Annex 1

INTERNATIONAL CENTRE FOR 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 Rejoinder

Members of the Tribunal

Ms. Valeria Galíndez, President of the Tribunal
Mr. Alfonso Iglesia, Arbitrator
Prof. Diego P. Fernández Arroyo, Arbitrator

6 August 2026

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GLOSSARY OF TERMS AND ABBREVIATIONS[1]

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
CLAIMANT	Mr. Ricardo Filomeno Duarte Ventura Leitão Machado
CIVIL PROCEDURAL CODE (OR CPC)	Angolan Civil Procedural Code, Law-Decree No. 44.129/63, dated 28 December 1961, with entry into force on 1 January 1963
CLAIMANT'S RESPONSE (OR CLAIMANT'S RESPONSE TO RULE 41 OBJECTION)	Claimant's Response to Rule 41 Objection dated 30 January 2025
FACILITY AGREEMENT	Agreement between the Republic of Angola acting by and through the Ministry of Finance (Borrower), TMF Global Services (UK) Limited (Agent) and GE Capital EFS Financing, INC (Original Lender) dated 21 August 2017, for the funding of the 13 Contracts up to USD 1,100,000,000.
FRAMEWORK AGREEMENT	Agreement between GE Packaged Power, INC. and Aenergia, S.A. dated 30 June 2016, for the sale of GE gas turbines, generators, Parts and Services for projects in Angola.
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)
FORGED LETTERS	Fake Letters created by 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

[1] Terms and abbreviations already defined in previous submissions retain their original designations and were not reannounced in the text of the present Reply.

FOUR UNSOLICITED TURBINES (OR 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*
ENERGY AND WATER SECTOR PROJECTS	Projects incorporated within the program of public investment approved by the government specifically related to the development of the energy and water sectors in Angola
FET	Fair and Equitable Treatment
FPS	Full Protection and Security
ICC	International Chamber of Commerce
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
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
LCIA	London Court of International Arbitration
LCIA TRIBUNAL	Arbitral Tribunal that ruled Mr. Machado was complicit in the creation of the Forged Letters
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
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*
PPO	*Public Prossecutor's Office*
REPLY	Reply dated 21 May 2026
REQUEST FOR ARBITRATION	Request for Arbitration dated 20 February 2024
RESPONDENT	The Republic of Angola
RESPONDENT'S OBJECTION (OR RESPONDENT'S REQUEST UNDER RULE 41)	Respondent's Submission on Manifest Lack of Legal Merit under Rule 41 dated 15 November 2024
SDNY	Southern District Court of New York
SOC	Statement of Claim dated 11 September 2025
SOD	Statement of Defense dated 27 November 2025
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 to be the trustee of the seized Four Unsolicited Turbines.
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

1 Introduction

1. Mr. Ricardo Machado is both a fraudster and a serial abuser of the legal system. The true story behind this case, which the Claimant has deliberately concealed and distorted, involves criminal wrongdoing.

2. The fact that the Claimant has not even come forward to testify in these proceedings nor provide any witness evidence is clear proof of his highly suspicious and untrustworthy nature – and that of his case. [redacted]

3. Investment arbitration is not designed to shield fraudulent actors or investments established through dishonest means. Mr. Ricardo Machado is wholly unworthy of the protection afforded by investment arbitration and has no entitlement to it whatsoever. Accordingly, not only should all claims be dismissed, but Mr. Ricardo Machado should also be ordered to reimburse the State for all costs incurred.

4. One critical issue in this arbitration is Mr. Machado's involvement in the creation of the Forged Letters – the documents that enabled (i) the inclusion of the Four Unsolicited Turbines in the Facility Agreement, and (ii) the establishment of the alleged investment. The Claimant has persistently alleged his innocence and claimed to be entirely uninvolved in the scheme. This account is false. The Claimant is simply lying.

5. The Republic of Angola, which is entirely unconnected to the fraudulent scheme, was compelled to collect and analyze an extensive body of evidence, painstakingly assembling the pieces of a complex puzzle to confirm its well-founded suspicions. Fraud is not committed in broad daylight. It is carried out in secrecy. Throughout this process, the Claimant, as the fraudster he is, failed to cooperate, objected to the production of documents, and, when ordered by the Tribunal to produce records, submitted incomplete materials, omitting relevant documents and important annexes. Such conduct should be critically addressed by the Tribunal, particularly by drawing

adverse inferences in relation to key facts. (**Section 1.1**)

6. In light of all the evidence gathered by the Respondent, one fact now stands beyond any doubt: the Claimant participated in the forgery alongside Mr. Wilson da Costa, Mr. Leslie Nelson and Mr. Bento. [redacted] There can be no doubt: the Claimant was an active participant in the forgery of the letters.

7. As the result of the forgery, the Four Unsolicited Turbines were included in the Facility Agreement and subsequently paid for with Angolan funds through the December 2017 disbursement. The Claimant contends that AEnergy paid for the Turbines with its own money, but once again, this is false. In reality, neither Mr. Machado nor his company made any contribution to the alleged investment. (**Section 2**)

8. An investment obtained through fraud – and a fraudster – cannot benefit from the protections afforded by the investment arbitration system. This legal principle is both undisputed and acknowledged by the Claimant. Accordingly, the Arbitral Tribunal's course of action is clear: it should declare its lack of jurisdiction and dismiss the case in its entirety.

9. However, there are additional flaws in the Claimant's case regarding jurisdiction. First, the acquisition of the Four Unsolicited Turbines does not possess the characteristics of an investment, namely because the Claimant did not make any contribution. Furthermore, the Claimant manipulates the facts related to the alleged expropriation to circumvent the *ratione temporis* restriction of the BIT, amounting to an abuse of rights/process. Importantly, the Tribunal lacks *ratione temporis* jurisdiction, as the facts giving rise to the dispute and claims occurred prior to 22 December 2021. Finally, the Tribunal also lacks *ratione voluntatis* jurisdiction. (**Section 3**)

10. Another deficiency in Mr. Machado's case concerns standing. The Claimant bases his investment

claims on alleged illegal expropriation, as well as on violations of the fair and equitable treatment and full protection and security standards. However, the Claimant does not have standing to bring claims of FET and FPS in relation to the Four Unsolicited Turbines, simply because the Angola-Portugal BIT does not entitle shareholders to bring direct claims for such breaches. (**Section 4**)

11. On the merits, the Claimant's case is also devoid of any basis.

12. Regarding the expropriation claim, the Claimant introduces a new argument in the Reply, alleging that the Four Unsolicited Turbines have reached a "point of no return" since being connected to the grid and put into operation. According to the Claimant, the Turbines have suffered physical damage and depreciation to such an extent that they were transformed into an *aliud* and can no longer be returned in their original condition. This argument is incorrect on both technical and legal grounds. Technically, the Four Unsolicited Turbines have been operated and maintained prudently, in accordance with industry standards, and can be refurbished to a "like new" condition before being returned to the Claimant. Legally, the installation and deployment of the Four Unsolicited Turbines do not constitute a taking or deprivation and, therefore, no expropriation has occurred. (**Section 5.1**)

13. The same result applies to the FET and FPS claims advanced by the Claimant: they are without merit. With regard to FET, the Respondent has not acted arbitrarily, in a grossly unfair, or discriminatory manner, or in a manner lacking due process. On FPS, the Claimant merely repackages the same facts to support this new claim, but the outcome remains unchanged – dismissal. (**Sections 5.2 and 5.3**)

14. Finally, damages. A fraudster is not entitled to damages. This is another rule that the Claimant does not dispute. If there were any damages, *quod non*, that would be entirely the Claimant's fault and consequently a reduction of 100% in damages should be warranted. Furthermore, in the most plausible counterfactual scenario the Turbines would have remained subject to ongoing litigation and would therefore have held zero value. (**Section 6**)

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15. In light of the overwhelming evidence, it is undeniable that the Claimant obtained his alleged

investment through fraud and now seeks to benefit as a fraudster in these proceedings. Such conduct cannot be condoned, and the Tribunal should dismiss the Claimant's case in its entirety.

16. Even if the Tribunal does not dismiss the case for lack of jurisdiction, the Claimant's claims concerning jurisdiction, the merits, and damages nevertheless fail to withstand scrutiny.

1.1 The Respondent requests that the Tribunal draw adverse inferences

17. Under Article 9(6) of the 2020 IBA Rules on the Taking of Evidence, applicable as per PO1:[2]

> *If a Party fails, without satisfactory explanation, to produce any Document required in a Request to Produce to which it has not objected in due time, or fails to produce any Document the production of which has been ordered by the Arbitral Tribunal, the Arbitral Tribunal may infer that such document would be adverse to the interests of that Party.*

18. This rule of evidentiary nature empowers tribunals to draw adverse inferences when a party fails to produce a document which is within its possession or practical ability to produce, without any justification.[3]

19. For an adverse inference to be drawn it is necessary that (i) there be an order to produce a specific document (or category), (ii) the party burdened with its production fails to produce such document, and (iii) the failure to produce be unaccompanied by a satisfactory explanation of the reasons why the document was not produced.[4] It is also necessary that the requesting party satisfies additional criteria, namely that (i) it produced all available evidence corroborating the inference sought, (ii) the requested evidence must be accessible to the inference opponent, (iii) the inference sought must be reasonable, consistent with facts in the record, and logically

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2 Procedural Order no. 1, dated 2024.11.27, p. 11, §15.1; IBA Rules on the Taking of Evidence, Article 9(6).

3 **RL-0109,** *Antonio del Valle Ruiz et al. v. Kingdom of Spain***,** PCA Case No. 2019-17, Final Award, dated 13 March 2023, pp. 204-205, §§ 689-691; **RL-0126,** *Niko Resources (Bangladesh) Ltd. v. Bangladesh Petroleum Exploration & Production Company Limited ("Bapex")*, ICSID Case No. ARB/10/11, Decision on the Corruption Claim, dated 25 February 2019, p. 281, § 958; **RL-0127,** *Lone Pine Resources Inc. v. Canada*, ICSID Case No. UNCT/15/2, Final Award, dated 21 November 2022, p. 91, § 259. **RL-0128,** Jeremy K. Sharpe, **"***Drawing Adverse Inferences from the Non-production of Evidence*", **i**n Arbitration International, Vol. 22, No. 4, 2006, p. 550.

4 **RL-0129**, *Safety Ppe, Llc V. Hobao Enterprising Co., Ltd. And Hobao Usa, Inc*, ICC Case No. 27854/PDP, Partial Final Award, dated 29 January 2025, pp. 20-21, §§ 94-100.

related to the likely nature of the evidence withheld, (iv) the party seeking the adverse inference must produce *prima facie* evidence, and (v) the inference opponent must know, or have reason to know, of its obligation to produce evidence rebutting the adverse inference sought.[5]

20. In the present case, the Respondent submits that the requirements for the Tribunal to draw adverse inferences are met, namely since (i) under PO3, the Tribunal has ordered the Claimant to produce the documents related to requests No. 5, 7 and 24, (ii) the requested documents remain outstanding as the Claimant did not produce them, and (iii) the Claimant has not provided any satisfactory explanation for the non-production of the documents.

21. Moreover, the Respondent has submitted its document production requests to the Claimant with the necessary reasoning for each request. The Respondent has produced *prima facie* evidence for all the claims advanced and presented all evidence at its disposal. The inferences which the Respondent asks the Tribunal to draw are reasonable, logical and consistent with the facts of the dispute. The basis for the Respondent's request for adverse inferences is the difficulty which the Respondent would face in proving the Claimant's acts, namely regarding the fraudulent acts committed by the Claimant and the damage he purports to have suffered.

22. In the present case, the adverse inferences requested by the Respondent all relate to matters which the Respondent alone could not have access to, and which would be prejudicial for the Respondent's presentation of its case. Namely, the Claimant obtained his alleged investment through fraudulent means, did not make any substantial contribution of its own, and sought to conceal the true nature of his arrangements with Mr. Wilson da Costa.

23. As will be further demonstrated, the Respondent requests the Tribunal to draw adverse inferences on the document production requests 5 and 7.

24. *First*, with regards to Request for document production No. 5, the Tribunal ordered the Claimant

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5 **RL-0128**, Jeremy K. Sharpe, **"***Drawing Adverse Inferences from the Non-production of Evidence*", **i**n Arbitration International, Vol. 22, No. 4, 2006, p. 550; **RL-0130**, *William J. Levitt v. Islamic Republic of Iran, Ministry of Agriculture and Natural Resources of the Islamic Republic of Iran and others*, IUSCT Case No. 210, dated 29 August 1991, p. 25, §§ 56-66; **RL-0131**, *George Edwards v. The Government of the Islamic Republic of Iran, The Ministry of Roads and Transportation and others*, IUSCT Case No. 251, dated 5 December 1989, p. 5, §§ 11.

to produce "*documents which concern the origin of the funds used for the payment of the Four Unsolicited Turbines, notably documents that demonstrate that AEnergy used its own funds, including bank statements, accounting records, and any documents evidencing AEnergy's actual financial costs in relation to the Four Unsolicited Turbines, for the period of 2012–2021*."[6]

25. Despite the breadth and clarity of the Tribunal's order, the Claimant only produced documents for the years 2017 to 2019. The Claimant's production consists of 22 documents that merely purport to support its own assertion that the Four Unsolicited Turbines were funded from an initial down payment of USD 11,868,767.68 and from proceeds that he claims were derived from receivables owed under its Angolan contracts. This assertion remains unsubstantiated by any complete or independently verifiable record. Notably, several of the wire transfer documents offered as "proof of payment", were produced only as PDFs generated from emails rather than in native, fully legible format, limiting the ability to verify their authenticity or completeness.

26. Additionally, the Claimant has failed to produce the required documentation since no documents for the period 2013–2016 and 2020–2021 were produced, notwithstanding that the Tribunal's order expressly covered the period 2012–2021. Moreover, the Claimant failed to provide any of AEnergy's bank statements, did not produce property, plant, and equipment lists or depreciation schedules; in some instances, he submitted only internal documents; and provided documents that were not fully legible.[7]

27. The Claimant has not provided any plausible explanation for his omission. As will be further developed in **Section 2.1.2.1**, the Tribunal should infer that AEnergy did not use its own funds to purchase the Four Unsolicited Turbines.

28. *Second*, with regard to Request for document production No. 7, the Tribunal ordered the Claimant to produce the "*drafts of the amendments to the 13 Contracts entered into by AEnergy and MINEA, to be proposed by AEnergy to MINEA at GE Capital's demand*," and all "*correspondence accompanying/responding/commenting on the drafts of the amendments to*

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6 Procedural Order No. 3, Document Request No. 5, p. 54.

7 Respondent's letter 27.05.2026, pp. 7-13.

the 13 Contracts."[8] The Claimant produced a series of emails purportedly evidencing the drafting and negotiation of the amendments to the 13 Contracts, including the email from Mr. Morgado of 8 September 2017 and the email from Mr. Talino of 12 October 2017 attaching a draft letter proposal, already produced as "Email FTalino_12.10.2017_07h36.pdf".

29. [redacted]

30. As will be further analyzed in **Section 2.1.1**, the Respondent respectfully requests that the Tribunal infer that the Claimant was aware that the contracts entered into by AEnergy and Angola would need to encompass at least 12 turbines in order for GE to finance the entire deal.

31. *Third,* with respect to damages concerning the alleged expropriation of the Four Unsolicited Turbines: the requested documents under Request No. 5 are essential for the Respondent to verify AEnergy's sunk costs, assess the value of the Claimant's shares, and determine the appropriate interest rates underlying the claimed damages.

32. The Claimant's failure to produce audited financial statements, auditor's reports, and statements of equity is telling. The Claimant is well aware that, at the time of the alleged expropriation, his shares were already effectively worthless due to his own conduct—specifically, the termination of the 13 Contracts on 13 August 2019, well before the BIT entered into force on 22 December 2021.

33. Accordingly, the Tribunal should draw the adverse inference that: (i) AEnergy did not suffer any damages in relation to the Four Unsolicited Turbines, (ii) nor did the Claimant incur any loss in the value of his shareholding or (iii) any loss arising from the loss of use of funds. This will be

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8 Procedural Order No. 3, Document Request No. 7, p. 63.

9 [redacted]

developed in **Section 6**.

34. In light of the foregoing, the Respondent submits that the Claimant's failure to comply with the Tribunal's document production orders under PO3 — with respect to both Requests No. 5 and 7 — meets all the necessary requirements for the Tribunal to draw adverse inferences.

35. On the one hand, the Tribunal issued clear and specific orders requiring the production of identified categories of documents and the Claimant has failed to produce the responsive documents in full without offering a satisfactory explanation for the gaps in its production.

36. On the other hand, the Respondent has produced all available corroborating evidence, demonstrated that the requested documents are within the Claimant's possession, established a *prima facie* case for each inference sought, and shown that the inferences requested are reasonable, consistent with the record, and logically related to the likely nature of the withheld evidence. Accordingly, the Respondent respectfully requests that the Tribunal draw the adverse inferences set out above, in accordance with Article 9(6) of the IBA Rules, as further detailed in the following sections.

2 The actual facts render the Claimant's narrative untenable

37. In this Section, the Respondent demonstrates that the factual record renders the premises underlying the Claimant's case untenable. Specifically, the Respondent will show that: (i) the Claimant's purported investment cannot be sustained as a legitimate one; and (ii) the Respondent's conduct with respect to the Four Unsolicited Turbines has been lawful throughout. This Section complements the submissions presented in Section 2 of the Statement of Defense, to which the Respondent respectfully refers the Arbitral Tribunal to avoid duplication.[10]

38. *First*, the Claimant did not use his own funds to pay for the Four Unsolicited Turbines but instead improperly used funds disbursed under the Facility Agreement. This course of action was made possible only through the Claimant's active participation in creating the Forged Letters, which misrepresented to GE that Angola had consented to purchase the Four Unsolicited Turbines and to include them under the financing provided in the Facility Agreement (**Section 2.1**).

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[10] SoD, pp. 5-52, §§ 24-194.

39. *Second*, the Respondent addresses the Claimant's contention that the Provincial Court of Luanda and IGAPE relinquished custody of the Four Unsolicited Turbines and that the Respondent treated them as its own property.[11] The Respondent demonstrates that: (i) Angola initiated judicial proceedings precisely to obtain a determination of ownership, thereby confirming that it has not treated the Four Unsolicited Turbines as State-owned; (ii) IGAPE's decision to entrust the Four Unsolicited Turbines to PRODEL's care was a reasonable exercise of its duties as judicially appointed trustee; (iii) throughout PRODEL's custody, IGAPE was kept regularly informed and the turbines have been operated and maintained in accordance with industry standards; and (iv) as established by the Technical Expert Report of Mr. Darcy Holderness, the installation of the Four Unsolicited Turbines is reversible, they can be refurbished to a "like new" condition, and they can be returned to the Claimant should the Provincial Court of Luanda so order (**Section 2.2**).

2.1 Through deliberate fraud and unlawful schemes, the Claimant extracted payments from the Respondent, which were used to pay GE for the Four Unsolicited Turbines[12]

40. The Claimant, in his Reply, argues that its investment was legitimate,[13] asserting that the Framework Agreement did not obligate AEnergy to sell all turbines purchased from GE to Angola,[14] that AEnergy did not use Angolan funds to pay for the Four Unsolicited Turbines, and that it did not participate in Mr. da Costa's fraudulent scheme.[15]

41. However, it is clear from the outset—and even more so in light of the documents produced by the Claimant—that the Framework Agreement did, in fact, bind AEnergy to sell the 14 turbines to Angola (**Section 2.1.1**). Furthermore, the condition precedent insisted upon by GE for the disbursement of Contracts 3, 7, 11 and 12 created circumstances that compelled the Claimant

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11 SoC, pp. 1, §§ 3-5; Reply, pp. 67-70, §§ 287-295.

12 The Respondent submits the following set of documents into the record: **R-0118**, Government evidence admitted in the criminal proceedings of Case No. 23 Cr 610 (PKC[redacted]

13 Reply, pp. 17-32, §§ 78-146.

14 Reply, pp. 18-19, §§ 79-87.

15 Reply, pp. 19-32, §§ 88-146. The Claimant argues, albeit unsuccessfully, that he used his own funds, see Reply, pp. 10-11, §§ 42-51.

to orchestrate a fraudulent scheme together with Mr. Wilson da Costa. Any contention to the contrary is a clear lie (**Section 2.1.2**). Faced with the illicit use of the Facility Agreement and the payment for the Four Unsolicited Turbines, the Respondent validly and reasonably terminated the 13 Contracts (**Section 2.1.3**).

2.1.1 Without the State's authorization, AEnergy committed to supplying Angola with more than the eight turbines covered by the 13 Contracts

42. The Claimant alleges that "*AEnergy never committed vis-à-vis GE to supplying Angola with all the turbines it purchased from GE*."[16] It further accuses Angola of misreading the Framework Agreement, stating that "[t]*here is a fundamental difference between anticipating that Angola might require additional turbines to develop its energy infrastructure and accordingly acquiring further turbines in anticipation of potential future demand – which is precisely what AEnergy did – and having committed to selling them to Angola, which it had not*."[17]

43. As extensively developed in the Statement of Defense, these submissions do not accurately reflect the contractual reality.[18] *First*, AEnergy purchased 14 turbines from GE, all of which could only be sold to Angola.[19] *Second*, the contractual and financial structure of the transaction confirms this destination exclusivity. *Third*, this contractual and financial structure also explains why AEnergy desperately needed Angola to buy the Four Unsolicited Turbines. Finally, the Tribunal should draw an adverse inference derived from the Claimant's failure to produce documents in response to the document production request.

44. *First*, under the Framework Agreement concluded with GE, AEnergy committed to purchasing 15 TM2500 turbines to be sold exclusively to Angola.[20] Pursuant to the four Supply Contracts

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16 Reply, p. 18, § 79.

17 Reply, p. 18, § 80; p. 18, § 83.

18 Statement of Defense, pp. 7-14.

19 **R-0038**, Supply Contract 1, dated 29 June 2016; **C-41**, Supply Contract 2, dated 30 March 2017; **R-0039**, Supply Contract 3, dated 2 June 2017; **R-0040**, Supply Contract 4, dated 30 June 2017; **C-38**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, p. 5, Article III(F) and (G).

20 **C-38**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, pp. 4-5, Article III (A), (F) and (G).

subsequently signed between the parties, AEnergy ultimately purchased 14 turbines from GE.[21]

45. It is common ground that Angola only acquired eight turbines under the 13 Contracts with AEnergy.[22] Therefore, six turbines, including the Four Unsolicited Turbines at the heart of this dispute, were purchased by AEnergy without any agreement from Angola to acquire them.

46. The Claimant submits that "*as a private commercial entity, AEnergy was free to determine the number of turbines it wished to purchase from its own supplier without requiring any authorization from MINEA or any other Angolan authority*."[23]

47. The Respondent does not dispute that AEnergy was capable of entering into supply contracts with GE. What the Respondent does submit, and what the Claimant avoids addressing, is that this contractual freedom to purchase turbines is entirely different from the issue of where those turbines could ultimately be sold. The true question is whether AEnergy had any liberty to direct those turbines to destinations other than Angola. It did not.

48. On this critical point, the Framework Agreement is unambiguous:

(i) Article III (A) (1) provides that "*the Buyer will commit to purchase no less than Fifteen (15) TM2500 Units (…) for use within Angola in accordance with the terms of this Agreement*;"[24]

(ii) Article III (F) imposes a corresponding restriction on disposition, stating that the Buyer – AEnergy – "*shall not lease, rent, sell or otherwise transfer any Equipment to a third party otherwise than for Projects in Angola listed in EXHIBIT 1 (…)*;"[25]

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21 **R-0038**, Supply Contract 1, dated 29 June 2016; **C-41**, Supply Contract 2, dated 30 March 2017; **R-0039**, Supply Contract 3, dated 2 June 2017; **R-0040**, Supply Contract 4, dated 30 June 2017.

22 Reply, p. 18, § 82.

23 Reply, p. 19, § 84.

24 **C-38**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, p. 4, Article III (A).

25 **C-38**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, p. 5, Article III (F).

(iii) Although the obligation to sell the turbines was already sufficiently established, Article III (G) still reinforces it: "*All Equipment purchased by the BUYER under this Framework Agreement shall be supplied for the Projects identified in EXHIBIT 1 hereof – Scope of Supply. In order to deviate from the use stipulated in EXHIBIT 1, BUYER will require SELLER's approval in writing. This approval shall not be unreasonably withheld*." [26]

49. The contractual architecture leaves no room for doubt. AEnergy was required to purchase turbines for Angola and was barred from selling them elsewhere without GE's prior written consent. The Claimant attempts to escape his contractual reality by clinging to the deviation mechanism under Article III (G), submitting that the "*destination restrictions in Article III.F and G do not establish any obligation to sell to Angola*," [27] as GE was "*contractually required to consider requests for deviation and could not unreasonably withhold its approval*." [28] This argument is self-defeating. The very existence of a deviation clause confirms that Angola was the default and mandatory destination for the turbines. If AEnergy truly had unfettered discretion over their destination, there would have been no need for a deviation mechanism at all.

50. Moreover, in 2017, prior to the disbursement, no written consent to deviate was granted by GE. Selling the Four Unsolicited Turbines outside of Angola was never even discussed. They were always destined for Angola, which is evident from AEnergy and GE's conduct, directing all their efforts towards securing their sale specifically to Angola, as thoroughly developed in the next section (**Section 2.1.2**).

51. As such, all 14 turbines purchased by AEnergy from GE were, as a matter of contractual obligation, destined exclusively for Angola, although no agreement on such number of turbines was first obtained from the State. As a result, AEnergy was left with a surplus of six turbines that

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26 **C-38**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, p. 5, Article III (G).

27 Reply, pp. 18-19, § 85.

28 Reply, p. 19, § 86.

were neither sold nor eligible to be included under the Facility Agreement.[29]

52. *Second*, the entire contractual and financial structure of the transaction corroborates this destination exclusivity.

53. The Claimant attempts to artificially fabricate a new commercial reality, recasting AEnergy as an autonomous distributor "*free to determine the number of turbines it wished to purchase*."[30] However, AEnergy's commercial viability was inextricably linked and dependent on the sale of these turbines to Angola. This becomes clear when the structure of the turbines' deal is examined. It was a complex transaction involving four interlocking sets of agreement, all converging on a single goal – the sale of turbines to Angola:

(i) On 30 June 2016, AEnergy entered into a Framework Agreement with GE, committing to purchase turbines to be sold exclusively to Angola;[31]

(ii) Under this Framework Agreement, AEnergy signed four Supply Contracts with GE, ultimately concluding the purchase of 14 turbines;[32]

(iii) AEnergy subsequently signed the first of the 13 Contracts with Angola on 17 July 2017, which contemplated the sale of only eight of those turbines; [33] and

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29 **R-0038**, Supply Contract 1, dated 29 June 2016; **C-41**, Supply Contract 2, dated 30 March 2017; **R-0039**, Supply Contract 3, dated 2 June 2017 **R-0040**, Supply Contract 4, dated 30 June 2017.

30 Reply, p. 18, § 84.

31 **C-38**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016.

32 **R-0038**, Supply Contract 1, dated 29 June 2016; **C-41**, Supply Contract 2, dated 30 March 2017; **R-0039**, Supply Contract 3, dated 2 June 2017; **R-0040**, Supply Contract 4, dated 30 June 2017.

33 **C-48**, Contract 1 (Central Térmica de Menongue) (with informal translation into English), dated 23 July 2017; **R-118.29 and R-118.30**, Contract No. 2 (Cuíto), dated 23 July 2017; **C-61**, Contract 3 (Quileva) (with informal translation into English), dated 9 December 2014; **C-50**, Contract 4 (Central Térmica de Malembo) (with informal translation into English), dated 23 July 2017; **R-0118.33 and R-0118.34**, Contract No. 5 (Luanda and Benguela), dated 23 July 2017; **C-49**, Contract 6 (Soyo I) (with informal translation into English), dated 23 July 2017; **R-0041**, Contract No. 07.ENDE-PIP.2017, dated 17 July 2017; **R-0118.39** and **R-0118.40**, Contract No. 8 (Luanda), dated 23 July 2017; **R-0118.41** and **R-0118.42**, Contract No. 9 (Namibe), dated 23 July 2017; **R-0118.25** and **R-0118.26**, Contract No. 10 (Luanda), dated 23 July 2017; **C-65**, Contract 11 (ENDE) (with informal translation into English), dated 17 July 2017; **R-0118.21** and **R-**

(iv) On 21 August 2017, GE Capital and Angola entered into a Facility Agreement designed to make USD 1.1 billion available to support the supply of services of 12 turbines TM2500.[34]

54. A crucial feature of this structure is that AEnergy was under no obligation to fulfil its own payment obligations towards GE upfront. With the exception of the USD 60 million advance, AEnergy's payment obligations were only triggered through amounts disbursed under the Facility Agreement.[35] The amounts disbursed flowed directly towards GE, fulfilling both Angola's payment obligations towards AEnergy and AEnergy's payment obligations towards GE.[36] That much was admitted in the LCIA arbitration, where AEnergy stated that "*the Supply Contracts would be paid off [...] only once Angola drew on the USD 1.1 billion facility*."[37]

55. The Claimant insists that AEnergy was not a mere intermediary because it "[C]*ontracts with GE in its own name, assuming all obligations and risks under the Supply Contracts.*"[38] This assertion rings hollow in light of the contractual architecture just described. In every sense, AEnergy was structurally and economically a conduit – its ability to fulfill its obligations or retain viability depended entirely on the Angolan projects.

56. All in all, even if the Tribunal were to consider that the Framework Agreement did not itself oblige AEnergy to sell those turbines to Angola, the commercial reality is unavoidable: AEnergy had no alternative but to direct the Four Unsolicited Turbines to Angola. Without Angolan orders for disbursements under the Facility Agreement, AEnergy simply lacked funds to pay for the turbines it bought from GE.

0118.22, Contract No. 12 (Bié, Benguela, Huambo and Uíge), dated 21 July 2017; **C-64**, Contract 13 (Turbina Móvel) (with informal translation into English), dated 23 July 2017.

34 **R-0052,** Facility Agreement, dated 21 August 2017, p. 17, clause 3.1.

35 Statement of Defense, p. 11, § 46; **R-0001**, Facility Agreement (Extract), dated 21 August 2017, Clause 3.1; **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 21, Figure 3.5, theoretical structure of turbine cash flow.

36 **R-0005**, Invoice Summary by On-Sale Contract, dated 22 December 2017; **R-0037**, Statement of Case in the LCIA between AEnergy and GE, dated 28 October 2020, p. 14, § 45 (a).

37 **R-0037**, Statement of Case in the LCIA between AEnergy and GE, dated 28 October 2020, pp. 12-13, § 42.

38 Reply, p. 8, § 36.

57. *Third*, this contractual and financial structure explains why AEnergy desperately needed Angola to buy the Four Unsolicited Turbines.

58. The reality is that this interdependency had tangible and decisive consequences: GE conditioned any disbursement under the Facility Agreement on the amendment of the 13 Contracts so as to include at least 12 turbines.[39] In other words, any disbursement, and consequently, AEnergy's ability to pay off its debts and ensure its financial viability, was entirely contigent on the sale of the Four Unsolicited Turbines to Angola.

59. The Claimant himself concedes this, acknowledging that GE "*would not be required to disburse funds related to Contracts Nos. 3, 7, 11, or 12 unless four additional TM2500 turbines were included within the scope of those four contracts.*"[40] Mr. Machado thus recognizes that the entire financial transaction was premised on Angolan sales.

60. [redacted].

61. [redacted]

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39 **R-0036**, United States v. Freitas da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, p. 3 of the PDF.

40 Reply, pp. 29-30a, § 131.

41 [redacted]

62. It is this total dependence on the sale of the turbines to Angola that explains AEnergy's subsequent conduct. The sustained, multi-month campaign to amend the 13 Contracts to include the Four Unsolicited Turbines is inexplicable under the Claimant's theory of the case. Had the turbines been capable of being sold elsewhere, this whole campaign would have been useless.

63. Finally, the Tribunal should draw an adverse inference from the Claimant's failure to produce documents responsive to Request No.7. Under this Request, the Tribunal ordered the Claimant to produce "*the draft amendments to the 13 Contracts entered into AEnergy and MINEA, to be proposed by AEnergy to MINEA at GE's Capital's demand*" and "*all correspondence accompanying/responding/commenting on the drafts of the amendments to the 13 Contracts*."[44] The Claimant produced a series of emails purportedly evidencing the drafting and negotiation of the amendments to the 13 Contracts, including the email from Mr. Morgado of 8 September 2017 and the email from Mr. Talino of 12 October 2017 attaching a draft letter proposal, already produced as "Email FTalino_12.10.2017_07h36.pdf".

64. [redacted]

65. The absence of these documents show that the Claimant was aware that the contracts entered into by AEnergy and Angola would need to encompass at least 12 turbines in order for GE to finance the entire deal. The Tribunal should therefore draw that adverse inference.

66. As set out above,[46] for a negative inference to be drawn it is necessary that (i) there be an order to produce a specific document (or category), (ii) the party burdened with its production fails to

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44 Procedural Order No. 3, Document Request No. 7, p. 63.

45 [redacted]

46 Section 1.1.

produce such document, and (iii) the failure to produce be unaccompanied by a satisfactory explanation of the reasons why the document was not produced. It is also necessary that the requesting party satisfies additional criteria, namely that (i) it produced all available evidence corroborating the inference sought, (ii) the requested evidence must be accessible to the inference opponent, (iii) the inference sought must be reasonable, consistent with facts in the record, and logically related to the likely nature of the evidence withheld, (iv) the party seeking the adverse inference must produce *prima facie* evidence, and (v) the inference opponent must know, or have reason to know, of its obligation to produce evidence rebutting the adverse inference sought. All requirements are met in the present case.

67. In this case, there was an order to produce a specific document, and the Claimant failed to comply with it without any satisfactory explanation.[47] Moreover, the Respondent has produced all available evidence corroborating the inference sought; [48] the inference requested is reasonable and consistent with the record, as prima facie evidence was produced.

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68. The contractual text, the parties' conduct, and the financial structure of the transaction all point to the same conclusion: AEnergy purchased 14 turbines under a contractual and financial framework that earmarked them exclusively for Angola. Accordingly, it had neither the contractual right to sell them elsewhere without GE's written consent (which was not granted), nor the financial capacity to absorb the cost of the turbines independently.

69. This context explains why, when the gap between the 14 turbines purchased and the eight turbines sold became apparent, AEnergy launched a sustained effort to close it. Ultimately, AEnergy had to resort, as detailed in the next Section, to the forgery of the amendment letters of the 13 Contracts, as there was no alternative for it to fulfill its obligations under the contracts signed with GE.

2.1.2 The Claimant did not use his own funds to pay for the turbines; instead, AEnergy improperly

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47 Respondent's letter, 17.04.2026, § 31, p. 5.

48 **R-0036**, United States v. Freitas da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, p. 3 of the PDF; Reply, pp. 29-30a, § 131.

used funds from the Facility Agreement by submitting letters forged by the Claimant and his associates

70. The Claimant advances yet another version of events regarding the acquisition of the Four Unsolicited Turbines in an attempt to deny the undeniable: the Claimant used Angola's funds to pay for the Four Unsolicited Turbines. Mr. Machado now contends, in plain contradiction to what had been alleged before,[49] that he paid for the Four Unsolicited Turbines through advance payments "*in the amount of USD 60 million*"[50] and through "*funds owed to Aenergy for other goods delivered and services rendered under the 13 Contracts,*"[51] that is, with disbursements under the Facility Agreement.

71. Additionally, the Claimant keeps denying participation in the fraudulent scheme to create the Forged Letters, alleging that "*the forgery was perpetrated by Mr da Costa alone, as conclusively established by the DOJ following a full criminal trial*."[52] Critically, with respect to the kick-back payments to Mr. da Costa and to Mr. Nelson, the Claimant admits that they were made, but that "*they bore no relation whatsoever to the acquisition of the Four Turbines.*"[53]

72. These contentions do not correspond to the reality of what happened and Mr. Machado is well aware of that. The documentary evidence leaves no room for doubt. *First*, the Four Unsolicited Turbines were paid for with Angolan funds under the Facility Agreement (**Section 2.1.2.1**). *Second*, this was only possible due to the Claimant's fraudulent scheme of creating Forged Letters to falsify Angola's consent to purchase the Four Unsolicited Turbines (**Section 2.1.2.2**).

2.1.2.1 The Four Unsolicited Turbines were paid for with Angolan funds under the Facility Agreement

73. Mr. Machado creates new ambiguous narratives in each passing opportunity as to how AEnergy

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49 [redacted] Statement of Claim, pp. 5-6, § 26; **R-0121**, Statement of Defense in the Declaratory Proceedings (Complete), dated 27 September 2020, p. 14 of the PDF, § 113.

50 Reply, p. 10, § 45.

51 Reply, p. 11, § 51.

52 Reply, p. 32, § 146.

53 Reply, pp. 31-32, § 141.

would have been able to afford to pay for the turbines: in December 2018, AEnergy "*resorted to bank debt, [and] gave up commercial margins;*"[54] in AEnergy's defense in the Main Action, he admitted that he did not pay the Turbines; in the Statement of Claim, the turbines were acquired "*in the normal course of its commercial and operational activities, even prior to the existence of the Credit Facility.*"[55] Now, the Claimant alleges that the turbines were paid through "*advance payments to GE in the amount of USD 60 million*"[56] and "*the remaining balance was paid with funds owed to Aenergy for other goods delivered and services rendered under the 13 Contracts*."[57]

74. The contradiction and ambiguity are not innocent. It is hard for the Claimant to find a coherent account of how AEnergy paid for the Four Unsolicited Turbines… because it did not.

75. In this new story presented in the Reply, the Claimant asserts that, prior to any disbursement from the Facility Agreement, AEnergy made advance payments to GE in the amount of USD 60 million, allocated to the purchase of 12 turbines, "*which included the Four Turbines*."[58] The Claimant further alleges that "*[t]he remaining balance was paid with funds owed to Aenergy for other goods delivered and services rendered under the 13 Contracts,"*[59] namely from receivables owed to AEnergy under the 13 Contracts. This version of events does not withstand scrutiny. The Four Unsolicited Turbines in dispute in this arbitration were undoubtedly paid for with Angola's funds under the Facility Agreement.

76. First, in AEnergy's Defense of the Main Action, it alleged that the amount of USD 60 million was used to pay for equipment and services included in the 13 Contracts.[60] If these monies were paid for the equipment included in the 13 Contracts, they could not, according to the Claimant's

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54 **R-0122**, 5 and 7 December 2018 meeting notes, §21.

55 Statement of Claim, pp. 5-6, § 26.

56 Reply, p. 10, § 45.

57 Reply, p. 11, § 51.

58 Reply, p. 10, § 45.

59 Reply, p. 10, § 45.

60 **R-0121**, Statement of Defense in the Declaratory Proceedings (Complete), dated 27 September 2020, p. 14 of the PDF, § 113.

narrative, have included the Four Unsolicited Turbines. Therefore, this advance payment was solely related to the eight turbines of the 13 Contracts. This alone should suffice to end the matter, but the Respondent will further demonstrate how the Claimant's new theory is another falsehood.

77. Second, as to the advance payments, the three documents submitted to support this allegation merely confirm that the Claimant made an advance payment of USD 60 million.[61] They do not state that this advance was allocated specifically to the Four Unsolicited Turbines.[62]

78. In fact, what the documents submitted do prove is that only USD 10 million was allocated to seven turbines under Supply Contract 2 – under which are included the Four Unsolicited Turbines.[63] The remaining USD 50 million in advance payments were completely unrelated to the Four Unsolicited Turbines.[64]

79. As such, the USD 10 million in advance payments which actually relate to the Supply Contract where the Four Unsolicited Turbines are included represent a mere payment of approximately USD 1.4 million per turbine, which is evidently insufficient to even begin to demonstrate that AEnergy paid for the Four Unsolicited Turbines.

80. In any case, AEnergy recouped this initial deposit by invoicing PRODEL for an advance payment under Contract 7, which included the USD 10 million used to pay for the seven turbines, including the Four Unsolicited Turbines.[65]

81. As such, not only would this advance payment always be, in light of the total contract value, practically irrelevant, but it was also Angola that ended up paying for this initial deposit for the

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61 **C-43**, GE Debt Credit Request, dated 28 June 2026; **C-45**, GE Invoice F4826150 re downpayment, dated 31 March 2017; **C-46**, Statement of Accounts GE 2018, dated 18 September 2018.

62 Particularly, **C-43**, GE Debt Credit Request, dated 28 June 2026, p. 5: "Out of $1.lBn loan amount, GE is getting paid $715M ($60M paid by AE as advance) […]."

63 **C-45**, GE Invoice F4826150 re downpayment, dated 31 March 2017; **RER-03**, HKA Second Report, p. 19, § 43; **CER-01**, First Quantum Expert Report by AlixPartners, pp. 7-8, § 26.

64 **RER-03**, HKA Second Report, p. 23, §§ 48-49; **C-43**, GE Debt Credit Request, dated 28 June 2026, p. 47.

65 **RER-03**, HKA Second Report, pp. 24-25, §§ 51-52; **R-0002**, Invoices approved by MINEA, dated 30 August 2017, p. 60; **R-0005**, Invoice Summary by On-Sale Contract, dated 22 December 2017, p. 9.

Four Unsolicited Turbines.

82. As to the suggestion that AEnergy paid the remaining balance from its own receivables, "*directly through disbursements from the credit facility*,"[66] it is simply not possible. The theory is that the "*debt that was allegedly owed to Aenergy by Angola was made instead to pay GE entities, 'rather than flowing through Aenergy's accounts'*."[67] In essence, the Claimant now argues that it forwent the amounts it otherwise would have received and they were directly transferred to GE under the Facility Agreement to pay for the Four Unsolicited Turbines.

83. This is, however, not mathematically possible. The Claimant himself is aware of this as he has not submitted any evidence in support of this manifestly unfounded contention.

84. As demonstrated in detail in the Statement of Defense, the funds disbursed under the Facility Agreement were allocated between GE and AEnergy pursuant to an invoice summary signed by them.[68] Out of the USD 643,314,360.00 disbursed in total, roughly USD 267 million was paid to AEnergy and the remainder to GE. Under this allocation, AEnergy was being paid for the work that was agreed up through the end of 2017 and for the work AEnergy had already committed to perform in 2018 within the scope of the 13 Contracts according to their actual terms (and not the forged version of them created by the Claimant and his accomplices).[69]

85. Thus, there were absolutely no margins from which AEnergy could cancel additional receivables.

86. This is also confirmed by AEnergy's own financial statements, which do not account for any receivables from Angola under the Fast Power Deal that could have been used to pay for the Four Unsolicited Turbines.[70]

87. As such, there were no additional amounts that AEnergy was owed on approved and funded

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66 **CER-02**, Second Quantum Expert Report by AlixPartners, pp. 8-9, § 30.

67 **RER-03**, HKA Second Report, pp. 29-30, § 64.

68 Statement of Defense, p. 12, § 47; pp. 26-28, §§ 96-97.

69 **RER-03**, HKA Second Report, pp. 28-29, § 61; **R-0003**, Utilization Request, dated 24 December 2017, p. 4; **R-0004**, Addendum of the Utilization Request, dated 28 December 2017, p. 1; **R-0013**, Termination letter, dated 2 September 2019, pp. 13-14 of the PDF.

70 **RER-03**, HKA Second Report, pp. 27-29, §§ 59-62.

work under the 13 Contracts whose receipt it could cancel and automatically transfer to GE.[71]

88. Consequently, the Claimant's absurd contention that "*Angola was not even the victim of the fraud,*"[72] but a "[b]*eneficiary of the transaction*"[73] and that the forgery "*had no effect whatsoever on the scope of the 13 Contracts*"[74] is irreconcilable with the Invoice Summary accepted by the Claimant, which clearly evidenced how Angola's funds under the Facility Agreement were used to pay for the Four Unsolicited Turbines.

89. Mathematically speaking, the Claimant cannot simultaneously admit that the Four Unsolicited Turbines were paid through the Facility Agreement and maintain that this payment left Angola untouched.

90. [redacted] This is simply not credible. In fact, according to the Claimant himself, "*Aenergy was not a party to the financing agreement and had no control over its disbursement.*"[76] Mr. Machado inevitably contradicts himself whenever he tells and retells his story. After all, a lie cannot stand still.

91. As such, this new version of events also fails to prove that the Claimant paid for the Four Unsolicited Turbines with his own funds.

92. Finally, the Tribunal should in any case draw adverse inferences from the Claimant's failure to provide documents proving that AEnergy paid for the Four Unsolicited Turbines.

93. As set out above,[77] for an adverse inference to be drawn, it is necessary that (i) there be an order

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71 **RER-03**, HKA Second Report, pp. 28-29, § 61; **R-0003**, Utilization Request, dated 24 December 2017, p. 4 of the PDF; **R-0004**, Addendum of the Utilization Request, dated 28 December 2017, p. 1 of the PDF; **R0013**, Termination letter, dated 2 September 2019, pp. 13-14 of the PDF.

72 Reply, p. 1, § 4.

73 Reply, p. 32, § 146.

74 Reply, pp. 30-31, § 136.

75 [redacted]

76 Statement of Claim, p. 5, § 45.

77 Rejoinder, Section 1.1.

to produce a specific document (or category), (ii) the party burdened with its production fails to produce such document, and (iii) the failure to produce be unaccompanied by a satisfactory explanation of the reasons why the document was not produced. It is also necessary that the requesting party satisfies additional criteria, namely that (i) it produced all available evidence corroborating the inference sought, (ii) the requested evidence must be accessible to the inference opponent, (iii) the inference sought must be reasonable, consistent with facts in the record, and logically related to the likely nature of the evidence withheld, (iv) the party seeking the adverse inference must produce *prima facie* evidence, and (v) the inference opponent must know, or have reason to know, of its obligation to produce evidence rebutting the adverse inference sought. In the case at issue, all these requirements are met.

94. *First*, under the Request for document production No. 5, the Tribunal ordered the Claimant to produce "*documents which concern the origin of the funds used for the payment of the Four Unsolicited Turbines, notably documents that demonstrate that AEnergy used its own funds, including bank statements, accounting records, and any documents evidencing AEnergy's actual financial costs in relation to the Four Unsolicited Turbines, for the period of 2012–2021*."[78]

95. *Second*, it is indisputable that the Claimant failed to produce documents evidencing that AEnergy paid for the Four Unsolicited Turbines. The Claimant, in clear opposition to the Tribunal's order, merely produced 22 documents, all relating to the period from 2017 to 2019. Besides being clearly insufficient in number, these documents are far from establishing that AEnergy used its own funds to pay for the Four Unsolicited Turbines.

96. The Tribunal's order was clear: it ordered the production of official records demonstrating that AEnergy actually paid for the Four Unsolicited Turbines.

97. The Claimant produced no such documents. Instead, Mr. Machado has submitted 22 out-of-context documents, most of which are internal documents with no official value purporting to be banking records. The only goal of this production is clearly to drown the Respondent in non-official documents full of numbers with no specification as to what they relate to.

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78 Procedural Order No. 3, Document Request No. 5, p. 54.

98. In fact, the only official transfer records relate to the advance payments made by AEnergy, which the Respondent has already demonstrated that not only is clearly insufficient to prove that AEnergy paid for the Four Unsolicited Turbines, but also that it was Angola that ultimately paid such amount.[79]

99. *Third*, the Claimant failed to provide a plausible explanation for not producing the requested documents. Mr. Machado alleges that he did not submit further banking transfer records evidencing the movement of funds besides the ones related to the advance payments because those were made through the application of receivables generated under AEnergy's Angolan contracts.[80] As extensively developed throughout this Section, however, this excuse does not withstand scrutiny. Not only would that be economically impossible, but AEnergy would always have to record such allocation of funds in its financial records, which it did not.[81]

100. *Fourth*, as for the additional criteria, the Respondent has submitted all available and corroborating evidence that AEnergy did not make any payment regarding the Four Unsolicited Turbines, including AEnergy's own allegations in the Main Action[82] and the USD 10 million invoice to PRODEL.[83] The documents requested to evidence payment are solely within the Claimant's possession. The Respondent has thus produced *prima facie* evidence of non-payment, and the inference sought is reasonable and consistent with the facts of the record. The Claimant was specifically requested to submit documents to support the claim that payment was made with his own funds, and has failed to do so, despite having knowledge of such obligation. Therefore, all additional criteria for an adverse inference have been satisfied.

