to Article 7(1) of the BIT:[128]

> *… the installation by the Republic of Angola, through MINEA, of the Four Seized Turbines, in contravention of the seizure order issued by the Provincial Court of*

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127 **RL-0010**, Article 7(1) of the consolidated version of the Angola-Portugal BIT, p. 5 (original version and English translation).

128 Request for Arbitration, pp. 11-12, §§ 53-55; p. 15, § 68 (unofficial translation). On similar terms, **C-26**, Claimant's Notice of Dispute, p. 4 (original version) and p. 3 (English translation).

> *Luanda, constitutes a measure equivalent to expropriation, without adequate and effective compensation, pursuant to Article 7 (Expropriation) of the BIT.*
>
> *…*
>
> *…the installation of the Four Turbines by MINEA, with the collaboration—through action or omission—of IGAPE and the Provincial Court of Luanda, has definitively severed any connection with the aforementioned seizure process, giving rise to a new and different factual and legal situation that needs to be resolved urgently.*
>
> *The permanent installation of Aenergy's Four Turbines in the Angolan State's power plants and their connection to the national electrical grid […] rendered the preventive seizure process, as well as the main proceeding, completely ineffective.*
>
> *…*
>
> *The actions of the Angolan State in seizing, permanently installing, and using the equipment seized from Aenergy constitute a measure equivalent to expropriation, without any legal procedure and without any appropriate and effective compensation, in direct violation of Article 7 (Expropriation) of the BIT and applicable international law.*

141. Simply put, the Claimant accuses the Republic of Angola of breaching Article 7 of the BIT through the seizing, installation, and use of the Four Unsolicited Turbines in the State's power plants. For the sole purpose of complying with Rule 41 of the ICSID Arbitration Rules, the Respondent will either assume the factual premises as alleged by the opposing Party, or demonstrate that they are "*(manifestly) incredible, frivolous, vexatious or inaccurate or made in bad faith*".[129]

142. Thus, for the Claimant's claim to stand, the operative events leading up to the expropriation (*i.e.* the State's decision to seize, install, and use the Four Unsolicited Turbines) would necessarily have to have happened after the BIT's entry into force, *i.e.*, after 22 December 2021. However, these three events happened months before the entry into force of the BIT – a fact that the Claimant is fully aware of and has claimed in judicial courts before, as seen in **Section 2.4**.

143. If one were to take the Claimant's allegations in the ICSID proceedings seriously, the foregone

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[129] **RL-0003**, *Trans-Global Petroleum, Inc v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25, Tribunal's Decision on the Respondent's Objection Under Rule 41(5) of the ICSID Arbitration Rules, 12 May 2008, p. 34, § 105; See also, e.g., **RL-0008** The Bank of Nova Scotia v. Peru, ICSID Case No. ARB/22/30, Decision on Respondent's Rule 41 Application, 31 May 2024, pp. 24-25 § 102.

conclusion would be that Angola expropriated (seized, installed, and used) the same Four Unsolicited Turbines multiple times: the last one "*during the course of 2022*".[130] Such an outcome would defy logic (and physics).

144. Lastly, the Claimant focuses on the execution of the alleged expropriation but ignores the relevant State conduct to characterize an expropriation case: the date that the State took the decision (i) to expropriate the Claimant's investment, or at the latest (ii) to order the expropriation.

145. In the *Mabco Constructions SA v. Kosovo* case, the tribunal was confronted with two relevant facts relating to an alleged expropriation of shares: one State decision to order execution (a pre-BIT decision) and one State decision to execute the withdraw of the shares (a post-BIT decision). By analysing which of these two events amounted to a "*sufficiently definitive*" decision regarding the alleged expropriation, the Tribunal concluded that the decision to order the withdrawal of shares was the one relevant to assess its *ratione temporis* jurisdiction:[131]

> *[I]t is uncontested that on 31 May 2012 the PAK took the official decision to order execution of the withdrawal of shares. Without doubt, the dispute itself, and not merely events leading up to it, had arisen by that time, which was some two weeks prior to the BIT's entry into force on 13 June 2012. The Tribunal cannot accept Claimant's suggestion that the operative date was 20 July 2012 (a date obviously well after entry into force of the BIT) when the withdrawal of shares was actually executed. The PAK's decision of 31 May 2012 was already sufficiently definitive.*
>
> *The Tribunal accordingly finds that, by virtue of BIT Article 2, it lacks jurisdiction over Mabco's expropriation claim* ratione temporis*.*

146. Therefore, instead of focusing on the date of the execution of the seizure, installation, and deployment of the Four Unsolicited Turbines, the relevant moment for an expropriation would be when the State made that decision in the first place. In other words, even if the Claimant could prove that the execution of the expropriation took place after the BIT's entry into force (which it cannot), it would first have to prove that Angola's decision to expropriate and to order

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130 Request for Arbitration, p. 1, § 5 (unofficial translation). On similar terms, p. 6, § 25.

