INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID CASE No. ARB/24/8

RICARDO FILOMENO DUARTE VENTURA LEITÃO MACHADO

(Portugal)

Claimant

and

REPUBLIC OF ANGOLA

Respondent

Respondent's Statement of Defense

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

27 November 2025

VIEIRA DE ALMEIDA cfa advogados haag LAW FIRM

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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	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 the Respondent's Request under Rule 41 retain their original designations and were not reannounced in the text of the present Statement of Defense.

FOUR UNSOLICITED TURBINES	Four turbines with the serial number #7266027, #7267025, #7267575; and #7267577 acquired with the Respondent's funds, without its consent or knowledge
ENDE	*Empresa Nacional de Distribuição de Eletricidade*
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*
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
SOD	Statement of Defense
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. The Claimant's case is fundamentally flawed—factually, legally, and ethically. He comes before this Tribunal with unclean hands and has failed to establish that the Tribunal has jurisdiction, that his claims have substantive merit, or that he has suffered any compensable loss. By any objective standard, his case is defective.

2. It is particularly egregious that the Claimant seeks to invoke investment protections despite (i) failing to satisfy even the most basic requirements of international investment law, and (ii) his manifest bad faith throughout this dispute—which dates to, *at least*, 2019. The record demonstrates that he did not make a qualifying investment in Angola. Moreover, contrary to his assertions, the events that gave rise to this dispute occurred well before the BIT entered into force. The Claimant has attempted to manipulate the facts, but the evidence is unequivocal.

3. Crucially, the Respondent has obtained substantial evidence demonstrating that Mr. Machado's actively participated in a fraudulent scheme to secure the inclusion of the Four Unsolicited Turbines in the Facility Agreement. These same Four Unsolicited Turbines that form the basis for this arbitration.

4. AEnergy, a company wholly owned by Mr. Machado, acted as an intermediary between GE and the Republic of Angola, facilitating the sale of equipment and the provision of related services to the Respondent. This structure was implemented through several instruments: (i) various agreements between AEnergy and GE, including a Framework Agreement, Supply Contracts, an Escrow Agreement and Side Letters; (ii) 13 Contracts between AEnergy and MINEA for the purchase of equipment and related services; and (iii) a Facility Agreement between the Respondent and GE Capital, under which the latter financed the 13 Contracts.

5. In essence, the transaction was structured so that GE would sell and finance equipment and services to the Respondent, with AEnergy acting as the contractual intermediary between GE and the Respondent.

6. Evidence now available to the Respondent demonstrates that AEnergy undertook vis-à-vis GE to secure the sale to Angola of at least 12 turbines, and to use best efforts to secure the sale of additional two turbines, for a total of 14. This 12-turbine commitment was a condition precedent

to disbursement of funds under the Facility Agreement.

7. At this point, matters became complicated for the Claimant. Despite AEnergy's obligation to sell at least 12 turbines to the Respondent, AEnergy only secured the purchase of eight turbines under the 13 Contracts with MINEA. This created a significant shortfall between AEnergy's commitments to GE and the contracts actually concluded with the Respondent.

8. This shortfall placed the Claimant in a precarious position, exposing him to potential breach of his commitments to GE and making disbursement under the Facility Agreement impossible. To bridge this gap, Mr. Machado and Mr. da Costa, then CEO of GE Power Angola, orchestrated a scheme: Mr. da Costa forged letters purporting to be from Angolan public authorities. These Forged Letters unlawfully enabled the inclusion of the Four Unsolicited Turbines in the Facility Agreement, thereby triggering disbursements by GE Capital and corresponding payments by Angola.

9. Further, Mr. Machado promised Mr. da Costa USD 10 million in exchange for forging documents and providing other illicit assistance to facilitate the commercial relationship between GE and AEnergy.

10. Mr. da Costa was arrested and later convicted in the United States for this criminal offense. Judgments from the U.S. criminal proceedings, together with the findings of an LCIA tribunal in the AEnergy v. GE arbitration, establish Mr. Machado's active involvement in this fraudulent scheme. The U.S. court found that Mr. Machado paid Mr. da Costa at least USD 5 million in kickbacks for his role.

11. The red flags of fraud perpetrated by the Claimant in relation to the Four Unsolicited Turbines are overwhelming. This scheme epitomizes the Claimant's bad faith, rendering his claims inadmissible and devoid of merit. As a result, the Tribunal should decline jurisdiction, and the Claimant's requests must be rejected.

12. The Respondent's discovery of the Four Unsolicited Turbines' inclusion in the Facility Agreement was met with shock. At a meeting on 7 December 2018, attended by senior MINEA officials, Mr. Machado, and his accomplice, Mr. da Costa unexpectedly disclosed that the Turbines had already been included in the Facility Agreement and thus were paid for by Angola and owned by

the State. Mr. Machado confirmed this in an e-mail sent the same day. That revelation shattered MINEA's confidence in AEnergy.

13. Upon discovering these facts, before their full extent was even known, the Respondent promptly acted to protect its rights. It lawfully terminated the 13 Contracts with AEnergy; a decision that was upheld by the Angola's administrative courts. The Respondent then initiated a preventive seizure to safeguard the Four Unsolicited Turbines and, in the subsequent civil proceedings, petitioned the Provincial Court of Luanda to recognize the State's rights in the Turbines.

14. The record shows that the Turbines remain under judicial custody and are administered by IGAPE, which has diligently ensured their safekeeping and preservation. In May 2020, based on technical and legal assessments, IGAPE authorized their delivery to PRODEL—the State's electricity-generation company—, for supervised operation. The decision was taken in faithful discharge of IGAPE's custodial duties and include arrangements for appropriate maintenance by specialized engineers. Concurrently, the decision served the public interest of expanding the electricity supply, which was one of the reasons behind MINEA's request to operate the Turbines. Following delivery, PRODEL proceeded to deploy the Turbines, which remain in operation under ongoing oversight.