101. Accordingly, considering that the Claimant has failed, without a plausible justification, to

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79 Rejoinder, p. 14, §§ 60-61; **RER-03**, HKA Second Report, p. 25, § 52; **R-0002**, Invoices approved by MINEA, dated 30 August 2017, p. 60; **R-0005**, Invoice Summary by On-Sale Contract, dated 22 December 2017, p. 9.

80 Respondent's letter 27.05.2026, Annex B, Claimant's response to Respondent's additional request for documents, dated 17 July 2026, p. 6, § 24.

81 **RER-03**, HKA Second Report, pp. 29-30, § 64.

82 **R-0121**, Statement of Defense in the Declaratory Proceedings (Complete), dated 27 September 2020, p. 14 of the PDF, § 113.

83 **RER-03**, HKA Second Report, p. 23, §§ 48-49; **C-43**, GE Debt Credit Request, dated 28 June 2026, p. 47.

produce documents evidencing that AEnergy paid for the Four Unsolicited Turbines, the Tribunal must draw the adverse inference that clearly transpires from the record: AEnergy did not use its own funds to purchase the Four Unsolicited Turbines.

102. The reality is simple. The Claimant was in a precarious financial position, with no resources to pay for the turbines it had purchased, thus resorting to the orchestration of a fraudulent scheme to use Angola's funds under the Facility Agreement to pay for them.

2.1.2.2 The use of Angola's funds was only possible due to the Claimant's fraudulent scheme of creating Forged Letters to falsify Angola's consent to purchase the Four Unsolicited Turbines

103. The Claimant persists in denying any involvement in the creation of the Forged Letters, alleging that "[t]*he forgery was perpetrated by Mr. da Costa alone, as conclusively established by the DOJ following a full criminal trial*,"[84] and that "*Angola was not even the victim of the fraud*."[85] Regarding the kick-back payments, the Claimant further contends that they were made, but that they "*bore no relation whatsoever to the acquisition of the Four Turbines*."[86]

104. These contentions are manifestly false and deliberately distort the documentary record. In fact, the payment of the Four Unsolicited Turbines with Angolan funds under the Facility Agreement was only possible due to the Claimant's creation of the Forged Letters.

105. The Claimant keeps trying to rationalize the fraudulent scheme that it perpetrated. However, the documentary record leaves no room for doubt: Mr. Machado, alongside Mr. da Costa and Mr. Nelson from GE, falsified Angola's agreement to purchase the Four Unsolicited Turbines under Contracts 7 and 11 by photoshopping the non-binding amendment letters that the Respondent had actually prepared.

106. The chronology is damning. *First*, this alliance did not emerge out of the blue, but as early as 2016. *Second*, the Claimant desperately needed Angola to buy the Four Unsolicited Turbines in order to get GE to authorize the full disbursement under the Facility Agreement. *Third*,

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84 Reply, p. 32, § 146.

85 Reply, p. 1, § 4.

86 Reply, pp. 31-32, § 141.

confronted with Angola's refusal to provide binding amendment letters, Mr. Machado and his accomplices forged what Angola had refused to give. *Fourth*, believing that the Forged Letters were genuine, GE Capital proceeded with the disbursement of funds under the Facility Agreement. *Fifth*, as the goal of the fraud was achieved, the Claimant paid each of his accomplices USD 5 million. *Sixth*, the Claimant attempted to double bill Angola for these same Four Unsolicited Turbines. *Finally*, the Claimant has been involved in several fraud schemes over the years.

107. *First*, this alliance did not emerge out of the blue. As early as 2016, Mr. da Costa and Mr. Machado had been cultivating an improper alliance through WhatsApp groups, destined at "*providing AE with an illicit commercial advantage in various deals between AE and GE in Africa, including the Fast Power Deal in Angola and other deals in Angola.*"[87] It was within this pre-existing corrupt relationship that, when the opportunity – and need – emerged, the Claimant and his accomplices decided to deceive Angola and GE.

108. *Second*, the Claimant desperately needed Angola to buy the Four Unsolicited Turbines in order to get GE to authorize the full disbursement.

109. To understand why the Forged Letters were created, it is essential to recall the structural mismatch at the heart of this transaction, thoroughly explained in the previous Section.[88] AEnergy had committed vis-à-vis GE to purchasing 14 TM2500 turbines under the Supply Contracts.[89] However, the 13 Contracts between AEnergy and MINEA covered only eight TM2500 turbines: two under Contract 1, three under Contract 3, two under Contract 7, and one under Contract 13.[90]

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87 **R-0045**, Memorandum of Law in support of the government's motions *in limine*, Case no. 23 Cr. 610 (PKC), dated 9 June 2024, pp. 17-18; Statement of Defense, pp. 20-21, § 75.

88 Section 2.1.1.

89 **R-0038**, Supply Contract 1, dated 29 June 2016; **C-0041**, Supply Contract 2, dated 30 March 2017; **R-0039**, Supply Contract 3, dated 2 June 2017; **R-0040**, Supply Contract 4, dated 30 June 2017. See **RER-01**, Expert Report by HKA, pp. 35- 38, §§ 82- 85.

90 **C-0048,** Contract 1 (Central Térmica de Menongue) (with informal translation into English), dated 23 July 17; C-61, Contract 3 (Quileva) (with informal translation into English), dated 9 December 2014; **R-0041**,

110. [redacted]

111. Accordingly, GE made its position unambiguous: it would not disburse funds from the Facility Agreement under Contracts 7, 11 and 12 until the Claimant was able to sell the Four Unsolicited Turbines to Angola.[93] This condition was known to Mr. Machado.[94] [redacted]

112. [redacted]

Contract No. 07.ENDE-PIP.2017, dated 17 July 2017; **C-64**, Contract 13 (Turbina Móvel) (with informal translation into English), dated 23 July 2017.

91 [redacted]

[redacted]

93 **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, p. 7 of the PDF; [redacted] **R-0118.44**, Email from Mr. Kurada to Mr. Machado, dated 3 September 2017, p. 1.

94 Reply, pp. 29-30, § 131.

95 **R-0123**, Side Letter sent from AEnergy to GE, dated 26 December 2017 (USD 27,620,465 under On-Sale Contract No. 7, USD 17,140,066 under On-Sale Contract No. 11, and USD 53,000,000 under On-Sale Contract No. 12), pp. 13 and 15.

96 [redacted]

[redacted]

[redacted]

114. *Third*, confronted with Angola's refusal to provide binding amendment letters, Mr. Machado, Mr. da Costa, and Mr. Nelson forged what Angola had refused to give. The chronology is precise and damning. The Claimant, alongside his accomplices, orchestrated the fraud scheme, creating Forged Letters depicting GE's required wording from the non-binding amendment letters provided by the Respondent.

115. [redacted]

116. On 6 October 2017, Mr. Machado sent updated draft letters removing the scope proviso.[102] These drafts contained the exact same language which later appeared in the Forged Letters. Critically, there is no record that AEnergy or anyone acting on its behalf ever sent those 6

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98 [redacted]

[redacted]

[redacted]

101 [redacted]

102 **R-0124**, WhatsApp messages between Mr. Machado and Mr. da Costa, dated 6 October 2017.

October drafts to PRODEL, ENDE, or MINEA. The text was fabricated by Mr. Machado for the sole purpose of creating false letters.

117. On 10 October 2017, Mr. Pizarro sent to PRODEL and ENDE draft amendment letters with the same scope proviso present in the attachments shared in Mr. da Costa's and Mr. Machado's WhatsApp messages from 5 October.[103]

118. At AEnergy's insistence, on 12 October 2017, PRODEL and ENDE responded to Mr. Pizarro's email with the non-binding letters of intent which would then be forged.[104] However, since the Respondent did not intend to commit to any purchase, these genuine letters merely stated Angola's interest in negotiating the acquisition of the Four Unsolicited Turbines.[105] As such, they did not satisfy GE's conditions as to the necessary legally binding wording showing the intention to acquire.[106] [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] **R-0125,** Emails between Mr. Ivo Pizarro and José António Neto, between 10 and 12 October 2017, pp. 6-9; [redacted]; **R-0126**, Email from Mr. Pizarro to Francisco Talino, dated 10 October 2017.

104 **R-0125**, Emails between Mr. Ivo Pizarro and José António Neto, between 10 and 12 October 2017, pp. 1-5; **R-0127**, Email from Francisco Talino to Mr. Pizarro, dated 12 October 2017; **R-0007**, ENDE's letter, dated 12 October 2017; **R-0008**, PRODEL's letter, dated 12 October 2017; Statement of Defense, dated 27 November 2025, p. 18, § 68.

105 **RWS-03**, Witness Statement of Mr. José Salgueiro, p. 6, § 28.

106 Statement of Defense, p. 18, § 68; **R-0045**, Memorandum of Law in support of the government's motions *in limine*, Case no. 23 Cr. 610 (PKC), dated 9 June 2024, pp. 6-7.

107 [redacted]

[redacted]

122. Approximately 40 minutes later, Mr. da Costa sent to Mr. Bento three emails attaching the first version of the Forged Letters, which bore the exact same language as the letters sent by Mr. Machado on 6 October 2017.[113]

113 **R-0124**, WhatsApp messages between Mr. Machado and Mr. da Costa, dated 6 October 2017;

R-0128, Email from Mr. Bento to Mr. Machado, dated 12 October 2017.

116

[redacted]

[redacted]

[redacted]

[redacted]

128. In his Reply, the Claimant attempts to undermine the conclusions of the LCIA tribunal, arguing:[125]

> *[T]he DOJ, after an extensive investigation, found that Mr Bento had not signed the letters but that it was Mr da Costa who affixed Mr Bento's signature to the documents.*
>
> *(…)*
>
> *Indeed, after a thorough investigation with access to all federal investigative mechanisms, resources, and expertise, the DOJ unequivocally established in the criminal proceedings against Mr da Costa that he was the perpetrator of the forgery. Mr Machado and AEnergy were not convicted, nor even prosecuted. To the contrary, the DOJ found that AEnergy and its employees were the victims of Mr da Costa's crime.*

129. These statements must be seen for what they really are: a clear distortion and manipulation of the findings in the American criminal proceedings. This attempt to mislead the Tribunal must be corrected and thus dismissed. This is a Claimant who blatantly lies.

130. It is not true that the DOJ found that it was Mr. da Costa who affixed Mr. Bento's signature. This is immediately contradicted by the excerpt quoted by the Claimant himself, which states that "*Da Costa* ***and others*** *created the Charged Forgeries using Adobe Photoshop (…) At some point,* ***a signature from an AE executive was affixed*** *to the documents created in Adobe Photoshop (…).*"[126] Nowhere does it conclude whether it was Mr. da Costa or one of the "*others*" affixing

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124 [redacted]

125 Reply, p. 28, §§ 124-125.

126 Reply, p. 28, § 124; **C-42**, United States Department of Justice letter in connection with Wilson da Costa's sentencing, dated 19 March 2025, p. 4.

the signature.

131. [redacted]

135. In fact, the US Government brought a witness, an expert in computer forensics, to analyze the making of the Forged Letters. When cross-examined by the defense attorneys, this expert – Mr. Crain – agreed that the Forged Letters were "*printed out and presented to whoever it was that signed* [them] *in blue ink (…)*."[130] As to AEnergy's stamp, Mr. Crain also agreed that "*there is nothing in the metadata (…) that shows that this stamp was put on the document using*

127 [redacted] **R-0009**, ENDE's Fake Letter, dated 12 October 2017; **R-0010**, PRODEL's Fake Letter, dated 12 October 2017.

128 [redacted]

129 Reply, p. 28, § 125.

130 **R-0129**, American criminal proceedings, hearing transcripts, dated 13 November 2024, p. 15 of the PDF.

Photoshop or iLovePDF or any other program."[131]

136. [redacted]

[redacted]

138. All in all, given the broader context in which the DOJ's findings which the Claimant quotes appear, it is evident that it did not conclude that it was Mr. da Costa who exclusively created the Forged Letters and who affixed Mr. Bento's signature. It simply reached no conclusion on who signed the Forged Letters, merely stating that it "*was affixed*"[133] by "*Da Costa and others*."[134]

139. This brings us to the second manipulation that the Claimant makes of the DOJ's findings. Contrary to what the Claimant asserts, the DOJ did not "*unequivocally established in the criminal proceedings against Mr da Costa that he was the perpetrator of the forgery*."[135]

140. As extensively referred to already, the DOJ found that the forgery was perpetrated by "*Da Costa*

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131 **R-0129**, American criminal proceedings, hearing transcripts, dated 13 November 2024, p. 17 of the PDF.

132 [redacted] **R-0129**, American criminal proceedings, hearing transcripts, dated 13 November 2024, pp. 13 and 18 of the PDF.

133 Reply, p. 28, § 124; **C-42**, United States Department of Justice letter in connection with Wilson da Costa's sentencing, dated 19 March 2025, p. 4.

134 Reply, p. 28, § 124; **C-42**, United States Department of Justice letter in connection with Wilson da Costa's sentencing, dated 19 March 2025, p. 4.

135 Reply, p. 28, § 125; **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, 7; **C-42**, United States Department of Justice letter in connection with Wilson da Costa's sentencing, dated 19 March 2025, p. 6 (emphasis added).

and others."[136]

141. It is clear from the above that the Claimant is manifestly attempting to misrepresent the findings of the American criminal proceedings. In reality, for the sake of clarity, it must be added that the fact that "*Mr Machado and Aenergy were not convicted, nor even prosecuted*"[137] does not, in any way, establish their innocence. In the United States, Department of Justice prosecutors have broad discretion to decline to bring charges against individuals, even in circumstances where they have sufficient evidence to bring such charges.[138] Thus, the DOJ prosecutors may have exercised their discretion not to bring charges against Mr. Machado for a variety of possible reason, having nothing to do with Machado's culpability. The DOJ does not usually publicly explain its reasons for declining to prosecute someone. As such, the absence of a prosecution against Mr. Machado had nothing to do with his innocence — which was refused several times during the proceedings.

142. In fact, his participation in the fraudulent scheme is so obvious that, even without being formally prosecuted, Mr. Machado is mentioned several times throughout the proceedings as an active person involved in the fraudulent scheme.[139] Even the DOJ was not entirely silent regarding its view of Machado's role in the crime.

143. At Da Costa's sentencing, the DOJ argued that one of the harms of this crime was the destruction of AE. The judge, who had presided over the trial and thus seen the evidence of Machado's role, interjected:[140]

> *[Y]ou're not disputing that Mr. Machado had a role in that demise as well?*

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136 **C-42**, United States Department of Justice letter in connection with Wilson da Costa's sentencing, dated 19 March 2025, p. 4 (emphasis added).

137 Reply, p. 28, § 125.

138 **RL-0132**, DOJ, Justice Manual: Principles of Federal Prosecution, dated February 2024, §§ 9-27.00 et seq..

139 For example: **C-42**, United States Department of Justice letter in connection with Wilson da Costa's sentencing, dated 19 March 2025, p. 5.

140 **R-0130**, Setentencing Transcript, dated 31 March 2025, pp. 40-41.

144. The prosecutor responded:[141]

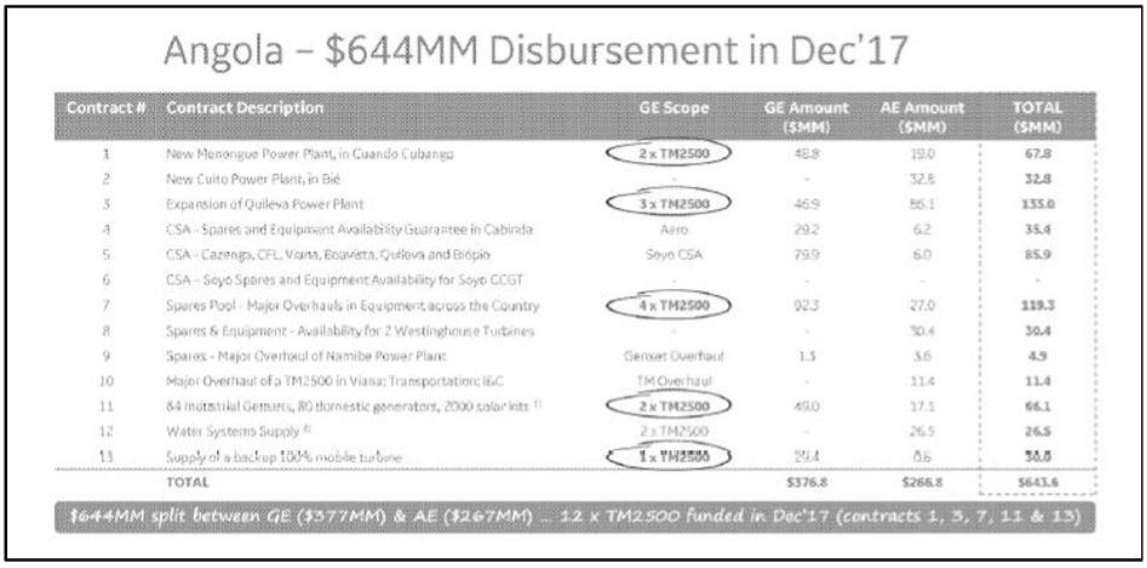
Absolutely. He bears responsibility for this as well.

145. This statement refutes the suggestion that the DOJ viewed Mr. Machado as an innocent. Much to the contrary, the judge asked and the prossecutor stated that it was not disputed that Mr. Machado bear responsibility for the entire scheme.

146. [redacted]

147. [redacted] On 22 December 2017, GE and AEnergy jointly signed the Invoice Summary, which allocated the first utilization request by On-Sale Contract.[143]

148. As explained in the Statement of Defense, the document presented by GE itself evidencing the allocation of funds under the Facility Agreement clearly demonstrates that they were used to



Angola – $644MM Disbursement in Dec'17

Contract #	Contract Description	GE Scope	GE Amount ($MM)	AE Amount ($MM)	TOTAL ($MM)
1	New Menongue Power Plant, in Cuando Cubango	2 x TM2500	48.8	19.0	67.8
2	New Cuito Power Plant, in Bié	-	-	32.8	32.8
3	Expansion of Quileva Power Plant	3 x TM2500	46.9	86.1	133.0
4	CSA - Spares and Equipment Availability Guarantee in Cabinda	Aero	29.2	6.2	35.4
5	CSA - Cazenga, CFL, Viana, Boavista, Quileva and Biópio	Seyo CSA	79.9	6.0	85.9
6	CSA - Seyo Spares and Equipment Availability for Seyo CCGT	-	-	-	-
7	Spares Pool - Major Overhauls in Equipment across the Country	4 x TM2500	92.3	27.0	119.3
8	Spares & Equipment - Availability for 2 Westinghouse Turbines	-	-	30.4	30.4
9	Spares - Major Overhaul of Namibe Power Plant	Genset Overhaul	1.3	3.6	4.9
10	Major Overhaul of a TM2500 in Viana: Transportation; I&C	TM Overhaul	-	11.4	11.4
11	84 Industrial Gensets, 80 domestic generators, 2000 solar kits [1]	2 x TM2500	49.0	17.1	66.1
12	Water Systems Supply [2]	2 x TM2500	-	26.5	26.5
13	Supply of a backup 100% mobile turbine	1 x TM2500	29.4	0.6	30.0
	TOTAL		$376.8	$266.8	$643.6

$644MM split between GE ($377MM) & AE ($267MM) ... 12 x TM2500 funded in Dec'17 (contracts 1, 3, 7, 11 & 13)

141 **R-0130**, Setentencing Transcript, dated 31 March 2025, p. 41.

142 [redacted]

143 Statement of Defense, pp. 26-27, § 96; **R-0005**, Invoice Summary by On-Sale Contract, dated 22 December 2017, p. 1.

pay for 12 turbines, including the Four Unsolicited Turbines:[144]

[redacted]49. Although the Claimant now argues that this table depicting the allocation of the disbursed funds for 12 turbines is "*a fabrication*" [145] made by Mr. da Costa and that "*its allocations are demonstrably wrong*,"[146] he omits that this same allocation was present in other documents known to him.[147]

[redacted]

151. [redacted]

144 Statement of Defense, pp. 27-28, §§ 97-99; **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, dated 7 May 2020, p. 43, § 149/g).

145 Reply, p. 26, § 115.

146 Reply, p. 26, § 115.

147 [redacted]

148 [redacted]

[redacted]

[redacted]

[redacted]

158. The Claimant's alleged lack of knowledge of the fact that the Four Unsolicited Turbines were paid with Angola's funds from the Facility Agreement would, in any case, never be credible.

159. As discussed above, Mr. Machado was fully aware that GE's funding was conditioned on selling the Four Unsolicited Turbines to Angola. Without knowledge of the Forged Letters, he could not credibly have believed that GE suddenly abandoned the binding amendment letters it had insisted on for months. Mr. Machado knew perfectly well that GE disbursed the agreed funds only because it had received the Forged Letters and believed Angola had already agreed to purchase the Four Unsolicited Turbines.

160. This, in fact, is confirmed by AEnergy's financial statements, and by Mr. Machado's statements. In 2018, when the Claimant was confronted with an email from Mr. da Costa requesting confirmation that GE Capital had funded 12 turbines – including the Four Unsolicited Turbines – , Mr. Machado stated that such information was accurate.[155]

161. Once more, the reality is simple: the Forged Letters materialized the intended goal. Upon receiving the Forged Letters, GE, believing that Angola had actually agreed to amend the contracts to include the Four Unsolicited Turbines, disbursed approximately USD 643 million, distributed across the 13 Contracts as if they included 12 turbines.

162. *Fifth*, as the goal of the fraud had been achieved, the Claimant paid USD 5 million to each of his accomplices.

163. The American criminal proceedings which the Claimant so praises are particularly compelling in confirming his involvement in the kick-back payments.

164. As the goal of the fraud had been achieved, rewards were due. Initially, the Claimant had promised each of his accomplices USD 10 million for their participation in the fraud scheme.[156]

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155 Statement of Defense, pp. 23-24, § 84; **R-0012**, Emails exchanged between GE Power (Wilson da Costa), AEnergy (Ricardo Machado) and MINEA, between 07 December 2018 and 17 December 2018.

156 **R-0118.126**, Messages from the "Friends" group chat, dated 24 April 2018, pp. 2-4; **R-0118.129**, Messages between Mr. da Costa and Mr. Nelson, dated 24 April 2018, p.1.

Ultimately, as admitted by Mr. da Costa himself,[157] the Claimant paid Mr. da Costa and Mr. Nelson USD 5 million each for their role in the creation of the Forged Letters, which allowed him to receive the disbursements he so desperately needed to keep his business afloat.

165. Mr. Machado has now admitted that he has indeed made these payments, but that they "*bore no relation whatsoever to the acquisition of the Four Turbines*."[158] He further alleges that "*the DOJ found evidence of payments by Mr Machado, but in no way did it conclude that they were made as compensation for the forgery*."[159] These assertions are manifestly false.

166. For starters, the Claimant once more attempts to misrepresent the documents quoted from the SDNY proceedings. Contrary to what Mr. Machado asserts, the DOJ concluded that "*the payment was made to 'take care' of Da Costa for his help with closing the Angola Fast Power Deal but that the banks were given documents saying that the payment was for 'services or consulting services'*."[160]

167. The Court also agreed with such view, sustaining that the payments received by Mr. da Costa were kickbacks for the fraud:[161]

> *The evidence showed that Da Costa acted with the purpose of facilitating disbursements to AE in order to obtain an undisclosed payment from AE's Machado.*

168. The paper trail confirms the corrupt nature of the payments. On 29 December 2017, one day after the Facility Agreement disbursement, Mr. da Costa emailed an invoice from MAMFE Energy FZC to Pera Investment Ltd (Mr. Machado's Dubai entity) for USD 5,040,000. Mr. Machado first replied "*Wrong address*" to the AEnergy corporate account. Mr. da Costa then resent the invoice

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157 **R-0118.173**, Mr. da Costa's post-arrest interview, dated 5 October 2023, pp. 3-5.

158 Reply, pp. 31-32, § 141.

159 Reply, p. 31, § 140.

160 **C-42**, United States Department of Justice letter in connection with Wilson da Costa's sentencing, dated 19 March 2025, p. 6.

161 **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, p. 7 of the PDF.

to Mr. Machado's personal email address.[162]

169. Mr. da Costa subsequently admitted that the Claimant paid each of his accomplices USD 5 million, to "*take care of us*,"[163] but that documents supporting the payments would describe them as concerning "*services or consulting services provided*."[164] The MAMFE contract was thus nothing more than a disguise to pass the kickback payments as legitimate commercial transactions. If the payments being made were legitimate, there would be no reason for Mr. Machado to send funds, allegedly for consulting services, through a shell company of an offshore account.[165]

170. The "*Friends*" WhatsApp group messages between Mr. da Costa, Mr. Nelson and Mr. Machado dispel any remaining doubt that could exist. Some months after the deal went through, the Claimant's accomplices still had not received the full USD 10 million that they were initially promised. As such, on 25 April 2018, Mr. Nelson wrote in their group:[166]

> *This Friends thing is only working for one of us and two of us are getting f***ed / First of all the amount is lower than we agreed / Second, it comes in small bull**** amounts / (…) Two friends worked all of 2017 for this and the bull**** continues.*

171. Separately, Mr. Nelson wrote to Mr. da Costa that "*we were expecting 10M each*."[167]

172. The meaning is unmistakable. The three individuals orchestrated a fraud scheme to falsify Angola's consent to buy the Four Unsolicited Turbines, and the two executors – Mr. da Costa

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162 **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, p. 4 of the PDF; **R-0118.118**, MAMFE Invoice, dated 29 December 2017.

163 **R-0118.173**, Wilson da Costa's post-arrest interview, dated 5 October 2023, p. 3.

164 **R-0118.173**, Wilson da Costa's post-arrest interview, dated 5 October 2023, p. 8.

165 **RER-03**, HKA Second Report, p. 35, § 78; **C-42**, United States Department of Justice letter in connection with Wilson da Costa's sentencing, dated 19 March 2025, p. 5; **R-0045**, Memorandum of Law in support of the government's motions in limine, Case no. 23 Cr. 610 (PKC), dated 6 September 2024, pp. 10-11; **R-0118.8**, MAMFE Contract, dated 1 June 2016 with a striking resemblance with **R-0118.9**, Contract for Sale of Services between China Machinery Engineering Corporation Contract and GE International, dated 17 June 2016.

166 **R-0118.126**, Messages from the "Friends" group chat, dated 24 April 2018, pp. 2-4.

167 **R-0118.129**, Messages between Mr. da Costa and Mr. Nelson, dated 24 April 2018, p.1.

and Mr. Nelson – were each promised USD 10 million by the orchestrator, Mr. Machado.[168]

173. *Sixth*, the Claimant attempted to double bill Angola for these same Four Unsolicited Turbines.

174. The Claimant further attempts to dodge its inevitable involvement in the forgery by alleging that the efforts he kept making to try to sell the Four Unsolicited Turbines throughout 2018 "*would have been entirely unnecessary – and indeed counterproductive – if the Respondent's theory were true that, in October 2017, Aenergy had participated in the fraudulent scheme to surreptitiously include those turbines within the scope of the 13 Contracts through the forged letters*."[169]

175. This last resort argument also does not prevail. The Claimant kept trying to sell the Four Unsolicited Turbines to Angola because he was trying to double bill the Respondent, making it pay twice for the same Turbines.

176. In fact, this seems to explain why tensions arose among the three accomplices. The Claimant remained in serious financial distress. As the funds had been allocated to the purchase of the Four Unsolicited Turbines, he now had to execute the 13 Contracts in their original version without the money that was supposed to be allocated to that.

177. When his accomplices complained about the low kick-back payments, Mr. Machado explained the scenario he was in:[170]

> *[L]ets review the facts WE have 6 TM in my warehouse that my client dont need and already paid […], and the funny thing after all this I still need to execute all 13 projects with the clients and my company have actually a debt bigger than 90 million ...*

178. Faced with this scenario, Mr. Machado sought an escape — and one soon presented itself.

179. In mid-2018, due to Angola's increased need for electricity production, the Respondent

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168 **RER-003**, HKA Second Report, pp. 35-37, §§ 73-79.

169 Reply, p. 24, § 108.

170 **R-0118.126**, Messages from the "Friends" group chat, p. 11.

approached AEnergy in order to acquire more turbines.[171] This provided the Claimant the escape that it desperately needed, giving it the opportunity to sell to Angola the same Four Unsolicited Turbines.[172]

180. During these negotiations, and taking into account both Angola's electricity needs and the presence of additional turbines in the country, MINEA requested formal authorization on 31 October 2018 to acquire four more turbines.[173]

181. The master plan, however, backfired, culminating in Mr. da Costa, at the meetings held on 5 and 7 December 2018 with AEnergy, Angola and GE, revealing to the Respondent the true allocation of the December 2017 disbursement.[174]

182. As such, during the first meeting, on 5 December 2018, when MINEA questioned whether GE would accept the scope of the On-Sale Contracts to be modified in order to accommodate four more turbines,[175] Mr. da Costa answered that Angola had already purchased 12 turbines under the Facility Agreement, which had been delivered to AEnergy accordingly.[176] Mr. Machado denied this affirmation.[177]

183. A second meeting was convened on 7 December 2018 to clarify the serious issue which started to erupt. It was during this meeting that the Claimant's accomplice, Mr. da Costa, showed the Forged Letters which GE had received in order to make the December 2017 disbursement.[178]

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171 **RWS-03**, Witness Statement of José Salgueiro, p. 4, §§ 8-10.

172 **RWS-03**, Witness Statement of José Salgueiro, p. 4, § 10.

173 **RWS-3**, Witness Statement of José Salgueiro, p. 5, § 14; **C-66**, MINEA's request to the President of Angola for Authorization to negotiate the inclusion of four additional turbines under Contract 6, dated 31 October 2018.

174 **R-0122**, 5 and 7 December 2018 meeting notes.

175 **RWS-03**, Witness Statement of José Salgueiro, p. 5, § 17; **R-0122**, 5 and 7 December 2018 meeting notes, dated 5 and 7 December 2018, p. 2, § 9.

176 **RWS-03**, Witness Statement of José Salgueiro, p. 5, § 18; **R-0122**, 5 and 7 December 2018 meeting notes, dated 5 and 7 December 2018, p. 2, §§ 11-12.

177 **RWS-03**, Witness Statement of José Salgueiro, p. 5, § 19.

178 **RWS-03**, Witness Statement of José Salgueiro, p. 6, § 23; Statement of Defense, pp. 2-3, § 12; p. 23, § 83; **R-0122**, 5 and 7 December 2018 meeting notes, dated 5 and 7 December 2018, p. 3, §§ 6-8.

This was when the Respondent started to understand the fraud scheme which it had been a victim of.

184. Later that same day, Mr. Machado, once more contradicting his own previous affirmations, sent an email confirming that the Facility Agreement had indeed funded 12 turbines.[179]

185. As the Tribunal can assess, far from being exculpatory, the record shows that, when Mr. Machado attempted to double-bill Angola for turbines already financed by Angola due to the fraud scheme, his accomplices recoiled.

186. Such discontentment from his accomplices is easily understandable when considering the no-win situation it would put them in. To double-bill the Four Unsolicited Turbines to Angola, the Claimant would have to sustain that Angola had only purchased eight turbines, while at the same time Mr. da Costa would have to keep GE believing that Angola had already purchased the 12 turbines which the disbursement was used. If Angola were now to demonstrate interest in acquiring the Four Unsolicited Turbines, Mr. da Costa knew that GE would immediately discover the Forged Letters.

187. This is clearly evident from WhatsApp messages exchanged between them, where Mr. da Costa wrote that the attempt to include the Four Unsolicited Turbines in the scope of yet another contract was "*so obvious especially to GE*", that it would bring "*huge problems to all of us*," and that they should "*stop ASAP and follow the original plan*."[180]

188. Faced with this impossible situation, Mr. da Costa ended up revealing the true allocation of the funds under the Facility Agreement in the meeting of 7 December 2017, which led to Angola uncovering the deep fraudulent scheme which it had been a victim of.

189. As the Tribunal can assess, the Claimant's later attempts to sell the Four Unsolicited Turbines to

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179 **RWS-03**, Witness Statement of José Salgueiro, p. 7, § 31; **R-0012**, Emails exchanged between GE Power (Wilson da Costa), AEnergy (Ricardo Machado) and MINEA, between 07 December 2018 and 17 December 2018.

180 **R-0045**, Memorandum of Law in support of the government's motions *in limine*, Case no. 23 Cr. 610 (PKC), dated 9 September 2024, p. 19; **R-0118.148**, Whatsapps in chatgroup "Friends", dated 23 to 26 November 2018, p. 3 of the PDF.

Angola were definitely not evidence of innocence. Rather, they were a second attempt to defraud the Respondent and solve the precarious situation in which the Claimant found himself.

190. The reality which transpires from the above is clear. While the Claimant keeps coming up with new, contradictory stories to defend its innocence, the facts are unforgiving: Mr. Machado, alongside his accomplices, perpetrated a fraudulent scheme, falsifying Angola's consent to purchase the Four Unsolicited Turbines.

191. And the story could have been even darker. Within this same "Friends" alliance, Mr. Machado and his accomplices still attempted to forge yet another letter purporting to show PRODEL's agreement to purchase two further turbines under On-Sale Contract 12, completing the 14 turbines that AEnergy had bought from GE.[181] Such attempt only failed because GE concluded that a presidential decree, rather than a mere PRODEL letter, was required to amend On-Sale Contract 12.[182]

192. Hence, far from an isolated occurrence, the forgery of Angola's non-binding amendment letters for On-Sale Contracts 7 and 11 was one instance of a deliberate and repeated strategy of committing illegalities in exchange for business interests.

193. *Seventh*, the Claimant has been involved in several fraud schemes over the years.

194. As already demonstrated in the Respondent's Statement of Defense, the Claimant has already been convicted in Portugal for the crime of falsification of documents. In that case, the Court found it proven that, as a coordinator of a project from the Federation of Forest Producers of Portugal financed by the Permanent Forest Fund, the Claimant knowingly used "*forged documents to justify expenses not incurred in or incurred for a purpose unrelated to the Forestry*

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181 Statement of Defense, p. 21, § 76; **R-0045**, Memorandum of Law in support of the government's motions *in limine*, Case no. 23 Cr. 610 (PKC), dated 9 September 2024, p. 9; **R-0118.209**, Mr. Crain powerpoint presentation, dated 13 November 2024.

182 Statement of Defense, p. 21, § 76; **R-0045**, Memorandum of Law in support of the government's motions *in limine*, Case no. 23 Cr. 610 (PKC), dated 9 September 2024, p. 10; **R-0118.44**, Emails between GE Team and Ricardo Machado, dated 3 September 2017; **R-0118.181**, Internal emails between GE, dated 25 December 2017.

Project in question."[183]

195. But apparently the Claimant did not stop here. Mr. Machado is, in fact, becoming a professional player. After this first (known) scheme and the Forged Letters fraudulent scheme, Mr. Machado is now being investigated in Portugal for yet another misconduct.

196. On 14 May 2026, Mr. Machado was formally charged in *Operação Torre de Controlo*, a judicial police investigation into corruption in public tenders for firefighting helicopter contracts. Mr. Machado, as owner of the company Gesticopter, is under investigation for several crimes, such as aggravated fraud, passive corruption, criminal association, tax fraud, abuse of power, and influence trafficking.[184]

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197. All in all, the evidence set out above admits only one reading: the Claimant did not, and could not, have paid for the Four Unsolicited Turbines out of AEnergy's resources. Mr. Machado's successive and inconsistent attempts at denying this evidently lack merit in light of the demolishing documentary record, which clearly corroborates that the Four Unsolicited Turbines were purchased with Angolan funds, disbursed under the Facility Agreement as a result of the Forged Letters created by the Claimant and his accomplices.

198. As such, in light of the above, the Tribunal should reject the Claimant's incoherent thesis on how AEnergy paid for the Four Unsolicited Turbines because it is nothing more than a fabrication of events which did not occur. The Claimant is lying. The reality is clear and must be upheld: the Four Unsolicited Turbines were paid for with misappropriated Angolan funds through the fraudulent scheme perpetrated by Mr. Machado described herein.

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183 Statement of Defense, pp. 20-21, § 78; **R-0047,** Lisbon Lower Court's Decision to condemn Ricardo Machado for the crime of falsification of documents, dated 18 November 1014, pp. 4 and 31; **R-0048**, Court of Appeal's Decision to deny Machado's appeal, dated 21 May 2015, p. 18, §§ 47-49.

184 **R-0131**, The 'heli' cartel already has 16 suspects, among them businessman Ricardo Leitão Machado, dated 14 May 2026; **R-0132**, Judicial Police conducts searches at the home of Leitão Amaro's brother-in-law. The Minister denies any involvement in the case, dated 14 May 2026; **R-0133**, Leitão Machado and three others have been named official suspects following searches related to the business of firefighting resources, dated 14 May 2026.

2.1.3 The Respondent lawfully terminated the 13 Contracts by Presidential order

199. The Claimant alleges that "*Mr. da Costa's deception caused irreparable mistrust between Angola and Aenergy*,"[185] and that as a result, "[T]*he contract negotiations between them collapsed*."[186] This narrative inverts the true sequence of events.

200. As stated in the Statement of Defense, the use of Angola's funds to pay for the Four Unsolicited Turbines irreparably undermined the trust fundamental to the 13 Contracts, leaving Angola with no option but to terminate its relationship with AEnergy.[187]

201. Upon discovering the utilization of the Facility Agreement, the Respondent had no reasonable alternative but to terminate the 13 Contracts, as the trust upon which the contractual relationship was built had been irreparably shattered by this misconduct. After this termination, Mr. Machado has been constituted as defendant in criminal proceedings in Angola based on these same facts.[188] The fully revealed fraudulent scheme devised by the Claimant confirms that the Respondent's decision to terminate the 13 Contracts was both justified and reasonable.

202. Despite the severity of the situation, Angola ensured full transparency throughout the entire termination process. The same good faith, however, was not demonstrated by the Claimant, who, rather than accepting the consequences of its own wrongdoing, embarked on a relentless campaign of judicial harassment against Angola.

203. As extensively detailed in the Statement of Defense,[189] immediately upon uncovering the fraudulent utilization of its funds to pay for the Four Unsolicited Turbines, Angola made its position unequivocally clear, manifesting its unsettlement with the Claimant's conduct and communicating the intention to terminate the 13 Contracts.[190]

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185 Reply, p. 30, § 134.

186 Reply, p. 30, § 134.

187 SoD, pp. 29-32, §§ 102-109.

188 **R-0134**, News article regarding the constitution as Defendant, dated 3 February 2026.

189 Statement of Defense, pp. 29-32, §§ 102-109.

190 **R-0055**, MINEA's answer to the Court of Appeal's notification, dated 20 July 2020, p. 7, § IX.

204. What followed was not a negotiation that later "*collapsed,*"[191] but a considered and measured process in which multiple communications were initiated with the Claimant to formalize the terms of the termination.[192] The documentary record of these communications speaks for itself. At every stage, Angola ensured that AEnergy was kept fully apprised of its intentions, the reasons underpinning the decision to terminate, and the potentially more advantageous alternatives available for the Claimant.

205. After exhausting every reasonable avenue of dialogue with AEnergy, the Respondent ultimately terminated the 13 Contracts on 2 September 2019 pursuant to Presidential Order No. 155/19.[193] The lawfulness of this decision was subsequently confirmed by the Angolan Administrative Courts.[194]

206. The same good faith was not demonstrated by the Claimant. In fact, the Claimant's conduct in the aftermath of the termination contrasts sharply with Angola's measured approach. In the span of barely four years, the Claimant has initiated six proceedings against Angola across different *forums*, attempting to drown the Respondent in a never-ending litigation stream.[195]

207. This strategy is not that of a Party acting in good faith to vindicate legitimate rights, it is the hallmark of a litigant engaged in forum-shopping and procedural abuse. The outcome of these proceedings confirms precisely that: aside from the still running arbitration, every single one of

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191 Reply, p. 30, § 134.

192 **R-0056**, MINEA's letter of intention to terminate the 13 Contracts, dated 10 January 2019; **R-0058**, MINEA's letter to AEnergy, dated 28 March 2019; **R-0059**, MINEA's letter to AEnergy, dated 24 May 2019.

193 **C-11**, Presidential Order No. 155/19 on the unilateral termination of the 13 Contracts between AEnergy and Angola (with informal translation into English), dated 23 August 2019; **R-0013**, Termination letter, dated 2 September 2019.

194 **R-0063**, Administrative Court of Angola's ruling on the Appeal for Challenge of Administrative Act, dated 22 March 2024, p. 1.

195 **R-0050**, Appeal for Challenge of Administrative Act, dated 10 January 2020, pp. 139- 140; **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, AE's complaint Southern District of New York, dated 7 May 2020; **R-0021**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Complaint, dated 22 August 2022, pp. 1-2, § 1; **R-0026**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, AE's Motion for Reconsideration, dated 18 July 2023; **R-0029**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 23-7160, AEnergy's Brief for Plaintiff-Appellant on Appeal from the United States District Court for the District of Columbia, dated 4 March 2024; Solicitud de Arbitraje, dated 20 February 2024.

the claims has been dismissed.[196]

208. The Claimant's conduct described herein cannot withstand scrutiny. It was the Claimant's own fraudulent scheme that led to the termination of the 13 Contracts. Rather than acknowledging its responsibility and engaging in negotiations constructively, the Claimant chose instead to pursue a scorched-earth litigation strategy designed not to obtain justice, but to punish Angola for exercising its lawful right to terminate the 13 Contracts.

209. The pattern of dishonesty that gave rise to the termination of the 13 Contracts persists in these very proceedings, where AEnergy withholds key documents and constantly shifts and contradicts its own arguments.[197] Once again, this is not the behavior of a party with a legitimate claim, but the continuation, by procedural means, of the same bad faith that initially led to the termination of the 13 Contracts.

2.2 The Court and IGAPE have not relinquished custody of the Four Unsolicited Turbines

210. In this Section, the Respondent reiterates that, contrary to the Claimant's position,[198] neither the Provincial Court of Luanda nor IGAPE relinquished custody of the Four Unsolicited Turbines, nor has the Respondent treated them as if they were its own property.

211. To that end, and as already set out in Section 2.2 of the Statement of Defense, the Respondent demonstrates that it initiated legal proceedings in Angola to confirm rightful ownership of the Four Unsolicited Turbines — which, in itself, demonstrates that it has not been treating them as its own property (**Section 2.2.1**). Moreover, the Respondent underlines that IGAPE's decision to entrust the Four Unsolicited Turbines to the care of PRODEL was reasonable in light of its

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196 **R-0063**, Administrative Court of Angola's ruling on the Appeal for Challenge of Administrative Act, dated 22 March 2024, p. 1; **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, Opinion and Order Southern District of New York, dated 19 May 2021, pp. 2, 19 and 24; **R-0025**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Memorandum of Opinion, dated 20 June 2023, pp. 1 and 8; **R-0028**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Order, dated 27 October 2023; **R-0064**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 23-7160, Opinion and Order District Court of Columbia, dated 20 December 2024.

197 Claimant's comments to Respondent's letter of 27 May 2026, dated 4 June 2026.

198 SoC, p. 1, §§ 4-5; Reply, pp. 64-70, §§ 282-295.

obligations to preserve those turbines and was aligned with the public interest of ensuring the supply of electricity to remote areas of Angola (**Section 2.2.2**).

212. The Respondent further reiterates that, following IGAPE's authorization to deliver the Four Unsolicited Turbines into the care of PRODEL, a series of measures were implemented to enable the operation of the turbines while keeping IGAPE informed at all times (**Section 2.2.3**). Crucially, the Respondent will demonstrate that the installation of the Four Unsolicited Turbines is reversible and that, having been operated in accordance with the standards of a prudent operator, they can be refurbished to a like-new condition and returned to the Claimant (**Section 2.2.4**). Finally, the Respondent refers to the evidence already adduced in the Statement of Defense demonstrating that the Angolan civil court proceedings are progressing in their normal course, without any interference by other branches of the Angolan State (**Section 2.2.5**).

2.2.1 The Respondent filed Proceedings in Angola to confirm its rightful ownership of the Four Unsolicited Turbines and to Prevent their Deterioration or Sale

213. As explained in Section 2.2.1 of its Statement of Defense, after initiating the provisional seizure proceedings aimed at safeguarding the condition of the Four Unsolicited Turbines, the Respondent further initiated declaratory proceedings before the Provincial Court of Luanda seeking alternative reliefs.[199] As its primary relief, the Respondent requested: (i) recognition of the State's ownership over the Four Unsolicited Turbines as well as over the assets removed therefrom; (ii) an order directing AEnergy to deliver the seized and non-seized assets to Angola; and (iii) compensation for damages caused. As alternative relief, the Respondent requested the return of the amounts unduly paid to AEnergy under the Facility Agreement, in a sum no less than USD 100,000,000.[200]

214. While the Claimant does not dispute the existence and scope of these proceedings, the Claimant argues that by installing the Four Unsolicited Turbines into the national grid, (i) the Respondent

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199 Statement of Defense, pp. 32-36, §§ 113-124.

200 **C-19**, Statement of Claim in Declaratory Proceedings, dated 2 March 2020; Request under Rule 41, p. 20, § 66.

assumed control of the turbines as if they were its property,[201] and that (ii) the installation of the Four Unsolicited Turbines undermines the primary objective of the preventive seizure proceedings – *i.e.*, guaranteeing the credit requested within the main proceedings.[202]

215. Neither contention withstands scrutiny.

216. In fact, the very existence of judicial proceedings aimed at determining the ownership title to the turbines renders the Claimant's assertion that the Respondent is treating the Four Unsolicited Turbines as though it owned them wholly untenable. It would be entirely contradictory for the Respondent to claim ownership through court proceedings while simultaneously acting as though such ownership had already been established. The initiation of the declaratory action is, by definition, an acknowledgement that the question of title remains unresolved and must be adjudicated by the competent court.

217. As already demonstrated in Section 2.2.1 of the Statement of Defense, the Respondent took the appropriate procedural steps to safeguard its rights over the Four Unsolicited Turbines by first requesting a preventive seizure and only thereafter initiating declaratory proceedings before the competent Angolan court.[203] This sequence is entirely consistent with a party that seeks judicial determination of its rights rather than unilateral appropriation.

218. Furthermore, as demonstrated in Sections 5.1.2 and 5.1.3 of its Statement of Defense[204] and as further discussed below,[205] placing the turbines in PRODEL's custody and integrating them into the electricity grid does not constitute an assumption of ownership and does not preclude their return if the Provincial Court of Luanda determines that they belong to AEnergy.

219. Contrary to the Claimant's portrayal, and as detailed in Section 2.2.4 of this Rejoinder,[206]

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201 Reply, p. 64, §§ 278 (iii).

202 Reply, p. 70, § 299.

203 SoD, pp. 32-36.

204 SoD, pp. 108-118, §§ 404-436.

205 Sections 5.1.2 and 5.1.3.

206 Section 2.2.4.

supported by the Expert Report of Mr. Darcy Holderness,[207] the installation of the turbines is reversible from a practical and engineering standpoint, and their restitution to a "like new" condition is possible.

220. This demonstrates that the installation of the Four Unsolicited Turbines in the Angolan power grid was simply the result of a decision by IGAPE, acting in its capacity as Trustee and within its authority to administer the turbines while they are under preventive seizure. Indeed, the administration of a seized asset — including its productive use where appropriate — is a function entrusted to the trustee and does not amount to a taking or deprivation of ownership rights as detailed in Section 5.1.2 of the Statement of Defense[208] and further discussed in Section 5.1.2 of this Rejoinder.[209]

221. Furthermore, contrary to what the Claimant seeks to portray,[210] there is no inconsistency between the scope of the provisional measures proceeding and the subsequent main action, on the one hand, and the decision to install the turbines, on the other.

222. As the Respondent will detail further below,[211] the turbines—despite being in active use—remain fully capable of safeguarding the credit right that the Respondent sought to secure through the seizure proceedings and now intends to pursue as an alternative claim in the main proceedings. Even as operating hours accumulate, the turbines are being maintained in a prudent way, can be restored to a "like new" condition, and therefore retain sufficient value to safeguard the credit that the Respondent sought to secure with the seizure.[212]

223. In sum, the mere existence of ongoing judicial proceedings over the ownership of the Four Unsolicited Turbines undermines the Claimant's submission that Angola is treating them as State-owned. As Angola has maintained from the outset and further demonstrates in this

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207 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026.