131 **RL-0014**, *Mabco Constructions SA v. Kosovo*, ICSID Case No. ARB/17/25, Decision on jurisdiction, 30 October 2020, p. 134, § 467.

the expropriation was also taken after the BIT's entry into force.

147. However, since the Claimant conceded that installation and deployment took place on or around May/June 2021[132] the State's decision to install and use the Four Unsolicited Turbines must necessarily have taken place before May/June 2021, *i.e.*, before the entry into force of the BIT.

148. As a result, the factual premises (as alleged by the Claimant) that led up to the expropriation dispute have necessarily taken place before 22 December 2021, and the Claimant is barred from stating otherwise with any measure of seriousness. The Claimant's expropriation claim is a non-starter.

149. Accordingly, the Tribunal manifestly lacks jurisdiction to hear the Claimant's expropriation claim under Article 7 of the Angola-Portugal BIT.

3.2.3. Be that as it may, the Respondent's (alleged) post-treaty acts were rooted in pre-treaty conducts

150. Firstly, by providing context for the post-treaty facts submitted by the Claimant, the Respondent will demonstrate that, for this expropriation claim to succeed, these facts must be capable of constituting a stand-alone breach. Finally, the Respondent will conclude that the events claimed by the Claimant manifestly do not meet this standard.

151. Fully aware that the seizure, installation, and deployment of the Four Unsolicited Turbines predates the BIT's entry into force, the Claimant omits the date of these conducts from its Request for Arbitration. Instead, the Claimant broadly frames the facts leading up to the dispute as having taken place "*during the course of 2022*".[133]

152. In a creative but otherwise unfruitful attempt, the Claimant puts forward two dates to argue the fulfilment of the *ratione temporis* criterion to uphold the Tribunal's jurisdiction to hear the expropriation claim:

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132 **R-0018**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case No. 21-1510-CV and Case No. 21-1752-Cv, Brief on Appeal from the United States District Court for the Southern District of New York, 8 September 2021, pp. 9 and 43.

133 Request for Arbitration, p. 1, § 5 (unofficial translation). On similar terms, p. 6, § 25.

a. 16 March 2022: publication of Presidential Order No. 60/22, which modified the financing method for the payment of the siteworks related to some of the State's power-plants;[134] and

b. 18 March 2022: MINEA's press release citing the Minister' visit to inspect one of PRODEL's power-plants comprised of two 25 MW turbines.[135]

153. These two invoked post-treaty facts do not bear the legal effect intended by the Claimant:

154. As for the first date, Presidential Order No. 60/22 simply modified the source of funding of the Construction Works of the thermal power stations at Lubango region. Whilst Presidential Order No. 177/21, from 26 October 2021 stated that "*[t]he costs associated with the above-mentioned Contracts will be paid from the Public Electricity Production Company's own resources - PRODEL-E.P.*",[136] Presidential Order No. 60/22 determined that "*the costs of the Contracts are executed with Ordinary Treasury Resources, as well as their inclusion in the Public Investments Programme 'PIP'*".[137] Evidently, Presidential Order No. 60/22 is not a decision to expropriate nor to order the expropriation of the Four Unsolicited Turbines.

155. As for the second date, MINEA's press-release citing two 25MW turbines in the Cunene power-plant could never amount to a State decision to expropriate nor to order the expropriation of the Four Unsolicited Turbines. First, this press-release is not a formal institutional communication, but merely an article published by the MINEA's press office on their website:[138]

134 Request for Arbitration, pp. 10-11, §§ 47-48; **C-22**, Presidential Order No. 60/22, published on 16 March 2022.

135 Request for Arbitration, pp. 9-10, § 43; **C-20**, MINEA's press-release, dated 18 March 2022.

136 **C-21**, Presidential Order No. 177/21, published on 26 October 2021.

137 **C-22**, Presidential Order No. 60/22, published on 16 March 2022.

138 **C-20**, MINEA's press-release, dated 18 March 2022.

156. Second, the press-release states that Minister paid a visit to the power-plant "*made up of two turbines of 25 MW each*".[139] At the risk of stating the obvious, the article does not say that 18 March 2022 marked the date of installation or deployment of these Four Unsolicited Turbines:

> Yesterday, 17 March 2022, a delegation from the Ministry of Energy and Water, headed by the Minister of Energy and Water, João Baptista Borges, paid a fact-finding visit to some of the sector's ventures in Cunene province.

157. As decided by several investment treaty tribunals, for a claim arising out of a post-treaty conduct to fall within a tribunal's jurisdiction, it must be capable of constituting a stand-alone breach of the BIT.[140] Specifically, the tribunal in *Astrida Benita Carrizosa v. Colombia* found that:[141]

> [U]*nless the post-treaty conduct (i.e. the 2014 Order) is itself capable of constituting a breach of the TPA, independently from the question of*

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139 **C-20**, MINEA's press-release, dated 18 March 2022, p. 2.