208 SoD, pp. 108-114, §§404-423.

209 Section 5.1.2.

210 Reply, p. 70, § 299.

211 Section 2.2.4.

212 Section 2.2.4.

Rejoinder, should the Claimant prevail in the proceedings before the Provincial Court of Luanda (*quod non*), the Respondent is able to—and will—return the Four Unsolicited Turbines to the Claimant's possession in an operational and commercially viable condition.

2.2.2 Contrary to the Claimant's allegations and in response to a request from MINEA, IGAPE granted authorization for the use of the turbines in May 2020

224. The Claimant alleges that, by delivering the Four Unsolicited Turbines into the custody of MINEA and PRODEL, IGAPE and the Provincial Court of Luanda relinquished their judicial custodial obligations.[213]

225. This allegation is without merit. As the Respondent detailed in Section 2.2.2 of the Statement of Defense, the decision to place the Four Unsolicited Turbines in PRODEL's custody was taken pursuant to a well-founded request supported by a technical expert report.[214] The measure was adopted in full compliance with IGAPE's duty to ensure the preservation and proper safeguarding of the turbines while they remained under judicial seizure.[215]

226. These facts are further confirmed by the Witness Statement of Ms. Marinela Monteiro, in which she explains that: [216]

> *This decision followed a request from MINEA to the Attorney General's Office to request authorization to use the four turbines, based on a technical opinion to which IGAPE had access in its decision-making. In the opinion of the Attorney General's Office, under the duties of a judicial depositary enshrined in Article 843 of the CPC, IGAPE should allow MINEA to use the seized turbines, since they should be used to prevent their deterioration, thus fulfilling IGAPE's duty to administer the assets with the diligence and care of a prudent person.*

227. Moreover, given the inadequate maintenance of the Four Unsolicited Turbines while under AEnergy's care in Angola between December 2017 and December 2019, Mr. Darcy Holderness

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213 SoC, p. 7, § 34; Reply, pp. 64-65, § 278 (ii).

214 SoD, pp. 36-41, §§ 127-141.

215 SoD, p. 41, §§ 142-143.

216 **RWS-02**, Witness Statement of Marinela Monteiro, pp. 5-6, § 13.

also confirms the reasonableness of IGAPE's decision:[217]

> *Based on the lack of records from Aenergy and the inspection report from December 2019, it is HKA's opinion that the Disputed Gas Turbine Packages were not being properly preserved by Aenergy in their Warehouse in Viana since their arrival in December 2017.*
>
> *Beyond two years, GE suggests that a consultation is required and a customized preservation and storage plan is created for certain aspects given the local storage conditions.*
>
> *Aenergy had stored the Disputed Gas Turbine Packages for approximately two (2) years before they were seized by the Government of the Republic of Angola.*
>
> *In HKA's opinion, IGAPE's decision to transfer the Disputed Packages to MINEA for preservation and potential operation was reasonable and prudent in the circumstances, particularly given that, prior to the seizure, very little maintenance was being performed on the equipment.*

228. Tellingly, the Claimant itself acknowledges that IGAPE's decision to deliver the Four Unsolicited Turbines into the care of PRODEL did not constitute an appropriation by Angola, but rather an act undertaken in the lawful exercise of IGAPE's duties as Trustee:[218]

> *Far from manifesting an intention to appropriate the Four Turbines, IGAPE's letter is the act of a custodian seeking -however misguidedly – to discharge its preservation duties within the framework of the judicial proceedings.*

229. It is thus clear that IGAPE's decision to deliver the Four Unsolicited Turbines into the care of PRODEL was an informed one and within its legal capacity as judicially appointed Trustee. To avoid unnecessary repetition, the Respondent respectfully refers the Arbitral Tribunal to Section 2.2.2 of the Statement of Defense, where the Claimant's allegations are comprehensively addressed and rebutted.[219]

2.2.3 Following IGAPE's authorization in May 2020, MINEA, through PRODEL, undertook a series of

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217 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 29, §§ 155-158.

218 Reply, p. 42, § 182.

219 SoD, pp. 36-41, §§ 125-144.

actions to operate the turbines and kept IGAPE informed on a regular basis

230. The Claimant's contention that IGAPE and the Provincial Court of Luanda relinquished their duties by entrusting the Four Unsolicited Turbines to PRODEL[220] is further refuted by the facts.

231. As set out in Section 2.2.3 of the Statement of Defense, following IGAPE's authorization for the Four Unsolicited Turbines to be placed under PRODEL's care, PRODEL implemented a series of actions aimed at their deployment and operation. At all relevant times during this process, PRODEL kept IGAPE informed of the measures taken and of the developments concerning the operation of the Four Unsolicited Turbines.[221]

232. As evidenced by Ms. Marinela Monteiro's testimony, IGAPE consistently maintained an active posture with respect to monitoring and collecting information concerning the use of the Four Unsolicited Turbines:[222]

> *As explained above, when authorizing the use of the turbines, IGAPE requested MINEA to send quarterly reports on all actions taken.*
>
> *Since May 2020, the public company supervised by MINEA and responsible for the use of the turbines has periodically provided IGAPE with information, although not always with the expected quarterly regularity. Whenever information on the use of the turbines was not sent, IGAPE requested it.*

233. This scenario was further confirmed by Mr. Arlindo Cambungo:[223]

> *[P]RODEL communicated with IGAPE on a continuous basis, preferably on a quarterly basis, or whenever relevant events occurred. PRODEL reported in the following aspects: the allocation and movement of equipment between thermal power plants; the installation/operational status of the units; the use, replacement, and preservation of critical consumables (oils, filters, and others); and preventive and corrective maintenance needs.*

234. These facts demonstrate IGAPE's full compliance with the duties levied upon it as judicially

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220 SoC, p. 7, § 34; Reply, pp. 64-65, § 278 (ii).

221 SoD, pp. 41-46, §§ 145-168.

222 **RWS-02**, Witness Statement of Marinela Monteiro, p. 6, §§ 16-17.

223 **RWS-01**, Witness Statement of Arlindo Cambungo, p. 11, § 41.

appointed trustee. To avoid duplicating submissions already on record, the Respondent respectfully refers the Arbitral Tribunal to Section 2.2.3 of its Statement of Defense, which comprehensively addresses and refutes the Claimant's allegations.[224]

2.2.4 The installation of the Four Unsolicited Turbines is reversible

235. In the Statement of Claim, the Claimant contended that the installation and use of the Four Unsolicited Turbines constituted a final and definitive measure. According to the Claimant, this conclusion follows from (i) the complexity and logistical challenges involved in connecting the turbines to the power grid, and (ii) the substantial costs incurred in their installation.[225]

236. The Respondent comprehensively rebutted this assertion in the Statement of Defense, by showing that: (i) the Four Unsolicited Turbines, being GE TM2500 units, are designed to be easily transported and relocated; and (ii) the installation costs incurred by the Respondent do not affect its ability to return the turbines, which the Respondent stands ready to do if directed by the Provincial Court of Luanda.[226]

237. In his Reply, the Claimant seeks to revive and reinforce this narrative. Relying mainly on the Technical Expert Report of Mr. Rajesh Sharma,[227] the Claimant argues that the Respondent's alleged appropriation of the Four Unsolicited Turbines is permanent in nature because: (i) Angola incurred substantial expenditure in installing the turbines;[228] (ii) their deployment required significant civil works;[229] (iii) the evidence allegedly demonstrates that the turbines were intended to form a permanent component of the State's electricity supply system;[230] (iv) IGAPE and the Provincial Court of Luanda allegedly ignored AEnergy's requests for information

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224 SoD, pp. 41-46, §§ 145-168.

225 SoC, pp. 23-24, §§ 115-116.

226 SoC, pp. 46-49, §§ 169-181.

227 **CER-04**, Technical Expert Report by Rajesh Sharma.

228 Reply, p. 65, §§ 283 (i).

229 Reply, p. 65, §§ 283 (ii).

230 Reply, p. 65, § 283 (iii).

concerning the location and condition of the turbines;[231] and (v) the turbines can no longer be returned in equivalent condition because they have purportedly suffered significant physical deterioration and have experienced a substantial reduction in value.[232]

238. With respect to arguments (i) through (iii), the Respondent refers the Tribunal to Section 2.2.4 of the Statement of Defense.[233] As explained therein, the costs incurred by Angola in deploying the turbines are irrelevant to the question of whether they can be returned;[234] and the GE TM2500 model is a highly modular system specifically engineered for deployment and redeployment across multiple locations. Consequently, the turbines' connection to the Angolan power grid is neither permanent nor irreversible.[235]

239. As regards argument (iv), the Respondent respectfully refers the Tribunal to Section 5.1.3 of the Statement of Defense[236] and Section 5.1.3 of this Rejoinder.[237] As demonstrated therein, the Claimant's allegation that IGAPE and the Provincial Court of Luanda abdicated their custodial responsibilities or improperly withheld information is without merit. The evidence establishes that both institutions acted in full compliance with their obligations under Angolan law. To the extent AEnergy did not obtain information concerning the Four Unsolicited Turbines, this was not because IGAPE or the Provincial Court of Luanda withheld it, but because AEnergy failed to follow the proper legal channels to obtain it.

240. In this section, the Respondent addresses the Claimant's fifth argument—namely, that the turbines can no longer be returned in substantially equivalent condition because they have purportedly suffered significant physical deterioration and a substantial reduction in value, thereby reaching a point of no return.[238] The Respondent will demonstrate that, in light of the

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231 Reply, p. 65, § 283 (iv).

232 Reply, pp. 67-70, §§ 287-295.

233 SoD, pp. 46-49, §§ 169-181.

234 SoD, p.p. 48-49, §§ 178-181.

235 SoD, p.p. 47-48, §§ 171-177.

236 SoD, pp. 114-118, §§ 424-436.

237 Section 5.1.3.

238 Reply, pp. 67-70, §§ 287-295.

operational, maintenance, and preservation measures implemented by PRODEL, the Four Unsolicited Turbines remain well-preserved, can be refurbished to a "like new" condition, and can be returned to the Claimant.

241. To that end, the Respondent will first demonstrate that Mr. Rajesh Sharma's Technical Expert Report is founded on erroneous premises and mischaracterizes the very evidence upon which it relies (**Section 2.2.4.1**). The Respondent will then show, through the Technical Expert Report of Mr. Darcy Holderness,[239] that PRODEL has operated and maintained the turbines prudently and in accordance with industry standards (**Section 2.2.4.2**). Finally, notwithstanding several years of operation, the Four Unsolicited Turbines can be refurbished to a "like new" condition and therefore can be returned to the Claimant **(Section 2.2.4.3**).

2.2.4.1 Mr. Rajesh Sharma's Report Relies on Erroneous Premises and Mischaracterizes the Evidence

242. The Claimant relies on Mr. Rajesh Sharma's Expert Report to argue that the Four Unsolicited Turbines can no longer be returned in substantially equivalent condition because they have purportedly suffered significant physical deterioration.[240] In particular, the Claimant relies on selected passages of Mr. Rajesh Sharma's Expert Report to contend that certain issues affecting the Four Unsolicited Turbines arose as a result of their installation and continued operation in Angola. On that basis, the Claimant asserts that the operational history reflected in the evidentiary record demonstrates that the Four Unsolicited Turbines cannot be properly characterized—whether from a technical or commercial standpoint—as preserved zero-hour units or standby-preserved units and therefore cannot be returned to the Claimant in equivalent condition.[241]

243. However, Mr. Rajesh Sharma's Technical Expert Report is unreliable and cannot support the conclusions that the Claimant seeks to draw for two reasons. First, Mr. Sharma's analysis is based on a fundamentally erroneous premise, as he assesses the condition of the Four Unsolicited Turbines, which are currently in operation, by reference to a GE manual applicable to equipment

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239 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026.

240 Reply, pp. 67-69, §§ 288-291.

241 Reply, p. 68, § 289.

preserved in storage. Second, Mr. Sharma mischaracterizes the very exhibits on which he relies, thereby undermining the factual basis of his opinions and rendering his conclusions unsustainable. The Respondent addresses both these points in turn.

244. *First*, Mr. Sharma's analysis of the preservation and life cycle framework of the Four Unsolicited Turbines is based on the GE Technical Procedure TP1200 – "Preservation & Storage Procedure".[242] As expressly stated in its preamble, this manual and the procedures it contains were "*prepared to serve as a guideline for long-term storage preservation*" of TM 2500+ GEN8 units."[243]

245. It is undisputed that the Four Unsolicited Turbines were neither maintained in accordance with the Preservation & Storage Procedure nor kept in storage. Instead, they were delivered into PRODEL's custody and brought into operation. Accordingly, the question before the Tribunal is not whether those turbines satisfy the requirements applicable to stored or standby-preserved units. Rather, the relevant inquiry is whether they have been operated, preserved, maintained, and managed in accordance with the standards of a prudent operator and whether, notwithstanding their use, they remain serviceable and capable of being restored to a condition approximating new.

246. It follows that Mr. Sharma's Expert Report fails to address the relevant issue in dispute, namely whether the Four Unsolicited Turbines are being prudently operated, maintained, and managed in their current operational state.

247. Mr. Darcy Holderness identifies precisely this flaw in Mr. Sharma's analysis and explains why the latter's reliance on a storage-preservation framework is misplaced in the circumstances of this case:[244]

> *The USPE Report provides an overview of one standard from GE, namely TP-1200, related to the preservation and storage requirements relevant to the Disputed Gas*

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242 **CER-04**, Technical Expert Report by Rajesh Sharma, §§ 40-86.

243 **RS-1**, OEM Preservation & Storage Procedure, p. 1.

244 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 18-19, §§ 101 and 104.

> *Turbine Packages. This is the only GE published standard that the records are compared against. (…)*
>
> *It is HKA's opinion that it is unreasonable to compare the operational and maintenance records produced by the Respondent to the GE requirements for long term storage.*

248. *Second*, the deficiencies of Mr. Rajesh Sharma's report extend beyond its erroneous premises.

249. In fact, Mr. Rajesh Sharma repeatedly mischaracterizes the evidence on which he relies, thereby obscuring the factual record and artificially increasing the perceived complexity of assessing the condition of the Four Unsolicited Turbines. The cumulative effect of these mischaracterizations is to create the misleading impression that the Four Unsolicited Turbines are not in a satisfactory state of preservation and maintenance, which is not true.

250. As Mr. Darcy Holderness explains in relation to Mr. Rajesh Sharma's observations on the disputed gas turbine package no. 7267575, which incorporates engine no. 679-315:[245]

> *HKA found the citations and references difficult to follow, creating unnecessary confusion and uncertainty about the history of this equipment. One statement from the USPE Report contemplates information from the Ondjiva thermal power plant, but only references records related to the Xitoto thermal power plant.*

251. The same pattern is evident in Mr. Sharma's reliance on unsupported assertions. Rather than grounding his conclusions in contemporaneous records or technical data, Mr. Sharma advances speculative propositions to suggest that the Four Unsolicited Turbines have not been properly preserved. As Mr. Darcy Holderness explains:[246]

> *In the USPE Report, Mr. Sharma indicates that "operating exposure of this magnitude", including diesel fuel, and elevated thermal cycling will contribute to increased maintenance exposure, accelerated deterioration mechanisms and reduce remaining useful life of the equipment, but does not make any references to records or data to support this statement.*

252. Mr. Sharma further seeks to draw adverse conclusions regarding the condition of the Four

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245 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 21, § 113.

246 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 22, § 118.

Unsolicited Turbines by relying on information pertaining to entirely different equipment. As Mr. Holderness notes:[247]

> *The USPE Report highlights observations made from borescope inspection reports regarding an Engine located in Ondjiva that is not disputed and therefore not relevant.*
>
> *The USPE Report contemplates five (5) monthly operational reports that included adverse weather conditions resulting in unplanned trips or shutdowns at Ondjiva. Mr. Sharma indicates that these unplanned trips contribute to thermal cycling which can have an adverse impact on the hot section components, combustor hardware, and rotating assemblies.*
>
> *An unplanned trip occurs when the control system for the unit automatically shuts down the Engine as a safety precaution or to protect itself. This is common in the power generation industry when conditions either internal to a unit or external do not allow for the safe and continued operation.*
>
> *HKA notes that all five of these reports and all of the unplanned trips are referring to the GT-1 unit at Ondjiva which is not part of the Disputed Gas Turbine Packages and therefore not relevant.*

253. The selective nature of Mr. Sharma's analysis is equally apparent in his discussion of disputed gas turbine package no. 7266027, which incorporates engine 679-299. While he highlights certain negative observations contained in a borescope inspection report dated October 2024, he omits to acknowledge that a subsequent borescope inspection of the same turbine package, conducted in November 2025, concluded that:[248]

> *All inspected components were found in generally good condition, with only minor deposits, light discoloration observed and honeycomb seal shows small scratches with no evidence of cracks or erosion.*

254. Decisively, the passages of Mr. Sharma's Expert Report on which the Claimant relies in his Reply are themselves founded on incomplete quotations, unsupported assertions, and references to

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247 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 22, § 119.

248 **RS-232**, Borescope inspection report for Malembo GT4, dated 4 November 2025, p. 35; **DH-44 (RS-232_en)**, Borescope inspection report for Malembo GT4, dated 4 November 2025, p. 35; **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 24, § 130.

evidence that is either irrelevant or taken out of context.

255. In paragraph 288 (ii) of the Reply, the Claimant refers to findings that an engine at the Tchicumina Power Plant sustained damage to components that are beyond repair.[249] However, the report in question pertains to an engine associated with an undisputed turbine package. As expressly stated in the report, it was prepared in relation to engine 679-329.[250] It is therefore entirely irrelevant to the matters in dispute in these proceedings.

256. In light of the foregoing, it is evident that Mr. Rajesh Sharma's expert report lacks reliability. On the one hand, it compares turbines in an operating state against standards applicable to preservation and storage. On the other hand, it fails to distinguish between information pertaining to the disputed turbine packages and information concerning turbines that are not at issue in this arbitration—even though this distinction is apparent from the very reports Mr. Sharma submits and cites.

257. As a result, the conclusions that the Claimant seeks to draw from Mr. Sharma's analysis are fundamentally flawed and cannot support the inference that the turbines are no longer in a serviceable state and still retain a significant remaining service life.

2.2.4.2 PRODEL is Operating and Maintaining the Turbines in Accordance with Industry Standards

258. Contrary to Mr. Rajesh Sharma's Technical Expert Report, Mr. Darcy Holderness's analysis takes into consideration the standards and maintenance criteria applicable to operating GE TM2500 turbines, specifically the GE TM2500 O&M manual[251] and the GEK 112859 engine O&M manual.[252]

259. Furthermore, Mr. Holderness's analysis is grounded in a detailed review of the available maintenance records, inspection findings, and technical reports, and focuses specifically on the actual components of the Four Unsolicited Turbines that are the subject of these proceedings,

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249 Reply, p. 67, § 288 (ii).

250 **RS-243**, Borescope inspection report for Tchicumina GT1, dated 27 February 2025, p. 3.

251 **DH-1**, TM2500 Package Operation and Maintenance Manual.

252 **DH-6**, GEK 112859.

as identified in Table 2 of his Technical Expert Report:[253]

Table 2 – Disputed Gas Turbine Package Serial Numbers

Disputed Gas Turbine Package Serial Numbers	Engine Serial Numbers
7267575	679-315
7267577	679-314
7267025	679-312
7266027	679-299

260. To confirm whether the Four Unsolicited Turbines are being preserved, maintained, and operated in accordance with industry standards, Mr. Darcy Holderness identifies the following metrics to be assessed through a review of the relevant maintenance and inspection reports:[254]

(i) Operational and maintenance manuals from the original equipment manufacturer are available and are actively used to guide operations and preventive or corrective maintenance;

(ii) Operational history is recorded in a consistent manner, including operational logs of activity;

(iii) The operational history tracks information needed for lifecycle asset management;

(iv) For regular inspections and maintenance, standard procedures are being followed by qualified service technicians;

(v) There is documented acceptance criteria to guide the requirements for corrective

253 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 10, § 47; **RS-283**, Email from GE to AEnergy, dated 21 March 2018.

254 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 29-30, § 160.

maintenance;

(vi) Potential problems are being tracked regularly, including observations and recommendations from field technicians that allow for informed operational decisions; and

(vii) Once potential problems are identified that create a significant threat to the safe continuous operations, there is evidence that corrective maintenance will take precedence over operational needs.

261. Having these metrics in mind, Mr. Darcy Holderness explains that the Four Unsolicited Turbines were subject to a comprehensive and well-documented maintenance regime throughout the relevant period.[255]

262. To ensure professional installation, commissioning, maintenance, and operation of the Four Unsolicited Turbines, PRODEL engaged GRD Services, a specialized company[256] that provided regular service of all Four Unsolicited Turbines. This service included scheduled 4,000-hour maintenance exercises and borescope inspections at each of the five thermal power plants where the turbine components were deployed: Lubango II, Malembo, Ondjiva, Xitoto, and Tchicumina.[257]

263. PRODEL's monthly operational reports document the operational activity and regular maintenance performed at each facility. These reports demonstrate that the maintenance program was conducted in a systematic, consistent, and professionally competent manner.[258]

264. The monthly operational reports for each plant follow a uniform format that reflects the breadth and rigor of the maintenance and operational oversight in place.

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255 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 28-35, §§ 155-180.

256 **R-0135**, GRD Services website, available at https://grdservices.co.ao/.

257 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 30-34, §§ 162-171.

258 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 28-35, §§ 155-180.

265. As exemplified by the February 2024 Lubango II report[259] and the October 2023 Malembo report,[260] the monthly reports generally address: (i) health and safety activities and statistics, including environmental incident reporting; (ii) operational goals and objectives, including compliance with preventative maintenance programs and the reduction of blackouts; (iii) preventative and corrective maintenance logs documenting daily activities such as filter changes, strainer cleaning, equipment washing, and lubrication; and (iv) operational statistics including energy produced, fuel consumed, operational hours, fired starts, and trip and blackout summaries.[261]

266. The remaining plants—Ondjiva, Xitoto, and Tchicumina—adhere to the same format and type of detail.[262]

267. Alongside these monthly records, the 4,000-hour maintenance reports provide documentation of major scheduled servicing. As illustrated by the October 2023 report for GT-2 at Lubango II, each such report includes equipment identification and introduction, section-by-section overviews of all maintenance work performed with before-and-after photographs and condition assessments, and a summary of final considerations and materials consumed.[263] In certain instances, as with the June 2022 Xitoto plant report, the 4,000-hour inspection was combined with the borescope inspection into a single integrated report covering both units, documenting findings and providing actionable recommendations.[264]

268. The borescope inspection reports further evidence of the thoroughness of the maintenance

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259 **RS-16**, February monthly activity report for Lubango II, dated 28 February 2025, pp. 5-11; **DH-63 (RS-16_en)**, February monthly activity report for Lubango II, dated 28 February 2025, pp. 5-11.

260 **RS-88**, October monthly activity report for Malembo, dated 5 November 2023, pp. 5, 28, 30-31, 47; **DH-45 (RS-88_en)**, October monthly activity report for Malembo, dated 5 November 2023, pp. 5, 28, 30-31, 47.

261 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 30-31, §§ 164-165.

262 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 32, § 166.

263 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 32-33, §§ 168; **RS-218**, 4000-hour maintenance report for Lubango II GT2, dated 21 October 2023, pp. 3, 5, 27; **DH-51 (RS-218_en)**, 4000-hour maintenance report for Lubango II GT2, dated 21 October 2023, pp. 3, 5, 27.

264 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 34, § 170; **RS-247**, 4000-hour maintenance report for Xitoto GT1 and GT2, dated 23 June 2022; **DH-23 (RS-247_en)**, 4000-hour maintenance report for Xitoto GT1 and GT2, dated 23 June 2022.

program and its adherence to manufacturer-specified procedures. Taking the May 2024 borescope inspection report for Malembo Unit GT-4 as a representative example, these reports include: (i) machine data such as serial number and operating hours; (ii) an introductory statement of purpose; (iii) reference to the applicable GE inspection procedure; (iv) documentation of tools used; (v) clearly defined acceptance and rejection criteria; (vi) GE manual diagrams paired with actual borescope photographs for comparative analysis; and (vii) conclusions and recommendations.[265] The consistent inclusion of manufacturer reference materials, objective inspection criteria, and photographic evidence across these reports confirms that the inspections were carried out in accordance with established industry standards and original equipment manufacturer guidelines.[266]

269. Notably, although the records indicate that PRODEL and GRD occasionally departed from certain maintenance intervals or procedures recommended by GE, Mr. Holderness explains that such decisions are common in the operation of gas turbines and do not, in themselves, demonstrate imprudent asset management. To the contrary, as he observes:[267]

> *In my experience, it is common for operators to make decisions that will defer certain recommended maintenance throughout the life of combustion turbines and equipment of this nature. Early in the lifecycle, the risk that deferred maintenance will cause catastrophic damage or will result in permanent damage affecting the operable and serviceable life of the equipment is low.*

270. Finally, Mr. Holderness further rejects Mr. Sharma's assertion that adverse environmental conditions, fuel quality issues, or inadequate maintenance have compromised the long-term operability or serviceability of the Four Unsolicited Turbines.[268] In this regard, he affirms that:[269]

> *In HKA's opinion, there are no signs of adverse environmental conditions, fuel quality, or lack of maintenance that would affect the long-term operability and*

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265 **RS-231**, Borescope inspection report for Malembo GT4, dated 3 May 2024, pp. 3, 5-8, 14, 42; **DH- 39 (RS-231_en)**, Borescope inspection report for Malembo GT4, dated 3 May 2024, pp. 3, 5-8, 14, 42.

266 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 34, § 171.

267 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 35, § 178.

268 **CER-04**, Technical Expert Report by Rajesh Sharma, § 126.

269 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 35, § 180.

> *serviceability of the Disputed Gas Turbine Packages, and their operational history should be considered normal operation.*

271. Based on the analysis of the operation and maintenance reports, Mr. Darcy Holderness concludes that:[270]

> *It is HKA's opinion that the records demonstrate a healthy program for operating and maintaining this technology, including traceable documentation for the same.*
>
> *The operating and maintenance program is aligned with normal industry practices and generally follows the manufacturers' recommended preventative maintenance procedures and the "On-Condition Maintenance" concept for corrective maintenance. In HKA's opinion, this demonstrates the Disputed Gas Turbine Packages have been operated and maintained in a prudent fashion.*

272. Mr. Holderness's findings therefore confirm that the operation and maintenance of the Four Unsolicited Turbines have been conducted in accordance with accepted industry standards and the manufacturer's preventive maintenance recommendations. These findings refute the Claimant's contention that the turbines have suffered significant physical deterioration.

273. The Tribunal should therefore reject the Claimant's allegations of mismanagement and accept that the Four Unsolicited Turbines remain operationally sound assets.

2.2.4.3 The Four Unsolicited Turbines can be restored to a "like new" condition and returned to the Claimant

274. The Claimant argues that the Four Unsolicited Turbines can no longer be returned in a condition equivalent to that at the time of seizure because they have purportedly suffered significant physical deterioration and reached a point of no return.[271]

275. This submission does not withstand scrutiny. As the Respondent further demonstrates below, the prudent preservation, maintenance, and operation programs implemented with respect to the Four Unsolicited Turbines ensure that, despite active use, (i) the turbines can still be refurbished to a "like new" condition, and (ii) can be returned to the Claimant regardless of the

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270 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 34, §§ 176-177.

271 Reply, pp 40-41, §§ 173-176 and pp. 67-70, §§ 287-295.

fact that their components have been deployed at different sites across Angola.

276. *First*, Mr. Darcy Holderness Technical Expert Report identifies a clear and practicable pathway to the refurbishment of the components of the Four Unsolicited Turbines.

277. With respect to the engines, the Technical Expert Report of Mr. Darcy Holderness confirms that GE authorizes service centers to perform hot section replacement and restoration services through facilities designated as "level 2 shops."[272] Given the condition and operating hours of each engine, Mr. Holderness recommends that each unit undergo specific refurbishment procedures, including a Hot Gas Path Inspection ("**HGPI**") and reconditioning overhaul carried out by GE or a GE-authorized service provider, with the objective of restoring the engines to the standard of a 50,000-hour major overhaul.[273]

278. Notably, industry service providers associated with GE engines—including USP&E, where the Claimant's own technical expert, Mr. Rajesh Sharma, serves as a consultant—confirm that the 50,000-hour major overhaul is designed to restore GE TM2500 engines to a "like new" condition.[274]

279. This possibility is also confirmed by Mr. Darcy Holderness in his expert report.[275] In either case, a defined, commercially available, and technically proven refurbishment process exists and can be deployed for these specific turbines.

280. A central pillar of the Mr. Darcy Holderness's conclusions as to the possibility of refurbishment to a "like new" condition is the favorable operating profile of the Four Unsolicited Turbines. Mr. Holderness notes that, throughout their operational period, the turbines were used *primarily as baseload assets*, meaning they were "*consistently operated at or near full load output, 100% of the time.*"[276]

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272 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 37-38, § 191.

273 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 38, § 192.

274 **DH-65**, Excerpt from https://uspeglobal.com/pages/power-generation-asset-refurbishment/; **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 36, § 183.

275 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 37, § 189-190.

276 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 36-37, § 188.

281. This is of significant technical consequence. As Mr. Holderness explains, combustion turbines are frequently deployed as peaking generation units or as back-up for variable renewable energy sources, which subjects them to frequent thermal cycling — *i.e.*, repeated heating to operating temperatures and cooling back to ambient conditions. It is not uncommon for combustion turbines in such service to be started multiple times per day. Indeed, a paper published by the National Energy Technology Laboratory in the United States observes that "*[p]ower generation is often the least demanding application for a given gas turbine, unless it is used in a variable load/peaking service.*"[277]

282. The Four Unsolicited Turbines, by contrast, were not subjected to such demanding conditions. Their baseload operation "*limited the amount of thermal cycling that was experienced*," as "*demonstrated by the small number of fired starts that were logged for each*" unit.[278] The significance of this finding cannot be overstated: the reduced number of thermal cycles directly correlates with reduced mechanical stress on the engines' critical components.

283. Indeed, Mr. Holderness identifies this operating profile as one of the primary reasons that the Engines can be restored to a 'like new' condition.[279]

284. In turn, with respect to the remaining components of the Four Unsolicited Turbines other than the engines themselves, Mr. Darcy Holderness notes that the restoration to a "like new condition" can occur "*relatively easily and in parallel with the Engine restoration by performing a regular 4,000-hour inspection and maintenance overhaul event*."[280]

285. All in all, to restore the turbines to a "like new" condition, Mr. Darcy Holderness recommends:[281]

> *[U]sing a GE authorized level 2 service provider for all the above restoration services and including working with PRODEL to decommission and disconnect the Disputed Gas Turbine Packages and packaging them for shipment, given their*

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277 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 36-37, §§ 186-188; **DH-68,** Printout from https://netl.doe.gov/sites/default/files/gas-turbine-handbook/1-1.pdf, p. 12.

278 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 36-37, § 188.

279 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 37, § 189.

280 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 39, § 194.

281 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 39-40, § 197.

neutrality to this dispute and advanced training, experience, and support from GE as the OEM of this technology.

286. Decisively, and contrary to what Mr. Rajesh Sharma argues,[282] this kind of refurbishment program can be conducted in an expedited manner. As Mr. Darcy Holderness points out: "[t]*he HGPI and recondition overhaul can be completed in a relatively short timeframe. GE indicates that turnaround time for level 2 service centers in their shops is typically 7 days*".[283]

287. *Second*, it must be further noted that the fact that Angola deployed components of the Four Unsolicited Turbines packages across different sites does not impair their ability to be returned to the Claimant.

288. To the contrary, as Mr. Darcy Holderness notes in his expert report, there are no traceability issues,[284] and the redeployment and interchange of gas turbine components across operational sites is standard industry practice. Indeed, GE itself offers engine exchange programs that facilitate precisely this type of component rotation, confirming that such practices are fully consistent with proper maintenance and the continued serviceability of the equipment.[285]

289. In sum, the Claimant's contention that the Four Unsolicited Turbines have reached a point of no return and cannot be returned in equivalent condition is without merit. If so ordered by the Angolan courts (*quod non*), the Four Unsolicited Turbines can be returned to the Claimant in a "like new" condition.

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290. All in all, the conclusions that the Claimant seeks to draw from Mr. Rajesh Sharma's Technical Expert Report are unsustainable, as the Report is based on an inapplicable preservation-in-storage manual and mischaracterizes the evidence upon which it relies. Furthermore, as confirmed by Mr. Darcy Holderness, the evidentiary record available to both the Claimant and the Respondent leaves no room for doubt that the Four Unsolicited Turbines have been

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282 **CER-04**, Technical Expert Report by Rajesh Sharma, §§ 40-86.

283 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 38, § 193.

284 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 13-18, §§ 62-99.

285 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 8, §§ 37-38.

preserved, maintained, and operated by PRODEL—with the support of GRD Services—in accordance with industry standards for this type of equipment.

291. Finally, it has been demonstrated that, contrary to what the Claimant argues, the Four Unsolicited Turbines have not reached a point of no return, as they can be refurbished to a "like new" condition and returned to the Claimant in a condition equivalent to that which existed at the time of seizure.

2.2.5 The Angolan civil court proceedings are moving forward in their normal course

292. In the Reply, the Claimant reiterates the position advanced in the Statement of Claim, contending that the Angolan civil court proceedings are not progressing in their normal course.[286]

293. This contention does not withstand scrutiny and was fully addressed in the Statement of Defense, where the Respondent demonstrated that the timelines for the main action before the Provincial Court of Luanda reflect ordinary procedural conditions rather than any procedural irregularity. To avoid repetition, the Respondent respectfully refers the Arbitral Tribunal to Section 2.2.5 of the Statement of Defense and to Section 5.2 of this Rejoinder, where this argument is comprehensively rebutted.[287]

3 The Tribunal lacks jurisdiction over the Claimant's claims under the BIT and/or the Claimant's claims are otherwise inadmissible

294. The Claimant's case is affected by several procedural defects.

295. *First*, the Four Unsolicited Turbines do not meet the requirements to qualify as a protected investment. The Claimant made no qualifying contribution, the transaction did not satisfy the duration requirement, and the Claimant faced no investment-related risk. The Tribunal therefore lacks jurisdiction *ratione materiae* (**Section 3.1**).

296. *Second*, the Respondent has demonstrated that the Claimant's investment was made through

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286 Reply, pp. 83-84, §§ 348-354.

287 SoD, pp. 49-52, §§ 182-194; Section 5.2.

fraud, and the Claimant does not dispute that such an investment cannot attract BIT protection. The Claimant contends that the alleged fraud occurred only after the investment was established and is thus irrelevant. This is incorrect. AEnergy's acquisition of the Turbines on 31 March 2017 does not constitute the establishment of the investment and does not overcome the Respondent's jurisdictional objection. Moreover, even if fraud occurred after the investment was established, it would still preclude protection under ICSID jurisdiction. (**Section 3.2**).

297. *Third*, the Claimant has deliberately shifted the date of dispossession of the Four Unsolicited Turbines in different proceedings to fit each forum's jurisdictional requirements, which is a clear attempt to manipulate temporal jurisdiction under the Angola-Portugal BIT. The Claimant's reliance on AEnergy to establish standing, while simultaneously disavowing AEnergy's earlier representations, constitutes an abuse of process. Such conduct, grounded in bad faith, warrants the dismissal of the claims as the Tribunal should decline jurisdiction or find the claims inadmissible when a claimant seeks to manufacture treaty protection through procedural manipulation (**Section 3.3**).

298. *Fourth*, the Tribunal lacks *ratione temporis* jurisdiction because all the key events giving rise to the dispute occurred before 22 December 2021, when the BIT entered into force. Article 2(1) of the Amended Version of the BIT clearly includes a double-exclusion clause, contrary to the Claimant's argument, making the critical date the occurrence of the relevant facts, not the later date the Claimant claims the expropriation was "consummated." Any FET or FPS claims based on IGAPE's actions are also tied to these pre-BIT events, and the Claimant's own previous statements confirm the loss in value of AEnergy's occurred before the amended BIT came into effect (**Section 3.4**).

299. Finally, a dispute must already exist before consent to arbitrate can arise. Since at least two of the Four Unsolicited Turbines had not been installed or operating on 9 June 2022 – the date the Notice of Dispute –, there was no present dispute about their alleged expropriation and thus no consent for the Tribunal to exercise jurisdiction over those claims. Consent-based jurisdiction (*ratione voluntatis*) cannot be presumed, implied, or made retroactive in the absence of a current legal dispute. (**Section 3.5**).

3.1 First Objection: The Tribunal lacks *ratione materiae* jurisdiction: The acquisition of the Four

Unsolicited Turbines does not have the characteristics of an investment

300. The Claimant identifies two distinct alleged investments for the purposes of the Tribunal's jurisdiction *ratione materiae*: the acquisition of the Four Unsolicited Turbines and Mr. Machado's shareholding in AEnergy.[288] This section addresses whether the acquisition of the Four Unsolicited Turbines constitutes a protected investment under the Angola-Portugal BIT. The Respondent submits that it does not.

301. Throughout these proceedings, the Claimant has made it clear that the sole object of the present dispute is the Four Unsolicited Turbines. It is in respect of those Turbines that the Claimant develops its legal theory that the Respondent breached its obligations under the BIT. At no point has the Claimant framed its BIT claims on the basis that the relevant investment is AEnergy or AEnergy's shares.

302. The Respondent submits that the Salini test applies to determine whether the Four Unsolicited Turbines constitute a protected investment under the BIT and Article 25 of the ICSID Convention. Under the Salini test, to determine whether the investor has made an investment, it needs to satisfy, at least, the criteria of contribution, duration, and risk.

303. However, rather than demonstrating that the Four Unsolicited Turbines themselves satisfy those criteria, the Claimant seeks to rely on AEnergy's broader activities, commercial presence, and alleged long-term operations in Angola. That is impermissible. If the Claimant maintains that the Four Unsolicited Turbines independently constitute a protected investment, it must establish that those Turbines satisfy the Salini criteria on their own. It cannot draw on characteristics of a separate alleged investment — the shareholding in AEnergy — to cure deficiencies in the alleged investment constituted by the Turbines.

304. As demonstrated in the Statement of Defense,[289] the Four Unsolicited Turbines do not meet the requirements to qualify as a protected investment. The Claimant made no qualifying contribution, the transaction did not satisfy the duration requirement, and the Claimant faced

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288 SoC, p. 16, §§ 77-81.

289 SoD, pp. 54-61, §§ 202-227.

no investment-related risk. The Tribunal therefore lacks jurisdiction *ratione materiae*.

3.1.1 The relevant standard is the Salini test

305. First, the Claimant alleges that the Respondent's reliance on the Salini criteria is misplaced as these criteria should not be read as necessary jurisdictional criteria, overriding the definition of investment put forward in the BIT. Second, should the criteria apply, they should be assessed globally in a holistic approach.[290]

306. The Respondent will further demonstrate that the Salini criteria apply to the present case (**Section 3.1.1.1**) and that, whether the criteria are applicable as jurisdictional requirements or as part of a holistic approach, the result is the same, namely that the alleged investment does not satisfy the requirements and, thus, cannot be protected under the BIT (**Section 3.1.1.2**).

3.1.1.1 The Salini criteria apply

307. The drafters of the ICSID Convention did not define what constitutes an investment for the purposes of Article 25 of the Convention.[291] Within this context, the *Salini* tribunal[292] identified the objective characteristics that distinguish a protected investment from a transaction that falls outside the Convention's material scope. It has long been established that tribunals must therefore apply the general criteria developed in ICSID jurisprudence, which require: (i) a contribution with economic value and a nexus to the host State project, (ii) a certain duration indicative of a medium-to-long-term commitment, and (iii) the assumption of a risk specific to the investment.[293]

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290 Reply, p. 3, § 11.

291 **RL-0052,** ICSID Convention, Article 25, in Stephan W Schill, Loretta Malintoppi, et al (eds), *Schreuer's Commentary on the ICSID Convention*, 3rd Edition, September 2022, p. 46, § 231.

292 **RL-0034,** *Salini Costruttori S.p.A and Italstrade S.p.A v. The Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, dated 16 July 2001, p. 622, § 52.

293 **RL-0034**, *Salini Costruttori S.p.A and Italstrade S.p.A vs the Kingdom of Morocco*, ICSID Case No. ARB/004, Decision on Jurisdiction, dated 16 July 2001, p. 622, §§ 52-58; **CLA-42**, *Biwater Gauff Ltd V United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, dated 24 July 2008, pp. 84-89, §§ 307-322; **CLA-100,** *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka,* ICSID Case No. ARB/09/02, Award, dated 31 October 2012, p. 59**,** §§ 293-295; **RL-0043** *Nova Scotia Power Incorporated v. Bolivian Republic of Venezuela,* ICSID Case No. ARB (AF)/11/1, Award, dated 30 April 2014, pp. 20-22, §§ 105-113.

308. The reason for those criteria is clear. As the tribunal in *Joy Mining* and *SGS v. Paraguay* held, there is a limit to the freedom with which the parties may define an investment if they wish to engage the jurisdiction of ICSID tribunals. Otherwise, Article 25 and its reliance on the concept of investment, even if not specifically defined, would be turned into a meaningless provision.[294] Without objective criteria, any transaction — however remote from the concept of investment — could be brought within the scope of ICSID protection merely because the parties chose broad treaty language.[295]

309. Additionally, Christoph Schreuer specifically mentions that:[296]

> *The drafting history leaves no doubt that the Centre's services would not be available for just any dispute that the parties may wish to submit. In particular, it was always clear that ordinary commercial transactions would not be covered by the Centre's jurisdiction no matter how far-reaching the parties' consent might be.*

310. The Claimant's contention that the Salini criteria should be disregarded in favor of the BIT'S definition of investment[297] is, therefore, untenable. The criteria exist precisely to ensure that Article 25 of the ICSID Convention retains independent meaning and that parties cannot bypass its objective limits by referring to broad treaty language.

3.1.1.2 Whether applied holistically or as jurisdictional criteria, the Claimant's alleged investment does not meet the necessary requirements

311. The Claimant alleges that the Salini criteria should not be treated as mandatory jurisdictional requirements but should instead be assessed holistically, as typical characteristics of an

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294 **RL-0040,** *Joy Mining Machinery Limited v The Arab Republic of Egypt*, ICSID Case No. ARB/03/11, Award on Jurisdiction, dated 6 August 2004, p. 11 §§ 49-50.

295 **RL-0034**, *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, dated 16 July 2001, p. 622, §§ 50-52; **RL-0040**, *Joy Mining Machinery Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/03/11, Award on Jurisdiction, dated 6 August 2004, pp. 11, §§ 49-53; **RL-0049**, *Romak S.A. v. Republic of Uzbekistan*, PCA Case No. AA280, Award, dated 26 November 2009, p. 48, 53, §§ 194-195, 207.

296 **RL-0052,** ICSID Convention, Article 25, in Stephan W Schill, Loretta Malintoppi, et al (eds), *Schreuer's Commentary on the ICSID Convention*, 3rd Edition, p. 117-118**,** § 122.

297 Reply, pp. 3-5, §§ 14-20.

investment rather than as conditions for the Tribunal's jurisdiction.[298] This submission adds nothing to the Claimant's case. Whether the criteria are treated as strict jurisdictional requirements or as indicative factors in a holistic assessment, the result is the same: the Four Unsolicited Turbines do not qualify as a protected investment.

312. On the one hand, the distinction between the two approaches does not dispense the core characteristics of any investment, since both approaches require, at a minimum, the presence of contribution, duration, and risk. On the other hand, the Four Unsolicited Turbines do not satisfy any of those requirements, regardless of the analytical framework applied.

313. *First*, even the tribunals that have declined to treat the Salini criteria as mandatory jurisdictional requirements have nonetheless recognized that contribution, duration, and risk remain the core characteristics of any investment under the ICSID Convention.[299] A holistic assessment does not dispense with those characteristics. It simply declines to treat the absence of any single one as automatically fatal.

314. In *Biwater Gauff*, the tribunal declined to apply the criteria rigidly but nonetheless assessed the transaction against all of them.[300] In *Philip Morris*, the tribunal held that the Salini criteria are "*typical features of investments under the ICSID Convention*" and that "*they may assist in identifying or excluding in extreme cases the presence of an investment*."[301] In *SGS*, the tribunal held that such criteria could be useful "*in the event that a tribunal were concerned that a BIT or contract definition of investment was so overreaching that it might have captured a transaction*

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298 Reply, pp. 3-5, §§ 14-20.

299 **RL-0051,** *Saba Fakes v. Republic of Turkey*, ICSID Case No. ARB/07/20, Award, dated 14 July 2010, p. 29-36, §§ 99-110; **RL-0057** *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Jurisdiction, dated 27 September 2012, p. 34-77 §§ 211-227; **CLA-125** *Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Decision on Jurisdiction, dated 2 July 2013, p. 63-67, § 193-206.

300 **CLA-42,** *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, dated 24 July 2008, pp. 86-87, §§ 312-316.

301 **CLA-125**, *Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Decision on Jurisdiction, dated 2 July 2013, p. 67, § 206.

that manifestly was not an investment under any acceptable definition."[302]

315. That is precisely the situation here. The Claimant seeks to characterize as a protected investment what is, on any objective assessment, an ordinary commercial sale of goods. The Salini criteria are designed to exclude precisely such transactions from investment protection.

316. *Second*, the Four Unsolicited Turbines do not satisfy any of the three core requirements, regardless of the analytical framework applied. The Respondent has already conducted that analysis in its Statement of Defense[303] and the outcome does not change whether the criteria are seen as jurisdiction requirements or through a holistic approach.

317. The deficiencies are not marginal. They are total. This is not a case where one criterion is arguably weak while others are strong. All three are absent. Under the jurisdictional approach, that absence defeats jurisdiction. Under the holistic approach, a transaction that displays none of the typical features of an investment cannot, "*by any reasonable process of interpretation*" be construed as an investment.[304]

3.1.2 The Claimant did not make a substantial contribution

318. The Claimant argues that the contribution requirement is satisfied in the present case as the Four Unsolicited Turbines were purchased in his own name and with his own funds and the Claimant did not act as an intermediary but rather as a distributor.[305]

319. The Respondent's primary position remains that the Claimant through AEnergy acted as a mere intermediary between GE and the Respondent, as demonstrated in the Statement of Defense. Be that as it may, the Claimant's case on contribution fails under either characterization: (i) if AEnergy was a mere intermediary,[306] there was plainly no contribution; (ii) even if the

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302 **RL-0133**, *SGS Société Générale de Surveillance S.A. v. Republic of Paraguay*, ICSID Case No. ARB/07/29, Decision on Jurisdiction, dated 12 February 2010, pp. 27-30, §§ 93, 97-99.

303 SoD, pp. 54-61, §§ 202-227.

304 **RL-0004**, *Global Trading Resource Corp. and Globex International, Inc. v. Ukraine*, ICSID Case No. ARB/09/11, Award, date 1 December 2010, p. 19, §§ 56.

305 Reply, pp. 7-10, §§ 32-51.

306 SoD, pp. 54- 61, §§ 202-227.

transaction is characterized as a purchase-for-resale — as the Claimant now contends[307] — it constitutes an ordinary sale-of-goods contract in which no qualifying contribution was made.

320. Either way, the Respondent will further demonstrate that (i) a sale-of-goods contract cannot amount to a protected investment since there is no contribution (**Section 3.1.2.1**); (ii) even if a sale-of-goods contract could be considered an investment, there would still be no contribution (**Section 3.1.2.2**).

3.1.2.1 A sale-of-goods contract cannot amount to a protected investment

321. The alleged investment, as the Claimant now contends — the purchase of the Four Unsolicited Turbines for resale to the Respondent — constitutes merely a simple sale of goods contract, which is widely recognized as insufficient for a transaction to be considered an investment.[308]

322. The Claimant refers to the *Joy Mining*[309] case to argue that the characterization of a contract as a sale-of-goods contract is not, by itself, sufficient to deny jurisdiction.[310] That reliance is misplaced. In *Joy Mining*, the tribunal first characterized the contract as a normal sales/procurement contract and emphasized that those contracts could only be protected investments in exceptional circumstances. The tribunal's reference to exceptional circumstances confirms that a sales contract can fall within ICSID jurisdiction only where it forms part of a broader economic operation displaying the objective features of an investment.

323. The conclusion that ordinary commercial sales should not be considered investments for the

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307 Reply, pp. 7-10, §§ 32-51.