140 **RL-0015**, *Spence International Investments, LLC, Berkowitz, et. al v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2), Interim Award, 25 October 2016, p. 131, § 222: ("*it will be necessary to assess whether the claim that is alleged can be sufficiently detached from pre-entry into force acts and facts so as to be independently justiciable*."). **RL-0016**, *Mondev International Ltd. v. United States of America, ICSID Case No ARB (AF) 992*, Award, 11 October 2002, p. 23, § 70; **RL-0017**, *Marvin Karpa v. United Mexican States*, ICSID Case No. ARB AF 991, Interim Decision on Preliminary Jurisdictional Issues, 6 December 2000, p. 28, § 62.

141 **RL-0013**, *Astrida Benita Carrizosa v Republic of Colombia*, ICSID Case No ARB/18/5, Award dated 19 April 2021, p. 48, § 153.

> *(un)lawfulness of the pre-treaty conduct, claims arising out of such post-treaty conduct would also fall outside the Tribunal's jurisdiction.*

158. The discussion in that case revolved around two judicial decisions (one pre and one post-NAFTA) and the parties disputed whether a post-treaty claim should necessarily be unrelated to the pre-treaty conduct for the purposes of asserting an investment tribunal's *ratione temporis* jurisdiction. The tribunal reasoned that it had "*no jurisdiction to assess the lawfulness of the Respondent's pre-treaty conduct*",[142] and that, related to the State's post-treaty conduct, the investor failed to "*raise any specific allegations that impugn the lawfulness of the 2014 Order* [the post-treaty conduct] *separately from her complaints about the 1998 Measures and the 2011 Decision* [the pre-treaty conducts]".[143] Therefore, the tribunal declined its jurisdiction to hear the merits of that case.

159. Transposing the test adopted by investment tribunals to the present dispute, the Tribunal will reach two conclusions:

160. On the one hand, the wording of the Amended Version of the BIT and customary international law prevent the Tribunal from assessing the (un)lawfulness of Angola's pre-treaty conduct (the State alleged decision regarding the seizure, the installation, and the deployment of the Four Unsolicited Turbines). On the other hand, neither of Angola's alleged post-treaty conducts removed the Claimant's investment nor changed the *status quo* of the Four Unsolicited Turbines, *i.e.* they do not give rise to a stand-alone breach.

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161. In sum, none of the events invoked by the Claimant amounts to a stand-alone post-treaty expropriation under Article 7 of the BIT. Therefore, the Tribunal must conclude that it manifestly lacks *ratione temporis* jurisdiction to hear the Claimant's expropriation claim.

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142 **RL-0013**, *Astrida Benita Carrizosa v. Republic of Colombia*, ICSID Case No ARB/18/5, Award dated 19 April 2021, p. 48, § 153.

143 **RL-0013**, *Astrida Benita Carrizosa v. Republic of Colombia*, ICSID Case No ARB/18/5, Award dated 19 April 2021, p. 50, § 158.

3.3. The Claimant manifestly lacks a fair and equitable treatment claim

162. The Claimant makes two separate allegations regarding Angola's failure to provide fair and equitable treatment. First, the Claimant asserts that IGAPE and the Provincial Court of Luanda have breached their fiduciary duties to guard and preserve the Four Unsolicited Turbines.[144] Second, the Claimant asserts that neither IGAPE nor the Provincial Court of Luanda have responded to its requests of 22 April 2022 and 24 May 2022 regarding the whereabouts of the seized turbines.[145]

163. The Claimant's interpretation of the State's conduct is inherently contradictory and, therefore, manifestly without merit. As the Respondent will demonstrate, the Claimant's first alleged Fair and Equitable Treatment ("**FET**") violation is based on the same theory of liability as the expropriation claim and must necessarily share its fate: it is a non-starter. Regarding the second FET allegation, the Claimant is manifestly attempting to fabricate a claim.

164. Article 4 of the Angola-Portugal BIT establishes that:[146]

> *1 - Each Party shall encourage and create favourable conditions for investments in its territory by investors of the other Party and shall allow such investments in accordance with its applicable law.*
>
> *2 - Investments made by investors of each Party shall be accorded fair and equitable treatment and shall enjoy full protection and safety in the territory of the other Party.*
>
> *3 - Neither Party shall subject to arbitrary or discriminatory measures the management, maintenance, use, enjoyment, or disposal of investments made in its territory by investors of the other Party.*
>
> […]

165. First, according to the Claimant, IGAPE's and the Provincial Court of Luanda's alleged breach of their fiduciary duties to guard and preserve the Four Turbines perfected the permanent

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144 Request for Arbitration, p. 15, § 70.