308 **RL-0004**, *Global Trading Resource Corp. and Globex International, Inc. v. Ukraine*, ICSID Case No. ARB/09/11, Award, date 1 December 2010, pp. 18-19, §§ 55-57; **RL-0049**, *Romak S.A v The Republic of Uzbekistan*, PCA Case No. AA280, Award, dated 26 November 2009, pp. 46, 57-58, §§ 185, 222; **RL-0040**, *Joy Mining Machinery Limited v The Arab Republic of Egypt*, ICSID Case No. ARB/03/11, Award on Jurisdiction, dated 6 August 2004, p. 14, § 58; **RL-0023**, *Phoenix Action Ltd. V. The Czech Republic*, ICSID Case No. ARB/06/5, Award, dated 15 April 2009, p. 32, § 82; **RL-0043**, *Nova Scotia Power Incorporated v. Bolivian Republic of Venezuela*, ICSID Case No. ARB (AF)/11/1, Award, 30 April 2014, pp. 22-23, § 113; **RL-0134**, *Alois Schönberger v. Republic of Tajikistan*, ICSID Case No. ARB(AF)/19/1, Award, dated 8 December 2023, pp. 60-62, §§ 213, 217-218.

309 **RL-0040**, *Joy Mining Machinery Limited v The Arab Republic of Egypt*, ICSID Case No. ARB/03/11, Award on Jurisdiction, dated 6 August 2004, p. 14, § 58.

310 Reply, p. 6, §§ 26-28.

purpose of BIT protection has been repeatedly held, even where such contracts involve payment obligations, delivery obligations, or regular commercial risks.[311]

324. In *Romak*, the tribunal held that the claimant's wheat supply contract did not constitute a protected investment.[312] The tribunal found that Romak's delivery of wheat was a transfer of title in performance of a sale of goods contract and the contractual payment rights recognized under the arbitral award merely crystallize that sale which could not constitute a protected investment.[313]

325. Additionally, in *Global Trading*, the claimants brought ICSID proceedings arising out of poultry sale-and-purchase contracts concluded with Man-Trade, acting as nominee for the Ukrainian State Reserve. The tribunal held that the contracts and the related payment claims did not constitute an investment under either the BIT or Article 25 of the ICSID Convention. The tribunal determined that the claims could only fall within the scope of Article 25 if they are associated with an investment. It further determined that the claimant's case was based on simple sale of goods contracts which lacked the essential connecting factor of being associated with an investment.[314]

326. As noted above, Schreuer has similarly confirmed that "*ordinary commercial transactions would not be covered by the Centre's jurisdiction no matter how far-reaching the parties' consent might*

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311 **RL-0040**, *Joy Mining Machinery Limited v The Arab Republic of Egypt*, ICSID Case No. ARB/03/11, Award on Jurisdiction, dated 6 August 2004, p. 14, § 58; **RL- 0023**, *Phoenix Action Ltd. V. The Czech Republic*, ICSID Case No. ARB/06/5, Award, dated 15 April 2009, p. 32, § 82; **RL-0004,** *Global Trading Resource Corp. and Globex International, Inc. v. Ukraine*, ICSID Case No. ARB/09/11, Award, dated 1 December 2010, pp. 18-19, §§ 55-57; **RL-0043**, *Nova Scotia Power Incorporated v. Bolivian Republic of Venezuela*, ICSID Case No. ARB (AF)/11/1, Award, 30 April 2014, p. 23, § 113; **RL-0028,** *Poštová banka, a.s. and Istrokapital SE v. Hellenic Republic*, ICSID Case No. ARB/13/8, Award, dated 9 April 2015, pp. 110-113, §§ 361-365.

312 **RL-0049**, *Romak S.A. v. The Republic of Uzbekistan*, PCA Case No. AA280, Award, dated 26 November 2009, pp. 55-57, §§ 213-221.

313 **RL-0049**, *Romak S.A v The Republic of Uzbekistan*, PCA Case No. AA280, Award, dated 26 November 2009 pp. 55-57, §§ 213-221.

314 **RL-0004**, *Global Trading Resource Corp. and Globex International, Inc. v. Ukraine*, ICSID Case No. ARB/09/11, Award, dated 1 December 2010, pp. 19-20, §§ 57-58.

be."[315]

327. The rule that emerges from these authorities is clear: a contract for the sale of goods is a process of exchange of values, not a process of creation of value. Unless exceptional circumstances transform such a transaction into a broader economic operation displaying the objective features of an investment — contribution, duration, and investment risk — it remains ordinary commerce outside the scope of BIT and ICSID protection.

328. In the present case, the distinction between the Claimant's narrative and the actual circumstances surrounding the acquisition of the Four Unsolicited Turbines is irrelevant since in either case, the transaction amounts to a sale of goods that cannot be characterized as a protected investment.

329. The Claimant contends that AEnergy acquired the Four Unsolicited Turbines from GE as an exclusive distributor, in its own name and with its own funds. Even accepting the Claimant's characterization, *quod non,* AEnergy's function was to channel GE equipment to the Respondent under a pre-existing framework. The payment of the price would be concluded through the Facility Agreement, and the Respondent was never intended to retain the Turbines or deploy them in any economic venture of its own. As such, whether one labels AEnergy an intermediary or a distributor, the Claimant never made a contribution.

330. All in all, the economic substance of the transaction is identical whether the Claimant acted as distributor or an intermediary: a back-to-back transfer of goods from manufacturer to purchaser, with AEnergy as the contractual vehicle is a sale of goods — not a protected investment.

331. The actual circumstances are even more unfavorable to the Claimant. It is undisputed that, under the Framework Agreement, AEnergy acquired the turbines from GE with the purpose of reselling them. However, as the Four Unsolicited Turbines were never validly included in the 13 Contracts between AEnergy and the Respondent, they had no contractual link to Angola. When the Claimant realized it could not sell the Four Unsolicited Turbines to the Respondent through

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315 **RL-0052,** ICSID Convention, Article 25, in Stephan W Schill, Loretta Malintoppi, et al (eds), *Schreuer's Commentary on the ICSID Convention*, 3rd Edition, September 2022, p. 117, § 122.

legitimate means, it resorted to fraud. The Claimant and his affiliates forged letters to procure the unauthorized inclusion of the Four Unsolicited Turbines in the 13 Contracts and in the Facility Agreement. The purchase price was then settled with funds drawn from that Facility Agreement — funds belonging to the Respondent, not to the Claimant or AEnergy.[316]

332. Both the pre-existing Facility Agreement and the actual fraud confirm that the Claimant committed no resources of its own to the acquisition of the Four Unsolicited Turbines. In reality, the price was paid with the Respondent's money, obtained without the Respondent's authorization. There is no contribution where the alleged investor's only "commitment" consists of misappropriating the host State's own funds to finance a transaction that the host State never agreed to.[317]

333. The Claimant's own admissions further confirm the commercial, non-investment character of the transaction. The Claimant has acknowledged that it purchased six turbines beyond the number that Angola had agreed to acquire, as an autonomous commercial decision, and that the Four Unsolicited Turbines could have been sold to other countries, such as Cameroon or Mozambique. An investor genuinely committed to an economic venture in the host State does not treat the core of its alleged investment as fungible merchandise available for sale to the highest bidder in any market.

334. The reasoning of the tribunals in the abovementioned case law is therefore directly applicable. The Four Unsolicited Turbines cannot be considered an investment given that they represent a sale-of-goods contract which is not intended to be protected under BIT protection.

3.1.2.2 Even if a sale-of-goods could be considered an investment, there would still be no contribution made by the Claimant

335. Even if, *quod non*, a sale-of-goods contract could amount to a protected investment, the Claimant made no qualifying contribution in respect of the Four Unsolicited Turbines. It is not disputed that the Claimant did negotiate the transaction with GE. However, the Claimant did not make any contribution of its own to the acquisition of the Four Unsolicited Turbines — it did not

316 Section 2.1.2.
317 Section 2.1.2.

pay the purchase price, it did not deploy assets or know-how directed at this transaction.

336. The contribution requirement demands commitment aimed at the specific investment alleged.[318] The alleged investment in the present case is the acquisition of the Four Unsolicited Turbines. It is therefore regarding this specific transaction — and this transaction alone — that the contribution requirement must be assessed.

337. This principle is well established. In *KT Asia*, the tribunal held that a claimant must show that it committed resources to the specific economic venture in question, assessing contribution by reference to the particular transaction relied upon.[319] Similarly, in Global Trading, the tribunal assessed each individual contract separately and found that contracts for the purchase and sale of goods could not qualify as investments — it did not aggregate the claimants' multiple transactions to find that together they crossed the investment threshold.[320] AEnergy's general commercial presence in Angola cannot supply a contribution that does not exist in respect of the Four Unsolicited Turbines, as those activities were not created for, nor directed at, this transaction.

338. Applying this standard, the Claimant's case fails in two respects.

339. *First*, the Claimant committed no resources of its own to the acquisition of the Four Unsolicited Turbines. As demonstrated in the preceding Section,[321] the purchase price was paid with funds drawn from the Facility Agreement — funds belonging to the Respondent, accessed through the Forged Letters without the Respondent's authorization. The Claimant did not deploy assets, technology, or know-how directed at this transaction. What it did was negotiate the purchase with GE and prepare for the delivery of the Turbines to the Respondent — the role of a

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318 **RL-0048**, *KT Asia Investment Group B.V v Republic of Kazakhstan*, ICSID Case No. ARB/09/8, Award, pp. 44-45, § 170; **RL-0057**, *Quiborax S.A., Non-Metallic Minerals S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Jurisdiction, dated 27 September 2012 pp. 75-76 § 219; **RL-0049**, *Romak S.A. v. Republic of Uzbekistan*, PCA Case No. AA280, Award, dated 26 November 2009, p. 57, § 222.

319 **RL-0048**, *KT Asia Investment Group B.V. v. Republic of Kazakhstan*, ICSID Case No. ARB/09/8, Award, dated 17 October 2013, pp. 44–45, § 170.

320 **RL-0004**, *Global Trading Resource Corp. and Globex International, Inc. v. Ukraine*, ICSID Case No. ARB/09/11, Award, dated 1 December 2010, pp. 18–19, §§ 55–57.

321 Section 3.1.1.

commercial intermediary, or at most a purchaser-for-resale, not of an investor contributing to an economic venture in the host State.

340. Second, the Claimant's general business activities in Angola cannot supply a contribution that does not exist. The Claimant invokes AEnergy's employment of hundreds of people and its performance of services through its own staff. [322] However, those activities existed independently of the acquisition of the Four Unsolicited Turbines. They were not created for, nor directed at, this transaction.

341. The relevant question is not whether AEnergy had a commercial presence in Angola, but whether AEnergy committed employees, assets, or capabilities to the Four Unsolicited Turbines. The answer is no.

342. If AEnergy's overall activity in Angola could, in theory, constitute an investment, that is a separate matter — and one that pertains to the Claimant's second alleged investment, his shareholding in AEnergy. But that activity cannot be disaggregated and retroactively attributed to a discrete sale-of-goods transaction that bears no functional connection to it. To hold otherwise would deprive the contribution requirement of its limiting function: any multinational with a general commercial presence in a host State could point to its employees, offices, and past expenditures to elevate any individual sale of goods into a protected investment.

3.1.3 The Four Unsolicited Turbines do not meet the requirement of "duration"

343. The Claimant argues that the duration requirement is satisfied because the Four Unsolicited Turbines were allegedly acquired as part of a broader, long-term investment strategy. It relies on the 13 Contracts and AEnergy's overall presence in Angola to argue that it could not be characterized as a party engaged in a one-off sale of goods.[323] That submission fails.

344. The Claimant's position conflates the duration of AEnergy's general commercial activities with the duration of the specific transaction at issue. The two are not the same. The investor's general commercial presence in the host State cannot supply the duration that the specific transaction

322 Reply, p. 13, §§ 59-60.

323 Reply, p. 12, § 54.

lacks.

345. The duration requirement demands a temporal commitment directed at the specific investment alleged, reflecting a sustained engagement with the economic operation in the host State.[324] As the tribunal in *Nova Scotia Power*[325] held, duration is one of the objective characteristics that must be present for a transaction to qualify as an investment under the ICSID Convention. The tribunal treated it as a requirement that distinguishes operations involving sustained commitment from those that are completed upon performance of a contractual obligation.

346. In *Global Trading*, the tribunal applied this principle to contracts for the sale of goods. It characterized the contracts at issue as "individual contracts, of limited duration, for the purchase and sale of goods" and concluded that contracts of that kind could not "by any reasonable process of interpretation be construed to be 'investments' for the purposes of the ICSID Convention."[326]

347. Assessed on its own terms, the acquisition of the Four Unsolicited Turbines had no meaningful duration. Even on the Claimant's own characterization — under which AEnergy allegedly acted as an exclusive distributor rather than a mere intermediary — AEnergy's role in relation to the Four Unsolicited Turbines was confined to purchasing turbines from GE and reselling them within a short period. The transaction was designed to be completed in months.

348. The Claimant's reliance on the 13 Contracts and AEnergy's broader activities does not alter this conclusion since the Four Unsolicited Turbines were never validly included in the 13 Contracts, and AEnergy's general activities were not specifically committed to the acquisition of the Four Unsolicited Turbines.[327]

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324 **RL-0034**, *Salini Construttori S.p.A and Italstrade S.p.A v. The Kingdom of Morocco*, ICSID Case No. ARB/00/4; Decision on Jurisdiction, dated 16 July 2001, p. 610, § 52.

325 **RL-0043**, *Nova Scotia Power Incorporated v. Bolivian Republic of Venezuela*, ICSID Case No. ARB (AF)/11/1, Award, dated 30 April 2014, p. 15, 19, §§ 84, 100-101.

326 **RL-0004**, *Global Trading Resource Corp. and Globex International, Inc. v. Ukraine*, ICSID Case No. ARB/09/11, Award, dated 1 December 2010, pp. 18-19, §§ 55-56**; RL-0040**, *Joy Mining Machinery Limited* v The Arab Republic of Egypt, ICSID Case No. ARB/03/11, Award on Jurisdiction, 6 August 2004, p. 15, § 58.

327 Reply, pp. 13-14, §§ 60-63.

349. The Claimant's own submissions further confirm the transient and purely commercial nature of the transaction since the Four Unsolicited Turbines could have been sold to other countries, such as Cameroon or Mozambique.[328] There can be no meaningful duration where the investor itself treats the goods as fungible merchandise available for sale to the highest bidder in any market.

350. An investor genuinely committed to a sustained economic operation in the host State does not acquire goods with the acknowledged possibility of diverting them elsewhere. The Claimant's characterization of AEnergy as an "exclusive distributor" committed to Angola's long-term energy development[329] is irreconcilable with its own admission that the Four Unsolicited Turbines were acquired as a speculative commercial decision, unrelated to any specific commitment to the host State.

351. The duration requirement is not met. The acquisition of the Four Unsolicited Turbines was a one-off commercial transaction, designed to be completed in months, with no temporal commitment to the host State. The Four Unsolicited Turbines were never validly included in the 13 Contracts, and the Claimant itself acknowledged that they could have been diverted to other markets — a posture incompatible with any sustained engagement in Angola. The Claimant's general activities in Angola, whatever their nature, cannot supply the duration that this specific transaction lacks.

3.1.4 The Claimant did not assume investment risk

352. The Claimant's position is that by purchasing the Turbines in his own name and with his own funds, it assumed risk. However, the Claimant does not specify any risk other than the normal transactional/commercial risks that a seller may face in a sales contract.[330]

353. The Respondent will demonstrate that (i) the legal standard distinguishes investment risk from ordinary commercial risk; and (ii) the only risk the Claimant faced – if any – was standard transactional risk, which disappeared entirely upon payment.

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328 Reply, p. 13, § 60.

329 Reply, p. 9, § 39.

330 Reply, pp. 17-19, §§78-87.

354. *First*, the distinction between investment risk and commercial risk is well established.[331] Investment risk entails a situation in which the investor cannot be sure of a return on its commitment and may not know the amount it will end up spending, even if all relevant counterparties discharge their contractual obligations. It is a risk inherent in the operation itself — linked to the uncertainty of the economic venture over time — as opposed to the risk of non-performance by a contractual counterparty.

355. In *Romak*, the tribunal distinguished between the two categories. It held that the risk faced by a seller under a supply contract — the risk that the buyer would not pay — was ordinary commercial risk, not investment risk. The tribunal explained that:[332]

> *'*[I]*nvestment risk' entails a different kind of alea, a situation in which the investor cannot be sure of a return on his investment and may not know the amount he will end up spending, even if all relevant counterparties discharge their contractual obligations. Where there is "risk" of this sort, the investor simply cannot predict the outcome of the transaction.*

356. In *Schonberger* the tribunal admitted that under a sale of goods contract parties could indeed face a risk, namely a risk that the purchased goods were not delivered and that they could not be reimbursed for that non-delivery. However, the tribunal concluded that the transaction constitutes ordinary sales of goods and therefore could not qualify as an investment.[333] Investment risk is thus distinguishable from ordinary commercial risk that a buyer might not pay, or that a commercial transaction might not be completed.[334]

357. *Second*, the Claimant faced no investment-related risk in respect of the Four Unsolicited Turbines. Even assuming, *quod non*, that AEnergy acquired the Turbines in its own name and

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331 **RL-0049**, *Romak S.A v The Republic of Uzbekistan*, PCA Case No. AA280, Award, dated 26 November 2009, p. 59, § 230; **RL-0028**, *Poštová Banka, a.s. and Istrokapital SE v. Hellenic Republic*, ICSID Case No. ARB/13/8, Award, dated 9 April 2015, p. 113, §§ 367-370; **RL-0053**, *Manchester Securities Corp. v. Republic of Poland*, PCA Case No. 2015-18, Award, dated 7 December 2018, pp. 101-102, §§ 374-375.

332 **RL-0049**, *Romak S.A v The Republic of Uzbekistan*, PCA Case No. AA280, Award, dated 26 November 2009, p. 59, § 230.

333 **RL-0134**, *Alois Schönberger v. Republic of Tajikistan*, ICSID Case No. ARB(AF)/19/1, Award, dated 8 December 2023, pp. 60-62, §§ 213, 217-218.

334 **RL-0028**, *Poštová Banka, a.s. and Istrokapital SE v. Hellenic Republic*, ICSID Case No. ARB/13/8, Award, dated 9 April 2015, p. 113, §§ 367-370.

bore the risk of resale — as the Claimant wrongly contends — such risk would be nothing more than ordinary commercial risk inherent in any distribution or purchase-for-resale arrangement. The risk that the buyer does not materialize or does not pay.

358. As demonstrated in Section 3.1.3 above, the Claimant itself treated the Four Unsolicited Turbines as fungible merchandise available for sale in multiple markets, which is incompatible with the assumption of genuine investment risk in the host State.

359. Moreover, once the purchase price was settled — through funds drawn from the Facility Agreement without the Respondent's authorization — the transaction was complete and the Claimant faced no residual risk whatsoever, whether political, commercial, or environmental.

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360. In sum, the acquisition of the Four Unsolicited Turbines does not constitute a protected investment under the Angola-Portugal BIT or Article 25 of the ICSID Convention. The Claimant made no qualifying contribution as the purchase price was paid with the Respondent's own funds, accessed through fraud. The transaction bore no meaningful duration since it was designed to be completed in months and bore no temporal commitment to the host State. The Claimant also assumed no investment risk. The only risk it faced, if any, was the ordinary commercial risk of finding a buyer, which is insufficient to satisfy these criteria.

361. These deficiencies are not marginal; they are total. Whether AEnergy is characterized as a mere intermediary or as a purchaser-for-resale, and whether the Salini criteria are applied as jurisdictional requirements or as typical characteristics under a holistic assessment, the conclusion is the same. The acquisition of the Four Unsolicited Turbines was an ordinary sale of goods that falls outside the scope of investment protection. The Tribunal therefore lacks jurisdiction *ratione materiae* over the Claimant's claims in respect of the Four Unsolicited Turbines.

3.2 Second Objection: The Tribunal lack jurisdiction Ratione Materiae – The Claimant's investment was made through fraud and therefore not in accordance with Angolan law as required by the BIT

362. The Claimant alleges that Mr. Machado was not involved in the fraudulent conduct surrounding

the Forged Letters. It further contends that, in any event, the alleged fraud occurred only after the alleged investment had already been established and therefore cannot affect the Tribunal's jurisdiction *ratione materiae*.[335]

363. The Claimant does not dispute the legal principle that an investment obtained through fraud cannot attract BIT protection, nor does it seek to distinguish the authorities relied upon by the Respondent. Rather, the Claimant confines its response to the factual circumstances surrounding the fraud — specifically, he denies Mr. Machado's involvement and contends that the fraud post-dates the establishment of the investment.[336]

364. The full factual and legal analysis of the fraud was set out in the Statement of Defense and is incorporated by reference. In that pleading, the Respondent established the factual basis of the fraud and the applicable legal framework, including Mr. Machado's motive, the gap between the Facility Agreement and the 13 Contracts, the payment of approximately USD 5 million to Mr. da Costa and Mr. da Costa's conviction in the U.S. proceedings.[337]

365. In Section 2.1.2 of this Rejoinder, the Respondent has further elaborated on the facts surrounding the fraud committed by the Claimant, namely the involvement in the creation of the Forged Letters, the kickback payments made to the Claimant's affiliates and the motive which justified the Claimant's resort to fraud.

366. In the following section, the Respondent will only rebut the Claimant's allegations that the fraud occurred after the establishment of the investment, and therefore it is irrelevant to the investment. *First*, AEnergy's acquisition of the turbines from GE on 31 March 2017 cannot mark the establishment of the investment and thus it does not defeat the Respondent's jurisdictional objection (**Section 3.2.1**). *Second*, even if the Tribunal were to find that fraud occurred after the alleged investment was established, the fraud would still require a denial of protection under ICSID jurisdiction (**Section 3.2.2**).

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335 Reply, pp. 23-30, §§ 106-135.

336 Reply, pp. 23-30, §§ 106-135.

337 SoD, pp. 61- 69, §§ 228- 261.

3.2.1 The Claimant's acquisition of the turbines from GE on the 31 March 2017 does not cure the fraud or defeat the Respondent's jurisdictional objection

367. Even assuming, *quod non*, that the Four Unsolicited Turbines constitute an investment for the limited purposes of the present objection, that alleged investment could not have been established on 31 March 2017, when AEnergy acquired the turbines from GE.

368. Before addressing the relevant moment for the establishment of the alleged investment, the Respondent notes one important distinction. The Respondent occupies a dual position in this case: it is both the alleged commercial counterparty in the acquisition of the Four Unsolicited Turbines and the host State that could, in the abstract, bear obligations under investment treaty law.

369. Both capacities are relevant, because the moment at which the Respondent could arguably have assumed obligations under the BIT depends on when, if ever, it entered into a legally operative relationship with those Turbines — not on when the Claimant unilaterally acquired them from a third party in a third country.

370. The Claimant's acquisition of the Four Unsolicited Turbines from GE on 31 March 2017 could not create obligations for the Respondent in either capacity. As a commercial counterparty, the Respondent was not a party to the transaction with GE, had not agreed to acquire the Turbines, and had assumed no contractual commitment in respect of them. As the host State, the Respondent could not bear obligations under the BIT with respect to assets that had no connection to its territory and were not located there at that date. The acquisition from GE was a unilateral purchase of goods by AEnergy from a third-party supplier that created no rights vis-à-vis the Respondent and did not involve any commitment by Angola to acquire the Four Unsolicited Turbines.

371. The Respondent will demonstrate that the acquisition of the turbines in 31 March 2017 does not defeat the fraud objection: first, under the applicable legal standard, there is not a legally operative investment relationship with the host State as unilateral and preparatory acts are not relevant to establish an investment (**Section 3.2.1.1**); second, the Respondent made no commitment in 2017 or 2018 in respect of the Four Unsolicited Turbines (**Section 3.2.1.2**); finally, any alleged connection between those Turbines and the Respondent was manufactured

solely through the Claimant's fraudulent conduct (**Section 3.2.1.3**).

3.2.1.1 There is not a legally operative investment relationship with the host State as unilateral and preparatory acts are not relevant to establish an investment

372. For the purposes of Article 25 of the ICSID Convention and the Angola-Portugal BIT, the relevant inquiry to determine whether an investment is established is not simply whether the alleged investor acquired an asset or incurred expenditure. The question is whether and when a legally operative investment relationship with the host State came into existence. As investment protection treaties create obligations for the host State, those obligations cannot arise from the investor's unilateral acts alone.[338]

373. In *ST-AD*, the tribunal rejected the argument that an investment had arisen from a preliminary agreement, holding that an agreement to acquire shares in the future was not equivalent to the acquisition of the shares themselves. The tribunal found that the claimant had conflated an intention to invest with the investment itself and held that the investment materialized only when the final contract was signed.[339]

374. The same approach was adopted in *Alois Schönberger v. Republic of Tajikistan* where the tribunal held that mere ownership of goods in the territory of the host State, without more, does not constitute an investment.[340] The claimant's purchase of goods could not, by itself, establish a protected investment. If an investment was to exist, it had to be grounded in something more than unilateral ownership or acquisition of goods.[341]

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338 **RL-0134**, *Alois Schönberger v. Republic of Tajikistan*, ICSID Case No. ARB(AF)/19/1, Award, dated 7 December 2023, pp. 62-68, §§ 210, 213, 218; **RL-0050**, *Mihaly Internatinoal Corporation v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/00/2, Award, dated 15 March 2002, p. 159-160, §§ 60-61; **RL-0135**, *Patel Engineering Limited v. The Republic of Mozambique*, PCA Case No. 2020-21, Final Award, dated 7 February 2024, p. 63, §§ 325-328.

339 **RL-0026**, *ST- AD GmbH v. Republic of Bulgaria*, PCA Case No. 2011- 06, Award on Jurisdiction, dated 18 July 2013, pp. 79-80, §§ 272-273.

340 **RL-0134**, *Alois Schönberger v. Republic of Tajikistan*, ICSID Case No. ARB(AF)/19/1, Award, dated 7 December 2023, pp. 62-68, §§ 210, 213, 218.

341 **RL-0134**, *Alois Schönberger v. Republic of Tajikistan*, ICSID Case No. ARB(AF)/19/1, Award, dated 7 December 2023, pp. 62-68, §§ 210, 213, 218.

375. Similarly, in *Deutsche Telekom*, the tribunal emphasized that the relevant threshold was the existence of binding, State-cleared contractual rights. The investment relationship arose when the relevant agreement became legally effective following governmental clearance. Again, the operative moment was not commercial preparation by the investor, but the moment when binding rights involving the host State came into existence.[342]

376. Article 2(1) of the Angola-Portugal BIT reinforces this conclusion, as it expressly provides that the BIT applies to investments made in the territory of the host State. Accordingly, the Four Unsolicited Turbines cannot be considered a protected investment under the Angola-Portugal BIT in March 2017 since at the time they had no territorial connection with the Respondent.

377. The requirement of a territorial nexus between the investment and the host State is a widely recognized precondition for treaty protection. Investment tribunals have consistently held that both the applicable treaty and the ICSID Convention require a link between the investor's investment and the territory of the host State. This territorial connection constitutes an overarching jurisdictional limit, since investors cannot reasonably expect protection of an investment located outside the host State's borders, given that the host State can only control acts that occur within its jurisdiction.[343]

378. Considering all the above, no qualifying operation has come into existence in the present case since the Respondent relies on preparatory unilateral acts which do not create obligations for the host State.

3.2.1.2 The acquisition of the Turbines in March 2017 cannot constitute the establishment of the investment

379. As a commercial counterparty, the Respondent had no contractual relationship with the Four

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342 **CLA-91**, *Deutsche Telekom AG V Republic of India*, PCA Case No. 2014-10, Interim Award, dated 13 December 2017, p. 57, § 181.

343 **RL-0136**, *Inmaris Perestroika Sailing Maritime Services GmbH and others v. Ukraine*, ICSID Case No. ARB/08/8, Decision on Jurisdiction, dated 8 March 2010, p. § 118-120; **RL-0137**, *Addiko Bank AG v. Montenegro*, ICSID Case No. ARB/17/35, Award, dated 24 November 2021, p. 96, § 354; **RL-0138,** *Kaloti Metals & Logistics LLC v. Republic of Peru*, ICSID Case No. ARB/18/2, Award, dated 14 May 2024, pp. 19-21, §§ 74-80.

Unsolicited Turbines on 31 March 2017. The Respondent had not requested them, had not authorized their acquisition, had not undertaken to purchase them, and had assumed no obligation in respect of them. As the Claimant states, the Turbines could have been sold to other countries.[344]

380. It was only the Claimant, through AEnergy, who had a commitment to sell the Four Unsolicited Turbines to the Respondent.[345] The Respondent had no relationship or knowledge of this arrangement which occurred under the Framework Agreement concluded with GE.[346] The Respondent only acquired eight turbines under the 13 Contracts with AEnergy.[347] Therefore, six turbines, including the Four Unsolicited Turbines at the heart of this dispute, were purchased by AEnergy without any commitment by the Respondent.[348]

381. The same is true if we consider Respondent's obligations as the host State. The Respondent could not bear obligations under the BIT in respect of the Four Unsolicited Turbines on 31 March 2017: not only were the Turbines not in Angola, but also and importantly, in Claimant's case they were not destined for Angola. Therefore, they had no connection whatsoever to the Respondent's territory.[349]

382. The Respondent recognizes that, in the abstract, an investor may hold a protected investment in the territory of a host State without a direct commercial relationship with that State. Similarly, an investor who acquires equipment for its own operations in the host State may enjoy treaty protection even if the State is not a counterparty to any transaction involving that equipment.

383. However, under the Claimant's narrative, the Four Unsolicited Turbines were goods purchased by AEnergy from GE that could have been shipped to any country.[350] In order for the

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344 Reply, p. 13, § 60.

345 **C-38**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, p. 4, Article III (A), (F) and (G).

346 Section 2.1.1.

347 Section 2.1.2; Reply, p. 18, § 82.

348 Section 2.1.1 and 2.1.2.

349 Reply, p. 13, § 60.

350 Reply, p. 13, § 60.

Respondent, as host State, to bear any obligation under the BIT in respect of those Turbines, they would first need to be connected to its territory — whether through a contractual commitment, through physical arrival in Angola, or through some other legally operative act establishing a link with the host State. None of those circumstances existed on 31 March 2017.

3.2.1.3 Any alleged connection between the Four Unsolicited Turbines and the Respondent was manufactured solely through the Claimant's fraudulent conduct

384. If any link between the Four Unsolicited Turbines and the Respondent exists at all, it was created through the Forged Letters. Those letters falsely represented to GE that the Respondent had accepted the purchase of the Four Unsolicited Turbines, when in reality the Respondent had never requested or accepted them.[351]

385. The Respondent does not accept that the Forged Letters created any valid contractual commitment. But even in the Claimant's case, they are the only basis on which the Four Unsolicited Turbines could be said to have entered any contractual or financial framework involving the Respondent. Without the Forged Letters, there would be no alleged investment and no claim before this Tribunal.

386. No legally materialized investment ever existed, as there was no binding contract that included the Four Unsolicited Turbines and therefore no obligation for the Respondent — either as commercial counterparty or as host State — to acquire them. However, for the purposes of the present section, the Respondent will consider, *quod non*, that if an investment ever materialized, it could only have been at one of two later moments.

387. *First*, it could only have arisen when the Forged Letters were used to create the appearance before GE, that the Respondent had accepted the acquisition of the Four Unsolicited Turbines and that those Turbines could be paid under the Facility Agreement.[352]

388. That alleged commitment was manufactured by the Claimant's fraud. But it is the only moment from which any obligation could arguably have arisen in respect of the Four Unsolicited Turbines,

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351 Section 2.1.1.

352 Section 2.1.2.

because it was only through the Forged Letters that the Claimant was able to use the funds drawn by the Respondent under the Facility Agreement to pay for the Four Unsolicited Turbines — without the Respondent's knowledge or permission.[353]

389. *Second*, and at the earliest in the alternative, the alleged investment could only have arisen when the Four Unsolicited Turbines were shipped to and arrived in Angola in December 2017.[354] This is the first moment at which the Turbines could be said to have had any physical connection to the host State's territory.

390. The Claimant contends that it acquired the turbines on 31 March 2017, yet it is undisputed that the Four Unsolicited Turbines reached Angola only in December 2017. The Claimant does not explain the nine-month interval between alleged acquisition and arrival. The explanation, however, is apparent from the record. The Claimant needed to incorporate the Four Unsolicited Turbines into the Facility Agreement and obtain payment before shipping them. In other words, the Turbines remained outside Angola — and outside any conceivable territorial nexus with the host State — until the Claimant's financing arrangements were in place. Until that point, the Turbines had no territorial nexus to the host State.

391. If the Tribunal considers that no legally binding commitment arose at the time the Forged Letters were created, the physical arrival of the Four Unsolicited Turbines in Angola must be considered the relevant moment for the establishment of the investment — and that moment, too, was a direct consequence of the Claimant's fraudulent conduct.

392. In either scenario, the acquisition from GE on 31 March 2017 is irrelevant to the establishment of the investment. On that date, AEnergy had merely purchased turbines from its supplier. The Respondent was not a party to that transaction and had no obligation to acquire the turbines.[355] As the host State, the Respondent could not bear obligations under the BIT over assets that had no connection to its territory and that weren't even there.

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353 Section 2.1.2.

354 **AP-1015,** Bill of Lading for MFG#7266027, 27 December 2017; **AP-016**, Bill of Lading for MFG# 7267575, 7267577, 7267025, 28 December 2017.

355 Section 2.1.1.

393. The consequence is unavoidable. The Claimant cannot rely on its unilateral purchase from GE to argue that the alleged investment predates the fraud. If any investment was established at all — which the Respondent denies — it was established only when the Claimant manufactured a commitment by Angola through the Forged Letters, or at the earliest when the Turbines arrived in Angola as a consequence of that same fraudulent scheme.

394. Either way, the alleged investment was inseparable from the fraud.

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395. In sum, under the applicable standard a protected investment is established not by the investor's unilateral acquisition of an asset, but by the creation of a legally operative investment relationship with the host State — whether through a binding contractual commitment, governmental clearance, or another legally operative act connecting the asset to the host State's territory. Unilateral and preparatory acts, however substantial, do not suffice.

396. Measured against that standard, the Claimant's purchase from GE on 31 March 2017 was a unilateral preparatory act that created no rights vis-à-vis Angola and cannot mark the establishment of a protected investment. The Respondent was not a party to that transaction, had not agreed to acquire the turbines, and was unaware of the issue concerning the Four Unsolicited Turbines until 2018. No legally operative relationship between those Turbines and the Respondent existed on that date — either as a commercial counterparty or as the host State.

397. If, *quod non*, any investment arose in respect of the Four Unsolicited Turbines, it could only have arisen at the moment when a connection to the host State was first established. The only act capable of creating a legally operative link between the Four Unsolicited Turbines and the Respondent was the Claimant's fraudulent conduct. The alleged investment — if it exists at all — was therefore established through fraud and is inseparable from it.

3.2.2 Even if the Tribunal were to find that fraud occurred after the alleged investment was established, fraud would still require a denial of protection under ICSID jurisdiction.

398. The Claimant contends that fraud could not have been established at the outset of the

investment since the investment was made on 31 March 2017.[356] For the reasons set out above, the Respondent contends that this argument fails. In any case, even if the Tribunal were to characterize the fraud as post-establishment conduct, the Claimant still could not obtain BIT protection for rights that, on its own case, depend on the Forged Letters.

399. The Respondent will demonstrate this in two steps. First, fraud occurring during the life of an investment may operate as a bar to admissibility or substantive BIT protection even if it does not defeat jurisdiction. Second, the Claimant's claims in respect of the Four Unsolicited Turbines depend entirely on an alleged relationship with Angola that exists, if at all, only because of the Forged Letters.

400. *First*, tribunals have held that fraud occurring after the establishment of the investment may not deprive the tribunal of jurisdiction but must nevertheless be addressed as matter of admissibility.[357]

401. In *Hesham Talaat M. Al-Warraq v. Republic of Indonesia,* the tribunal held that an investor who had engaged in fraudulent conduct in the management of the investment could not invoke treaty protection for the consequences of that conduct. The tribunal applied the clean hands doctrine and concluded that the claimant's own wrongful acts barred his claims.[358] The fraud, namely the bribery of host State officials, did not need to predate the investment, the ownership of the shares in PT Bank Century, for this consequence to follow.

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356 Reply, pp. 19-20, §§ 90-93.

357 **RL-0056**, *Gustav F W Hamester GmbH & Co KG v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award, dated 18 June 2010, p. 37, §§ 126-127; **RL-0063**, *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines*, ICSID Case No. ARB/03/25, Award, dated 16 August 2007, p. 223, §§ 344-345; **RL-0057**, *Quiborax S.A., Non Metallic Minerals S.A. and Allan Fosk Kaplún v. Plurinational State of Bolivia*, ICSID Case No. ARB/06/2, Decision on Jurisdiction, dated 27 September 2012, p. 90,93, §§ 266, 277; **RL-0139**, *Bank Melli Iran and Bank Saderat Iran v. The Kingdom of Bahrain*, PCA Case No. 2017-25, Award, dated 9 November 2021, pp. 107-112, §§ 367-376; **RL-0140**, *Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Award, dated 6 December 2016, pp. 188-189, §§ 507-508, 528; **CLA-103,** *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, dated 27 August 2008, p. 40-43, §§ 138-146; **RL-0141**, *Kim and others v. Republic of Uzbekistan*, ICSID Case No. ARB/13/6, Decision on Jurisdiction, dated 8 March 2017, p. 78, §§ 375-376.

358 **RL-0142**, *Hesham Talaat M. Al- Warraq v. Republic of Indonesia*, UNCITRAL, Final Award, dated 15 December 2014, p. 200-2001 §§ 646-648.

402. In *Plama*, the tribunal addressed fraudulent misrepresentation in the acquisition of the investment, namely the shares in Nova Plama AD, and held that the investor's deceitful conduct precluded the substantive protection of the ECT. The tribunal held that the substantive protections of the ECT cannot apply to investments made contrary to law. The investor's fraud constituted a bar to protection since, regardless of the way the shares were formally acquired, the state authorization necessary for their transfer had been obtained through fraudulent misrepresentation.[359]

403. Zachary Douglas similarly explains that where an investor's own misconduct is causally connected to the claim, the appropriate consequence may be inadmissibility: the investor is "*simply unable to assert a claim in investment treaty arbitration by reason of its own misconduct*."[360] While Zachary Douglas confines the scope of international public policy to conduct that "*attracts the opprobrium of the international community*" — such as corruption, rather than ordinary fraud — subsequent tribunals have extended this reasoning to encompass fraudulent misrepresentation as well, holding that an investor who has obtained its investment through fraud cannot invoke treaty protection to shield the very rights so procured.[361]

404. Even where fraud does not defeat jurisdiction because it is characterized as post-establishment conduct, it operates as a bar to substantive BIT protection.[362] The principles of *ex turpi causa*, clean hands, and good faith preclude the investor from deriving rights from its own wrongful

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359 **CLA-103**, *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, dated 27 August 2008, pp. 38-43, §§ 135-146.

360 **RL-0143**, Zachary Douglas, "*The Plea of Illegality in Investment Treaty Arbitration*", in ICSID Review, ICSID, Vol. 29, No. 1, 2014, p. 180.

361 **CLA-103**, *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, dated 27 August 2008, pp. 38-43, §§ 135-146.

362 **RL-0142**, *Hesham Talaat M. Al-Warraq v. Republic of Indonesia*, UNCITRAL, Final Award, dated 15 December 2014, pp. 201-202, §§ 645-648; **RL-0139**, *Bank Melli Iran and Bank Saderat Iran v. The Kingdom of Bahrain*, PCA Case No. 2017-25, Award, dated 9 November 2021, pp. 107-112, §§ 367-376; **RL-0140**, *Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Decision on Jurisdiction, dated 24 February 2014, p. 189, § 315, Award, dated 6 December 2016, pp. 188-189, §§ 507-508, 528; **CLA-103**, *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, dated 27 August 2008, p. 42, §§ 138-146.

conduct.[363] The investor cannot invoke BIT protection for an advantage obtained through fraud.[364]

405. *Second*, the Claimant cannot benefit from BIT protection in respect of the Four Unsolicited Turbines as it resorted to fraud in the execution of the investment. On the Claimant's own case, any relationship between the Four Unsolicited Turbines and Angola exists, if at all, only because of the Forged Letters.

406. In 2017, the Respondent never requested, authorized, or undertook any obligation to acquire the Four Unsolicited Turbines. The inclusion of those Turbines in the Facility Agreement in October 2017 was made possible solely through the Forged Letters which led GE to believe that the Respondent had accepted such acquisition.[365] The Claimant participated in that fraud and now seeks to invoke BIT protection for rights that depend entirely on its consequences. This is not a case where an investor made a legitimate investment and later engaged in unrelated misconduct. The fraud here is not collateral to the claim — it is the very basis on which the Claimant seeks to connect the Four Unsolicited Turbines to Angola. Without the Forged Letters, the Claimant would have no basis for alleging that Angola had any obligation in respect of those Turbines, and no loss to claim.

407. Accordingly, even if the Tribunal characterizes the fraud as post-establishment conduct, the

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363 **RL-0142**, *Hesham Talaat M. Al-Warraq v. Republic of Indonesia*, UNCITRAL, Final Award, dated 15 December 2014, pp. 201-202, §§ 645-647; **RL-0059**, *Inceysa Vallisoletana, S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, dated 2 August 2006, pp. 72-76, §§ 239-251; **CLA-103**, *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, dated 27 August 2008, p. 42, §§ 143-146; **RL-0023**, *Phoenix Action, Ltd. v. Czech Republic*, ICSID Case No. ARB/06/5, Award, dated 15 April 2009, p. 41, § 101; **RL-0140**, *Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Award, dated 6 December 2016, pp. 188-189, §§ 507-508, 528.

364 **RL-0062**, *World Duty Free Company Limited v. Republic of Kenya*, ICSID Case No. ARB/00/7, Award, dated 4 October 2006, p. 32-34, §§ 138-148; **RL-0142**, *Hesham Talaat M. Al-Warraq v. Republic of Indonesia*, UNCITRAL, Final Award, dated 15 December 2014, pp. 201-202, §§ 645-647; **RL-0059**, *Inceysa Vallisoletana, S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, dated 2 August 2006, pp. 72-76, §§ 239-251; **CLA-103**, *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, dated 27 August 2008, p. 42, §§ 143-146; **RL-0023**, *Phoenix Action, Ltd. v. Czech Republic*, ICSID Case No. ARB/06/5, Award, dated 15 April 2009, p. 41, § 101; **RL-0140**, *Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Award, dated 6 December 2016, pp. 188-189, §§ 507-508, 528.

365 Section 2.1.1.

outcome does not change. The Claimant's claims in respect of the Four Unsolicited Turbines are inadmissible. The BIT cannot be used to enforce rights allegedly founded on forgery.

3.3 Third Objection: The Claimant is manipulating the facts related to the date of the alleged expropriation to circumvent the *ratione temporis* restriction of the BIT, which amounts to an abuse of rights/process

408. The Claimant denies that his claims constitute an abuse of process advancing four arguments: first, corporate separateness entitles Mr. Machado to depart from AEnergy's prior factual representations;[366] second, any inconsistencies result from new information;[367] third, the authorities relied on by the Respondent are distinguishable,[368] and fourth, the Respondent has not demonstrated manipulation or bad faith.[369]

409. None of these arguments withstand scrutiny. The Claimant's claims constitute an abuse of process because they represent a deliberate reshaping of the factual basis of the dispute to manufacture jurisdiction under the Angola-Portugal BIT. The Claimant relies on his ownership of AEnergy to establish standing, while disavowing AEnergy's prior factual representations when they reveal that dispossession occurred before the BIT entered into force. That is not a legitimate exercise of procedural rights, but an attempt to manipulate temporal jurisdiction.[370]

410. Abuse of process is an emanation of the principle of good faith and of the broader doctrine of abuse of rights.[371] A tribunal must decline to exercise jurisdiction, or hold a claim inadmissible, where a claimant manipulates the factual or legal basis of its claim to manufacture access to

366 Reply, p. 48, §§ 212-213.

367 Reply, p. 50, § 216.

368 Reply, pp. 48-49, § 215.

369 Reply, p. 50, § 216.

370 SoD, pp. 70-75, §§ 262-285.

371 **RL-0140**, *Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Award, dated 6 December 2016, p. 177, §§ 492; **RL-0144**, *WM Mining Company, LLC v. Mongolia*, ICSID Case No. ARB/21/8, Award, dated 29 August 2024, pp. 30-31, § 119-120; **RL-0145**, *The Renco Group, Inc. v. Republic of Peru (I)*, ICSID Case No. UNCT/13/1, Partial Award on Jurisdiction, dated 15 July 2016, pp. 44-45, §§ 175-177.

treaty arbitration.[372] That determination is made on a case-by-case basis, in light of all the relevant circumstances.[373]

411. The Respondent demonstrates this in five steps. First, the Claimant cannot selectively invoke corporate separateness to escape AEnergy's prior factual representations while relying on that same corporate relationship for standing. Second, the authorities confirm that abuse of process extends to the manipulation of factual or legal premises to obtain access to treaty arbitration. Third, the Rule 41 Decision does not preclude this objection on the full record. Fourth, the Claimant's "new information" defense does not explain the repeated inconsistencies in his factual account across proceedings. Finally, the record affirmatively demonstrates manipulation and bad faith.

412. *First*, the Claimant is AEnergy's sole shareholder.[374] Mr. Machado claims standing based on property held through AEnergy.[375] Yet, he simultaneously asserts that AEnergy's prior factual representations in the US proceedings do not bind him.[376] These positions are irreconcilable. Unity with AEnergy for standing and separation from AEnergy to escape prior admissions that expropriation occurred before the BIT's entry into force is a contradictory posture and shows abuse of process.

413. *Second*, the Respondent has presented sufficient legal basis for the standard of abuse of process.[377] The Respondent acknowledges that no reported case reproduces the precise factual pattern of this dispute — which is unsurprising, given the exceptional nature of the Claimant's

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372 **RL-0023**, *Phoenix Action, Ltd. v. Czech Republic*, ICSID Case No. ARB/06/5, Award, dated 15 April 2009, p. 57, § 142-143; **RL-0026**, *ST- AD GmbH v. Republic of Bulgaria*, PCA Case No. 2011- 06, Award on Jurisdiction, dated 18 July 2013, p. 116, § 423.

373 **RL-0146**, *Ipek Investment Limited v Republic of Turkey*, ICSID Case No. ARB/18/18, Award, dated 8 December 2022, p. 83, § 324.

374 SoD, p. 72, § 270.

375 SoC, p. 17 §§ 82-84.

376 Claimant's Rule 41 Response p.36, §§164-170, Claimant's Rule 41 Rejoinder p.22, §84.

377 Reply, pp. 48, §§ 211-216.

conduct. But that is immaterial. The Respondent relies on the cited authorities[378] for the broader principle they establish that a claimant may not manipulate the factual or legal basis of a claim to obtain access to treaty arbitration where such access would otherwise be unavailable. [379] That is precisely what occurred in the present case.

414. The Claimant's reading of *Phoenix Action* as limited to corporate restructuring is too narrow. The tribunal condemned the claimant's creation of a legal fiction to gain access to ICSID arbitration where it was not entitled to do so. The broader relevant principle is therefore that investment arbitration may not be accessed through artificial arrangements designed to convert a non-protected dispute into a protected one.[380]

415. This principle that tribunals possess inherent power to protect the integrity of the proceedings has been confirmed by different tribunals. In *Orascom*, the tribunal found that the claimant's pursuit of claims constituted an abuse of rights because it represented an exercise of procedural rights contrary to the legitimate purpose of the BIT.[381] The same is confirmed in *Lao Holdings,*[382]

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378 SoD, pp. 69-74 §§ 262-285; **RL-0023**, *Phoenix Action Ltd. V. The Czech Republic*, ICSID Case No. ARB/06/5, Award, dated 15 April 2009, pp. 56-57 §§ 143-144; **RL-0059***, Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, dated 2 August 2008, p. 70, §§ 230-231; **RL-0072**, *Waste Management, Inc. v. United Mexican States*, ICSID ARB(AF)/00/3, Decision of the Tribunal on Mexico's Preliminary Objection concerning the Previous Proceedings, dated 30 April 2004, p. 19, §49.

379 SoD, pp. 69-74 §§ 262-285; **RL- 0023**, *Phoenix Action Ltd. V. The Czech Republic*, ICSID Case No. ARB/06/5, Award, dated 15 April 2009, pp. 56-57 §§ 143-144; **RL-0059**, *Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, dated 2 August 2008, p. 70, §230-231; **RL-0072**, *Waste Management, Inc. v. United Mexican States*, ICSID ARB(AF)/00/3, Decision of the Tribunal on Mexico's Preliminary Objection concerning the Previous Proceedings, dated 30 April 2004, p. 19, § 49.

380 **RL- 0023**, *Phoenix Action Ltd. V. The Czech Republic*, ICSID Case No. ARB/06/5, Award, dated 15 April 2009, pp. 56-57 §§ 143-144.

381 **RL-0147**, *Orascom TMT Investments S.à r.l. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/12/35, Award, dated 31 May 2017, p. 146- 148, §§ 539-548; **RL-0144**, *WM Mining Company, LLC v. Mongolia*, ICSID Case No. ARB/21/8, Award, dated 29 August 2024, pp. 30-31, §§ 120-121.

382 **RL-0148**, *Lao Holdings N.V. v. Lao People's Democratic Republic (I)*, ICSID Case No. ARB(AF)/12/6, Decision on Jurisdiction, dated 21 February 2014, pp. 82-85, §§ 231-239.

Caratube,[383] *ST-AD*,[384] *Mobil*,[385] and *Plama.*[386] Each case recognizes that the investment treaty regime does not protect a claimant who reshapes or misuses the factual basis of a dispute to manufacture access to arbitration.

416. Additionally, the Respondent relies on *Inceysa* for the principle that good faith requires the absence of deceit and artifice in the instruments giving rise to the investment, as such treaty protection cannot be invoked on the basis of a factual premise constructed through artifice.[387] The Claimant's criticism of *Inceysa* is formalistic. The Claimant's argument therefore conflates the right to bring a separate claim with the freedom to contradict prior factual representations. Good faith does not permit a party to adopt contradictory positions that are clearly inconsistent, deliberate, and used to obtain a material procedural advantage across proceedings.

417. *Third*, the Rule 41 Decision does not preclude the abuse of process objection. That decision was rendered under the "manifestly without legal merit" standard, which dismisses only frivolous claims at the outset — not a finding on the merits. The Tribunal's observations were made without the full factual record now available and do not foreclose the present assessment.

418. *Fourth*, the Claimant's reliance on "new information" does not explain the inconsistencies.[388] The central issue - when the Claimant lost control, use, and economic value of the Four Unsolicited Turbines - is not a fact that required later discovery. It is a fact the Claimant experienced directly.

419. If the Claimant was dispossessed in or before 2019, as AEnergy represented in prior

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383 **CLA-76**, *Caratube International Oil Company LLP and Devincci Salah Hourani v. Republic of Kazakhstan (II)*, ICSID Case No. ARB/13/13, Award, dated 27 September 2017, p. 100, § 376.

384 **RL-0026**, *ST-AD GmbH v. Republic of Bulgaria*, UNCITRAL, PCA Case No. 2011-06, Award on Jurisdiction, dated 18 July 2013, pp. 68, 40-41, §§ 273.

385 **RL-0071**, *Mobil Corporation et al. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Decision on Jurisdiction, dated 10 June 2010, pp. 40-41, §§ 169-176.

386 **CLA-103**, *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, dated 27 August 2008, pp. 44-47, §§ 143-145.

387 **RL-0059**, *Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, dated 2 August 2008, p. 70, §§ 230-231.

388 Reply, p. 48, § 214.

proceedings,[389] then the present post-BIT expropriation theory is false. If it was not dispossessed until 2022, as it now contends, then AEnergy's prior representations were false when made. No "new information" can reconcile these two positions. Nor can the Claimant shift the blame to Angola's evolving position on ownership: that is a legal characterization, whereas the date of dispossession is a factual matter within the Claimant's own knowledge.

420. *Fifth*, the record affirmatively demonstrates manipulation. The chronology is stark. In 2019, Mr. Machado, through AEnergy, represented that AEnergy had been dispossessed of the Four Unsolicited Turbines.[390] In its complaint of 7 May 2020 before the U.S. District Court (S.D.N.Y.), and again in its 2023 amended complaint, AEnergy located dispossession in acts occurring in or before 2020.[391] After the BIT entered into force on 22 December 2021, the Claimant changed its arguments to consider that the alleged expropriation occurred with installation and connection of the Four Turbines in 2022.[392] These are not refinements of an evolving case. They are irreconcilable accounts of a fact within the Claimant's direct knowledge, changed overtime to meet the jurisdictional needs of the forum.

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421. In sum, the Claimant cannot invoke AEnergy for standing while disavowing AEnergy's prior representations. The record shows that the date of dispossession has shifted across fora to match each forum's jurisdictional requirements. That is an abuse of process, and the claims should be dismissed.

3.4 Fourth Objection: The Tribunal lacks *Ratione Temporis* jurisdiction: the facts that lead to the dispute/claims occurred prior to 22 December 2021

389 **R-0108,** Letter sent by Claimant to IGAPE on 12 December 2019, p. 2; **R-0109**, Letter sent by Claimant to IGAPE on 17 December 2019, p. 2; **R-0110**, Letter sent by Claimant to IGAPE on 31 December 2019; **R-0111**, Letter sent by Claimant to IGAPE on 14 April 2020, p. 1.

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

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

392 SoC, p. 23, § 112.

422. Since its Request for Arbitration,[393] the Claimant has maintained that the installation of the Four Unsolicited Turbines constitutes an expropriation. In earlier submissions connected with different judicial proceedings, the Claimant advanced different scenarios for the same alleged expropriation.[394]

423. Now that the Respondent has proven that the installation of the Four Unsolicited Turbines occurred as early as October 2020,[395] the Claimant advances four arguments in an attempt to escape the Tribunal's lack of jurisdiction *ratione temporis*: (i) that Article 2(1) of the BIT does not include a "double-exclusion" clause; (ii) that the installation and connection of the Four Unsolicited Turbines to the national grid constitute an independently actionable post-BIT conduct; (iii) that any FET and FPS claim predicated on IGAPE's conduct falls within the Tribunal's jurisdiction; and (iv) that the loss in value of AEnergy's shares occurred after BIT's entry into force.

424. None of these arguments withstand scrutiny, and each simply repackages positions the Respondent has already refuted in its previous pleadings.

425. The Respondent will demonstrate, in turn, that Article 2(1) of the BIT establishes precisely the double-exclusion clause the Claimant denies (**Section 3.4.1**); that the relevant critical date is the date the constitutive facts occurred and not the date the Claimant now says the expropriation was "consummated" (**Section 3.4.2**); that any FET and FPS claim predicated on IGAPE's custodial

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393 Request for Arbitration, p. 11, § 53.

394 Respondent's Request under Rule 41, pp. 37-40, §§ 131-137; **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, §§ 218-219; **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; **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; **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).

395 SoD, p. 43, § 155; **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 9; **R-0076**, PRODEL's letter to IGAPE, dated 14 October 2020; **R-0077**, Transportation Certificate issued by PRODEL to OREY dated 20 October 2020; **R-0078**, Report of Completed Work at Xitoto Thermal Power Plant dated 18 December 2020.

conduct is intrinsically tied to that same pre-BIT decision (**Section 3.4.3**); and that the Claimant's own prior representations confirm that AEnergy's value was destroyed before the Amended Version of the BIT entered into force (**Section 3.4.4**).

3.4.1 Article 2(1) of the BIT bars post-entry claims rooted in pre-entry facts

426. The Claimant contends that Article 2(1) of the BIT does not include a double-exclusion clause and that the Respondent's reading imposes a heightened standard inconsistent with Article 31(1) of the VCLT.[396] He is wrong on both counts.

427. According to the Vienna Convention:[397]

> *A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*

428. The Respondent is proposing an interpretation that follows the ordinary meaning of Article 2(1) of the Amended Version of the BIT. Indeed, Angola is applying the text as written, intended and judged by previous ICSID decisions in similar BITs: unlike the general non-retroactivity formulations found in most BITs, this wording of Article 2(1) of the Amended Version of the BIT sets the cut-off at the facts giving rise to the claim, not merely at the dispute itself.

429. As the tribunal in *Mabco Constructions SA v. Kosovo* held when interpreting a materially identical clause, such wording "suggests that the exclusion from [treaty] coverage may start at an earlier point than the time at which the dispute as such emerged."[398] Claims arising out of pre-entry-into-force facts are therefore excluded even where the dispute surfaces later.

430. That is precisely the double exclusion the Claimant now disputes: the clause precludes jurisdiction over both pre- and post-BIT disputes that are rooted in pre-BIT facts – a situation that the *Spence* tribunal also dealt with. As a preliminary observation to that decision (from

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396 Reply, pp. 35-36, §§ 156-159.

397 **RL-0011**, Vienna Convention on the Law of Treaties, 23 May 1969, article 31(1).

398 **RL-0014**, *Mabco Constructions SA v. Kosovo*, ICSID Case No. ARB/17/25, Decision on jurisdiction, dated 30 October 2020, p. 132, § 460.

which the facts were detailed in Respondent's SoD)[399], that tribunal noted that:[400]

> *The Claimants face formidable jurisdictional hurdles. On the face of it, the conduct of which they complain has deep roots in the period before the CAFTA entered into force between Costa Rica and the United States on 1 January 2009. Article 10.1.3 makes it clear that a cause of action under the CAFTA cannot arise in relation to any act or fact that took place or any situation that ceased to exist before the CAFTA entered into force.*

431. Like the Claimants on *Spence*, Mr. Machado's case also (i) faces formidable jurisdictional hurdles, (ii) is so deeply rooted in pre-entry into force conduct as not to be meaningfully separable from that conduct,[401] and (iii) fails in many respects to comport with the reality disclosed by the evidence.[402] The present Tribunal should, therefore, reach the same conclusion as the *Spence* Tribunal and dismiss the case on jurisdictional grounds.

432. Moreover, Mr. Machado mischaracterizes the Respondent's argument as one that would exclude jurisdiction over any claim with any connection whatsoever to pre-treaty circumstances.[403] That is not the Respondent's position.

433. The Respondent's case is dispositive: where, as here, the constitutive and decisive facts underlying the Claimant's claims occurred before 22 December 2021, subsequent conduct that is a continuation or implementation of that earlier decision cannot constitute an independently actionable breach.

434. The conclusion is that Article 2(1) does not merely restate the customary non-retroactivity principle codified in Article 28 of the VCLT, as the Claimant suggests. It goes further, excluding claims and disputes "*arising from facts that occurred before*" the BIT's entry into force,

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399 SoD, pp. 77-78, §§ 297-298.

400 **RL-0073**, *Spence International Investments, LLC, Berkowitz, et. al v., Republic of Costa Rica*, ICSID Case No. UNCT/13/2), Interim Award (Corrected), dated 30 May 2017, p. 109, § 162.

401 **RL-0073**, *Spence International Investments, LLC, Berkowitz, et. al v., Republic of Costa Rica*, ICSID Case No. UNCT/13/2), Interim Award (Corrected), dated 30 May 2017, pp. 144-145, § 269.

402 **RL-0073**, *Spence International Investments, LLC, Berkowitz, et. al v., Republic of Costa Rica*, ICSID Case No. UNCT/13/2), Interim Award (Corrected), dated 30 May 2017, p. 154, § 301.

403 Reply, p. 36, § 159.

regardless of when the dispute itself arose.

435. Applying Article 2(1) of the Amended Version of the BIT to the present case, the Tribunal will reach the necessary conclusion that the legal effect of the installation was simply the outcome of Angola's pre-BIT decisions. Therefore, because the constitutive facts of this dispute predate the BIT's entry into force, the Tribunal should not exercise jurisdiction.

3.4.2 The installation and connection to the grid of the Four Unsolicited Turbines are events not sufficiently detached from Angola's pre-BIT conduct

436. The Claimant next argues that the installation and connection of the Four Unsolicited Turbines to the national grid is an independently actionable, post-BIT event because that is when the expropriation was "consummated".[404] Tellingly, the precise trigger keeps shifting: across his Reply, the Claimant now also refers to the Turbines having "commenced operating" and reaching "entry into operation".[405] This is simply the latest iteration of a continuing search for the most recent post-BIT fact capable of sustaining jurisdiction. As set out below, the argument fails both as a matter of law (**Section 3.4.2.1**) and on the record, since the relevant threshold – on any view of it – was crossed well before the critical date (**Sections 3.4.2.2** and **3.4.2.3**).

3.4.2.1 The Claimant's "point of no return" standard has no basis in international law, and no embezzlement or breach of trust occurred in fact

437. According to the Claimant's theory, because the Four Unsolicited Turbines were already in the Respondent's custody when the alleged expropriation occurred, the Claimant makes a (wrong) analogy to embezzlement – "abuso de confiança" under Angolan and Portuguese law, "Unterschlagung" under German law, or "apropiación indebida" under Spanish law.[406] Under the Claimant's analogy, "consummation" would occur not when the object is taken into custody, but when the custodian crosses a "point of no return" by using the object in a manner that causes it significant loss of value, transforming it into an *aliud* that can no longer be returned in

404 Reply, pp. 36-45, §§ 160-198.

405 Reply, p. 33, § 149; p. 40, heading (b), § 172.

406 Reply, pp. 38-40, §§ 166-171.

its original condition.[407] According to the Claimant, that point was crossed when the Four Unsolicited Turbines were installed, connected to the grid, and put into operation.

438. As a matter of law, this theory rests on the wrong standard. The Claimant's proposed standard does not find any footing in international law. The "point of no return" that the Claimant invokes is not drawn from any principle of public international law, from the BIT, or from any authority applying the BIT. It is instead assembled from an assortment of unrelated domestic criminal-law concepts – Angolan/Portuguese, German, and Spanish –[408] selected not because any of them governs the present dispute, but because their common denominator happens to produce the chronology the Claimant wishes for. No coherent legal system nor arbitral authorities are identified as actually applying this composite standard to determine the temporal scope of an investment treaty. The theory should be rejected for that reason alone.

439. In any event, there was no embezzlement, breach of trust, or unlawful appropriation to speak of. On the Claimant's own account,[409] IGAPE's decision to deliver the Four Unsolicited Turbines for use was taken squarely within its lawful powers and duties as court-appointed trustee under Article 843 of the Angolan Civil Procedure Code ("**CPC**"). As the Claimant's own Reply records, "*IGAPE's letter is the act of a custodian seeking – however misguidedly – to discharge its preservation duties within the framework of the judicial proceedings.*"[410]

440. Evidently, a custodian's lawful exercise of its custodial mandate is the antithesis of "abuso de confiança", "Unterschlagung", or "apropiación indebida", each of which presupposes a breach of the custodial relationship. The Claimant cannot invoke a criminal analogy premised on wrongful appropriation while simultaneously – and correctly – describing the underlying decision as one taken in faithful discharge of custodial duty.

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407 Reply, p. 40, § 171.

408 Reply, pp. 38-40, §§ 166-171.

409 Reply, p. 42, § 182.

410 Reply, p. 42, § 182.

3.4.2.2 Even accepting the Claimant's own theory, the "point of no return" was crossed well before the BIT's entry into force

441. Even taking the Claimant's "point of no return" theory at face value – *quod non* – it does not assist him. That threshold, on his own logic, would have been crossed well before the critical date: between IGAPE's decision of 5 May 2020[411] and the Four Unsolicited Turbines' installation in 2022, Angola took concrete, operative steps that already manifested the firm decision to install, connect and operate the Turbines:

(i) MINEA's request for authorization and accompanying technical assessment, dated 4 May 2020;[412]

(ii) The Public Prosecutor's Office's legal opinion endorsing use of the turbines, dated 5 May 2020;[413]

(iii) IGAPE's authorization to deliver the seized Turbines into MINEA's care, dated 5 May 2020;[414]

(iv) Presidential Order No. 177/21 of 26 October 2021, which opened the public procurement procedure for their installation;[415] and

(v) PRODEL dismantled, transported, and installed the seized engine of Turbine #7267575 at the Xitoto Thermal Power Plant in October 2020.[416]

442. None of this is disputed. Indeed, the Claimant himself catalogues these very steps as part of the

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411 **R-0070**, IGAPE's letter to the Minister of Energy and Water, 5 May 2020.

412 **R-0065**, Letter from MINEA to the PPO and attached technical report, dated 4 March 2020.

413 **R-0068**, Letter from the PPO to the MINFIN, dated 5 May 2020.

414 **R-0070**, IGAPE's letter to the Minister of Energy and Water, 5 May 2020.

415 **C-21**, Presidential Order No. 177/21, dated 26 October 2021.

416 SoD, p. 43, § 155; **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 9; **R-0076**, PRODEL's letter to IGAPE, dated 14 October 2020; **R-0077**, Transportation Certificate issued by PRODEL to OREY dated 20 October 2020; **R-0078**, Report of Completed Work at Xitoto Thermal Power Plant dated 18 December 2020.

"manner" in which the alleged expropriation was carried out. The necessary conclusion is that the connection to the grid in 2022 did not create a new fact – it was the last event in a series of acts all performed before 22 December 2021.

443. Interestingly, when characterizing his expropriation case, the Claimant's Reply pointed out the manner in which the expropriation of the Four Unsolicited Turbines would have been carried out:[417]

> *The conduct of IGAPE and the Provincial Court of Luanda is not a separate legal requirement for the claim to succeed; it is a description of the manner in which the expropriation was carried out. The Four Turbines were under judicial custody precisely because a court had ordered their preventive seizure and had appointed IGAPE as trustee. The installation and connection of the Four Turbines could only have occurred because the authorities charged with safeguarding them either actively facilitated or passively acquiesced in their appropriation.*

444. In the Claimant's own words, the active facilitation or passive acquiescence of IGAPE and the Provincial Court of Luanda is the manner by which Angola installed and connected the Four Unsolicited Turbines to the grid. In other words, the active facilitation or passive acquiescence of IGAPE and the Provincial Court of Luanda is the Claimant's but-for expropriation event.

445. What is more interesting is the event that the Claimant deliberately pointed out as relevant in this context: "[t]*he Four Turbines were under judicial custody precisely because a court had ordered their preventive seizure and had appointed IGAPE as trustee*."[418]

446. But the preventive seizure of the Four Unsolicited Turbines and IGAPE's appointment as trustee both happened in December 2019,[419] years before the entry into force of the Amended Version of the BIT.

447. What is more, the Claimant admitted that the contracting procedure for the installation of the Four Unsolicited Turbines is "*part of the factual context that explains how Angola arranged for*

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417 Reply, p. 58, § 255.

418 Reply, p. 58, § 255.

419 **C-17**, Judgement of the Provincial Court of Luanda, dated 5 December 2019, p. 15.

the installation to be carried out."[420] The Claimant's own declarations confirm that installation and connection to the grid were merely the execution of decisions and arrangements already made.

448. The Reply's next paragraph, however, cannot be reconciled with this sequencing. There, the Claimant asserted that "*Angola has installed the Four Turbines in state-owned power plants and connected them to the national power grid, thereby removing them from judicial custody and defeating the purpose of the preventive seizure of the assets*."[421]

449. On the Claimant's account, the removal of the Four Unsolicited Turbines from judicial custody is presented as a consequence of their installation. That sequencing cannot be right: the Four Unsolicited Turbines could not have been – and were not – instantly installed and connected to the grid without prior authorization and arrangement. As the Claimant himself states two paragraphs earlier in the same Reply, the installation and connection "*could only have occurred because the authorities charged with safeguarding them either actively facilitated or passively acquiesced in their appropriation*."[422] The facilitation or acquiescence the Claimant relies upon therefore necessarily precedes, and cannot be a consequence of, the installation.

450. The Claimant does not dispute that these acts predate the critical date; he disputes only their legal characterization, which is unavailing for the reasons set out above.

451. To be clear, the Claimant's "point of no return" theory is not, and should not be conflated with, an invitation to treat Angola's conduct as a continuing or composite act under general international law; the use of the Turbines is a distinct, technical claim tied to the physical consequences of putting the Four Unsolicited Turbines into operation. Any allegations therein relate to asset condition and valuation; it does not answer the separate legal question that Article 2(1) of the BIT poses, namely when the State's operative measure interfering with the investor's rights occurred. On the Claimant's own logic, the relevant "point of no return" is the moment Angola decided to use, rather than merely preserve, the Four Unsolicited Turbines - a

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420 Reply, p. 58, § 256.

421 Reply, p. 58, § 257.

422 Reply, p. 58, § 255.

decision taken by IGAPE in May 2020 and implemented, authorized, and contracted for throughout 2020 and 2021, all before the BIT's entry into force.

452. The Claimant's attempt to distinguish *Mabco* fares no better. He argues that IGAPE's communication of 5 May 2020 was not "sufficiently definitive" because it was framed in the language of custodial administration rather than appropriation.[423]

453. The label the Claimant attaches to IGAPE's communication cannot disguise its substantive, operative effect: it authorized precisely the conduct - delivery for operational deployment - that the Claimant now relies upon as the trigger of his claims. As in *Mabco*,[424] the decisive question is the date of the State's official, sufficiently definitive decision, not the date that decision was executed. Applied to the present case, the inquiry turns on when Angola took a sufficiently definitive decision to interfere with the investor's rights – not on when that decision was carried into effect, and still less on when its effects crossed some threshold of severity borrowed from unrelated bodies of domestic criminal doctrine. In other words, this Tribunal should look past the custodial language of IGAPE's communication to what it actually accomplished.

454. The Claimant's own characterization of IGAPE's decision exposes an unavoidable contradiction. The Claimant does not dispute that IGAPE's decision to deliver the Four Unsolicited Turbines for use was "*grounded in law, taken in accordance with proper procedure, and consistent with its custodial duty of prudent, diligent administration.*"[425] The Claimant further contends that "[f]*ar from manifesting an intention to appropriate the Four Turbines, IGAPE's letter is the act of a custodian seeking – however misguidedly – to discharge its preservation duties within the framework of the judicial proceedings*."[426] Yet the Claimant simultaneously contends that PRODEL's connection of those very turbines to the grid – undertaken pursuant to that same decision, and with IGAPE's continuous knowledge through PRODEL's periodic reports – was an

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423 Reply, p. 43, §§ 188-189.

424 **RL-0014**, *Mabco Constructions SA v. Kosovo*, ICSID Case No. ARB/17/25, Decision on jurisdiction, dated 30 October 2020, p. 134, § 468.

425 Reply, p. 42, § 182; SoD, p. 137, § 491.

426 Reply, p. 42, § 182.

internationally wrongful taking.

455. Either IGAPE's decision to deliver the Four Unsolicited Turbines for supervised operation was lawful under international law, or it was not. The Claimant cannot accept its legality when convenient to defeat the "sufficiently definitive" test under *Mabco*, and – simultaneously – denounce its execution as an expropriation because it is convenient to establish a breach of the BIT.

3.4.2.3 The 2022 connection to the grid does not constitute an independently actionable breach

456. The Claimant's reliance on *Carrizosa v. Colombia* to distinguish *Mabco* is equally misplaced.[427] The Claimant argues that adjudicating his claim would not require the Tribunal to assess the lawfulness of IGAPE's pre-treaty communication.[428] That is incorrect. Precisely as in *Carrizosa*, where the post-treaty judicial decision did no more than confirm the effect of an earlier pre-treaty decision,[429] the Claimant's theory requires the Tribunal to treat the installation and connection of the Four Unsolicited Turbines as an independent wrong, when in truth it is inseparable from, and dependent upon, IGAPE's already-crystallized pre-BIT decision to deliver the Turbines for deployment.

457. Nor does *Spence v. Costa Rica* assist the Claimant. Mr. Machado notes that the *Spence* tribunal found some post-treaty judicial decisions to be independently actionable.[430] That is beside the point. What *Spence* confirms, and what the Claimant does not dispute, is that post-treaty conduct that is, at most, the continuation or implementation of a pre-existing legal or factual regime cannot constitute an independently actionable breach.[431] The installation and connection of the Four Unsolicited Turbines to the grid in 2022 is exactly such continuation of a

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427 Reply, pp. 43-44, § 190.

428 Reply, pp. 43-44, § 190.

429 **RL-0013**, *Astrida Benita Carrizosa v. Republic of Colombia*, ICSID Case No. ARB/18/5, Award, dated 19 April 2021, pp. 65-66, § 213.

430 Reply, p. 44, § 191.

431 **RL-0073**, *Spence International Investments, LLC, Berkowitz, et. al v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2), Interim Award (Corrected), dated 30 May 2017, p. 131, § 222.

regime that IGAPE and the Angolan State had already put in place by October 2021 at the latest.

458. Even accepting the Claimant's own framing of the relevant conduct – *quod non* –, the record contradicts his claim that nothing occurred before 2022. The Respondent has demonstrated that, as early as October 2020, PRODEL dismantled, transported, and installed the seized engine of Turbine #7267575 at the Xitoto Thermal Power Plant, and that the remaining components of that turbine, together with Turbines #7267577 and #7267025, were sent for installation on 14 June 2021. The Claimant's assertion that a turbine is only "expropriated" once every one of its components is installed in its "complete configuration" [432] is an artificial and self-serving distinction that finds no support in the BIT or in the authorities the Claimant invokes.

459. It is also inconsistent with the position the Claimant takes elsewhere in the same Reply: for purposes of establishing the Tribunal's jurisdiction *ratione voluntatis*, the Claimant insists that the Notice of Dispute validly captured all Four Unsolicited Turbines because it referred to them "as a group,"[433] without any need to identify individual installation dates.

460. The Claimant cannot have it both ways: treating the turbines as a single, undifferentiated group when that characterization favors consent-based jurisdiction, and as four discrete assemblies requiring component-by-component precision when that characterization favors his temporal theory. Either way, the distinction cannot convert what is, in substance, a single pre-BIT course of conduct into a post-BIT stand-alone breach.

461. In sum, the installation and connection of the Four Unsolicited Turbines to the national grid does not constitute an independently actionable, post-BIT breach. It is, at most, the implementation of decisions already taken before 22 December 2021.

462. The Tribunal accordingly lacks jurisdiction *ratione temporis* over the Claimant's expropriation claim.

3.4.3 Any alleged non-expropriatory (as well as expropriatory) violation predicated on IGAPE's

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[432] Reply, p. 45, § 198.

[433] Reply, p. 53, § 229.

actions falls outside the jurisdiction of the Tribunal

463. The Claimant further argues that IGAPE's actions fall within the Tribunal's jurisdiction because (i) the delivery of the Turbines to PRODEL is factually unclear and legally immaterial, and (ii) the damage from any FET and FPS breach materialized only when the Four Unsolicited Turbines were installed and connected to the grid in 2022. This argument cannot be reconciled with the Claimant's own case.

464. Whatever significance the Claimant now attaches to the precise legal characterization of IGAPE's 5 May 2020 communication, it remains the operative act underlying any FET and FPS claim predicated on the alleged failure by IGAPE and the Provincial Court of Luanda to safeguard and preserve the Four Unsolicited Turbines.[434]

465. As the Claimant contends that the failure to safeguard the Four Unsolicited Turbines facilitated their installation and use, then the relevant custodial conduct necessarily occurred – and the alleged breach necessarily crystallized – no later than IGAPE's 2020 decision to relinquish custody for operational deployment.[435] In other words, the latest point in time at which any obligation to safeguard and preserve the Four Unsolicited Turbines could have been breached is the date of the alleged expropriation itself, and, as set out above, that date is fixed before the BIT's entry into force.

466. For these reasons, and as more fully explained in the Statement of Defense,[436] any FET and FPS claim predicated on IGAPE's or the Provincial Court of Luanda's alleged custodial failures falls outside the Tribunal's jurisdiction ratione temporis.

3.4.4 Be that as it may, any damages related to the Claimant's loss in the value of AEnergy's shares predate the Amended Version of the BIT's entry into force

467. Finally, the Claimant contends that, should the Tribunal find he lacks standing to bring direct FET and FPS claims, the residual value of his shares in AEnergy was destroyed only after BIT's entry

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434 SoC, p. 23, §112; Reply, pp. 58-59, § 257.

435 **R-0070**, IGAPE's letter to the Minister of Energy and Water, 5 May 2020.

436 SoD, pp. 87-89, §§ 330-333.

into force.[437] The Claimant's own prior sworn statements refute this contention.

468. In his declaration filed in support of AEnergy's opposition to the motions to dismiss before the SDNY, dated 2 November 2020, Mr. Machado stated that, following the termination of the 13 Contracts on 2 September 2019 and the ensuing seizure and litigation, AEnergy's "*previously thriving energy business has been completely destroyed"* and that it had become *"impossible... to operate in the energy sector."*[438] Those are the Claimant's own words – not AEnergy's – , given under oath, more than a year before the BIT entered into force. Any diminution in the value of Mr. Machado's shares in AEnergy therefore necessarily flowed from pre-entry-into-force conduct: the termination of the 13 Contracts on 2 September 2019[439] or, at the latest, the Provincial Court of Luanda's seizure of the Four Unsolicited Turbines on 6 December 2019.[440]

469. Moreover, the Claimant has not submitted any evidence to demonstrate AEnergy's financial situation at the time of the resolution of the 13 Contracts and compare it to its financial situation when his shares were allegedly destroyed.

470. Even if the Claimant could, in theory, recover for the loss in value of his shares, a proposition the Respondent disputes, the conceded fact that AEnergy was, by the Claimant's own account, already destroyed well before the installation and deployment of the Four Unsolicited Turbines places his alternative claim outside the Tribunal's *ratione temporis* jurisdiction. No post-entry measure could have caused any additional compensable loss.

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471. For the foregoing reasons, the facts giving rise to this dispute crystallized before 22 December 2021. Article 2(1) of the BIT bars the Tribunal from exercising jurisdiction over claims rooted in those facts, however the Claimant chooses to relabel or re-date them. The Tribunal accordingly

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437 Reply, pp. 47-48, §§ 208-210.

438 **R-0112**, Declaration of Ricardo Machado in Support of Plaintiff`s Opposition to Defendant`s Motions to Dismiss before the SDNY, dated 02.11.2020, p. 6, § 18.

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

440 **C-18**, Ruling of the Provincial Court of Luanda on the freezing of AEnergy's four turbines, dated 6 December 2019.

lacks jurisdiction *ratione temporis* over the entirety of the Claimant's claims.

3.5 Fifth Objection: Alternatively, the Tribunal lacks *ratione voluntatis* jurisdiction

472. The Reply's attempt to rescue jurisdiction over claims tied to Turbines that had not been installed by the date of the Notice of Dispute does not withstand scrutiny.[441] As explained in the Statement of Defense,[442] the Parties' consent to arbitrate is confined to the present legal dispute that existed as of 9 June 2022 — the date the Claimant dispatched his Notice of Dispute —[443] and that consent cannot be presumed, expanded by implication, or retroactively perfected to capture facts that had not yet occurred. The Claimant's arguments to the contrary rest on a mischaracterization of the Respondent's objection and must be rejected.

473. Contrary to the Claimant's suggestion, the Respondent has never argued that a notice of dispute must incorporate every fact later relied upon in a claim. The Respondent's objection is narrower and more fundamental: a dispute — a situation in which the Parties hold clearly opposed views on a question of right or fact — must actually exist before consent to arbitrate it can arise. Because at least two of the Four Unsolicited Turbines had not been installed — or, in the terms the Claimant now uses, had not yet commenced operating — as of 9 June 2022,[444] there was, by definition, no present dispute concerning their alleged expropriation for the Claimant to notify, and no consent for the Tribunal to exercise over claims connected to them.

474. The authorities on which the Claimant relies do not assist him. *RREEF v. Spain*[445] and *Eiser v. Spain*[446] concerned claimants who had already triggered a jurisdictionally sound dispute and later sought to bring additional, related measures adopted by the same respondent within the scope of that pre-existing dispute. Both tribunals asked only whether the additional measures changed the character of an already-constituted case — not whether a dispute existed at all.

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441 Reply, pp. 50-53, §§ 217-232.

442 SoD, pp. 90-94, §§ 338-347.

443 **C-0026**, Claimant's Notice of Dispute, dated 9 June 2022.

444 SoD, pp. 93-94, § 346.

445 **CLA-143**, *RREEF v. Spain*, ICSID Case No. ARB/13/30, Decision on Jurisdiction, 22 November 2013.

446 **CLA-144**, *Eiser v. Spain*, ICSID Case No. ARB/13/36, Award, 4 May 2017.

475. That is an entirely different inquiry from the one posed here: whether a present dispute existed, as of 9 June 2022, over the legal effects of the installation and connection to the grid of the Four Unsolicited Turbines. *RREEF* and *Eiser* offer no answer to that antecedent question, because in neither case had the underlying measure occurred after the notice was given.

476. *Kappes v. Guatemala*[447] fares no better. The Claimant invokes it for the proposition that new facts adduced in support of an existing claim need not restart the notice process. But *Kappes* addressed whether new claims arising from an already-notified measure required a fresh notice period. That decision cannot support the proposition that consent may be extended, after the fact, to conduct that a notice of dispute could not have addressed because it had not yet occurred.

477. Nor does the Claimant's assertion that the Notice of Dispute "*referred to all Four Turbines as a group*"[448] cure the defect. A generic reference to four turbines, made without any knowledge of whether or when any of them had been installed, cannot manufacture a present dispute over facts that had not yet materialized. Consent to ICSID arbitration is not established by anticipatory or aspirational pleading; it requires an actual, existing dispute at the time consent is invoked.

478. Moreover, Mr. Machado's approach to the relevant facts shifts opportunistically depending on which characterization advances jurisdiction in a given objection. In the *ratione temporis* context addressed above, the Claimant treats facts occurring after BIT's entry into force — such as the connection to the grid and commencement of operation of turbines installed later in time — as supplying an independently actionable, post-treaty basis for his claims, which requires the Tribunal to examine each turbine's operational status individually and to isolate the most recent, turbine-specific events. Yet when that same individualized inquiry defeats his *ratione voluntatis* argument — because at least two of the Four Unsolicited Turbines had not commenced operating as of the date of his Notice of Dispute — the Claimant reverses course and insists that the Four Unsolicited Turbines must instead be treated collectively, as a single, undifferentiated

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447 **CLA-145**, *Kappes v. Guatemala*, ICSID Case No. ARB/18/43, Decision on Respondent's Preliminary Objections, 13 March 2020.

448 Reply, p. 52, § 226.

"group."

479. The Claimant cannot have it both ways. The constitutive fact relevant to the Tribunal's jurisdiction cannot vary according to which characterization happens to confer competence in a given objection. If the individual installation and grid-connection dates of each turbine are the operative facts for *ratione temporis* purposes, those same individualized, turbine-by-turbine facts must equally govern whether a present dispute existed as to each turbine for *ratione voluntatis* purposes. On that basis, no present dispute existed as of 9 June 2022 as to the turbines that had not yet been installed and connected to the grid.

480. The Claimant's suggestion that Angola's own opacity should excuse this gap is unavailing. As the Respondent has already demonstrated,[449] neither IGAPE nor the Provincial Court of Luanda was under any obligation to respond to AEnergy's information requests, let alone within the timeframe the Claimant posits, and, in any event, an alleged failure to disclose facts cannot retroactively create a dispute over facts that did not yet exist. In sum, it was the Claimant's own choice to dispatch his Notice of Dispute on 9 June 2022 that produced the temporal gap of which he now complains.

481. For these reasons, the Tribunal's jurisdiction *ratione voluntatis*, being consent-based, cannot be presumed, expanded by implication, or retroactively perfected in the absence of a present legal dispute.

4 The Claimant does not have standing to bring claims of FET and FPS in relation to the Four Unsolicited Turbines

482. The Claimant argues that a proper interpretation of the BIT under Article 31(1) of the VCLT shows that shareholders can bring direct claims for violations of the FET and FPS standards in respect of its company's assets.[450]

483. In support of his position, the Claimant refers to the arguments set out in the Statement of

449 SoD, pp. 114-116, §§ 425-431.

450 SoC, pp. 17-19, §§ 82-97; Reply, pp. 54-57, §§ 234-251.

Claim[451] and submits that the Respondent's objections in the Statement of Defense should be rejected for three reasons. First, the Respondent's interpretation of the BIT relies solely on the treaty's wording and does not take into account the broader interpretative framework established by the VCLT.[452] Second, contrary to the Respondent's position, it is settled that shareholders may bring claims directly in respect of assets owned by their companies whenever the applicable BIT contains a provision equivalent or analogous to Article 7(4) of the BIT.[453] Third, the Respondent failed to engage with or distinguish the authorities cited by the Claimant in support of his standing to advance FET and FPS claims.[454] Fourth, the Claimant referred the calculation of damages for reflective loss to its damage section.[455]

484. The Claimant's Reply does not change the conclusion set out in the Statement of Defense. The Respondent maintains that the Claimant lacks standing to bring claims under the FET and FPS provisions of the Angola-Portugal BIT in relation to the Four Unsolicited Turbines, as the BIT grants direct standing to shareholders only for expropriation claims.[456]

485. Accordingly, the Respondent will show that: (i) its interpretation of the BIT is the only one that is consistent with Article 31(1) of the VCLT while giving effect to the intent of the Contracting Parties; and that (ii) contrary to the Claimant's suggestion, the issue of shareholders' standing to bring direct claims for harm to a company's assets remains unsettled, even where the applicable BIT contains a provision similar to Article 7 (4).

486. With respect to the Claimant's submission regarding the calculation of reflective loss, the Respondent refers the Arbitral Tribunal to Section 6.3.2 of the Statement of Defense[457] and Section 6.3.2 of this Rejoinder,[458] which demonstrate that the Claimant has failed to prove any

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451 Reply, p. 55, § 238.

452 Reply, pp. 55-56, §§ 241-246.

453 Reply, pp. 56-57, §§ 247-248.

454 Reply, p. 57, § 249.

455 Reply, p. 57, § 250.

456 SoD, pp. 94-104, §§ 348-389.

457 SoD, p. 163, §§ 575-577.

458 Section 6.3.2.

loss in the value of the AEnergy shares he holds.

487. *First*, the Claimant's argument that shareholders have direct standing under the BIT to bring claims for breaches of the FET and FPS standards is inconsistent with both the rules of treaty interpretation set forth in the VCLT and the intention of the treaty drafters. As demonstrated below, the Claimant seeks to rely on the general objective of promoting and protecting investments under international investment treaties to support the existence of a form of protection that is simply not provided for under the BIT. Such an interpretation impermissibly extends the scope of the Treaty beyond its text and the intentions of the Contracting States.

488. The Claimant's position is circular. He argues that, because Article 7(4) of the BIT expressly grants shareholders standing to bring expropriation claims in respect of company assets, and because the BIT aims to promote and protect investments, shareholders must also have standing to bring direct claims under all substantive protections of the BIT, including FET and FPS.[459]

489. To support his position, the Claimant argues that the BIT must not be interpreted solely based on the literal wording of its provisions, but rather in light of the BIT's overall structure, coherence, and objectives. On that basis, he contends that the fact that Article 7(4) of the BIT expressly grants shareholders standing to bring expropriation claims does not give rise to a negative implication excluding shareholders from bringing direct claims for alleged breaches of the FET and FPS standards.[460]

490. This reasoning is flawed. It assumes the very conclusion it seeks to establish, namely that a specific grant of standing for expropriation claims can be extended to all other treaty protections, notwithstanding the absence of any textual basis for such an extension in the BIT.

491. As the Respondent explained in its Statement of Defense, Article 31 of the VCLT does not authorize interpreters to disregard the choices made by the Contracting States and to adopt interpretations that are inconsistent with the treaty text they negotiated and agreed upon.[461]

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459 SoC, pp. 17-19, §§ 84-97; Reply, pp. 54-56, §§ 234-246.

460 Reply, pp. 55-56, §§ 242-243.

461 SoD, pp. 96-99, §§ 355-367.

492. Tellingly, the ILC Commentary relied upon by the Claimant, whose relevant passage mirrors that contained in the ILC's 1966 Draft Articles on the Law of Treaties and Commentaries submitted by the Respondent with its Statement of Defense,[462] confirms this point. While it characterizes the interpretative process under Article 31 of the VCLT as a "*single combined operation*", it does not suggest that a treaty object and purpose may prevail over its text. Rather, it confirms that interpretation must remain anchored in the terms chosen by the Contracting Parties:[463]

> *The article [27 (1) of the Draft Articles, which corresponds to Article 31 (1) of the VCLT] as already indicated is based on the view that the text must be presumed to be the authentic expression of the intentions of the parties; and that, in consequence, the starting point of interpretation is the elucidation of the meaning of the text, not an investigation ab initio into the intention of the parties.*
>
> (…)
>
> *Moreover, the jurisprudence of the International Court contains many pronouncements from which it is permissible to conclude that the textual approach to treaty interpretation is regarded by it as established law. In particular, the Court has more than once stressed that it is not the function of interpretation to revise treaties or to read into them what they do not, expressly or by implication, contain.*

493. This reasoning is confirmed by the case law of the International Court of Justice and of Investment Arbitral tribunals. The International Court of Justice, in the landmark Advisory Opinion concerning the Competence of the General Assembly for the Admission of a State to the United Nations, explains that:[464]

> *The Court considers it necessary to say that the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter. If, on the other hand, the words*

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462 **RL-0079**, Draft Articles on the Law of Treaties with commentaries, adopted by the International Law Commission in 1996, pp. 217-223.

463 **CLA-147**, Yearbook of the International Law Commission, 1966, Vol. II, Documents of the second part of the seventeenth session and of the eighteenth session including the reports of the Commission to the General Assembly, pp. 220-221.

464 **RL-0149**, Competence of the General Assembly for the Admission of a State to the United Nations, International Court of Justice Advisory Opinion, dated 3 March 1950, p. 8.

> *in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then, and then only, must the Court, by resort to other methods of interpretation, seek to ascertain what the parties really did mean when they used these words.*

494. In turn, the *Ping An v. Belgium* ICSID tribunal also asserted that:[465]

> *Article 31 of the Vienna Convention reflects the primacy of the text as the basis for the interpretation of a treaty, while also giving a role to extrinsic evidence of the circumstances of its conclusion and to the objects and purposes of a treaty as a means of interpretation. It is based on the view that the text is presumed to be the authentic expression of the intentions of the parties, and that in consequence the starting point of interpretation is the elucidation of the meaning of the text by reference to the intention of the drafters: International Law Commission, Yb ILC, 1966, vol II, pp 218, 220.*
>
> *The ordinary meaning approach has been adopted in many investor-State arbitrations to confirm that the presumed intentions of the parties should not be used to override the explicit language of a BIT (Fraport v. Philippines at [340]) or to override the agreed upon framework (Daimler Financial Services v. Argentina at [164]), or be used as an independent basis of interpretation (Wintershall v. Argentina at [88]).*

495. Indeed, the Claimant seeks to divert from this uncontroversial understanding to invite the Arbitral Tribunal to rewrite the BIT by disregarding its plain terms and incorporating rights that are absent from its provisions.

496. Furthermore, the Claimant's contention that such an interpretation is compelled by the BIT's objective of promoting and protecting mutual investment between investors of the Contracting States is misconceived.[466]

497. By their very nature, international investment treaties are intended to encourage and protect reciprocal investment flows between the nationals of one Contracting State and the territory of

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465 **RL-0150**, *Ping An Life Insurance Company of China, Limited and Ping An Insurance (Group) Company of China, Limited v. Kingdom of Belgium*, ICSID Case No. ARB/12/29, Award, dated 30 April 2015, p. 39, §§ 165-166; **RL-0063**, *Fraport AG Frankfurt Airport Services Worldwide v. Republic of the Philippines*, ICSID Case No. ARB/03/25, Award, dated 16 August 2007, p. 162, § 340; **RL-0151**, *Wintershall Aktiengesellschaft v. Argentine Republic*, ICSID Case No. ARB, Award, dated 8 December 2008, p. 52, § 88.

466 SoC, pp. 17-19, §§ 84-97; Reply, pp. 54-56, §§ 234-246.

the other. However, the promotion of investment cannot serve as a pretext for disregarding the treaty's text or for extending rights and standing beyond those that the Contracting States chose to confer. As pointed out by the International Court of Justice in the *Case Concerning the Rights of Nationals of the United States of America in Morocco*, which the Respondent has already referred to in its Statement of Defense:[467]

> *This interpretation of the Act, in some instances, leads to results which may not appear to be entirely satisfactory. But that is an unavoidable consequence of the manner in which the Algeciras Conference dealt with the question of consular jurisdiction. The Court can not, by way of interpretation, derive from the Act a general rules as to full consular jurisdiction which it does not contain.*

498. This reasoning is also supported by the *Daimler Financial Services v. Argentina* arbitral tribunal which held that:[468]

> *Now as international treaties, BITs constitute an exercise of sovereignty by which States strike a delicate balance among their various internal policy considerations.306 For this reason, the Tribunal must take care not to allow any presuppositions concerning the types of international law mechanisms (including dispute resolution clauses) that may best protect and promote investment to carry it beyond the bounds of the framework agreed upon by the contracting state parties. It is for States to decide how best to protect and promote investment. The texts of the treaties they conclude are the definitive guide as to how they have chosen to do so.*

499. The Claimant sought to avoid the implications of this conclusion in his Statement of Claim through reliance on *Pezold v. Zimbabwe*,[469] and seeks to do so again in its Reply by relying on *Casinos v. Argentina*.[470] Specifically, the Claimant relies on these cases to argue that Article 7 (4) of the BIT "*was designed to confer an additional right of action in respect of expropriation—not*

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467 **RL-0080**, *Case Concerning the Rights of Nationals of the United States of America in Morocco, France v. United States of America*, International Court of Justice's Judgement, dated 27 August 1952, p. 199; SoD, pp. 97-98, §§ 363-365.

468 **RL-0152**, *Daimler Financial Services AG v. Argentine Republic*, ICSID Case No. ARB/05/01, Award, dated 22 August 2012, p. 65, § 164.

469 SoC, p. 19, §§ 96. The Claimant's reliance on the *Pezold v. Zimbabwe* was rebutted by the Respondent on SoD, p. 103, § 384 to which the Respondent respectfully refers the Tribunal.

470 **CLA-148**, *Casinos Austria v. Argentina*, ICSID Case No. ARB/14/32, Decision on Jurisdiction, 29 June 2018.

to restrict the scope of other substantive protections afforded by the treaty".[471]

500. This submission, and the case law cited in its support, should be rejected. If Article 7 (4)—which is analogous to Article 4 (3) of the Argentina - Austria BIT at issue in *Casinos Austria v. Argentina*—confers an "additional right of action" for expropriation, it necessarily follows that no such standing exists absent an express treaty provision. Characterizing Article 7 (4) as "additional" presupposes that, without it, shareholders would lack standing to bring expropriation claims in respect of company assets. If such standing existed as a general principle, Article 7(4) would be superfluous.

501. The Claimant cannot have it both ways. Either Article 7 (4) of the BIT is necessary to confer standing on shareholders to bring claims in respect of company assets, in which case the absence of equivalent language in Article 4 is fatal to the Claimant's FET and FPS claims. Or Article 7 (4) is unnecessary because such standing exists independently of any express treaty provision, in which case the Contracting States included a redundant provision in the BIT.

502. The former interpretation is the only one consistent with the principle of *effet utile*, which requires that effect be given to every treaty provision and presumes that the Contracting States did not include language devoid of purpose or legal consequence.

503. This principle of *effet utile* was adopted in the *Romak v. Uzbekistan* case where the tribunal rejected and interpretation that would "render meaningless – or without *effet utile* – the provision granting the investor a choice between ICSID and UNCITRAL Arbitration".[472] The Tribunal should do likewise in the present case. To accept the Claimant's position would be to conclude that Article 7(4) accomplishes nothing that shareholders could not already achieve in its absence. Such an interpretation would deprive the provision of any practical effect and reduce the Contracting States' deliberate decision to include it in the BIT to an exercise in futility.

504. Furthermore, the restriction of Article 7(4) to expropriation claims reflects a deliberate choice by the Contracting States that must be given effect. That choice is entirely rational in light of the

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471 Reply, p. 56, §§ 243-244

472 **RL-0049**, *Romak S.A. v. The Republic of Uzbekistan*, PCA Case No. AA280, Award, dated 26 November 2009, pp. 48-49, §§ 194-195.

distinctive seriousness of expropriation, which entails the deprivation of property rights and therefore occupies a unique position among the substantive protections afforded by the BIT.