145 Request for Arbitration, p. 15, § 70.

146 **RL-0010**, Article 4 of the consolidated version of the Angola-Portugal BIT, p. 3 (original version and English translation).

installation of the equipment, thereby rendering the Preventive Seizure Proceedings useless: [147]

> *Such failures by these two entities made the permanent installation of equipment owned by Aenergy an accomplished fact, rendering the main procedure, of which the preliminary seizure proceedings were instrumental, superfluous and useless.*

166. Logic mandates that this part of the claim must follow the fate of the Tribunal's findings regarding the expropriation claim. This is because the alleged failure to guard and preserve the Four Unsolicited Turbines cannot be considered a stand-alone measure or a distinct breach of the BIT unrelated to the alleged expropriation. The Claimant itself concedes that these measures "*made the permanent installation of equipment […] an accomplished fact*". In this context, the Respondent's alleged failures to guard and preserve the Four Turbines evidently relate to the same theory of liability, and therefore, could never amount to a separate or independent breach.

167. Moreover, the latest point in time when an obligation to guard and preserve the Four Unsolicited Turbines could have been breached is the date of the expropriation itself; according to the Claimant, this occurred with the seizure, installation, and deployment of the Turbines.

168. Therefore, if the Tribunal finds that it does not have jurisdiction to hear the expropriation claim because the facts leading up to it occurred before the BIT's entry into force, it will automatically lack *ratione temporis* jurisdiction to decide whether Angola breached any alleged obligation to guard and preserve the Four Unsolicited Turbines. In other words, IGAPE's and the Provincial Court of Luanda alleged failure to guard and preserve the Four Unsolicited Turbines are intrinsically related to the expropriation claim and would have occurred prior to the BIT's entry into force as well.

169. As a result, the Tribunal should dismiss the Claimant's first FET allegation for lack of *ratione temporis* jurisdiction.

170. Second, the Claimant's allegation of a breach of the obligation "*to answer in good faith Aenergy's information requests since April 2022 and inform the latter the whereabouts of the seized Four*

147 Request for Arbitration, p. 15, § 71 (unofficial translation).

Turbines"[148] has been blatantly fabricated following two events: the Claimant's repeated defeats in US courts and the entry into force of the Amended Version of the Angola-Portugal BIT, on 22 December 2021.

171. With the shift in the BIT's temporal restriction, the Claimant saw an opportunity to manipulate post-treaty facts and rehash its old claim. The dates of the exhibits submitted by the Claimant speak for themselves:[149]

C-23	Requerimiento de Aenergy al Tribunal Provincial de Luanda (con traducción informal al inglés)	22 de abril de 2022
C-24	Carta de Aenergy al IGAPE (con traducción informal al inglés)	22 de abril de 2022
C-25	Requerimiento de Aenergy al Tribunal Provincial de Luanda (con traducción informal al inglés)	24 de mayo de 2022
C-26	Notificación del Sr. Machado a Angola para la solución amistosa de la controversia (con traducción informal al inglés)	9 de junio de 2022

172. On the one hand, only 34 business days elapsed between AEnergy's information requests and the Claimant's sending of his Notice of Dispute. It goes without saying how unreasonable it would be to conclude that there was a breach of international law based on a limited government turnaround time of just a month or two. On the other hand, such expectations fail to account for the practical challenges and systemic hurdles present in Angola, a typical developing country facing significant infrastructural and logistical limitations.

173. Therefore, the Tribunal must dismiss the Claimant's claim of an alleged breach of Angola's duty to answer in good faith because it is manifestly incredible, frivolous, vexatious, inaccurate, and made in bad faith.

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148 Request for Arbitration, p. 15, § 70 (unofficial translation).

149 Request for Arbitration, List of Exhibits, p. ii.

174. In sum, the present case represents nothing more than a manifest and desperate attempt to link an old (and meritless) expropriation dispute (before the US and Angolan courts) to a new investment claim before the ICSID. Therefore, the Tribunal should find that the Claimant is engaging in a blatant attempt to fabricate a case and accordingly dismiss the Claimant's claims for lack of *ratione temporis* jurisdiction.

4. THE RESPONDENT'S REQUEST FOR RELIEF

175. Based on the above arguments, the Respondent respectfully requests that the Tribunal render an Award as follows:

a) **DECLARE** that the Claimant's claims are manifestly without legal merit;

b) **DISMISS** the Claimant's claims in their entirety**;**

c) **ORDER** the Claimant to pay all costs and expenses of these arbitration proceedings, including fees and expenses of the Arbitral Tribunal and the cost of the Respondent's legal representation, plus pre-award and post-award interest thereon; and

d) **GRANT** any further relief against the Claimant as the Tribunal deems appropriate.

On behalf of the Republic of Angola,

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