505. As the Respondent pointed out in the Statement of Defense[473] by referencing Professor Zachary Douglas, it is understandable that BIT's provide greater protection in respect of expropriation claims in comparison with other type of protection standards:[474]

> *The (…) claims by shareholders for reflective loss where the company's assets have been expropriated are admissible. In such a situation, the shareholder's rights are devoid of content; they are rights to an empty corporate shell. It follows that the shareholder's rights have been indirectly expropriated as well as the company's assets and hence the shareholder's claim for expropriation must be admissible. In contradistinction, if the company has been prejudiced by measures attributable to the host state which fall short of the expropriation of its assets, the shareholder's rights are not thereby extinguished and the damage to the shareholder has merely taken the form of a diminution in the value of its shares. In this situation, the shareholder must look to the company to pursue a remedy against the host state for the shareholder's rights have not been prejudiced, only its interests.*

506. The Claimant seeks to dismiss Professor Zachary Douglas's reasoning on the ground that it addresses a different issue, namely the standing of shareholders to recover reflective losses.[475] That objection, however, misses the point. The relevance of Professor Douglas's commentary does not lie in the specific doctrinal question under consideration, but in the broader rationale underpinning it. Specifically, it demonstrates that there are sound reasons for affording shareholders enhanced protection in cases of expropriation as compared to breaches of other treaty standards.

507. Unlike violations of the FET or FPS standards, expropriation may result in the complete deprivation or extinguishment of the investment and, consequently, of the shareholder's interests in it. It is therefore entirely understandable that States may choose to accord shareholders a distinct right of action in expropriation cases while withholding such protection

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473 SoD, pp. 103-104, § 385.

474 **RL-0081**, Zachary Douglas, The International Law of Investment Claims, Cambridge University Press, 1.º Ed. 2009, pp. 435 - 436.

475 Reply, p. 57, § 248.

in relation to less severe treaty breaches.

508. By invoking Professor Douglas's analysis, the Respondent does not seek to deny the direct standing conferred upon shareholders by Article 7(4) of the BIT in respect of expropriation claims. Rather, the Respondent's point is a narrower one: the reasoning identified by Professor Douglas helps explain why the Contracting States may have deemed it necessary to include Article 7(4) as an exceptional provision applicable only to expropriation claims, rather than extending their reach to all alleged breaches of the BIT.

509. All in all, when interpreted in accordance with Article 31(1) of the VCLT, Article 7(4) must be understood as an exceptional provision. The Tribunal should therefore refrain from reading into the BIT a broader grant of standing than that expressly agreed upon by the Contracting States.

510. Finally, and decisively, the Respondent's interpretation does not leave the Claimant without protection. Quite the contrary, it gives full effect to BIT's objective of promoting and protecting investments between investors of the Contracting States. Any breach of the FET or FPS standards affecting the assets of AEnergy—an entity in which the Claimant holds shares—remains actionable to the extent that it causes a diminution in the value of the Claimant's shareholding.[476]

511. *Second*, the Claimant attempts to overcome the Respondent's submission that the standing of shareholders to bring claims in respect of a company's assets remains far from settled in international investment arbitration. It contends that, where a BIT incorporates a provision equivalent to Article 7 (4), the question whether shareholders possess direct standing to pursue claims in lieu of the company does not arise. In the Claimant's view, such provisions themselves confer the requisite standing upon shareholders to assert claims directly in relation to the assets of the companies in which they hold an interest.[477]

512. Once again, the Claimant's reasoning rests on an unwarranted assumption of the very point in dispute. Article 7 (4), like analogous provisions found in other BITs, has the limited function of

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476 SoD, pp. 99, § 367.

477 Reply, pp. 56-57, § 247.

granting shareholders direct standing to pursue expropriation claims. It does not establish that shareholders may assert, in their own right, claims relating to assets owned by the company under any other investment treaty standard, which is precisely the issue under debate.

513. Accordingly, the authorities relied upon by the Respondent in its Statement of Defense[478] — notably *CMS v. Argentina*,[479] *El Paso v. Argentina*,[480] *Poštová banka, a.s. and Istrokapital SE v. Hellenic Republic*, [481] *ST-AD GmbH v. Republic of Bulgaria*, [482] and *Montauk Metals v. Colombia*[483]—are fully applicable to the present case.

514. Furthermore, as explained in the Statement of Defense, the line of authorities upon which the Claimant relies cannot be followed because it fails to give proper effect to the fundamental principle of separate legal personality.[484] Under that well-established principle, a company possesses rights and obligations distinct from those of its shareholders, and assets owned by the company cannot be equated with assets owned by its shareholders. By permitting shareholders to assert claims in respect of injuries allegedly suffered by the company, without a clear treaty basis for doing so, the Claimant's authorities effectively blur the distinction between the legal personality of the company and that of its shareholders.

515. The Respondent's position, by contrast, is the only one that preserves the integrity of this foundational principle. If the separate legal personality of companies is to be respected, shareholders may assert claims only in respect of their own rights and interests, and may pursue claims relating to company assets only where the applicable BIT expressly grants them standing

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478 SoD, pp. 99-103, §§ 374-381.

479 **RL-0020**, *CMS Gas Transmission Co. v. Argentina*, ICSID Case No. ARB/01/8, Decision of the Tribunal on Objections to Jurisdiction, dated 17 July 2003, p. 20, §§ 66-68.

480 **RL-0083**, *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award, dated 31 October 2011, p. 64, § 214.

481 **RL-0028**, *Poštová banka, a.s., Istrokapital SE v. Hellenic Republic*, ICSID Case No. ARB/13/8, Award, dated 9 April 2015, p. 51, § 245.

482 **RL-0026**, *ST-AD GmbH v. The Republic of Bulgaria*, PCA Case No. 2011-06 (ST-BG), Award on Jurisdiction, dated 18 July 2013, pp. 69-70, § 278.

483 **RL-0084**, *Montauk Metals Inc. (formerly known as Galaway Gold Inc.) v. the Republic of Colombia*, ICSID Case No. ARB/18/13, Award, dated 7 June 2024, p. 91, § 382.

484 SoD, pp. 100-103, §§ 373-383.

to do so. Article 7(4) constitutes precisely such an exceptional grant of standing in relation to expropriation claims. Absent a comparable treaty provision, shareholders cannot circumvent the separate legal personality of the company and assert claims that, in substance, belong to the company itself.

516. Any other interpretation would undermine the distinction carefully maintained by international law between a company and its shareholders.

517. *Finally*, one further point warrants emphasis. The Claimant contends that the Respondent failed to engage with the authorities relied upon in support of its submissions on his standing to submit FET and FPS claims.[485] This allegation is unfounded and misleading. A review of the Statement of Defense reveals that the Respondent comprehensively addressed all prongs of the Claimant's standing argument. Therefore, for avoidance of repetition, the Respondent refers the Tribunal to Section 4 of its Statement of Defense.[486]

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518. In summary, the Reply provides no basis for departing from the conclusions set forth in the Statement of Defense. Properly interpreted, the Angola-Portugal BIT grants shareholders direct standing only in the limited and exceptional context of expropriation claims. It follows that the Claimant lacks standing to assert direct claims under the FET and FPS standards in respect of the Four Unsolicited Turbines. Any contrary conclusion would impermissibly expand the scope of standing beyond that expressly agreed upon by the Contracting States.

5 The Respondent has not breached its obligations under the BIT

519. The Claimant's case on the merits fails in its entirety. As fully demonstrated in Section 5 of the Statement of Defense — the arguments, evidence and expert opinions of which the Respondent incorporates herein by reference[487] —, none of the Respondent's actions constitutes a breach of its obligations under the Angola-Portugal BIT.

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485 Reply, p. 57, § 249.

486 SoD, pp. 94-104, §§ 348-389.

487 SoD, pp. 105-147, §§ 390-524.

520. Nothing in the Reply disturbs that conclusion. *First*, the Claimant's expropriation claim is fatally flawed: his characterization of the alleged taking rests on an untenable *ratione temporis* theory, the installation and deployment of the Four Unsolicited Turbines do not amount to a substantial and definitive taking or deprivation of the Claimant's investment, and neither IGAPE nor the Provincial Court of Luanda abdicated their judicial custodial responsibilities (**Section 5.1**). *Second*, the Claimant's fair and equitable treatment claim must be dismissed: the applicable FET standard remains a high one that the Claimant's allegations do not come close to satisfy, Angola has not frustrated the Claimant's purported legitimate expectations, Angola has not denied AEnergy due process, and IGAPE's decision to place the Four Unsolicited Turbines into supervised operation was a lawful and proportionate act of prudent administration (**Section 5.2**). *Third*, the Claimant's full protection and security claim is equally without merit: under the correct standard, FPS refers to the physical protection of the investment, which the Respondent has at all times provided through PRODEL's diligent operation and maintenance of the Four Unsolicited Turbines in accordance with industry standards; and even if, *quod non*, FPS were held to extend to legal security, the Respondent has not breached any such obligation, as the Claimant has never been denied access to courts or legal remedies (**Section 5.3**).

5.1 The Respondent has not expropriated the Four Unsolicited Turbines

521. The Claimant's expropriation claim fails at every turn. First, the Claimant's characterization of his expropriation case rests on an untenable *ratione temporis* theory and on a deliberate refusal to specify whether the alleged expropriation is direct or indirect, a refusal that inverts the burden of proof the Claimant bears (**Section 5.1.1**). Second, even taking the Claimant's case at face value, the installation and deployment of the Four Unsolicited Turbines do not amount to a substantial and definitive taking or deprivation of the Claimant's investment (**Section 5.1.2**). Third, neither IGAPE nor the Provincial Court of Luanda abdicated their judicial custodial responsibilities over the Four Unsolicited Turbines (**Section 5.1.3**).

5.1.1 The Claimant's expropriation case rests on an untenable *ratione temporis* theory

522. For the reasons detailed in **Section 3.4.2**, to which the Respondent refers the Tribunal for

procedural economy, the Claimant's new attempt at (re)characterizing his (old) expropriation[488] hits an insurmountable *ratione temporis* brick wall.

523. As for the alleged relevant elements related to attribution, identification of the impugned measures, and the demonstration of a causal link to a substantial, lasting and irreversible deprivation, the Claimant simply does not meet any of the thresholds.[489]

524. *First*, Mr. Machado continues to assert that he does not need to qualify his case as a direct or indirect expropriation.[490] The argument is absurd, and it does more than mislabel a pleading defect: it inverts the burden of proof that international investment law places squarely on the investor. The qualification is not a mere formality ("direct" and/or "indirect" as if the words have no true meaning), but the last chapter of the Claimant's own narrative. It is for Mr. Machado to assert the concrete effects of the installation and connection of the Four Unsolicited Turbines: they either (i) openly and deliberately transferred the title or possession of the Four Unsolicited Turbines (a direct expropriation),[491] or (ii) wholly or substantially resulted in the lasting deprivation of Mr. Machado's use, benefits, or value of the asset (an indirect expropriation).[492] These are not interchangeable labels: each modality carries its own definitional elements, its own evidentiary threshold, and its own consequences for the case. An investor cannot allege "deprivation" in the abstract and leave the Tribunal, and the Respondent, to guess which species of taking it must adjudicate and defend against.

525. The Claimant seeks to neutralize this burden by arguing that the *Electrabel v. Hungary* tribunal addressed only "*the standard of proof for the existence of a deprivation, not a procedural requirement to select a label*."[493] That reading does not withstand scrutiny. The very passage the Claimant relies upon requires the investor to establish "*the substantial, radical, severe, devastating or fundamental deprivation of its rights or the virtual annihilation, effective*

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488 Reply, p. 58, §§ 254-258.

489 SoD, p. 108, § 402.

490 Reply, p. 63, §§ 274-276.

491 **CLA-0073**, UNCTAD, Expropriation: A Sequel, 2012, p. 6.

492 **RL-0085**, UNCTAD Report Taking of Property, 2000, p. 4.

493 Reply, p. 63, § 276.

neutralisation or factual destruction of its investment, its value or enjoyment."[494]

526. On any fair reading, that formulation tracks – precisely – the distinction between an outright taking of title or possession (direct expropriation) and a measure of equivalent effect falling short of taking but, nonetheless, eviscerating the investor's rights (indirect expropriation). An investor cannot discharge that evidentiary burden while refusing to say which of the two effects it suffered, because *Electrabel*'s own standard of proof is defined by reference to that very distinction. The Claimant, in other words, invokes the standard while disclaiming the characterization from which the standard's content is derived.

527. *Second*, the Claimant's refusal to elect between the two is not costless. The valuation date applicable to an expropriation claim differs depending on whether the taking is characterized as direct or indirect, because each modality crystallizes, and therefore is valued, at a different moment.[495] By declining to specify which modality he invokes, the Claimant deprives the Tribunal, and the Respondent, of the very benchmark against which the alleged deprivation, and any resulting damages, must be measured. This is not a pleading nicety: it is the Claimant's own burden to particularize attribution, identify the impugned measure(s), and demonstrate the causal link to a substantial, lasting and irreversible deprivation – a burden that cannot be met by studied ambiguity as to the very nature of the measure alleged.

528. *Third*, the reason behind Claimant's refusal to characterize the alleged expropriation is simple: the installation and connection of the Four Unsolicited Turbines to the grid did not transfer the title or possession of the Four Unsolicited Turbines to Angola (the title of the goods are being disputed by the Parties before Angolan courts), nor did it result in the lasting deprivation of Mr. Machado's use, benefits, or value of the assets (because he did not hold them at the time of installation).

529. In sum, unable to satisfy the elements of either species of expropriation, the Claimant has chosen ambiguity over a reasoned theory of the case — a deficiency that vitiates his

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494 **RL-0086**, *Electrabel S.A. v. Republic of Hungary*, ICSID Case No. ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability, 30 November 2012, p. 19, § 6.62.

495 **CLA-109**, Irmgard Marboe, Calculation of Compensation and Damages in International Investment Law (2nd ed., 2017), p. 143, § 3.306.

expropriation claim at the threshold.

5.1.2 The Four Unsolicited Turbines' installation and deployment do not amount to a taking or deprivation

530. For the reasons detailed in Sections 2.2.4 and 5.1.2 of the Statement of Defense[496] and 2.2.4 of this Rejoinder,[497] which the Respondent incorporates herein by reference for procedural economy, the installation and deployment of the Four Unsolicited Turbines do not amount to a substantial and definitive taking or deprivation of the Claimant's investment. As demonstrated therein, temporary, good-faith and proportionate measures adopted to preserve an asset held in judicial custody – particularly where ownership remains disputed and judicial proceedings are ongoing – do not satisfy the threshold for expropriation, whether the alleged taking is characterized as direct or indirect.

531. In his Reply, the Claimant advances four arguments in an attempt to resist that conclusion: (i) that the Respondent's appropriation of the Four Unsolicited Turbines was final; (ii) that the Respondent acted in bad faith; (iii) that the measures taken were disproportionate; and (iv) that the Respondent misreads the authorities on which it relies.[498] None of these arguments rests on any new factual or legal basis capable of disturbing the analysis already set out in the Statement of Defense, as the Respondent demonstrates below.

532. *First*, the Claimant's contention that the Respondent's appropriation was "final" because of the installation costs and the civil works undertaken by MINEA merely repackages arguments already comprehensively addressed in the Statement of Defense.[499] As demonstrated therein, those expenditures reflect nothing more than the standard civil, electrical and connection works necessary to bring mobile generators safely into service; they say nothing about the legal character of the Respondent's possession or the ease with which the units can be disconnected and returned. A temporary installation does not become permanent merely because its

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496 SoD, pp. 46-49, §§ 169-181; SoD, pp. 108-114, §§ 404-423.

497 Section 2.2.4.

498 Reply, pp. 64-72, §§ 280-321.

499 SoD, pp. 112-113, §§ 418-422.

deployment required site preparation and the commitment of financial resources (just as temporary bridges or field hospitals do not become permanent fixtures for the same reason).

533. *Second,* the Claimant further seeks to bolster this narrative with statements from Angola's contractors describing the turbines as operating in a "*permanent regime*" or as "*permanently integrated into the system*".[500] These statements do not assist the Claimant. They describe the ordinary operational status of equipment currently deployed and in continuous use – a state of affairs the Respondent has never concealed – but say nothing about the legal reversibility of that deployment. Reversibility turns not on how a contractor colloquially describes the turbines' day-to-day functioning, but on whether the units can, as a matter of engineering and law, be disconnected, refurbished and returned.

534. As demonstrated in the Statement of Defense[501] and further corroborated by the Expert Report of Mr. Darcy Holderness,[502] the GE TM2500 units are – by default – mobile, modular and readily redeployable, irrespective of the terminology used by third parties to describe their present operation.[503] Furthermore, as Mr. Darcy Holderness explains in his expert report,[504] and as addressed in detail in Section 2.2.4.3, the Four Unsolicited Turbines can undergo a refurbishment program, capable of restoring them to a like-new condition before being returned to the Claimant.

535. *Third,* the Claimant's reliance on the Harvard Draft Convention's "objective observer" standard does not assist his case.[505] That standard asks whether there is "*no immediate prospect that the owner will be able to resume the enjoyment of his property*."[506] An objective observer applying that standard to the facts of this case would reach the opposite conclusion from the one the

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500 Reply, p. 66, § 283(iii).

501 SoD, pp. 112-113, §§ 418-422.

502 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026.

503 **RER-04,** Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 4-6, §§ 22-26.

504 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 35-40, §§ 181-197.

505 Reply, p. 66, § 284.

506 **CLA-79**, Harvard Draft Convention on the International Responsibility of States for Injuries to Aliens and explanatory notes, 1961, p. 12.

Claimant urges:

(i) On the one hand, the Claimant temporarily loss of enjoyment of his property predates the installation and connection of the Four Unsolicited Turbines to the grid, and that status has not changed as a result of the Turbines' installation, connection to the grid, or commencement of operations; and,

(ii) On the other hand, the Turbines remain under judicial custody, subject to an active domestic proceeding that will determine their ownership, and the Respondent has consistently maintained – including in these very proceedings – that it will return the Turbines should the Provincial Court of Luanda rule in AEnergy's favor. Where ownership remains under adjudication, judicial process remains active, and restitution remains expressly available if the Claimant succeeds domestically, there is no substantial, permanent, and effectively irreversible deprivation required for expropriation.

536. *Fourth*, the Claimant's attempt to recast *Wena Hotels v. Egypt* fares no better.[507] The Respondent showed that the finding of expropriation in that case derived from an illegal, extrajudicial seizure of the two hotels at issue, carried out by force and without any court order.[508] In response, the Claimant now argues that the relevant point of comparison is not the seizure itself, but the "functional equivalent" of that unlawful seizure, which the Claimant locates in the installation and use of the Four Unsolicited Turbines.[509]

537. The Tribunal should analyze the one comparison that is both obvious and fatal to the Claimant's case: seizure to seizure. The Claimant does not, and has never in the present proceedings, disputed the lawfulness of the preventive seizure ordered by the Provincial Court of Luanda on 6 December 2019.[510] Confronted with a comparator that defeats his own argument – a lawful,

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507 Reply, pp. 66-67, §§ 285-286.

508 SoD, pp. 111-112, § 415; **CLA-83**, *Wena Hotels v. Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, p. 915, §§ 99-101.

509 Reply, pp. 66-67, §§ 285-286.

510 Reply, p. 67, § 286.

court-ordered seizure set against *Wena*'s forcible, extrajudicial and illegal one – the Tribunal will conclude that the Wena is materially different and cannot support the Claimant's claim on expropriation.

538. But even if the Tribunal were to conclude that the *Wena* tribunal's findings on the characterization of an expropriation are useful to the present case (a "more than an ephemeral interference"), the finding rested on three cumulative features, none of which is present here:

(i) The hotels were physically seized and held by force, without recourse to any court;[511]

(ii) That possession was never subject to any judicial oversight or supervision during the period of illegality;[512] and

(iii) Egypt ultimately assumed that the seizure was unlawful.[513]

539. By contrast, the installation and use of the Four Unsolicited Turbines proceeded at all times under the continued custodianship of IGAPE, acting on a documented technical report from MINEA and a reasoned legal opinion from the Public Prosecutor's Office, and reporting periodically to that court. What is more, no Angolan court has found, or been asked to find, that this conduct was unlawful.

540. *Fifth*, the Claimant's newly emphasized assertion that the Four Unsolicited Turbines have suffered physical damage and depreciation such that they can no longer be returned in an equivalent condition is unsupported[514] and, in any event, immaterial to whether a "taking or deprivation" has occurred.

541. As demonstrated in Section 2.2.4.2, with the support of Mr. Darcy Holderness Technical Expert

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511 **CLA-83**, *Wena Hotels v. Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, p. 913, §§ 88-90.

512 **CLA-83**, *Wena Hotels v. Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, p. 913, § 91.

513 **CLA-83**, *Wena Hotels v. Egypt*, ICSID Case No. ARB/98/4, Award, 8 December 2000, p. 907, §§ 54; 57.

514 Reply, pp. 67-70, §§ 288-295.

Report,[515] PRODEL has prudently operated and maintained the Turbines in accordance with industry standards. Furthermore, as confirmed by the testimony of Mr. Arlindo Cambungo, their useful life "*can exceed three or four decades*" under the maintenance regime consistently applied.[516]

542. Moreover, as Mr. Darcy Holderness explains,[517] and as detailed in Section 2.2.4.3, the Four Unsolicited Turbines can be restored to a "like new" condition through a GE-approved refurbishment program. This fact alone displaces the Claimant's contention that, with the deployment of the Four Unsolicited Turbines into the electric grid, they have reached a point of no return and can no longer be restored to an equivalent condition.

543. Indeed, taken to its logical conclusion, the Claimant's argument would mean that no asset placed into operation during a period of judicial custody could ever be returned – a proposition with no support in the authorities on which the Claimant himself relies.

544. *Sixth*, the Claimant's newly framed allegation that the Respondent acted in "bad faith" fares no better – and, on the Claimant's own submission,[518] is not even a necessary element of an expropriation claim. In any event, the record establishes precisely the opposite of an alleged opacity and concealment conduct.[519]

545. The decision to place the Four Unsolicited Turbines into operation followed a formal technical report from MINEA and a reasoned legal opinion from the Public Prosecutor's Office, culminating in IGAPE's decision of 5 May 2020 – all of which are documented and undisputed matters of record. PRODEL has, since that authorization, kept IGAPE regularly informed of the status of the turbines. Far from a covert or unilateral appropriation, the process by which the Turbines were placed into service was deliberative, documented and consultative among the relevant Angolan authorities at every stage.

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515 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 6 August 2026, pp. 28-35, §§ 151-180.

516 **RWS-01**, Witness Statement of Arlindo Cambungo, p. 10, § 36.

517 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 37-40, §§ 189-197.

518 Reply, p. 70, § 297.

519 Reply, p. 70, § 296.

546. *Seventh*, the Claimant's assertion that the Respondent misreads *Smurfit Holding B.V. v. Venezuela* and *Santa Elena v. Costa Rica* is incorrect.[520] The Respondent's interpretation that a "*change in the owner's status quo*" is necessary for an expropriation is not an invented gloss on the applicable standard, but a faithful summary of the very principle both tribunals articulated: that expropriation occurs where the measures taken have deprived the owner of "*access, use and enjoyment of the property,*"[521] *i.e.,* a change in the legal status.

547. That is precisely the inquiry the Respondent has undertaken, and the answer, on the facts of this case, remains that the Claimant's position in relation to the Four Unsolicited Turbines has not materially changed since the preventive seizure of 6 December 2019: ownership remains judicially contested, the turbines remain subject to the custodial oversight of IGAPE and the Provincial Court of Luanda, and the Respondent stands ready to return them should that Court rule in AEnergy's favor.

548. The Claimant's own quotation from *Smurfit* that "*this outright seizure constituted an expropriation*" only reinforces the distinction: the *Smurfit* tribunal addressed (i) an overt, unilateral seizure formalized through Hugo Chavez's public declaration, and (ii) the authorization of a third-party to "recover" the investor's land. None of these facts have a coherent parallel to the Claimant's allegations relating to the installation and connection of the Four Unsolicited Turbines (nor the corresponding decree and authorization, which pre-date the Amended Version of the BIT and are outside this Tribunal's jurisdiction).

549. *Santa Elena* is equally unavailing to the Claimant: the tribunal's finding that a decree which "*freezes or blights the possibility for the owner reasonably to exploit the economic potential of the property*"[522] does not alter the conclusion that here (i) the decree that authorized the installation of the Four Unsolicited Turbines was issued in October 2021,[523] and (ii) in any case,

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520 Reply, pp. 71-72, §§ 300-305.

521 **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, dated 28 August 2024, p. 139, § 419.

522 **CLA-48**, *Compañia del Desarrollo de Santa Elena S.A. v. Costa Rica*, ICSID Case No. ARB/96/1, Final Award, 17 February 2000, p. 194, § 77.

523 **C-21**, Presidential Order No. 177/21, dated 26 October 2021.

the prospect of the Claimant recovering the title, possession and use of the Four Unsolicited Turbines remains real, and judicially possible.

550. In sum, the Reply raises no argument – factual or legal – capable of disturbing the Respondent's position, fully developed in the Statement of Defense, that the installation and deployment of the Four Unsolicited Turbines do not amount to a taking or deprivation of the Claimant's investment. The measures at issue remain temporary, good-faith and proportionate, consistent with IGAPE's recognized custodial responsibilities, and reversible as a matter of both engineering and law. The Claimant's expropriation claim must accordingly fail on this ground alone.

5.1.3 IGAPE and the Provincial Court of Luanda have not abdicated their judicial custodial responsibilities

551. For the reasons detailed in Section 5.1.3 of the Statement of Defense,[524] which the Respondent expressly incorporates herein by reference for procedural economy, neither IGAPE nor the Provincial Court of Luanda abdicated their judicial custodial responsibilities over the Four Unsolicited Turbines. As demonstrated therein, IGAPE responded to AEnergy's information request in accordance with its obligations under Angolan law, the Provincial Court of Luanda was under no obligation to respond to AEnergy's requests within any specific timeframe, and AEnergy had, but chose not to avail itself of, the remedies of an accounting proceeding and a petition for the Trustee's removal.

552. That conclusion is now further confirmed by the opinion of the Respondent's Angolan law expert, Mr. Manuel Gonçalves.[525]The Respondent notes that Mr. Hermenegildo Cachimbombo — the expert in Angolan procedural law who rendered a legal opinion in November 2025[526] in connection with these proceedings — was appointed Judge of Angola's Supreme Court in March 2026.[527] As Mr. Cachimbombo's appointment to the Supreme Court now precludes him from continuing to serve as a party-appointed expert in these proceedings, the Respondent instead

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524 SoD, pp. 114-117, §§ 424-435.

525 **RER-05**, Expert Legal Opinion by Manuel Gonçalves.

526 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo.

527 **R-0136**, Individual oath of office No. 011/2026, dated 26 March 2026.

submits the expert legal opinion of Mr. Manuel Gonçalves.

553. Nothing in the Claimant's Reply alters, undermines, or otherwise affects the Respondent's position that IGAPE and the Provincial Court of Luanda have not abdicated their judicial custodial responsibilities. The Claimant recycles the same three contentions: (i) IGAPE failed to meaningfully respond to AEnergy's requests for information, (ii) the Provincial Court of Luanda should have responded to those requests, and (iii) AEnergy was under no obligation to initiate local proceedings — dressed up with new elaborations but no new factual or legal basis capable of disturbing the Respondent's position.[528]

554. *First*, the Claimant's characterization of IGAPE's 3 May 2022 letter as a "non-answer" mischaracterizes both the content of that letter and IGAPE's obligations under Angolan law.[529] As Mr. Gonçalves confirms, the judicial trustee renders accounts exclusively to the Court, not to the owner of the seized assets, and any communication between the parties and the trustee regarding information or accounting must be channeled through the Court.[530]

555. IGAPE's letter did precisely that: it informed AEnergy, accurately, that its accountability ran to the Provincial Court of Luanda and directed AEnergy to the competent forum.[531] That response was not an evasion — it was a correct statement of Angolan law.

556. The Claimant's newly emphasized suggestion that IGAPE's conduct reflected a "double standard" because it corresponded with MINEA, the Public Prosecutor's Office, and the Ministry of Finance while withholding information from AEnergy conflates two entirely different categories of communication. IGAPE's correspondence with those entities formed part of the administrative process by which it sought and obtained authorization, in 2020, to place the Four Unsolicited Turbines into operation — a decision the Trustee was empowered to take within the scope of its powers — as Mr. Gonçalves confirms — without the owner's consent or the Court's prior authorization. That administrative correspondence, internal to the Angolan executive's

528 Reply, pp. 72-76, §§ 306-321.

529 Reply, pp. 72-74, §§ 307-311.

530 **RER-05**, Expert Legal Opinion by Manuel Gonçalves, pp. 20-21, §§ 69-73.

531 **R-0013**, Letter sent from IGAPE to AEnergy, dated 2 May 2022.

own deliberative process, is not equivalent to providing an opposing litigant with substantive updates on the conduct of adversarial proceedings. IGAPE remained, throughout, accountable exclusively to the Court, exactly as Angolan law requires.

557. Nor does the Claimant's invocation of Article 843(2)-(3) of the CPC — advanced through Prof. Costa e Silva's opinion — assist his case. As Mr. Gonçalves confirms, the exercise of the trustee's powers of administration and exploitation, including the decision to place seized assets into operation, does not depend on the owner's consent or prior authorization from the Court. The Claimant's suggestion that IGAPE was required to consult AEnergy before authorizing PRODEL's use of the Four Unsolicited Turbines finds no support in the provision on which he relies, nor in any other rule of Angolan procedural law identified by the Claimant or his expert.

558. *Second*, the Claimant's contention that the Provincial Court of Luanda was obliged to respond to AEnergy's information requests — whether within five days or otherwise — fares no better. Mr. Gonçalves confirms, consistently with Judge Cachimbombo's opinion, that the five-day period contemplated by Article 159(2) of the CPC is merely indicative and applies essentially to case-management acts; it is not a mandatory deadline binding the Court's disposition of substantive applications such as AEnergy's requests for information. The Claimant's assertion that this deadline is "mandatory, not advisory" is simply incorrect as a matter of Angolan law.

559. Nor does the Claimant's fallback position – that the relevant question is not the five-day deadline but whether the Court was required to respond "at all" – improve his position. As Mr. Gonçalves explains, in a procedural system structured, like Angola's, around the dispositive principle, the Court's intervention to demand information from the trustee depends on the initiative of the parties and the allegation of concrete facts justifying that intervention; and while the Court must eventually rule on questions properly submitted to it, it retains latitude as to timing, being required only to address the issues raised by the parties in its final judgment. The Provincial Court of Luanda's handling of AEnergy's requests, however protracted, does not on this record amount to an abdication of judicial responsibility as a matter of Angolan law.

560. The Claimant's suggestion that IGAPE's direction to address information requests to the Court would be "meaningless" unless the Court were bound to respond simply misreads Angolan procedural law. IGAPE's direction accurately reflected the applicable rule that the trustee's

accountability runs to the Court, not to the parties. It did not represent – and cannot be read as – an assurance that the Court was bound to rule on any particular timeline. The Claimant's own remedies, addressed below, did not depend on such a ruling.

561. *Third*, the Claimant's newly minted contention that domestic remedies were "*structurally unavailable*" – because a petition for IGAPE's removal supposedly required prior information from IGAPE itself about how it had discharged its duties – is legally incorrect. As Mr. Gonçalves confirms, a violation of the trustee's duties may be established by any legally admissible means of proof; the provision of information by the trustee is merely one such means, not a precondition for a removal petition under article 845 of the CPC. To hold otherwise, as Mr. Gonçalves observes, would unjustifiably compromise the effectiveness of the very remedy the law establishes.

562. AEnergy was not, therefore, dependent on IGAPE's cooperation to substantiate a request for removal or for accounting. Following the Claimant's factual line of argument (*quod non*), the (i) contractor's statements describing the Turbines' "permanent regime" of operation,[532] (ii) Presidential Orders authorizing the relevant works,[533] and (iii) PRODEL's own installation and commissioning reports[534] — several of which the Claimant relies upon elsewhere in the Reply[535] to argue that the appropriation was final — supplied the basis on which AEnergy could have petitioned the Provincial Court of Luanda for IGAPE's removal or for an order compelling an accounting. AEnergy did neither. Having deliberately foregone the remedies available to it under Angolan law, the Claimant cannot now recast that choice as evidence of the structural unavailability of those remedies.

563. The Claimant's remaining suggestion that the Provincial Court of Luanda's inaction, followed by the scheduling of a preliminary hearing in 2025, reveals collusion between the Angolan judiciary

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532 **C-31**, Extract from GRD website indicating installation of two turbines in the Ondjiva Power Plant, dated 1 May 2022.

533 **C-21**, Presidential Order No. 177/21, dated 26 October 2021.

534 **RS-279**, Lubango Installation and Commissioning Report, dated 31 January 2022, p. 66; **RS-281**, Ondjiva Installation and Commissioning Report, dated 31 January 2022, p. 55.

535 Reply, pp. 65-66, § 283.

and the executive is, as the Respondent has already demonstrated in its Statement of Defense,[536] unfounded. Mr. Gonçalves' independent assessment confirms this conclusion: the Angolan expert notes the complexity of the underlying dispute and the substantial reorganization of the Angolan judiciary effected by Laws 15/15 and 21/21, which led to the closure of certain courts and the reassignment of judges nationwide.[537] In his opinion, the duration of the Main Action to date remains within what should ordinarily be expected.[538] This refutes any suggestion that the timeline reflects irregular interference rather than the ordinary, and largely uncontrollable, vicissitudes of Angolan civil procedure.

564. In sum, the Reply raises no argument – factual or legal – capable of disturbing the Respondent's position, fully developed in the Statement of Defense and corroborated both by Judge Cachimbombo's and Mr. Gonçalves' expert opinions, that neither IGAPE nor the Provincial Court of Luanda abdicated their judicial custodial responsibilities over the Four Unsolicited Turbines. The Claimant's expropriation claim must accordingly fail on this ground as well.

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565. For the foregoing reasons, the Claimant's expropriation claim fails in its entirety:

(i) His case rests on an untenable *ratione temporis* theory and a deliberate refusal to characterize the alleged taking as direct or indirect;

(ii) The installation and deployment of the Four Unsolicited Turbines do not amount to a substantial and definitive taking or deprivation, and Angola's measures remain temporary, proportionate and fully reversible; and

(iii) Neither IGAPE nor the Provincial Court of Luanda abdicated their custodial responsibilities.

566. In sum, nothing in the Reply disturbs the Respondent's position, and the expropriation claim

536 SoD, pp. 49-52, §§ 182-193.

537 **RER-05**, Expert Legal Opinion by Manuel Gonçalves, p. 10, § 35; p. 28, § 101.

538 **RER-05**, Expert Legal Opinion by Manuel Gonçalves, p. 10, § 35; p. 28, § 101.

must accordingly be dismissed.

5.2 Angola has not breached its obligation to provide FET

567. Angola incorporates by reference, and adopts in full, the arguments, evidence and expert opinions set out in Section 5.2 of the Statement of Defense,[539] which conclusively established that no conduct attributable to Angola meets the threshold required to constitute a breach of the FET standard under Article 4(2) of the BIT. For the reasons set out below, nothing in the Reply — whether by way of new argument, new authority, or the new Expert Report of Prof. Paula Costa e Silva —[540] disturbs that conclusion.

568. In the Reply,[541] the Claimant recycles, virtually unchanged, the same three theories of FET breach already addressed at length in the Statement of Defense: (i) frustration of the Claimant's purported legitimate expectations; (ii) denial of due process and lack of transparency; and (iii) arbitrary impairment of the Four Unsolicited Turbines. To the limited extent the Reply raises arguments not previously addressed, the Respondent rebuts them below.

569. *First*, as set out in the Statement of Defense, the applicable FET standard remains a high one and the Claimant's attempt to recast it as an unbounded, evolving standard does not alter that conclusion (**Section 5.2.1**). *Second*, Angola has not frustrated the Claimant's purported legitimate expectations (**Section 5.2.2**). *Third*, Angola has not denied AEnergy due process (**Section 5.2.3**). *Finally*, Angola's decision to place the Four Unsolicited Turbines into operation was a lawful act of prudent administration (**Section 5.2.4**).

5.2.1 The applicable FET standard is a high one

570. For the applicable FET standard, Angola refers the Tribunal to its Statement of Defense,[542] incorporated herein by reference for procedural economy. As demonstrated therein, and as

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539 SoD, pp. 118-141, §§ 437-502.

540 **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva.

541 Reply, pp. 76-8, §§ 322-376.

542 SoD, pp. 119-122, §§ 440-449.

recognized in *Waste Management v. Mexico*,[543] *Parkerings v. Lithuania*,[544] and *Lemire v. Ukraine (II)*,[545] not every act of the host State that prejudices an investor rises to the level of an FET breach; the conduct at issue must be arbitrary, grossly unfair, discriminatory, or involve a lack of due process offending judicial propriety. Critically, the applicable standard is one of international law, not of domestic law: a mere breach of the host State's own legislation does not, without more, constitute a violation of the FET standard.

571. As the *Parkerings* tribunal confirmed, "*not every breach of an agreement or of domestic law amounts to a violation of a treaty.*"[546] The same rationale was followed by the *Lemire* tribunal: "*not every violation of domestic law necessarily translates into an arbitrary or discriminatory measure under international law and a violation of the FET standard*," only a "*blatant disregard*" of applicable rules will cross that threshold.[547] The Claimant's attempt to recast alleged irregularities under Angolan procedural law as FET violations is accordingly misconceived.

572. The Claimant now contends that FET is a "*non-exhaustive and evolving standard*" capable of being infringed by conduct falling short of that threshold, including a State's failure to apply its own law consistently.[548] This does not assist the Claimant. Angola has never disputed that FET permits an objective, case-specific assessment of the State's conduct;[549] its position, consistent with the authorities cited in the Statement of Defense, is that such an assessment — however flexible in principle — still requires conduct of a sufficiently serious character before liability can attach.[550]

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543 **RL-0072**, *Waste Management, Inc. v. United Mexican States*, ICSID ARB(AF)/00/3, Award, dated 30 April 2004, pp. 35-36, § 98.

544 **RL-0093**, *Parkerings v. Lithuania*, ICSID Case No. ARB/05/8, Award, dated 11 September 2007, p. 67, § 315.

545 **RL-0153**, *Joseph Charles Lemire v. Ukraine (II)*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability, dated 14 January 2010, p. 70, § 385.

546 **RL-0093**, *Parkerings v. Lithuania*, ICSID Case No. ARB/05/8, Award, dated 11 September 2007, p. 67, § 315.

547 **RL-0153**, *Joseph Charles Lemire v. Ukraine (II)*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability, dated 14 January 2010, p. 70, § 385.

548 Reply, p. 77, §§ 325-326.

549 SoD, p. 119, § 441.

550 SoD, pp. 120-122, §§ 446-448.

573. As demonstrated below, Angola's conduct does not come close to that threshold, irrespective of which formulation of the standard the Tribunal ultimately adopts.

5.2.2 Angola has not frustrated the Claimant's purported legitimate expectations

574. In his Reply,[551] the Claimant reiterates the same three allegations already addressed in the Statement of Defense — that IGAPE breached its custodial duties by authorizing the Four Unsolicited Turbines' use, that no prior consent or judicial authorization was obtained, and that the Provincial Court of Luanda failed to respond to AEnergy's information requests. Nothing in the Reply alters, undermines, or otherwise affects the Respondent's position on these points, further corroborated by the expert legal opinion of Mr. Gonçalves.[552]

575. *UAB Garsu Pasaulis v. Kyrgyzstan*[553] does not assist the Claimant's case. That tribunal found a breach of legitimate expectations where the host State's own authorities had acted inconsistently with clearly established domestic law. Here, by contrast, the premise that Angola disregarded its own procedural law is precisely the disputed factual and legal question the Claimant must, but has not, established.

576. More fundamentally, the Claimant's reliance on *UAB Garsu Pasaulis* conflates two distinct inquiries. This Tribunal's mandate is not to apply or interpret Angolan domestic law as a domestic court would; it is to determine, under the applicable international law standard, whether any alleged irregularity under domestic law is of such gravity — arbitrary, grossly unfair, discriminatory, or involving a fundamental denial of due process — as to cross the threshold required for a breach of the FET standard under the BIT. Therefore, the *UAB Garsu Pasaulis* decision presupposes a proven violation of domestic law of that character; it does not lower the evidentiary bar for proving one, still less does it convert any alleged domestic-law irregularity into an international wrong.

577. The Claimant's argument rests, in substance, on Prof. Paula Costa e Silva Expert Report,[554] who

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551 Reply, pp. 77-78, § 328.

552 **RER-05**, Expert Legal Opinion by Manuel Gonçalves.

553 **CLA-95**, *UAB Garsu Pasaulis v. Kyrgyzstan*, UNCITRAL, Award, 8 April 2024.

554 **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva.

understands that the use granted to the Four Unsolicited Turbines exceeded IGAPE's powers under Article 843 of the Angolan CPC absent prior judicial authorization under Article 852(1) of the CPC and prior consultation with AEnergy under Article 843(2)(3) of the CPC.[555]

578. Mr. Gonçalves' expert opinion refutes each strand of that conclusion.

579. *First*, Mr. Gonçalves confirms that the judicial custodian's power to administer seized movable assets — including placing them into operation — derives directly from Article 843 of the CPC, applicable to movable assets by virtue of Article 855 of the CPC and does not depend on any prior authorization from the court or the consent of the owner.[556] This conclusion converges with, and independently corroborates, the opinion previously submitted by Judge Cachimbombo.[557]

580. *Second*, Mr. Gonçalves confirms that the special regime under Article 852(1) of the CPC, requiring judicial authorization before a seized vessel may sail, has no application, even by analogy, to other categories of movable assets such as turbines.[558] That special regime is justified by the singular risk that a vessel may leave the jurisdiction and escape the custodian's effective control — a risk with no counterpart here, since the turbines can only operate while installed and physically stationary at their place of use. The Claimant's reliance on Article 852(1) of the CPC[559] to demand prior judicial authorization is accordingly misplaced.

5.2.3 Angola has not denied AEnergy due process

581. For the reasons set out in the Statement of Defense,[560] Angola afforded AEnergy the due process to which it was entitled under Angolan law and the BIT, within the relevant timeframe running from 22 December 2021 to 9 June 2022.

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555 **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, pp. 64-69, §§ 129-140.

556 **RER-05**, Expert Legal Opinion by Manuel Gonçalves, pp. 17-18, §§ 62-64.

557 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 9, §§ 38-39.

558 **RER-05**, Expert Legal Opinion by Manuel Gonçalves, pp. 18-19, §§ 65-68.

559 Reply, p. 62, § 270; **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, p. 140, §§ 136-137.

560 SoD, pp. 130-135, §§ 474-486.

582. At his Reply, the Claimant repackages the same allegations of non-transparency and denial of due process already addressed in the Statement of Defense — namely, the absence of notice prior to the Turbines' installation, the lack of documentary record identifying the responsible State body, and IGAPE's and the Court's failure to respond to AEnergy's requests.[561] None of these allegations rests on any new factual basis.

583. The Claimant's attempt to distinguish *Orazul v. Argentina* fares no better.[562] The Claimant argues that *Orazul* is inapposite because his due process allegations target defects within the judicial process itself, rather than administrative inaction that could have been challenged before the courts. This distinction does not assist the Claimant. *Orazul* stands for the broader proposition that a due process claim under FET requires the Claimant to demonstrate a systemic failure of the host State's judicial system as a whole to afford fair and equitable treatment[563] — a burden the Claimant has not discharged here, irrespective of whether the impugned conduct is labelled administrative or judicial in nature. As demonstrated in **Section 5.1.3** above, AEnergy had specific procedural remedies available under Angolan law — an accounting and the Trustee's removal proceedings — of which it chose not to avail itself, precisely the kind of local recourse whose absence proved fatal to the due process claim in *Orazul*.[564]

584. The Claimant cites Angola's alleged "*failure to summon Aenergy to any hearing*" as an example of a defect within the judicial process.[565] Nothing could be further from the truth. The preliminary hearing, initially scheduled for 17 July 2025, was rescheduled at the Claimant's request and held on 5 September 2025.[566] This fact not only proves that the judicial process is

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561 Reply, pp. 79- 84, §§ 336-354.

562 Reply, pp. §§ 337-340; **RL-0105**, *Orazul International España Holdings S.L. v. Argentine Republic*, ICSID Case No. ARB/19/25, Award, 14 December 2023.

563 **RL-0105**, *Orazul International España Holdings S.L. v. Argentine Republic*, ICSID Case No. ARB/19/25, Award, 14 December 2023, pp. 168-169, §§ 732-733.

564 **RL-0105**, *Orazul International España Holdings S.L. v. Argentine Republic*, ICSID Case No. ARB/19/25, Award, 14 December 2023, p. 169, §§ 734-735.

565 Reply, p. 80, § 339.

566 **R-0104**, Notification of the date of the Preliminary Hearing, dated 15 May 2025; **R-0105**, AEnergy's Request to delay the Preliminary Hearing, dated 16 July 2025; **R-0106**, Notification of the new date of the Preliminary Hearing, dated 13 August 2025; **R-0107**, Record of the Preliminary Hearing, dated 5 September 2025.

running its course, but also shows that the court accommodated the Claimant's rescheduling request.

585. In an attempt to draw an analogy to *Deutsche Bank v. Sri Lanka*,[567] the Claimant asserts that Angola's stance on the current ownership of the Four Unsolicited Turbines has been "anything but consistent," because it has claimed both that it paid for the Four Unsolicited Turbines and that ownership of the Turbines has already been effectively transferred to the State.[568] In doing so, the Claimant conflates MINEA's arguments in support of the Main Action with the current reality of the Turbines' ownership.

586. MINEA contends that it has paid for the Four Unsolicited Turbines and that ownership should be retroactively declared in its favor by the Provincial Court of Luanda.[569] That is the argument underlying the Main Action. Until the Court decides the rightful ownership of the Four Unsolicited Turbines, however, the reality remains that, to this day, AEnergy is their owner. There is nothing inconsistent with the Respondent's allegations.

587. The Claimant next seeks to turn Angola's own evidence against it, asserting that the statistical study cited in the Statement of Defense[570] confirms that the Provincial Court of Luanda's delay is anomalous, since only approximately 15% of Angolan civil proceedings exceed five years.[571] This argument mischaracterizes the record. The cited statistic addresses the ordinary duration of civil proceedings generally; it says nothing about the timeframe reasonably to be expected for a case of this complexity, or amid the unprecedented reorganization the Angolan judiciary has undergone.

588. Mr. Gonçalves' assessment confirms this point, concluding that the duration of the Main Action to date "is within what is expected,"[572] given the complexity of the underlying dispute and the

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567 **CLA-100**, *Deutsche Bank AG v Sri Lanka*, ICSID Case No. ARB/09/02, Award, dated 13 October 2012.

568 Reply, p. 82, § 344.

569 SoD, p. 140, § 499; **C-19**, Angola's lawsuit against Aenergy, filed in the Provincial Court of Luanda, p. 7 of the PDF, §§ 11-12.

570 **RL-0055**, Raúl Araújo/Conceição Gomes (Coor.), A Justiça em Recurso em Angola, 2019, p. 126.

571 Reply, pp. 83-84, § 351.

572 **RER-05**, Expert Legal Opinion by Manuel Gonçalves, p. 28, § 101.

substantial reorganization of the Angolan judiciary effected by Laws 15/15 and 21/21 — which led to the closure of certain courts and the reassignment of judges nationwide.[573] Angolan's law expert further confirms that the pace of Angolan civil litigation depends on a range of factors that lie largely outside the parties' control. These factors include the complexity of the case, delays in notifying parties and witnesses, the need to collect evidence abroad, expert appraisals, the volume of procedural incidents, judicial strikes, and shortages of magistrates.[574]

589. By contrast, Prof. Paula Costa e Silva concludes that the court's delay on ruling on AEnergy's request for information is "incomprehensible" and unjustified under Angolan law, since Article 159(2) CPC requires orders to be issued within five days.[575] Mr. Gonçalves' independent opinion refutes this conclusion on two independent grounds.

590. *First*, Mr. Gonçalves confirms, consistently with Judge Cachimbombo's opinion,[576] that the five-day period under Article 159(2) of the CPC is merely indicative and applies essentially to routine case-management acts, not to the disposition of substantive applications such as AEnergy's request.[577]

591. *Second*, Mr. Gonçalves confirms that, in a procedural system structured, like Angola's, around the dispositive principle, the court's intervention to compel information from a trustee depends on the initiative of the parties, and that a court is only required to rule on the issues submitted to it in its final judgment, retaining latitude as to the timing of interlocutory matters.[578]

592. The result is that Prof. Costa e Silva's assumption that Angolan courts must resolve such requests on an expedited, quasi-automatic basis finds no support in Angolan law.

593. Angola's measures, in short, remain routine, court-supervised, well-documented and unremarkable when measured against the ordinary vicissitudes of Angolan civil procedure. The

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573 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 5, §§ 16-17.

574 **RER-05**, Expert Legal Opinion by Manuel Gonçalves, pp. 10-11, §§ 36-37.

575 **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, p. 74, § 152.

576 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 11, § 50.

577 **RER-05**, Expert Legal Opinion by Manuel Gonçalves, p. 22, § 77.

578 **RER-05**, Expert Legal Opinion by Manuel Gonçalves, pp. 21-22, §§ 75-77.

Reply raises no argument capable of disturbing the Respondent's position that the Claimant's due process and transparency claims must fail.

5.2.4 Angola has not arbitrarily impaired the Four Unsolicited Turbines

594. For the reasons set out in the Statement of Defense,[579] IGAPE's decision to place the Four Unsolicited Turbines into operation pursued a legitimate aim, was grounded in Angolan law, and was neither arbitrary nor discriminatory.

595. At his Reply,[580] the Claimant contends that Angola's justifications for using the Turbines shifted opportunistically from "storage" and "preservation" to "use," and that this alleged inconsistency evidences arbitrariness. The Respondent has already demonstrated that the record discloses no such shift: from the outset, Angola's position has consistently been that placing the Turbines into supervised operation was itself a measure of preservation, not an alternative to it. Nothing in the Reply disturbs that conclusion.[581]

596. The only genuinely new element is Prof. Costa e Silva's opinion that the specific use authorized by IGAPE fell outside Article 843 CPC because it was not remunerated, exposed the Turbines to wear without offsetting consideration, and should instead have taken the form of an anticipatory sale under Article 851 CPC.[582] Mr. Gonçalves' opinion refutes this conclusion as a matter of Angolan law.

597. Mr. Gonçalves confirms that Article 843 CPC's power of administration is satisfied whenever the custodian's chosen course of action reflects the diligence and care of a prudent administrator directed at conserving the value of the seized assets.[583] He further confirms that Article 851 CPC's anticipatory sale mechanism is an independent and alternative faculty that neither excludes nor limits the trustee's power of administration under Article 843 CPC: "[t] *former involves the disposal of the asset and its replacement with the corresponding value, whereas the*

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579 SoD, pp. 135-140, §§ 487-500.

580 Reply, p. 87, § 370.

581 SoD, pp. 135-140, §§ 487-500.

582 **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, pp. 57-60, §§ 117-121, 123.

583 **RER-05**, Expert Legal Opinion by Manuel Gonçalves, pp. 16-17, §§ 60-61.

latter allows the asset to remain in the debtor's estate without lying idle and ceasing to produce any benefit."[584]

598. This conclusion is confirmed by the very Portuguese case law on which Prof. Costa e Silva relies.[585] The Lisbon Court of Appeal decision of 6 October 1977[586] addressed materially identical facts: seized machinery kept in operation, as part of a functioning factory, to avoid the wear and devaluation that would result from idleness.[587] The Court held that a judicial custodian may lease or directly operate seized movable assets where doing so serves the diligent and prudent administration of those assets. Crucially, the availability of anticipatory sale does not displace that power.[588] Mr. Gonçalves confirms that this same reasoning applies here:[589] as MINEA's own technical report recognized, the Four Unsolicited Turbines required continued operation to prevent the corrosion and obsolescence that would otherwise result from prolonged storage.

599. Once again, the Tribunal faces converging, independent conclusions from Judge Cachimbombo and Mr. Gonçalves, both confirming that Angolan law permits the productive use of seized movable assets, against the isolated, contrary opinion of Prof. Costa e Silva. For the reasons already set out above, the Tribunal should prefer the former.

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600. For the foregoing reasons, the Claimant's FET claim fails in its entirety. The applicable standard is a high one, and the Respondent's conduct falls far short of the threshold required to establish a breach. Angola has not frustrated any legitimate expectation, has not denied AEnergy due process, and IGAPE's decision to place the Four Unsolicited Turbines into supervised operation

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584 **RER-05**, Expert Legal Opinion by Manuel Gonçalves, p. 17, § 62.

585 **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, pp. 38-39, § 84. The Claimant's Expert refers to the Judgement as having been rendered on 10 June 1977, which appears to be a typographical error.

586 **RL-0101**, Appeal No. 12535, Lisbon Court of Appeal, Judgement, 6 October 1977 *in* Coletânia de Jurisprudência, Year II, Vol. 5, 1977.

587 **RL-0101**, Appeal No. 12535, Lisbon Court of Appeal, Judgement, 6 October 1977 *in* Coletânia de Jurisprudência, Year II, Vol. 5, 1977, pp. 1006-1007.

588 **RL-0101**, Appeal No. 12535, Lisbon Court of Appeal, Judgement, 6 October 1977 *in* Coletânia de Jurisprudência, Year II, Vol. 5, 1977, p. 1006.

589 **RER-05**, Expert Legal Opinion by Manuel Gonçalves, pp. 17-18, §§ 63-64.

was a lawful and proportionate act of prudent administration under Angolan law. Nothing in the Reply disturbs the Respondent's position, and the FET claim must accordingly be dismissed.

5.3 Angola has not breached its obligation to provide FPS

601. The Claimant alleges that the Respondent breached its obligation to provide full protection and security for the Claimant's alleged investment. The Claimant argues that the Respondent installed and operated the Four Unsolicited Turbines and did not provide the Claimant with adequate legal remedies to defend his rights.[590]

602. To support his allegations, the Claimant defines the appropriate standard of protection as encompassing both physical and legal dimensions. Additionally, the Claimant argues that the host State's obligation to exercise due diligence with regards to the investment shall not be applicable to cases where the host State itself has violated the standard.[591]

603. The Claimant's position does not withstand scrutiny. The Respondent will demonstrate that under the correct standard of protection, FPS refers to the physical protection of the investment. Accordingly, the Respondent did not violate any of its obligations towards the Claimant's alleged investment. Even if the Tribunal agrees with the Claimant that FPS entails a legal protection, the Respondent will still not have breached its obligations to provide FPS.

5.3.1 The applicable FPS standard

604. With regard to the FPS, the Respondent refers to its previous allegations in the Statement of Defense in which it established that the FPS standard shall be interpreted as the need for the host State to grant physical security to the investment. This protection materializes in the host State's duty to protect the investor against violence directed at people or property stemming from State organs or private entities.[592]

605. The Claimant mentions that the case law referred to by the Respondent in its Statement of

590 Reply, p. 88, §§ 377; pp. 91-92, §§ 389-394.

591 Reply, p. 91, §§ 389-394.

592 SoD, pp. 141-147, §§ 503-524.

Defense, namely *El Paso* and *Saluka* does not demonstrate the Respondent's position.[593] However, these cases were cited as a proposition that legal security should be analyzed with regards to FET and not FPS. FPS should be limited to physical protection, thus rejecting broader interpretations that would extend this standard to cover legal or regulatory frameworks and avoid possible overlaps between the two standards.

606. In *El Paso*, the tribunal warned that investment case law had generated "confusion and overlap" among treaty standards and stressed that they "should not be used indifferently one for the other." It then treated FPS as "a residual obligation" and held that, where the challenged measures "all emanated from the State itself," they were to be assessed under "the other BIT standards" rather than FPS.[594]

607. *Saluka* points in the same direction. The tribunal held that FPS applies essentially where the investment has been affected by physical violence and is "not meant to cover just any kind of impairment of an investor's investment, but to protect more specifically the physical integrity of an investment against interference by use of force."[595] Consistently, while *Saluka* found breaches of FET and non-impairment, it failed to find a breach of FPS. Read together, these findings support the cautious proposition for which they were cited, namely that a broad reading of FPS risks blurring its distinct function, while complaints concerning direct State legal or regulatory treatment are more appropriately examined under FET rather than under FPS.

608. The Respondent has complied with its obligation to provide FPS to the Claimant's alleged investment since, as the Respondent has previously demonstrated in Section 2.2.4,[596] PRODEL has implemented the necessary operational, maintenance, and preservation measures on the Four Unsolicited Turbines which remain in a well-preserved condition and retain significant value.

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593 Reply, p. 90, §§ 385-386.

594 **RL-0083**, *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award, dated 31 October 2011, p. 193, §§ 523-525.

595 **CLA-35**, *Saluka Investments B.V. v. The Czech Republic*, UNCITRAL, Partial Award, dated 17 March 2006, p. 98, § 484.

596 Section 2.2.4.

609. The same conclusion can be drawn from the Expert Report of Mr. Darcy Holderness, which demonstrates that PRODEL prudently operated and maintained the Four Unsolicited Turbines and in accordance with industry standards.[597]

610. In his Expert Report, Mr. Holderness confirms that "[t]*he operating and maintenance program is aligned with normal industry practices and generally follows the manufacturers' recommended preventative maintenance procedures and the "On-Condition Maintenance" concept for corrective maintenance. In HKA's opinion, this demonstrates the Disputed Gas Turbine Packages have been operated and maintained in a prudent fashion*."[598] Mr. Holderness further concludes that PRODEL and GRD records demonstrate a healthy program for operating and maintaining the Four Unsolicited Turbines.[599]

611. The Claimant alleges that the due diligence obligation under full protection and security does not apply when the State is the alleged perpetrator.[600] In support, he cites Dolzer & Schreuer.[601] That reading is incorrect. The authors do not deny the existence of a due diligence standard, they hold that where the State itself inflicts the harm, questions of attribution and diligence need not be resolved separately because the State is directly responsible. This concerns the *mode of liability*, not the scope of the obligation.

612. The case law reflects two branches of the FPS standard: a negative obligation on the State to refrain from directly harming the investment,[602] and a positive obligation to exercise due diligence against harm caused by third parties.[603] Where the State is the perpetrator, responsibility is direct. Where a third party causes harm, responsibility turns on whether the

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597 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 28-35, §§ 151-180.

598 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 34, § 177.

599 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, p. 34, § 176.

600 Reply, p. 90, § 388.

601 **CLA-69**, Rudolf Dolzer and Christoph Schreuer, *Principles of International Investment Law*, Second edition, Oxford University Press, 2012, p. 10.

602 **CLA-43**, *Cengiz İnşaat Sanayi ve Ticaret A.S v. Libya*, ICC Case No. 21537/ZF/AYZ, Award, dated 7 November 2018, pp. 81-82, §§ 402-406.

603 **RL-0083**, *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award, dated 31 October 2011, p. 193, §§ 523-525.

State took reasonable measures to prevent or address it. On either branch, the standard requires conduct measured against what was reasonably available in the circumstances — it does not disappear merely because the State is implicated.[604]

613. The Claimant's submission therefore rests on a false premise. Due diligence is not excluded when the State acts directly. In cases where the host State fails to provide FPS due to actions taken by the State itself or its organs, it becomes unnecessary as a *separate inquiry* because the State's own conduct establishes liability without the need to prove a failure of prevention.

614. However, that is not what occurs in the present case. The Respondent took all reasonable measures that could be expected to prevent harm to the Claimant's investment since, as previously demonstrated, the Respondent has complied with the necessary maintenance requirements for the preservation of the turbines. Accordingly, no violation of FPS existed.

5.3.2 If, *quod non,* the Tribunal considers that FPS extends to legal security, the Respondent did not violate its obligation to provide FPS

615. Even if the Tribunal considers the proposition that FPS refers to the obligation to provide a legal framework for the protection of the investment the Respondent would still not have violated any of its obligations to provide FPS.

616. If, *quod non*, FPS extends to legal security, this would entail that the host State is under an obligation to make a functioning system of courts and legal remedies available to the investor. This requirement must be assessed in light of the circumstances and the reasonableness of the claimed protection, meaning that not every failure to obtain redress constitutes a violation of the standard.[605] Tribunals must consider the resources and the capacities of the state and the

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604 **RL-0117**, *A.M.F. Aircraftleasing Meier & Fischer GmbH & Co. KG v. Czech Republic*, PCA Case No. 2017-15, Final Award, dated 11 May 2020, pp. 101-102, §§ 648-655; **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, dated 28 August 2024, p. 194, § 548, **RL-0083**, *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award, dated 31 October 2011, p. 193, § 522.

605 **CLA-41,** *Frontier Petroleum Services Ltd. v. Czech Republic*, UNCITRAL, PCA Case No. 2008-09, Final Award, dated 12 November 2010, pp. 91-92, §§ 263, 273; **RL-0093,** *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, dated 11 September 2007, p. 76, § 360; **RL-0086***, Electrabel S.A. v. Republic of Hungary*, ICSID Case No. ARB/07/19, Decision on Jurisdiction, Applicable Law and

specific factual context of the case.[606]

617. The Claimant's allegation that the decision to use the Four Unsolicited Turbines required judicial clearance conflates the substantive legality of the State's conduct — which is a matter for the expropriation and FET standards — with the availability of legal remedies, which could only be the proper domain of FPS.[607]

618. The Claimant has not shown that it was denied access to courts, that judicial proceedings were unavailable, or that effective legal remedies were withheld. The Claimant cannot argue that the delay in the declaratory proceedings amounts to a violation of FPS since the pending judicial proceedings themselves demonstrate that legal remedies do exist and are available for investors.

619. The Respondent maintains a functioning judicial system. Courts operate under the Civil Procedure Code, and legal remedies are available to investors seeking to vindicate their rights. While the Respondent acknowledges that proceedings in its courts may be slower than in certain European jurisdictions, this does not amount to a denial of legal protection under the FPS

Liability, dated 30 November 2012, Part. VII, p. 23 § 7.83; **RL-0066**, *Mamidoil Jetoil Greek Petroleum Products Societe Anonyme S.A. v. Republic of Albania*, ICSID Case No. ARB/11/24, Award, dated 30 March 2015, p. 157 § 821; **RL-0137**, *Addiko Bank AG v. Montenegro*, ICSID Case No. ARB/17/35, Award, dated 24 November 2021, p. 214, §§ 783-784.

606 **RL-0154**, *Ampal-American Israel Corporation and others v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, dated 21 February 2017, p. 54, § 241; **RL-0083**, *El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Award, dated 31 October 2011, pp. 192-193, §§ 522-523; **RL-0118**, *Pantechniki S.A. Contractors & Engineers v. Republic of Albania*, ICSID Case No. ARB/07/21, Award, dated 30 July 2009, pp. 22, § 81; **CLA-44**, *Asian Agricultural Products Ltd. (AAPL) v. Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Award, dated 27 June 1990, p. 17, § 77; **RL-0097**, *AES Summit Generation Limited and AES-Tisza Erömü Kft v. Republic of Hungary*, ICSID Case No. ARB/07/22, Award, dated 23 September 2010, pp. 91-92, § 13.3.2; **CLA-51**, *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, dated 29 July 2008, p. 180, § 668.

607 **CLA-41**, *Frontier Petroleum Services Ltd. v. Czech Republic*, UNCITRAL, PCA Case No. 2008-09, Final Award, dated 12 November 2010, pp. 91-92, §§ 263, 273; **RL-0093,** *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, dated 11 September 2007, p. 76, § 360; **RL-0086,** *Electrabel S.A. v. Republic of Hungary*, ICSID Case No. ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability, dated 30 November 2012, Part. VII, p. 23, § 7.83; **RL-0117**, *A.M.F. Aircraftleasing Meier & Fischer GmbH & Co. KG v. Czech Republic*, PCA Case No. 2017-15, Final Award, dated 11 May 2020, pp. 101-102, §§ 648-655.

standard.[608]

620. The Claimant invested in Angola with knowledge of the characteristics of its legal system. The relevant benchmark is whether the Respondent affords the degree of legal protection and security that should be legitimately expected from a reasonably well-organized State in its particular circumstances.

621. It does not oblige the State to prevent each injury to the investment, nor does it guarantee a particular outcome or speed of judicial proceedings. The Claimant has not demonstrated how the Respondent's judicial system failed to meet this standard, nor has the Claimant explained what additional legal remedies the Respondent should have provided that would, in the Claimant's view, satisfy the FPS requirement.

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622. In sum, the Claimant's FPS claim fails. The Four Unsolicited Turbines have been maintained in accordance with industry standards and retain substantial value, defeating any claim of physical harm. The Claimant has identified no instance in which it was denied access to courts or legal remedies - the pending declaratory proceedings themselves demonstrate that the Respondent's judicial system remains available and functioning. To the extent the Claimant's complaint concerns the substantive legality of the State's conduct regarding the Turbines, that is a matter for the expropriation and FET standards, not FPS. Accordingly, the Tribunal should dismiss the Claimant's FPS claim in its entirety.

6 The Claimant is not entitled to the damages he claims compensation

623. In his Reply, the Claimant was unable to demonstrate that, in the most plausible counterfactual scenario, it would have suffered any loss; in reality, the Claimant has not suffered—and will not

608 **RL-0093**, *Parkerings-Compagniet AS v. Republic of Lithuania*, ICSID Case No. ARB/05/8, Award, dated 11 September 2007, p. 76, § 360; **CLA-41**, Frontier Petroleum Services Ltd. v. Czech Republic, UNCITRAL, PCA Case No. 2008-09, Final Award, dated 12 November 2010, pp. 86, 90, §§ 263, 273; **RL-0118**, *Pantechniki S.A. Contractors & Engineers v. Republic of Albania*, ICSID Case No. ARB/07/21, Award, dated 30 July 2009, p. 20, §§ 81-82; **RL-0137**, *Addiko Bank AG v. Montenegro*, ICSID Case No. ARB/17/35, Award, dated 24 November 2021, pp. 213-214, § 784; **CLA-114**, *Marion Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/08/1-ARB/09/20, Award, dated 16 May 2012, pp. 97-100, §§ 281-287.

suffer—any loss (**Section 6.1**). Even if some loss had occurred, the Claimant's conduct warrants either the extinction or a significant reduction of any damages (**Section 6.2**). Furthermore, the quantification of the alleged damages is incorrect and unsubstantiated (**Section 6.3**).

6.1 In the most plausible counterfactual scenario, the Claimant suffered no loss

624. The Claimant advances three distinct allegations in support of its contention that it suffered a loss as a result of Angola's alleged breaches of the BIT.

625. *First*, the Claimant alleges that ownership of the Four Unsolicited Turbines was never transferred from AEnergy, asserting that the Respondent itself acknowledged AEnergy's title and never raised any substantive defense to the contrary. Therefore, the Claimant argues that there is no need to demonstrate that, in the counterfactual scenario, the property would have reverted to AEnergy.[609] *Second*, the Claimant argues that the preventive seizure and judicial custody of the turbines pending the Provincial Court of Luanda's judgment did not affect AEnergy's ownership and possession of the Four Unsolicited Turbines.[610] *Finally*, the Claimant contends that, in any event, the situation after the Provincial Court of Luanda's future judgment cannot assist the Respondent, because the return of the Fourt Unsolicited Turbines in their original condition has become impossible once they were installed and operated, and Angola is estopped from hypothesizing about the outcome of proceedings it rendered moot by its own unilateral conduct.[611]

626. As set out below, the Respondent will demonstrate that none of these three allegations withstands scrutiny. *First*, the Claimant fundamentally misapplies the but-for standard (**Section 6.1.1**). *Second*, when the but-for standard is correctly applied, it shows that, absent the installation, the Four Unsolicited Turbines would have remained subject to ongoing litigation and would therefore have held zero value (**Section 6.1.2**). *Third*, under Angolan jurisdiction and law, both possible outcomes of that litigation yield zero loss to AEnergy (**Section 6.1.3**). Fourth, Angola is not precluded from invoking the Angolan proceedings, whereas the Claimant is barred

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609 Reply, p. 93, §§ 399-404.

610 Reply, pp. 94-95, §§ 405-410.

611 Reply, pp. 95-98, §§ 411-429.

from challenging those proceedings (**Section 6.1.4**).

6.1.1 The Claimant fundamentally misapplies the but-for standard in an attempt to conceal the absence of any losses

627. The Claimant and the Respondent do not dispute the theoretical or legal framework governing the principle of full reparation under customary international law, namely:

(i) The State is required to provide full reparation for all damages resulting from its alleged breaches of the BIT;[612]

(ii) Under Article 31 of the ILC Articles on State Responsibility, reparation is owed only for injuries that directly result from an internationally wrongful act;[613]

(iii) This principle requires a demonstrable causal link between the breach and the alleged harm;[614]

(iv) The Claimant must establish that the injury would not have occurred but for the wrongful conduct;[615] and

(v) Based on the *Chorzów Factory* case, the Claimant must establish a counterfactual scenario by projecting, with reasoned analysis, how the investment would have developed had the wrongful act not occurred.[616]

628. The Parties are only in agreement with the theoretical legal framework. In what concerns the

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612 SoC, p. 41, § 189; SoD, p. 147, § 525.

613 SoC, p. 44, § 198; SoD, p. 148, § 527; **RL-0012**, International Law Commission's 2001 Articles on the Responsibility of States for International Wrongful Acts, dated 12 December 2001, Article 31.

614 SoC, p. 44, § 198; SoD, p. 148, § 527; **CLA-110**, Compensation, Damages, and Restitution, Borzu Sabahi, Noah Rubins, and Don Wallace Jr., Investor-State Arbitration (Second Edition), 2019, Chapter XXI, 1 September, 2019, p. 8, § 21.31.

615 SoC, p. 44, § 199; SoD, p. 148, § 527; **CLA-110**, Compensation, Damages, and Restitution, Borzu Sabahi, Noah Rubins, and Don Wallace Jr., Investor-State Arbitration (Second Edition), 2019, Chapter XXI, 1 September, 2019, p. 9, § 21.33.

616 SoC, p. 44, § 199; SoD, p. 148, § 528; **CLA-111**, *Factory at Chorzów (Germany v. Poland),* PCIJ Series A. No. 17, Judgement, 13 September 1928, p. 20, § 125.

application of this framework to the present case, they disagree.

629. Mr. Machado asserts that, but for Angola's alleged unlawful actions, he would not have been deprived of the Four Unsolicited Turbines.[617] Specifically, he claims that Angola breached the BIT by "*removing the Four Turbines from judicial custody and depriving Mr. Machado of them.*"[618]

630. In his Reply, Mr. Machado states that Angola's argument regarding the counterfactual is that he would need to demonstrate that, but for Angola's appropriation of the Four Turbines, ownership would have "*reverted*" to AEnergy.[619]

631. The Claimant's assertion is both inaccurate and an oversimplification of the requirements that must be met.

632. The Claimant must demonstrate that, but for Angola's removal of the Four Unsolicited Turbines from judicial custody, their subsequent installation in state-owned power plants, and their connection to the national grid, the Claimant or AEnergy would more likely than not have retained control over, used, or derived economic benefit from the turbines. The Claimant must further show that these benefits were lost as a direct result of Angola's actions. These alleged breaches and the resulting damage form the basis of Mr. Machado's claim.

633. However, as we will demonstrate below, it is undisputed that neither AEnergy nor Mr. Machado had control, use of, or derived any economic benefit from the Four Unsolicited Turbines at the time the alleged breaches occurred, and this was not due to any breach of the BIT.[620]

634. Finally, even if the Angolan court were to recognize AEnergy as the legal owner, it would receive the Four Unsolicited Turbines and could seek compensation for any alleged deterioration, should it choose to request such relief. Thus, under any counterfactual scenario, AEnergy would not have suffered any losses attributable to a breach of the BIT by Angola.[621]

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617 SoC, p. 46, § 211.

618 SoC, p. 46, § 211.

619 Reply, p. 93, § 399.

620 See bellow Section 6.1.2.

621 See bellow Section 6.1.3.

6.1.2 Absent the installation, the Four Unsolicited Turbines would have remained subject to ongoing litigation and would therefore have held zero value

635. The Claimant contends that, before the alleged breach of the BIT—that is, before the installation of the Four Unsolicited Turbines—it was undisputed that the turbines were AEnergy's property at the time they were appropriated by Angola,[622] and that, despite the judicial restrictions imposed by the preventive seizure, AEnergy remained the owner of assets which had an ascertainable fair market value ("**FMV**").[623]

636. This argument confuses mere legal ownership of property with the actual, realizable economic value that a claimant must show to support a claim for damages. The Respondent has never disputed that AEnergy holds title to the Four Unsolicited Turbines pending the Provincial Court of Luanda's adjudication of the ownership dispute. What matters for the but-for analysis, however, is not who holds nominal title, but whether, absent Angola's alleged breach, AEnergy could actually have used, sold, leased, or otherwise monetized the turbines.

637. Absent the installation, the Four Unsolicited Turbines would simply have remained exactly as they were: seized, held in judicial custody, and legally beyond AEnergy's power of disposal or use. As the Claimant's own Angolan law expert, Prof. Paula Costa e Silva, explains, a preventive seizure "*does not constitute a title for the transfer of ownership of the seized assets,*" but is instead "*an interim measure intended solely to preserve the debtor's assets so that a claim, allegedly in default, may ultimately be satisfied through the proceeds of the sale or adjudication of the seized assets*."[624] In other words, while bare title remained unaffected, the seizure stripped AEnergy of the practical powers of disposal and enjoyment that give an asset realizable economic value. A fact that is not disputed by the Claimant:[625]

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622 Reply, p. 91, § 403.

623 Reply, p. 94, § 407.

624 **CER-03**, Legal Expert Report by Prof. Paula Costa e Silva, p. 16, § 28.

625 Reply, p. 94, § 409.

> *[T]he Claimant's case does not ignore that the judicial decision ordering preventing custody temporarily impaired Aenergy's rights, as owner, to dispose of the assets at will.*

638. Tellingly, the Claimant does not challenge, in this arbitration, the lawfulness of the preventive seizure itself; it challenges only Angola's subsequent conduct. Therefore, if those later actions had not taken place, AEnergy's turbines would still be subject to an uncontested, lawful seizure. They would remain unusable and unsaleable while the ownership dispute is resolved in the Angolan courts. This court proceedings, given typical timelines in Angolan civil cases, could reasonably be expected to take several years to reach a final decision.[626]

639. An asset that its holder is legally barred from using, selling, leasing, or pledging has no realizable market value to that holder when assessing damages. Accordingly, absent Angola's alleged breach, AEnergy's and the Claimant's position would have been one of zero economic value derived from the Four Unsolicited Turbines as of the relevant date.

640. The Claimant seeks to avoid this conclusion by recasting the Respondent's counterfactual as a "*straw man,*" arguing that its case does not require showing that AEnergy would have "*profited from use*" of the turbines, but only that it remained "*owner of assets which had an ascertainable fair market value.*"[627] However, this reframing fails to resolve the fundamental issue. Whatever residual value a saleable, unencumbered turbine might command, that value could not have been realized by AEnergy, because the turbines were neither saleable nor usable while under seizure. The prospect of eventually recovering that value was, and remains, wholly contingent on the outcome of the still-pending Angolan litigation, a contingency that the Claimant does not claim constitutes a breach of the BIT, and which predates any of the conduct challenged in this arbitration.

6.1.3 Neither possible outcome of the Angolan litigation causes AEnergy to incur loss as a result of a BIT breach

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626 SoD, pp. 149-150, §§ 531-533; **RER-05**, Expert Legal Opinion by Manuel Gonçalves, p. 10, § 35; p. 28, § 101.

627 Reply, p. 94, §§ 406-407.

641. As demonstrated in the previous section, absent Angola's alleged breach, the Four Unsolicited Turbines would have remained frozen under an uncontested, lawful preventive seizure, unusable and unsaleable, pending resolution of the ownership dispute before the Provincial Court of Luanda. The Claimant nonetheless seeks to escape this conclusion by arguing that the preventive seizure is, by its nature, temporary, and that once lifted, AEnergy would have recovered the Four Unsolicited Turbines as new, unused assets rather than as turbines that had already been installed and operated.[628] On this theory, the Claimant contends that the relevant loss crystallizes once the turbines pass a "*point of no return,*" triggered by their operational use.[629]

642. This counterfactual is flawed and, in any event, immaterial to the outcome of the but-for analysis because it ignores the fact that there are two possible outcomes, both of which would result in zero losses to AEnergy.

643. The Respondent initiated two sets of proceedings before the Provincial Court of Luanda: first, the Preventive Seizure Proceedings, brought on 4 October 2019 to safeguard the Four Unsolicited Turbines pending decision (Case No. 074/2019-E);[630] and second, the Main Action, brought on 2 March 2020, in which the Respondent requests, principally, recognition of the State's ownership over the Four Unsolicited Turbines and compensation for damages caused. In the alternative, Angola requests the return of the amounts unduly paid to AEnergy under the Facility Agreement, in a sum no less than USD 100,000,000 (Case No. 034/2020-D).[631]

644. *First*, if the Provincial Court of Luanda rules in Angola's favor on the principal claim of the Main Action, title to the Four Unsolicited Turbines will vest in Angola, with retroactively effect, not AEnergy. In that scenario, there is, by definition, no loss to AEnergy: an asset that a court determines never belonged to AEnergy in the first place cannot generate a compensable loss to AEnergy, irrespective of the condition in which it is eventually found. The Claimant's "*point of*

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628 Reply, pp. 94-95, §§ 405-410.

629 Reply, p. 95, §§ 412-413.

630 **R-0116**, Application for interim measure for the seizure of the Four Unsolicited Turbines, dated 4 October 2019.

631 SoD, pp. 32-36, §§ 113-124; **C-19**, Statement of Claim in the Declaratory Proceedings, dated 2 March 2020.

no return" theory presupposes an entitlement to the turbines that this very outcome would disprove. In this scenario, the seizure of the Four Unsolicited Turbines would be lifted, and the turbines would be returned to AEnergy, contrary to the Claimant's argument.[632]

645. *Second*, if the Provincial Court of Luanda instead determines that the Four Unsolicited Turbines are not Angola's property, the Respondent's alternative request would come into play: the return of no less than USD 100,000,000 unduly drawn by AEnergy under the Facility Agreement. In this case, Angola's credit right could be enforced against the seized turbines. However, should AEnergy voluntarily pay the compensation owed to the Respondent, the Four Unsolicited Turbines could be returned to AEnergy, contrary to the Claimant's assertion.[633]

646. *Third*, if the Provincial Court of Luanda were to rule that AEnergy is the rightful owner of the Four Unsolicited Turbines and that no funds are due to Angola, AEnergy would be entitled under Angolan law to have the turbines returned, together with reparation or compensation for any alleged deterioration they may have suffered while under judicial custody. This conclusion is supported by the Expert Report of Mr. Darcy Holderness, which confirms that the installation of the turbines is reversible from both a practical and engineering perspective. The report further notes that industrial service providers associated with the Engines state that the 50,000-hour major overhaul is intended to restore the equipment to a "like new" operating condition with respect to output and reliability.[634]

647. In sum, whichever outcome the Provincial Court of Luanda reaches, AEnergy suffers no loss from the operation of the Four Unsolicited Turbines during judicial custody (the alleged breach of the BIT). If Angola is recognized as the owner, AEnergy has no valid claim to compensation. If Angola prevails on its alternative claim, that claim can be satisfied through the turbines. If AEnergy is recognized as the owner, it can recover the turbines, restored to their prior condition, and receive compensation for any alleged damage. In none of these scenarios does AEnergy establish

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632 Reply, p. 96, §§ 415-417.

633 Reply, pp. 96-97, § 419.

634 **RER-04**, Technical Expert Report by Mr. Darcy Holderness dated 5 August 2026, pp. 36-39, §§ 183, 189-194.

a causal link between Angola's conduct and any compensable loss under the but-for standard.

6.1.4 Angola is not precluded from invoking the Angolan proceedings, whereas the Claimant is barred from challenging those proceedings

648. The Claimant argues that:

(i) As a matter of principle, Angola is barred from contending that it would have prevailed in the court proceedings because it willfully disregarded the provisional nature of the preventive seizure order and appropriated the seized goods in breach of that order; [635]

(ii) Angola is estopped from invoking a hypothetical outcome before the Court that is irreconcilable with the position it adopts in this arbitration, namely, that AEnergy is the owner of the turbines;[636] and

(iii) The theory advanced by Angola before the Provincial Court of Luanda is wholly unfounded and manifestly absurd, and therefore the Arbitral Tribunal should disregard the possibility of the Court accepting such a theory.[637]

649. None of the Claimant's three contentions withstands scrutiny. First, Angola did not breach the preventive seizure order or act inconsistently with its provisional nature. Second, the Respondent is not estopped from relying on the possible outcomes of the Main Action. Third, this Arbitral Tribunal, does not have the mandate to decide the merits of a title dispute governed by Angolan law, which remains pending before the competent Angolan court. In any event, the Claimant has never alleged in this arbitration that the mere existence or continuation of the Angolan proceedings regarding ownership of the turbines constitutes a violation of the BIT, nor has the Claimant challenged the competence of the Provincial Court of Luanda to determine ownership of the Four Unsolicited Turbines.

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635 Reply, p. 95, § 414.

636 Reply, pp. 96-97, § 419.

637 Reply, p. 96-97, § 419.

650. *First*, Angola did not breach the preventive seizure order. As demonstrated in Section 5.1.3 above, the decision to place the Four Unsolicited Turbines into supervised operation followed a formal request submitted by MINEA to the Attorney General's Office. This request was supported by a technical opinion. The Public Prosecutor's Office issued a legal opinion confirming that, under Article 843 of the CPC, IGAPE should allow MINEA to use the seized turbines to prevent their deterioration, as part of IGAPE's duty to manage the seized assets with due care. Mr. Gonçalves, in his expert opinion, confirms that the judicial custodian's power to administer seized movable assets — including placing them into operation — derives directly from Article 843 of the CPC and does not depend on any prior authorization from the court or the consent of the owner.

651. The Claimant himself has acknowledged IGAPE's decision to authorize the turbines' use. As the Claimant states: "*Far from manifesting an intention to appropriate the Four Turbines, IGAPE's letter is the act of a custodian seeking – however misguidedly – to discharge its preservation duties within the framework of the judicial proceedings*."[638] This characterization is the antithesis of an unauthorized or wrongful appropriation.

652. Angola's conduct accordingly remained, at every step, within the bounds of the preventive seizure order and IGAPE's lawful custodial mandate. It supplies no basis to bar Angola from relying on the outcome of proceedings it lawfully initiated and has faithfully pursued.

653. *Second*, Angola is not estopped from invoking the possible outcomes of the Main Action. The premise underlying the Claimant's argument — that Angola has taken the irreconcilable position that AEnergy's ownership of the Four Unsolicited Turbines is undisputed — mischaracterizes the record.

654. As Angola has already explained, MINEA's position in the Main Action is that it paid for the Four Unsolicited Turbines and that ownership should accordingly be declared in Angola's favor, with retroactive effect, by the Provincial Court of Luanda. Until that Court rules, the reality remains that AEnergy is the turbines' current owner. There is nothing inconsistent in Angola simultaneously acknowledging that present reality while maintaining, as demonstrated in

638 Reply, p. 42, § 182.

Section 6.1.3 above, that should the Provincial Court of Luanda rule in its favor, title will vest in Angola retroactively. Angola has never asserted, in this arbitration or before the Angolan courts, that AEnergy's title is beyond dispute. It has consistently maintained that title remains sub judice and that, whichever party ultimately prevails, will hold title from the outset by operation of the retroactive effect of the judgment. A party cannot be estopped by the coherent and unchanging articulation of one and the same position.

655. *Third*, this Tribunal does not have jurisdiction to decide on the merits of the Main Action. The Tribunal's jurisdiction is confined to determining whether Angola's conduct breached the Angola-Portugal BIT as a matter of public international law.

656. Moreover, there is, to date, no judgment of the Provincial Court of Luanda for the Tribunal to characterize as wholly unfounded or manifestly absurd: the ownership of the Four Unsolicited Turbines remains disputed by the Parties before the Angolan courts, the Main Action remains pending, and the Claimant's invitation to pre-judge and discard a still-undecided claim before the competent court exceeds this Arbitral Tribunal's role.

657. Tellingly, the Claimant has never raised, in this arbitration, any claim concerning the Main Action. As shown in Section 5.1.3 above, AEnergy had access to legal remedies under Angolan law—including an accounting proceeding and a petition for the Trustee's removal—but chose not to pursue them. At no point has AEnergy contested, either before the Provincial Court of Luanda or before this Tribunal, the competence or legitimacy of the Angolan courts to adjudicate ownership of the Four Unsolicited Turbines. This passive approach in Angola underscores that the Claimant's objective is not to address any legitimate grievance with the Angolan proceedings, but rather to fabricate a shortcut around a forum he has consistently treated as competent.

658. In sum, Angola is not precluded from relying on the possible outcomes of the Main Action, whereas the Claimant — having never disputed the lawfulness of the preventive seizure, never challenged the Angolan courts' competence to determine ownership — is in no position to ask this Tribunal to discard Angola's position or to resolve, in its stead, a dispute that remains properly and exclusively before the Provincial Court of Luanda.

659. It bears emphasis that the Claimant now seeks to litigate, within this arbitration, questions

related to the Main Action — including by invoking new arguments under Swiss law, the applicable law of the Supply Contracts. The Provincial Court of Luanda, not this Tribunal, is the forum in which the ownership dispute over the Four Unsolicited Turbines must be, and is being, resolved. This is but the latest instance of the Claimant's broader strategy of pursuing the same underlying dispute across a multiplicity of fora in search of a more favorable outcome, a strategy the Respondent has already documented at length in its Statement of Defense.[639]

6.2 The Claimant's contributory fault warrants a 100% reduction in damages.

660. In his Reply, the Claimant contends that the Respondent's contributory fault defense fails on two grounds: first, that the Respondent cannot establish a sufficient causal link between the Claimant's conduct and the loss claimed;[640] and second, that the 100% reduction sought by the Respondent is unprecedented, since none of the authorities relied upon by the Respondent has ever apportioned fault at that level.[641]

661. Neither ground withstands scrutiny. The Respondent will demonstrate that: (i) the applicable legal standard requires only a material and significant contribution to the injury, not that the Claimant's conduct be the sole cause; (ii) no rule of international law caps the percentage by which damages may be reduced for contributory fault, and tribunals exercise wide discretion in fixing that percentage according to the gravity of the claimant's conduct; and (iii) applying these principles to the record, any damages that might otherwise be due (*quod non*) must be reduced by 100%, or, at the very least, very substantially.

662. *First*, it is a well-established principle of international law that the conduct of an injured party must be taken into account when assessing the form and extent of reparation. Article 39 of the ILC Articles on State Responsibility provides that, in determining reparation, "*account shall be taken of the contribution to the injury by willful or negligent action or omission of the injured*

639 SoD, pp. 21-30, §§ 71-105.

640 Reply, pp. 99-100, §§ 432-435.

641 Reply, p. 100, § 436.

State or any person or entity in relation to whom reparation is sought."[642] Grounded in the broader principle of full reparation, this rule is widely recognized in arbitral practice and permits the reduction, or even the complete offsetting, of compensation otherwise due.[643]

663. Tribunals applying Article 39 have consistently held that a mere contribution to causation does not suffice; what is required is a material and significant contribution attributable to the injured party's willful or negligent conduct.

664. The Claimant argues that "*the loss of the Four* [Unsolicited] *Turbines was caused by Angola's sovereign act of appropriating them*," and that "*no act or omission attributable to the Claimant forms any part of*" that chain.[644] However, Angola's termination of the 13 Contracts, the Preventive Seizure Proceedings, the Main Action, and the subsequent custodial administration of the Four Unsolicited Turbines were responses to the Claimant's own conduct. The causal inquiry required by Articles 31 and 39 admits only one answer: but for the Claimant's fraud, none of the conduct the Claimant now labels wrongful would ever have occurred.

665. As demonstrated, the Claimant, together with Mr. da Costa and Mr. Nelson, fabricated the Forged Letters to induce GE to disburse Angola's funds under the Facility Agreement for the Four Unsolicited Turbines. The Claimant then paid Mr. da Costa and Mr. Nelson USD 5 million each as reward for their role in the scheme. Later, Mr. Machado attempted to sell the same Four Unsolicited Turbines to Angola. It was only the unravelling of this scheme, precipitated by Mr. da Costa's disclosure of the true allocation of the December 2017 disbursement, that led Angola to terminate the 13 Contracts and to commence the Preventive Seizure Proceedings and the Main Action.[645]

666. The Claimant's complicity is not a matter of inference. It is established across three separate proceedings [redacted]

642 **RL-0012**, International Law Commission's 2001 Articles on the Responsibility of States for Internationally Wrongful Acts, Article 39.

643 **CLA-109**, Irmgard Marboe, Calculation of Compensation and Damages in International Investment Law, 2nd ed., Mar 2017, p. 153, § 3.242.

644 Reply, p. 99, § 434.

645 SoD, pp. 32-36, §§ 113-124.

[redacted] the DOJ found that the forgery was committed by "*Da Costa and others*" and confirmed before the SDNY that Mr. Machado "*bears responsibility for this as well*." Each finding confirms that the Claimant's conduct was willful, not merely negligent, and that it was the proximate and predominant cause of the events culminating in this dispute, comfortably meeting the "*material and significant*" threshold required by Article 39.[646]

667. Second, neither Article 39 of the ILC Articles nor its Commentary imposes any ceiling on the percentage by which compensation may be reduced for contributory fault. To the contrary, commentators confirm that "*the amount by which tribunals should reduce damages to reflect contributory fault has received little attention and has not generally been based on any particular formula*,"[647] and that tribunals enjoy a wide margin of discretion in fixing that amount. The absence of a prior award reducing damages by exactly 100% reflects only the rarity of facts as extreme as those presented here, not any legal impediment to such an outcome.

668. Third, the Claimant does not merely bear some share of responsibility for a business decision that went awry. He personally orchestrated the fraud that gave rise to this entire dispute. This is precisely the type of exceptional case warranting a 100% reduction, both appropriate and permissible under the circumstances, and it accords with the broader principle, already invoked by the Respondent that an investor cannot invoke treaty protection to shield an advantage obtained through its own fraud.

669. In sum, had the Claimant not engineered the fraudulent scheme described above, this dispute would not exist: Angola would have had no basis to terminate the 13 Contracts, to initiate the Preventive Seizure Proceedings or the Main Action, or to take the custodial and maintenance measures over turbines. The Claimant's contribution to his own alleged injury is therefore not merely material and significant, but total and exclusive. Accordingly, any damages that might otherwise be due (*quod non*) must, under Article 39 of the ILC Articles and the practice of investment tribunals, be reduced by 100%, precluding any entitlement to compensation, or any

646 Section 2.1.2.

647 **CLA-110**, Borzu Sabahi, Noah Rubins and Don Wallace Jr., Compensation, Damages, and Restitution in Investor-State Arbitration, Sep 2019, p. 10, § 21.42.

reduction near 100%.

6.3 The Claimant has not accurately quantified or substantiated his damages

670. The Claimant had the opportunity to properly quantify its alleged losses; however, it continues to rely on incorrect and flawed valuations (**Section 6.3.1**), does not attempt to quantify the alleged damages to its shares (**Section 6.3.2**), and has selected an interest rate that is wholly inappropriate for the circumstances of this case (**Section 6.3.3**).

6.3.1 The Claimant's valuation and its underlying basis are flawed

671. Even if the Tribunal were to reject the Respondent's causation and contributory fault defenses set out above (*quod non*), the Claimant's damages claim must still be dismissed, or at the very least drastically reduced. Im fact, Mr. Machado has not discharged his burden of proving the quantum of his alleged loss with the reasonable certainty required under international law.

672. As demonstrated below, the quantum claimed by the Claimant suffers from pervasive and independently fatal flaws: it uses an incorrect valuation date (**Section 6.3.1.1**), employs a method that is unsuitable for the case (**Section 6.3.1.2**), and, even if the method were appropriate, it is applied incorrectly (**Section 6.3.1.3**).

6.3.1.1 The Claimant uses an incorrect valuation date

673. The Claimant contends that the appropriate valuation date is the date on which the Four Unsolicited Turbines were installed and connected to the grid.[648] According to the Claimant, the Turbines retained value at that time because, although AEnergy had been prevented from disposing of them since December 2019, it remained their owner and could have sold them once the preventive seizure was lifted. The Four Unsolicited Turbines would have remained new and unused, but for Angola's unlawful decision to put them into operation.[649] For this reason, the Claimant instructed AlixPartners to use the installation and use dates as the valuation date.[650]

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[648] Reply, p. 101, § 443.

[649] Reply, p. 102, § 446.

[650] **CER-02**, Second Quantum Expert Report by Alix Partner, pp. 12-13, § 44; p. 16, § 58.

674. However, this position is incorrect both economically and legally.

675. *First*, as already mentioned, the Claimant has deliberately opted not to characterize the expropriation as direct or indirect, arguing that this distinction is irrelevant. However, this option was chosen not because the Claimant believes it is is irrelevant, but rather to conceal the fact that there is no expropriation—and, consequently no valuation date to determine.

676. In cases of indirect expropriation, the valuation date is the date when the expropriation is consummated. As noted in the *Clorox v. Venezuela*, investment arbitration practice does not allow for the capricious selection of a valuation date. Instead, the valuation date must be linked to the moment when it can be clearly established that the investment was definitively and irrevocably deprived of its commercial value.[651]

677. Here, the Claimant acknowledges that the Four Unsolicited Turbines had no economic value unless and until a judgment in the Main Action were to grant ownership and return the Turbines to AEnergy. Until then, the Claimant admits it was impossible to sell the Turbines.[652] Not due to the alleged expropriation, but because they were subject to a valid preventive seizure and ongoing Main Action initiated by the Respondent against AEnergy.

678. Accordingly, as demonstrated in Section 6.1 above, the Claimant was required to establish that it was likely that the Main Action would be decided in his favour. If so, the return of the Four Unsolicited Turbines (used and deteriorated) would result in a loss, and to quantify such loss. Not only did the Claimant fail to do so, but the Respondent demonstrated that, under any scenario, the Claimant would have suffered no loss.

679. Based on this rationale, the Respondent's Expert, HKA, maintains that the Claimant did not incur any economic loss based on the valuation date of the installation and use of the Four Unsolicited Turbines, as they had zero value to the Claimant at that point.[653] Indeed, since 10 December

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651 **RL-0155**, *Clorox Spain S.L., v. The Bolivarian Republic of Venezuela*, PCA Case No. 2015-30, Final Award, dated 9 August 2023, p. 160, § 720.

652 Reply, p. 102, § 446.

653 **RER-04**, Second HKA Report, p. 74, §§ 162-164.

2019, the last "*clean*" date, the Turbines held no economic value for the Claimant.[654]

680. *Second*, for the Claimant, it is irrelevant that the Four Unsolicited Turbines were subject to preventive seizure for a specific period of time, whether 2, 5, or 10 years, as this is asserted to have had no effect on the value of the assets allegedly expropriated.[655]

681. The Second HKA Report exposes the economic absurdity of this position: under the Claimant's own valuation-date theory, there would be no difference between having held the Four Unsolicited Turbines in custody for one year (2019 to 2020), three years (2019 to 2022), or, hypothetically, seven years through 2026, since no loss would be said to arise until the turbines were installed and used, regardless of how long they had previously been held. This outcome is economically indefensible.[656]

682. This explains why the Claimant and AlixPartners constructed not only a hypothetical transaction involving a willing buyer and seller, but also a hypothetical asset, in an attempt to circumvent the fact that the Four Unsolicited Turbines had either no value or only a negligible one.[657]

683. This approach is analogous to an investor seeking the fair market value of an expropriated company by applying the income approach—specifically the DCF method—but using projected cash flows from a hypothetical company in the industry, rather than projected cash flows based on the actual financial statements of the expropriated company.

684. Such a fabricated "but-for" scenario renders the valuation date meaningless, as it is disconnected from any real damage to the actual assets allegedly expropriated.

685. In sum, the valuation date used by AlixPartners at the Claimant's instruction lacks economic justification and does not satisfy the legal requirements of the principle of full compensation.

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654 **RER-04**, Second HKA Report, p. 49, § 113.

655 **RER-04**, Second HKA Report, p. 47, § 108.

656 **RER-04**, Second HKA Report, p. 47, § 108.

657 **RER-04**, Second HKA Report, pp. 47-48, § 109.

6.3.1.2 The Claimant employs a trending method that is unsuitable for this case

686. The Claimant argues that the trending method is appropriate because it allows a known cost (the historical cost) to be updated to its current value (at the valuation date) by applying a trending factor (the Producer Price Index) and then adding a distributor margin. The Claimant maintains that this approach is not speculative, is more suitable than the sunk cost method, and that the distributor margin is an element of the FMV of the Four Unsolicited Turbines rather than a claim for lost profits.[658]

687. However, the Claimant's assertions do not withstand scrutiny. The trending method is not valid in this case because it is inherently speculative and contains significant weaknesses. Furthermore, the distributor margin is not a proper component of this approach, rather, it constitutes a separate and inadmissible claim for lost profits. Instead, the sunk cost method is the most appropriate approach here.

688. *First*, the Claimant argues that the Respondent's assertion that the trending method is speculative relies on an article focused on real estate valuation. According to the Claimant, this is not applicable to the appraisal of standardized industrial machinery, such as gas turbines, which do not face the same uncertainties as the real estate market.[659]

689. This argument is disingenuous because, as HKA has noted,[660] the trending method is not appropriate during periods of volatility or short-term macroeconomic shocks that affect tangible assets, as is the case here. In fact, even the "*authoritative source*"[661] cited by AlixPartners acknowledges this limitation:[662]

> *[C]aution should be exercised regarding the use of trending for longer periods of time unless accuracy of the trending result can be independently confirmed by*

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658 Reply, pp. 102-105, §§ 447-457.

659 Reply, p. 103, § 451; **CER-002**, Second Quantum Expert Report by AlixPartners, p. 14, §§ 50-51; **HKA-17**, Understanding Replacement Costs in a Market That is Awash in Cash.

660 **RER-04**, Second HKA Report, p. 51, § 117.

661 **CER-002**, Second Quantum Expert Report by AlixPartners, p. 13, § 46.

662 **HKA-105**, American Society of Appraisers, Valuing Machinery And Equipment: The Fundamentals of Appraising Machinery and Technical Assets, Fourth Edition, p. 44.

> *comparing it with the results of other methods of estimated cost new. This is especially true when using a broad-based index or in periods of relatively high inflation.*

690. As also pointed out by HKA,[663] the same source considers that RCN trending method includes the following weaknesses:[664]

> *The historical costs that one is attempting to trend may not be typical costs; that is, it may include extraordinary costs or exclude indirect costs, and so on.*
>
> *Cost indexes are based on average values, but specific cases (including the subject property) may differ from the average.*

691. *Second*, the Claimant asserts that the distributor margin applied to the Four Unsolicited Turbines is not a claim for lost profits, but rather an integral component of the FMV calculation, as a hypothetical buyer would similarly acquire them through an agent.[665]

692. The cost approach, which includes the trending method, starts with the current replacement or reproduction cost of the property, then subtracts any loss in value due to physical deterioration, functional obsolescence, and economic obsolescence. This approach is based on the principle of substitution, which holds that a prudent buyer would not pay more for a property than the cost to acquire a substitute property with equivalent utility.[666]

693. The property in question consists of the Four Unsolicited Turbines that AEnergy intended to sell. Under the principle of substitution, a prudent buyer would not pay more for a substitute property with equivalent utility than they would to purchase the turbines directly from AEnergy. Any valuation approach resulting in a higher value would violate this principle. In fact, a prudent buyer would most likely purchase directly from GE, since GE sells turbines directly to end

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663 **RER-04**, Second HKA Report, p. 51, § 118.

664 **HKA-105**, American Society of Appraisers, Valuing Machinery And Equipment: The Fundamentals of Appraising Machinery and Technical Assets, Fourth Edition, p. 44.

665 Reply, p. 104, §§ 454-455.

666 **HKA-105**, American Society of Appraisers, Valuing Machinery And Equipment: The Fundamentals of Appraising Machinery and Technical Assets, Fourth Edition, p. 32.

customers.[667]

694. Furthermore, AlixPartners has not identified any source, including the ASA's *Valuing Machinery and Equipment*, that supports adding a notional distribution markup to a cost approach calculation. There is no evidence of industry practice, published price guides, or market surveys that treat a hypothetical distributor's profit as a component of FMV for aeroderivative gas turbines. The absence of such market evidence confirms that the distributor margin applied by AlixPartners does not reflect how this asset class actually trades, but is instead an artificial construct intended to inflate the value of the claim.[668]

695. *Third,* the Claimant argues that the sunk cost approach is inappropriate because it does not reflect the fair market value, equating sunk cost with purchase price or historical cost, and therefore is not a method that converts known costs into current costs.[669]

696. However, the Claimant is mistaken because his argument is based on a flawed assumption. The sunk cost approach does convert a known cost (the historical cost) into a current cost. Instead of relying on a highly speculative trending factor (in this case the PPI), the sunk cost method puts the investor in the same position as it would have been had never made the investment.[670]

697. Moreover, Article 7(3) of the BIT stipulates that lawful expropriation requires payment of the "real market value." Nowhere does it mandate that compensation for alleged breaches of the BIT must be quantified using Fair Market Value. The only requirement for the determination of quantum—as is not disputed—is that the investor be fully compensated for the alleged breach. The sunk cost approach is also a method capable of providing full compensation to the investor.

698. In *Deutsche Telekom v. India*, the Arbitral Tribunal addressed a similar debate regarding FMV. The Tribunal observed that cost-based valuation methods are commonly used by investment treaty tribunals, particularly when the enterprise was not a going concern, had no history of profitability, or lacked realistic prospects for profit. In such situations, tribunals typically rely on

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667 **RER-04**, Second HKA Report, pp. 60-61, § 135.

668 **RER-04**, Second HKA Report, pp. 60 and following, §§ 135 and following.

669 Reply, p. 103, §§ 451-452.

670 **RER-04**, Second HKA Report, pp. 72-73, § 160.

sunk costs.[671]

699. The Tribunal found that the cost-based approach can represent FMV when the amounts actually spent by the investor are equivalent to what a hypothetical willing buyer would pay. However, it also recognized that the FMV standard applies only to lawful expropriation under the treaty, and emphasized that in other cases tribunals must apply the full reparation principle under customary international law. This means tribunals may award FMV—or, if there is insufficient evidence to reliably determine FMV, use other indicators of damages.[672]

700. Therefore, the tribunal concluded that when other valuation methods are not supported by sufficient evidence to establish damages with reasonable certainty, sunk costs may be the best (or only) alternative to quantify the investor's loss.[673]

701. Also, it is incorrect to claim that the sunk cost approach cannot be a measure of fair market value. As Ripinsky expressly states, "*the sunk cost may well be a fair way of measuring compensation, and sometimes is the best available evidence of FMV; although it generally does not meet the legal requirement to make the award equivalent to the investment's fair market value*."[674]

702. In the case of *Strabag v. Germany*, the Arbitral Tribunal was tasked with establishing the FMV of an offshore wind project and was divided between applying the comparable approach or the income approach. The Tribunal also examined the cost-based approach and noted that such methods are generally considered a last resort, to be used only when more market-oriented valuation methods are unavailable or inappropriate.[675]

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671 **RL-0156**, *Deutsche Telekom AG v. The Republic of India*, PCA Case No. 2014-10, Final Award, dated 27 May 2020, pp. 99-100, § 284.

672 **RL-0156**, *Deutsche Telekom AG v. The Republic of India*, PCA Case No. 2014-10, Final Award, dated 27 May 2020, pp. 101-102, § 287.

673 **RL-0156**, *Deutsche Telekom AG v. The Republic of India*, PCA Case No. 2014-10, Final Award, dated 27 May 2020, pp. 102-103, § 288.

674 **AP-90**, Williams Ripinsky, *Damages in International Investment Law*, p. 231.

675 **RL-0157**, *Strabag SE, Erste Nordsee-Offshore Holding GMBH and Zweite Nordsee-Offshore Holding GMBH v. Federal Republic of Germany*, ICSID Case No. ARB/19/29, Award, dated 18 December 2024, p. 194, § 607.

703. In the present case, both parties agree that the cost-based approach is more suitable than the income approach for determining FMV. However, while the Claimant employs the trending method, a speculative approach, the Respondent relies on the sunk cost method, which is widely accepted in investment arbitration as a correct approach to determined investors damages.[676]

704. For that reason, HKA considered that the non-speculative approach would be to use the actual alleged investment value, adjusted for any required refurbishment or reconditioning to bring the equipment up to working condition.[677] This value should accrue interest from the alleged date of expropriation, applying the 5-year U.S. Treasury rate.[678]

705. During the Document Production Phase, the Respondent requested documents to determine the historical cost of the Four Unsolicited Turbines.[679] However, as previously noted, the Claimant failed to produce any documents that would permit this quantification.

706. As set out above,[680] for an adverse inference to be drawn, it is necessary that (i) there be an order to produce a specific document (or category), (ii) the party burdened with its production fails to produce such document, and (iii) the failure to produce be unaccompanied by a satisfactory explanation of the reasons why the document was not produced. It is also necessary that the requesting party satisfies additional criteria, namely that (i) it produced all available evidence corroborating the inference sought, (ii) the requested evidence must be accessible to the inference opponent, (iii) the inference sought must be reasonable, consistent with facts in the record, and logically related to the likely nature of the evidence withheld, (iv) the party seeking the adverse inference must produce *prima facie* evidence, and (v) the inference opponent must know, or have reason to know, of its obligation to produce evidence rebutting

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676 **RER-04**, Second HKA Report, pp. 75 and following, §§ 166 and following.

677 **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 51, § 114.

678 **RER-04**, Second HKA Report, p. 77, § 170.

679 Procedural Order No. 3, Document Request No. 5, p. 54: "*documents which concern the origin of the funds used for the payment of the Four Unsolicited Turbines, notably documents that demonstrate that AEnergy used its own funds, including bank statements, accounting records, and any documents evidencing AEnergy's actual financial costs in relation to the Four Unsolicited Turbines, for the period of 2012–2021*."

680 Rejoinder, Section 1.1.

the adverse inference sought. In the case at issue, all these requirements are met.

707. The Claimant's failure to provide specific documents relating to the actual costs of the Four Unsolicited Turbines and any additional equipment—together with his refusal to produce the requested documents based on an unduly narrow interpretation of Request No. 5, and the evidence submitted by the Respondent—justifies drawing the adverse inference that such costs did not exist. Accordingly, on the valuation date selected by the Claimant, the value of the Four Unsolicited Turbines should be considered zero. Consequently, the Tribunal should draw the adverse inference that AEnergy did not suffer any damages in relation to the Four Unsolicited Turbines.

708. In sum, the trending method is not valid in this case because it is inherently speculative and contains significant weaknesses. Furthermore, the distributor margin is not a proper component of this approach, rather, it constitutes a separate and inadmissible claim for lost profits. Instead, the sunk cost method is the most appropriate approach here, utilizing a low-risk interest rate index instead of the Producer Price Index (PPI).

6.3.1.3 Even if the trending method is appropriate, it is applied incorrectly by the Claimant

709. The Claimant asserts that the trending method used by AlixPartners is based on accurate information, is well substantiated, and relies on reliable evidence.[681] According to AlixPartners, the trending method estimates a property's Replacement Cost New (RCN) by applying an index or trend factor to the property's historical costs, thereby converting known costs into an indicator of current costs.[682]

710. However, as will be demonstrated, AlixPartners' calculation contains several errors both in the determination of the historical cost and in the application of the trend factor.

711. *First*, as for the determination of the historical costs, AlixPartners assumes that the end-users would purchase new turbines from dealers or distributors similar to how the Four Unsolicited

681 Reply, pp. 105-109, §§ 458-479.

682 First Quantum Expert Report by AlixPartners, 11 September 2025, p. 17, § 58.

Turbines were distributed.[683]

712. Indeed, AlixPartners adds a hypothetical distributor profit margin of between 23.2% and 28.1% to the trended RCN of the Four Unsolicited Turbines, based on the median gross margin of a sample of unrelated power generation equipment distributors. AlixPartners does not point to a single instance in which AEnergy actually earned, or could be shown to have earned, such a margin on the resale of turbines to Angola.[684]

713. This omission is telling, because AlixPartners had every opportunity to substantiate the point: the Claimant alleges detailed negotiations between AEnergy and GE for the purchase of turbines, and equally detailed negotiations between AEnergy and PRODEL/ENDE for their resale. If any such margin had ever been earned or negotiated, the underlying contractual documentation would show it. It does not.[685]

714. By contrast, the contemporaneous transaction documents show that AEnergy's actual profit margin on the turbines sold to Angola under the On-Sale Contracts was approximately 4.539% — the margin implied by the price AEnergy invoiced to PRODEL for the single turbine under Contract 13, measured against AlixPartners' own USD 20,000,000 historical cost per turbine — a small fraction of the margin AlixPartners assumes. AlixPartners' unsupported profit margin therefore inflates the claimed damages by a substantial and unjustified amount.[686]

715. AlixPartners' profit margin is further inflated because it relies on the gross margin, rather than the operating margin, of its selected comparable companies. As the Second HKA Report demonstrates, gross margin captures only the cost of goods sold and excludes the selling, general and administrative costs that a distributor would necessarily incur in performing the very intermediary function AlixPartners assumes. Correcting for this omission, the average operating margin of AlixPartners' own comparable set is only approximately 5.4% — a figure far closer to the margin actually evidenced by AEnergy's own transaction documents than to the

683 First Quantum Expert Report by AlixPartners, 11 September 2025, p. 17, § 58.

684 **RER-04**, Second HKA Report, p. 61, § 136.

685 **RER-04**, Second HKA Report, pp. 61-62, § 137.

686 **RER-04**, Second HKA Report, p. 66, § 146.

23.2% to 28.1% margin AlixPartners applies.[687]

716. AlixPartners' comparable companies are, in any event, not a reliable basis for any margin, whether gross or operating. As the Second HKA Report shows, the selected companies differ materially from AEnergy in location, services, size, and financial performance, and their gross margins exhibit a coefficient of variation ranging from 32% to 45% across the years analyzed — a degree of dispersion that deprives the dataset of any meaningful comparability. AlixPartners compounds this flaw by relying on the median to mask the effect of outliers: removing a single outlier company from the 2018 sample, for example, reduces the median margin from 17.2% to 15.9%, a swing of 7.1 percentage points from the exclusion of just one data point. Where, as here, the underlying multiples are so widely dispersed, they provide no reliable guidance to value, and AlixPartners' reliance on this dataset cannot sustain its profit margin assumption.[688]

717. Moreover, AlixPartners claims USD 16,723,036 in "*Other Transportation and Logistics*" costs for the Four Unsolicited Turbines, based not on the underlying invoices from the service provider, but on a draft Excel spreadsheet and summary figures. Given the magnitude of the sum claimed, the actual invoices documenting these costs should have been produced, and were not.[689]

718. The unreliability of these figures is illustrated by their internal inconsistency. According to AlixPartners' own spreadsheet, shipping the turbines by sea across more than 11,000 nautical miles — from Houston, Texas and Koper, Slovenia to Luanda, Angola — cost approximately USD 1,567,795 in total. Yet AlixPartners simultaneously assumes that moving the same turbines a further 18.6 kilometers onshore, from the Port of Luanda to AEnergy's warehouse in Viana, cost USD 13,600,000 — more than eight times the cost of the entire transoceanic shipment. No explanation for this discrepancy is offered, and none is apparent.[690]

719. AlixPartners' Second Report does not cure this deficiency: rather than producing the missing invoices, it merely points back to the same unverified estimate and final summary figures already

687 **RER-04**, Second HKA Report, pp. 65-66, § 145.

688 **RER-04**, Second HKA Report, pp. 63-64, § 140.

689 **RER-04**, Second HKA Report, p. 54, § 124.

690 **RER-04**, Second HKA Report, p. 58, § 129.

criticized in the HKA First Report. Costs of this magnitude, unsupported by contemporaneous invoicing, cannot meet the evidentiary standard required to sustain a damages award.

720. Furthermore, AlixPartners further claims USD 4.2 million for "Additional Equipment," based solely on a draft, unexecuted purchase order between PRODEL and AEnergy dated 9 December 2019. A draft order that was never signed or performed provides no basis to conclude that this sale would ever have been executed, particularly given that the underlying contracts were terminated shortly thereafter.[691]

721. *Second*, as for the trending factor, AlixPartners' trending calculation is also unreliable because it does not use AEnergy's actual accounting records for the turbines, relying instead on U.S. and Hungarian PPI data on the unproven assumption that these are the turbines' primary places of manufacture. AlixPartners concedes that this approach does not assume the absence of a global supply chain, yet it makes no adjustment for components sourced from, or partially assembled in, other countries. The resulting PPI-adjusted RCN is accordingly unreliable.[692]

722. When the same PPI methodology is applied to AlixPartners' own comparable turbine listings, it produces a 2017 price below the price actually paid for the Four Unsolicited Turbines — a result that independently confirms the unreliability of AlixPartners' trending calculation. Moreover, by selectively changing the valuation date between its First and Second Reports, AlixPartners was able to convert what had been calculated as a 0.2% decrease in Hungarian PPI-adjusted cost into increases of 0.6%, 6.8%, and as high as 21.3% — depending solely on which of the newly-instructed valuation dates is selected — using nothing more than the choice of date to inflate the result.[693]

723. Furthermore, AlixPartners' alternative valuation as of 31 July 2025 suffers from the same defects as its 2022 valuation, compounded by a further 22.8% cost escalation that AlixPartners attributes to supply and demand imbalances in the turbine market. But AlixPartners disregards that other manufacturers, including Mitsubishi, Baker Hughes and Siemens, have entered the

691 **RER-04**, Second HKA Report, pp. 66-67, § 148.

692 **RER-04**, Second HKA Report, pp. 51-52, § 119.

693 **RER-04**, Second HKA Report, pp. 52-53, § 121.

market to relieve exactly this supply pressure, and that recent increases in turbine prices reflect efficiency gains in newer models rather than a like-for-like increase in the value of the specific, older-generation turbines at issue in this arbitration.[694]

724. For these cumulative reasons, reinforced by the additional information and analysis contained in the Second HKA Report, none of AlixPartners' valuations, whether as of the installation dates in 2022/2024 or as of July 2025, provides a reliable or reasonably certain basis on which the Tribunal could award damages.

6.3.2 The Claimant has failed to demonstrate that Angola's (inexistent) breaches of the BIT caused any loss of value to his shares

725. The Claimant bears the burden of proving both the fact and the amount of any loss in the value of his shares in AEnergy. Yet he has adduced no valuation evidence whatsoever on this alternative theory of damages. The Claimant did not commission, and does not rely upon, any valuation of AEnergy as a going concern using an income, market, or asset-based approach. Instead, the Claimant simply assumes, without any supporting analysis, that the loss of the Four Unsolicited Turbines translates dollar-for-dollar into an equivalent diminution in the value of his shares.

726. That assumption does not withstand scrutiny. On the Claimant's own case and supporting documents, AEnergy was left in a precarious financial position following the termination of the 13 Contracts, having resorted to third-party borrowing that it could not readily service. Where a company's liabilities already exceed, or closely approach, the value of its assets, the loss of a single asset first erodes the position of the company's creditors before it affects the residual value available to shareholders. The Claimant has not shown and even has not attempted to show, that AEnergy retained any positive equity value that his shareholding loss theory requires.

727. Nor has the Claimant provided any evidence that the market or book value of his shares in AEnergy in fact declined as a result of the events at issue, as opposed to the multiple other liabilities and disputes affecting AEnergy since 2019, including the termination of the 13

694 **RER-04,** Second HKA Report, pp. 69-70, § 153; p. 70, § 156.

Contracts, the preventive seizure, and the parallel LCIA and ICC proceedings against AEnergy. Absent a comparison between AEnergy's actual financial condition and a properly constructed counterfactual, the alternative claim for reflective loss in share value must fail for lack of proof.

728. During the document production phase, the Respondent requested documents to determine whether the Claimant had suffered any loss in the value of his shares and to enable quantification of such loss.[695] However, as previously noted, the Claimant failed to produce any documents that would permit this quantification.

729. As set out above,[696] for an adverse inference to be drawn, it is necessary that (i) there be an order to produce a specific document (or category), (ii) the party burdened with its production fails to produce such document, and (iii) the failure to produce be unaccompanied by a satisfactory explanation of the reasons why the document was not produced. It is also necessary that the requesting party satisfies additional criteria, namely that (i) it produced all available evidence corroborating the inference sought, (ii) the requested evidence must be accessible to the inference opponent, (iii) the inference sought must be reasonable, consistent with facts in the record, and logically related to the likely nature of the evidence withheld, (iv) the party seeking the adverse inference must produce *prima facie* evidence, and (v) the inference opponent must know, or have reason to know, of its obligation to produce evidence rebutting the adverse inference sought.

730. In the case at issue, all these requirements are met: the documents were properly requested, yet the Claimant failed to produce them, relying on an inadmissibly narrow interpretation of Request No. 5. This failure appears calculated to conceal the fact that the shares are, in reality, worthless. The Respondent has provided evidence to this effect, and the Claimant's obstruction justifies the drawing of a negative inference. Accordingly, the Claimant has suffered no loss in the value of his shareholding, as the shares were worthless at the relevant time.

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695 Procedural Order No. 3, Document Request No. 5, p. 54: "*documents which concern the origin of the funds used for the payment of the Four Unsolicited Turbines, notably documents that demonstrate that AEnergy used its own funds, including bank statements, accounting records, and any documents evidencing AEnergy's actual financial costs in relation to the Four Unsolicited Turbines, for the period of 2012–2021*."

696 Section 1.1.

731. Consequently, the Tribunal should draw the following adverse inference: the Claimant did not incur in any loss in the value of its shareholding.

6.3.3 The interest rate selected is not appropriate in the circumstances of this case

732. The Claimant, applying Article 7(3) of the BIT, considers that a commercial rate should be applied.[697] Furthermore, this commercial rate allows for two possible interpretations: either Angola's borrowing rate (Angola's one-year U.S. dollar-denominated government bond yield) or a reasonable commercial rate determined by international market standards (one-year term SOFR plus a 4% margin), both compounded annually.[698]

733. The Claimant submits that his selected interest rate is appropriate because it compensates the investor for the time value of money lost;[699] it reflects the commercial risk associated with lending to a counterparty in the circumstances of this case;[700] and SOFR plus 4% rate has been applied in multiple investor-state cases as a reasonable commercial rate.[701]

734. However, the Claimant did not substantiate his actual loss. Even after the Respondent requested relevant information during document production to assess the actual loss, the Claimant failed to provide such evidence. This omission appears to be a deliberate attempt to circumvent an assessment of whether the Claimant incurred any damage due to the delayed payment of compensation or whether the requested interest rate would result in overcompensation. Such conduct should not be permitted to prevail.

735. The Respondent will demonstrate that: (i) the sovereign debt rate of Angola is inapposite (**Section 6.3.3.1**); (ii) the Claimant did not incur any losses, the SOFR + 4% is an excessively high commercial rate, and the U.S. Treasury rate matched to the duration of the damage period would be a more appropriate interest rate if interest should be awarded (**Section 6.3.3.2**); and (iii) any interest awarded should be calculated on a simple, rather than a compounded, basis

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697 SoC, p. 50, §§ 230-231.

698 SoC, pp. 50-52, §§ 232-236; Reply, pp. 109-111, §§ 484-494.

699 Reply, p. 110, § 488.

700 Reply, pp. 110-111, § 490.

701 Reply, p. 111, § 492.

(**Section 6.3.3.3**).

6.3.3.1 The sovereign debt rate of Angola is inapposite

736. The Claimant asserts that the use of Angola's borrowing rate reflects the commercial rate at which Angola can borrow in U.S. dollars on the international market,[702] that this rate is determined using Bloomberg's valuation methodology,[703] and that it compensates the investor for the time value of money lost as a result of the Respondent's wrongful conduct.[704]

737. This is incorrect, for the following three reasons. First, the rate cited by AlixPartners does not reflect Angola's actual borrowing rate and should therefore be disregarded. Second, Angola's actual borrowing rate does not constitute a commercial rate. Finally, the sovereign debt approach does not compensate the Claimant for his losses, but instead aims to prevent alleged unjust enrichment of the host State, and is accordingly inapplicable in this case.

738. *First*, as noted by the Respondent in its Statement of Defense, and acknowledged by the Claimant in his Reply, the yield curve data used by AlixPartners from Bloomberg does not reflect actual bonds issued by Angola.[705] Instead, it represents an extrapolation of spreads, since "[t]*he one-year yield point used in AlixPartners's analysis therefore cannot be directly observed from traded instrument and is therefore derived through Bloomberg's valuation methodology.*"[706] Accordingly, the interest rate relied upon by AlixPartners does not represent Angola's actual borrowing rate and, as such, should be disregarded.

739. *Second*, Angola's borrowing rate requested by Claimant, based on the "*coerced loan theory,*" does not amount to a commercial rate, as recognized in case law. In *Khan Resources v. Mongolia*, the investor argued that, under Article 13 of the ECT, interest should be assessed at a

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702 Reply, p. 110, § 486.

703 Reply, p. 110, § 488.

704 Reply, p. 110, § 489.

705 SoD, p. 164, § 579.

706 Reply, p. 110, § 488.

commercial rate established on a market basis.[707] The investor contended that this rate should reflect the idea that the host State had effectively forced the investor to make an involuntary loan to them for the period prior to payment ("*coerced loan theory.*")[708] Based on this, the investor proposed an interest rate of 7.5 percent, calculated on the basis of host state's foreign debt.[709] In contrast, the host state submitted that a commercially reasonable rate should be no higher than LIBOR or LIBOR plus 1% or 2%.[710] The Arbitral Tribunal found that the rate proposed by the investor was too high and that using the host State's borrowing rate was not equivalent to a "*commercially reasonable rate.*"[711] Instead, the Tribunal awarded interest at LIBOR plus a small percentage (LIBOR plus 2 percent), in line with practice among ICSID tribunals and the prevailing scholarly view.[712]

740. As the foregoing case law demonstrates, the "*commercial rate*" required under Article 7(3) of the Angola-Portugal BIT[713] refers not to Angola's borrowing rate, but rather to an interest rate that ensures full reparation, which the "*coerced loan theory*" does not provide, as will be demonstrated below.

741. *Third*, the Respondent does not dispute that the interest rate should compensate the investor for the time value of money lost as a result of the Respondent's wrongful conduct. It is precisely for that reason, however, that Angola's borrowing rate is not the appropriate benchmark: as recognized in case law, that rate is not designed to compensate the investor's actual loss, but

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707 **RL-0158**, *Khan Resources Inc, Khan Resources B.V. and CAUC Holding Company LTD. V. The Government of Mongolia and Monatom CO. Ltd.*, PCA Case No. 2011-09, Award, dated 2 March 2015, p. 67, § 278.

708 **RL-0158**, *Khan Resources Inc, Khan Resources B.V. and CAUC Holding Company LTD. V. The Government of Mongolia and Monatom CO. Ltd*., PCA Case No. 2011-09, Award, dated 2 March 2015, p. 67, § 278.

709 **RL-0158**, *Khan Resources Inc, Khan Resources B.V. and CAUC Holding Company LTD. V. The Government of Mongolia and Monatom CO. Ltd.*, PCA Case No. 2011-09, Award, dated 2 March 2015, p. 67, § 277 and p. 68, § 282.

710 **RL-0158**, *Khan Resources Inc, Khan Resources B.V. and CAUC Holding Company LTD. V. The Government of Mongolia and Monatom CO. Ltd*., PCA Case No. 2011-09, Award, dated 2 March 2015, p. 67, § 280.

711 **RL-0158**, *Khan Resources Inc, Khan Resources B.V. and CAUC Holding Company LTD. V. The Government of Mongolia and Monatom CO. Ltd*., PCA Case No. 2011-09, Award, dated 2 March 2015, p. 100, § 425.

712 **RL-0158**, *Khan Resources Inc, Khan Resources B.V. and CAUC Holding Company LTD. V. The Government of Mongolia and Monatom CO. Ltd*., PCA Case No. 2011-09, Award, dated 2 March 2015, p. 100, §§ 425-426.

713 **RL-0010**, Consolidated version of the Angola-Portugal BIT, pp. 5-6, Article 7(3).

rather to prevent the unjust enrichment of the host State. Consequently, arbitral tribunals decline to apply it.

742. In *Vestey v. Venezuela*, the investor requested that interest be calculated at the rate applicable to Venezuela's U.S. dollar-denominated sovereign bonds, arguing that this rate reflects the host state's use of the compensation amount since the date of injury, effectively forcing the investor to lend funds without remuneration.[714] The host State argued that the investor is only entitled to the rate applicable to U.S. Treasury bonds, as it faces no lending or investment risk with respect to an investment it no longer owns.[715] Furthermore, the host state contended that higher interest rates fail to recognize that interest serves solely to compensate the investor for not having the use of its funds. The Venezuelan sovereign bond rate proposed by the investor reflects the long-term risk of sovereign default, a risk that the investor did not bear.[716]

743. The tribunal was unequivocal in its view that the purpose of reparation is to compensate the victim for actual losses, not to reward for risks that have not been borne, nor to address any potential enrichment of the host state.[717]

744. In *Tethyan Copper v. Pakistan*, both parties agreed that, under customary international law (specifically Article 38 of the ILC Articles), the interest rate serves a compensatory function.[718] However, the investor argued that interest should also serve to prevent unjust enrichment of the host state and to promote arbitral efficiency.[719] The arbitral tribunal disagreed, finding that it is not established that "*the interest rate is the proper means to address either of these*

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714 **RL-0159**, *Vestey Group Ltd v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award, dated 15 April 2016, pp. 84-85, § 429.

715 **RL-0159**, *Vestey Group Ltd v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award, dated 15 April 2016, pp. 85-86, § 433.

716 **RL-0159**, *Vestey Group Ltd v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award, dated 15 April 2016, pp. 85-86, § 433.

717 **RL-0159**, *Vestey Group Ltd v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/06/4, Award, dated 15 April 2016, pp. 86-87, § 440.

718 **RL-0160**, *Tethyan Copper Company PTY Limited v. Islamic Republic of Pakistan*, ICSIS Case No. ARB/12/1, Award, dated 12 July 2019, p. 478, § 1781.

719 **RL-0160**, *Tethyan Copper Company PTY Limited v. Islamic Republic of Pakistan*, ICSIS Case No. ARB/12/1, Award, dated 12 July 2019, p. 468, §§ 1744-1745.

considerations."[720] On the contrary, reparation is focused on making the investor whole and is not concerned with any potential enrichment of the host state.[721]

745. As summarize by Christina L. Beharry, "the focus of this approach is the respondent's assumed gains rather than the claimant's losses." [722] The author further explains that "equitable considerations such as 'unjust enrichment' do not fulfil the purpose of compensation because the respondent's borrowing costs are unrelated to the claimant's actual losses. (…) While there may be a role for equitable considerations in international arbitration, unjust enrichment should not feature significantly (if at all) in decisions about prejudgment interest."[723]

746. In sum, Angola's borrowing rate should not be applied for three reasons: (i) the rate cited by AlixPartners does not reflect Angola's actual borrowing rate; (ii) Angola's actual borrowing rate does not constitute a commercial rate; and (iii) the sovereign debt approach does not compensate the Claimant for his losses, but instead aims to prevent alleged unjust enrichment of the host state, which is immaterial.

6.3.3.2 The SOFR + 4% is an excessively high commercial rate, and the U.S. Treasury rate would be a more appropriate interest rate if interest should be awarded

747. The Claimant contends that: (i) the Secured Overnight Financing Rate ("SOFR") is proposed as the successor to one-year LIBOR and serves as a benchmark rate for pricing U.S. dollar-denominated variable rate loans;[724] (ii) the 4% premium reflects the commercial risk associated with lending to a counterparty in the circumstance of this case;[725] and (iii) SOFR + 4% has been

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720 **RL-0160**, *Tethyan Copper Company PTY Limited v. Islamic Republic of Pakistan*, ICSIS Case No. ARB/12/1, Award, dated 12 July 2019, p. 478, § 1782.

721 **RL-0160**, *Tethyan Copper Company PTY Limited v. Islamic Republic of Pakistan, ICSIS Case No. ARB/12/1*, Award, dated 12 July 2019, p. 478, § 1783; **RL-0161**, *Cairn Energy PLC, Cairn Uk Holding Limited v. The Republic of India*, PCA Case No. 2016-7, Award, dated 21 December 2020.

722 **RL-0162**, Christina L. Beharry, *Prejudgment Interest Rates in International Investment Arbitration*, in Journal of International Dispute Settlement, No. 8, 2017, p. 67.

723 **RL-0162**, Christina L. Beharry, *Prejudgment Interest Rates in International Investment Arbitration*, in Journal of International Dispute Settlement, No. 8, 2017, p. 67.

724 Reply, pp. 110-111, § 490.

725 Reply, p. 111, § 490.

applied in multiple investor-State cases as a reasonable commercial rate.[726]

748. It is undisputed that, under international customary law, the purpose of awarding interest is to make the investor whole by compensating him for the time value of money. However, as the Respondent will demonstrate below, the Claimant's proposes SOFR + 4% rate is arbitrary, unsubstantiated, and inconsistent with prevailing tribunal practice. As demonstrated by HKA, the U.S. Treasury rate matching the duration of the damage period would be the appropriate interest rate.

749. *First*, it is undisputed that the purpose of interest is to fully compensate the Claimant for its alleged harm by restoring it to the position it would have occupied had the breach not occurred.[727] It is also not disputed that the primary function of compensatory interest is to reimburse the investor for the delay in the payment of funds owed to it by the host state.[728]

750. Thus, the Claimant must demonstrate the specific harm suffered as a result of the delay in payment of the compensation. This ensures that the Claimant is fully compensated, while also preventing any overcompensation. The Claimant failed to demonstrate such damage and instead sought to apply a form of precedent to establish the interest rate.

751. Accordingly, during the document production phase, the Respondent requested accounting records and financial statements of AEnergy, as well as any documents reflecting Claimant/AEnergy's historical financial data showing actual finance costs incurred.[729] This request was material to establishing that the Claimant suffered no damages, that the claimed interest rate is unsupported by contemporaneous records, and that a SOFR + 4% rate could result in overcompensation.[730]

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726 Reply, p. 111, § 492.

727 **RL-0162**, Christina L. Beharry, *Prejudgment Interest Rates in International Investment Arbitration*, in Journal of International Dispute Settlement, No. 8, 2017, p. 63.

728 **RL-0162**, Christina L. Beharry, *Prejudgment Interest Rates in International Investment Arbitration*, in Journal of International Dispute Settlement, No. 8, 2017, p. 63.

729 PO3, p. 54 (p. 63 of the PDF), Request No. 5, (ii) and (v).

730 PO3, p. 55 (p. 64 of the pdf), Request No. 5, M.

752. However, as indicated in the Respondent's letter to the Arbitral Tribunal dated 27 May 2026, the Claimant failed to produce any documents that would allow for an assessment of actual damage or demonstrate that the claimed interest rate would not result in overcompensation.[731] Accordingly, the Arbitral Tribunal should dismiss the interest claim in its entirety.

753. Indeed, during the document production phase, the Respondent requested documents to determine the historical cost of the Four Unsolicited Turbines.[732] However, as previously noted, the Claimant failed to produce any documents that would permit this quantification.

754. As set out above,[733] for an adverse inference to be drawn, it is necessary that (i) there be an order to produce a specific document (or category), (ii) the party burdened with its production fails to produce such document, and (iii) the failure to produce be unaccompanied by a satisfactory explanation of the reasons why the document was not produced. It is also necessary that the requesting party satisfies additional criteria, namely that (i) it produced all available evidence corroborating the inference sought, (ii) the requested evidence must be accessible to the inference opponent, (iii) the inference sought must be reasonable, consistent with facts in the record, and logically related to the likely nature of the evidence withheld, (iv) the party seeking the adverse inference must produce *prima facie* evidence, and (v) the inference opponent must know, or have reason to know, of its obligation to produce evidence rebutting the adverse inference sought.

755. The Claimant's failure to produce documents regarding loan costs, investment returns, or any other information that would have allowed the Respondent to assess any alleged loss arising from the purported absence of funds constitutes a deliberate concealment of evidence. These documents would have demonstrated either that the Claimant suffered no actual damages, or that applying the requested interest rate would result in overcompensation.

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731 Respondent's letter dated 27.05.2026, pp. 8-9, § 36.

732 Procedural Order No. 3, Document Request No. 5, p. 54: "*documents which concern the origin of the funds used for the payment of the Four Unsolicited Turbines, notably documents that demonstrate that AEnergy used its own funds, including bank statements, accounting records, and any documents evidencing AEnergy's actual financial costs in relation to the Four Unsolicited Turbines, for the period of 2012–2021*."

733 Rejoinder, Section 1.1.

756. Consequently, the Tribunal should infer that the Claimant suffer no loss arising from the loss of use of funds.

757. *Second*, should the Arbitral Tribunal nonetheless consider ordering the Respondent to pay interest (*quod non*), the Claimant contends that SOFR should be used solely because it is the successor to LIBOR.[734] However, this alone does not demonstrate that it is the most appropriate rate to compensate the Claimant. The assertion is clearly unsubstantiated.

758. This criticism is also mentioned by Christina L. Beharry which note that:[735]

> *[S]ome decisions fails to consider critical issues such as the duration of the underlying reference rate or even the currency to which it refers. For example, LIBOR rates are calculated for five currencies (ie Swiss Franc, Euro, Pound Sterling, Japanese Yen and US dollar) and seven borrowing periods ranging from overnight to one year.*

759. It contains neither a credit premium nor a duration premium. Any margin layered on top of SOFR must therefore be independently and rigorously justified by reference to the specific circumstances of the case.[736] The Claimant has not done so.

760. Moreover, as indicated by HKA, rates such as SOFR + 4% are meant to account for not only the time value of money, but also the risk of the investment. This is important when the investment is a business which carries a certain level of risk. However, for an asset such as a turbine, the risk profile is lower as it is a fungible commodity.[737]

761. *Third*, the Claimant asserts that the 4% premium put forward by AlixPartners constitutes an alternative commercial rate, leaving it to the Tribunal to determine the most appropriate rate given the circumstances of this case.[738] However, the Claimant provides no explanation or

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734 Reply, pp. 110-111, § 490.

735 **RL-0162**, Christina L. Beharry, *Prejudgment Interest Rates in International Investment Arbitration*, in Journal of International Dispute Settlement, No. 8, 2017, p. 68.

736 **RER-04**, Second HKA Report, pp. 71-72, §§ 158-159.

737 **RER-04**, Second HKA Report, p. 72, § 160.

738 **Reply**, p. 111, § 493.

substantiation as to why a 4% premium would be warranted in these circumstances.[739] Consequently, the application of an interbank rate plus a premium should be rejected, as there is no substantiation that the circumstances of this case justify such a premium.

762. *Fourth*, if the Arbitral Tribunal were to award interest (*quod non*), it should apply the return on investment approach. As Christina L. Beharry explains, "*interest is meant to compensate for the claimant's opportunity costs (i.e., what the claimant would have done with the money if it had been paid on time)*."[740] In other words, a rational economic agent would have either paid down debts or reinvested the funds but for the delay in payment.[741]

763. The appropriate approach for determining the interest rate is to ensure that the investor is compensated at the rate that could have been earned in the market on a low-risk investment, such as treasury bills, certificates of deposit, or savings deposits.[742] This approach does not expose the investor to commercial risk, but rather to the risks of unexpected inflation, exchange rate fluctuations, and changes in prevailing market interest rates.[743]

764. There are three main reasons for applying a low-risk investment rate: (i) the investor faces lower risk, consistent with the limited upside potential of such instruments; (ii) these securities typically offer high liquidity, meaning their prices accurately reflect market value at any given time; and (iii) low-risk investments are generally accessible to investors irrespective of their individual creditworthiness.[744]

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739 **AP-071**, Credibility, Study of Damages Awards in Investor-State Cases, 2nd ed., January 2021, p. 60.

740 **RL-0162**, Christina L. Beharry, *Prejudgment Interest Rates in International Investment Arbitration*, in Journal of International Dispute Settlement, No. 8, 2017, pp. 69-70.

741 **RL-0162**, Christina L. Beharry, *Prejudgment Interest Rates in International Investment Arbitration*, in Journal of International Dispute Settlement, No. 8, 2017, p. 70.

742 **RL-0162**, Christina L. Beharry, *Prejudgment Interest Rates in International Investment Arbitration*, in Journal of International Dispute Settlement, No. 8, 2017, p. 73.

743 **RL-0162**, Christina L. Beharry, *Prejudgment Interest Rates in International Investment Arbitration*, in Journal of International Dispute Settlement, No. 8, 2017, p. 73.

744 **RL-0162**, Christina L. Beharry, *Prejudgment Interest Rates in International Investment Arbitration*, in Journal of International Dispute Settlement, No. 8, 2017, p. 73.

765. As Christina L. Beharry aptly notes:[745]

> *By using this rate, investors are only compensated for the time value of money, the loss of purchasing power and certain macroeconomic risks. There is no commercial or market risk premium included in this rate because the inclusion of such a premium would compensate the claimant for an unproven outcome.*

766. This approach is often used by the arbitral tribunals. In the case *Siemens v. Argentina*, the investor requested an award of compound interest at an annual rate of 6%, arguing that this reflected the average corporate borrowing rate used for appraising investments and assessing funding costs during 2001–2003. The investor also contended that this rate was consistent with arbitral practice.[746] The arbitral tribunal considered, based on the principle of full reparation that "*the rate of interest to be taken into account is not the rate associated with corporate borrowing but the interest rate the amount of compensation would have earned had it been paid after the expropriation.*"[747] Because the award was in dollars it considered the average rate of interest applicable to US six-month certificates of deposit as an appropriate rate of interest.[748]

767. In *Yukos v. Russia*, the investor requested interest at LIBOR plus 4 percent, compounded annually, to be applied both pre- and post-award. The investor also noted that the host State's cost of debt is a natural candidate for determining the appropriate interest rate.[749] Conversely, the host State contended that the investor failed to provide justification for the proposed LIBOR plus four percent rate and argued that awarding this rate, compounded annually, would "unduly punish" the host State and result in a windfall for the investor.[750] The arbitral tribunal, applying

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745 **RL-0162**, Christina L. Beharry, *Prejudgment Interest Rates in International Investment Arbitration*, in Journal of International Dispute Settlement, No. 8, 2017, p. 73.

746 **CLA-90**, *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/08, Award, dated 17 January 2007, p. 124, § 390.

747 **CLA-90**, *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/08, Award, dated 17 January 2007, p. 126, § 396.

748 **CLA-90**, *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/08, Award, dated 17 January 2007, p. 126, § 396.

749 **RL-0120**, *Yukos v. Russian*, UNCITRAL PCA Cases No. AA 226, 227, 228, Award, dated 18 July 2014, p. 512, §§ 1644 and 1646.

750 **RL-0120**, *Yukos v. Russian*, UNCITRAL PCA Cases No. AA 226, 227, 228, Award, dated 18 July 2014, p. 512, §§ 1644 and 1646.

Article 13(1) of the ECT, which requires a commercial rate determined on a market basis, noted that many investor-state tribunals have adopted the investment alternative approach, using rates based on U.S. debt instruments even where the claimant was not a U.S. investor.[751] Accordingly, the tribunal concluded it would be appropriate to award the claimants interest at a rate based on ten-year U.S. Treasury bonds.[752]

768. As demonstrated by HKA, a U.S. Treasury bond with a maturity that matches the duration of the damage period is the most appropriate, transparent, and objective benchmark. It directly reflects the time value of money over the relevant period without the need for an arbitrary credit premium that the Claimant has failed to justify.[753]

769. For that reason, HKA concluded for a US 5-year Treasury rates would be the appropriate award interest rate because it match "*(1) the lower risk profit of the turbines; (2) the duration of the alleged damages; and (3) the currency, i.e. US dollars, in my opinion, the US 5-year Treasury rates would be the appropriate award interest rate.*"[754]

6.3.3.3 Any interest awarded should be calculated on a simple, rather than a compounded, basis

770. The Claimant argued in the Statement of Claim that the interest should be calculated on a compound basis rather than simple interest, as this better reflects commercial reality and

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751 **RL-0120**, *Yukos v. Russian*, UNCITRAL PCA Cases No. AA 226, 227, 228, Award, dated 18 July 2014, p. 519, § 1677; p. 520, § 1684.

752 **RL-0120**, *Yukos v. Russian*, UNCITRAL PCA Cases No. AA 226, 227, 228, Award, dated 18 July 2014, p. 521, § 1685.

753 **RER-04**, Second HKA Report, pp. 72-73, § 160. See also **RL-0162**, Christina L. Beharry, *Prejudgment Interest Rates in International Investment Arbitration*, in Journal of International Dispute Settlement, No. 8, 2017, p. 76: "*The risk-free rate, proxied by the yield of a security such as US Treasury bonds, is appropriate in most cases because it: (i) leads to consistent, fair and predictable outcomes; (ii) is a straightforward method which does not involve subjective judgments about risk; (iii) avoids speculation by predicting the claimant's likely return on alternative investment; and (iv) allows for flexibility by taking into account shifts in the market.*"

754 **RER-04**, Second HKA Report, p. 72, § 160. See also **RL-0162**, Christina L. Beharry, *Prejudgment Interest Rates in International Investment Arbitration*, in Journal of International Dispute Settlement, No. 8, 2017, p. 76: "*The risk-free rate, proxied by the yield of a security such as US Treasury bonds, is appropriate in most cases because it: (i) leads to consistent, fair and predictable outcomes; (ii) is a straightforward method which does not involve subjective judgments about risk; (iii) avoids speculation by predicting the claimant's likely return on alternative investment; and (iv) allows for flexibility by taking into account shifts in the market.*"

ensures full reparation without any substantiation.[755] In his Reply, the Claimant again did not substantiate why in the circumstances of the case a compound interest ensure full reparation.

771. As previously noted, in Request No. 5 of the Document Production phase, the Respondent sought disclosure of documents relevant to assessing whether the Claimant's request for compound interest would result in full reparation or overcompensation.[756] However, the Claimant did not comply with the Arbitral Tribunal's order and failed to provide any financial information or other documentation to substantiate the alleged damages arising from the delayed payment of compensation.[757]

772. The parties do not dispute that under Article 38 of the ILC framework interest is payable only "*when necessary in order to ensure full reparation,*" and leaves the "*rate and mode of calculation*" to what is necessary to achieve that result. The prevision does not prescribe compound interest, it is a case-by-case determination.

773. In the case *MOL v. Croatia*, the investor requested pre-award interest at LIBOR plus 4%, compounded annually. The arbitral tribunal noted that the rationale for this rate was not immediately clear, as it was justified solely on the basis that it represented a commercial rate. Moreover, the experts acknowledged during cross-examination that they had included this rate in their calculations at the instruction of the investor.[758] The tribunal held that there is "*no settled international rule*" on whether interest should be simple or compound, and that while practice is divided, compound interest must be justified as necessary to meet full reparation.[759] The tribunal further emphasized that the burden of proof lies on the party claiming compound interest, and concluded that it "*does not see itself justified in awarding compound interest for a*

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755 SoC, p. 50, § 229.

756 PO3, p. 54 (p. 63 of the PDF), Request No. 5, (ii) and (v) and p. 55 (p. 64 of the PDF), M.

757 Respondent's letter dated 27.05.2026, pp. 8-9, §36.

758 **RL-0163**, *MOL Hungarian Oil and Gas Company PLC v. Republic of Croatia*, ICSID Case No. ARB/13/32, dated 5 July 2022, p. 208, § 691.

759 **RL-0163**, *MOL Hungarian Oil and Gas Company PLC v. Republic of Croatia*, ICSID Case No. ARB/13/32, dated 5 July 2022, pp. 209-210, § 694(2).

discrete and limited financial loss."[760]

774. In sum, the Claimant has failed to demonstrate why an award of compound interest is necessary to fully compensate for the time value of money in respect of the compensation withheld.

7 The Respondent's requests for relief

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

a. **DRAW** the following **ADVERSE INFERENCES:**

i. The Claimant was aware that the contracts entered into by AEnergy and Angola would need to encompass at least 12 turbines in order for GE to finance the entire deal;

ii. AEnergy did not use its own funds to purchase the Four Unsolicited Turbines;

iii. AEnergy did not suffer any damages in relation to the Four Unsolicited Turbines;

iv. The Claimant did not incur any loss in the value of his shareholding;

v. The Claimant did not incur any loss arising from the loss of use of funds.

b. **DISMISS** all of Claimant's claims for lack of jurisdiction and lack of admissibility;

c. **DISMISS** all of Claimant's claims for lack of merit;

d. **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

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

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760 **RL-0163**, *MOL Hungarian Oil and Gas Company PLC v. Republic of Croatia*, ICSID Case No. ARB/13/32, dated 5 July 2022, pp. 209-210, § 694(2).

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