15. The Respondent is maintaining the Turbines in a condition that will allow them to be either returned to AEnergy or retained by the State, depending on what the Angolan courts ultimately decide. The Four Unsolicited Turbines, which correspond to the GE TM 2500 model, are specifically designed for rapid deployment and relocation, which makes their installation fully reversible.

16. None of the Respondent's actions are unlawful or constitute a breach of the Angola-Portugal BIT. On the contrary, they comply with all applicable rules of Angolan and international law and were undertaken with due care, in light of the seriousness of the facts giving rise to the dispute and the value of the assets at stake.

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17. Upon establishing the relevant facts, as demonstrated by the available evidence (**Section 2.**), the Respondent will turn to its legal submissions and its position on quantum.

18. *First*, the Respondent submits that the Tribunal lacks jurisdiction to hear the dispute and that the dispute is alternatively inadmissible. There is no jurisdiction *ratione materiae* because the acquisition of the Four Unsolicited Turbines (i) does not have the characteristics of an investment and (ii) the investment was procured through fraud. Moreover, the Claimant manipulates the chronology of the alleged expropriation to evade the BIT's non-retroactivity, which constitutes an inadmissible abuse of rights and process. This does not change the reality that the facts giving rise to the dispute predate 22 December 2021, the date the Amended Angola-Portugal BIT entered into force. Therefore, the Tribunal lacks jurisdiction *ratione temporis*. Finally, and in the alternative, the Tribunal lacks *ratione voluntatis* jurisdiction, as the Notice of Dispute was sent before the occurrence of several facts on which the Claimant now relies, and consent cannot be retroactively extended to cover them (**Section 3.**).

19. *Second*, Mr. Machado, in his capacity as a shareholder of AEnergy, advances direct claims under the FET and FPS standards. He lacks standing to bring such direct claims because the Angola-Portugal BIT contains no provision granting shareholders a right to bring direct FET/FPS claims in these circumstances. Those claims must be dismissed (**Section 4.**).

20. *Third*, on the merits, the Claimant's case also fails. There was no expropriation: the Turbine's installation and deployment do not amount to a taking or deprivation, and neither IGAPE nor the Provincial Court of Luanda abdicated their judicial custodial responsibilities. Importantly, the installation is fully reversible and lacks any element of permanence. Should the Angolan courts ultimately determine that the Four Unsolicited Turbines belong to AEnergy, they can and will be returned. For the same reasons, the alleged facts fall well short of the thresholds of any breach of FET and FPS (**Section 5.**).

21. Finally, the Claimant is not entitled to any damages. The Claimant has suffered no compensable loss. The proper counterfactual scenario is that the Turbines would remain under seizure in the Camama warehouse and not in the Claimant's possession in any event. Moreover, even if compensation were theoretically available (it is not), the Claimant's own fault, fraud and bad faith warrant reducing any award to zero. In any event, the alleged losses are neither properly quantified nor substantiated (**Section 6.**).

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22. Taken as a whole, the Claimant has deliberately withheld or distorted key facts. There is an almost complete absence of contemporaneous documentary evidence, and no witness evidence has been provided to fill these gaps. Furthermore, the pleading is replete with unsupported assertions regarding Angolan law, yet it entirely lacks any expert evidence from a qualified Angolan legal specialist. The absence of any witness statement from the Claimant is particularly telling. It appears to be a calculated attempt to shield material assertions from the Tribunal's scrutiny and avoid the rigors of cross-examination.

23. Forgery, fraud, manipulation, harassment, bad faith, and abuse of process are all hallmarks of the Claimant's case. An ICSID tribunal cannot—and should not—grant investment-treaty protection to such a tainted claim.

2. The actual facts render the Claimant's narrative untenable

24. The Claimant puts forward a series of factual assertions in its Statement of Claim that do not correspond with the real circumstances of this case. A thorough review of the facts enables the Respondent to clarify what truly happened.

25. *First*, the Claimant asserts that it purchased eight turbines to fulfill 13 Contracts with Angola and acquired six additional turbines to address any potential future needs. *Second*, the Claimant alleges that Mr. Wilson da Costa, then CEO of GE Power Angola, submitted forged documents to GE Capital in 2017 to secure financing for Four Unsolicited Turbines, and was subsequently convicted in the United States of fraud and identity theft. This allegation omits important facts (which was that the Claimant was involved in the forgery). *Third* and importantly, the Claimant contends that, despite having no involvement in any forgery, Angola unlawfully terminated the 13 Contracts in 2019.[2]

26. As mentioned above, recent investigations shows that the Claimant was involved in the forgery.

27. Contrary to his own transgressions, the Claimant seeks to portray himself as the victim of actions supposedly perpetrated by the Republic of Angola in 2022. He alleges that, in that year, the

[2] SoC, pp. 2—5, §§ 9—23.

Respondent removed the Four Unsolicited Turbines from judicial custody, installed them in Angolan state-owned power plants, and connected them to the national grid—all with the involvement or acquiescence of IGAPE and the Provincial Court of Luanda.

28. The Respondent will demonstrate that these assertions are inaccurate and/or omit important facts. The documentary record shows that AEnergy initially signed a Framework Agreement with GE to sell 15 turbines to Angola without first obtaining the necessary State confirmation. Pursuant to the Framework Agreement, AEnergy signed four supply contracts that committed it to purchasing 14 turbines from GE. However, AEnergy subsequently executed 13 Contracts with Angola to supply only eight turbines. This mismatch between the number of turbines purchased from GE and those sold to Angola was further complicated when GE set a funding condition requiring that the agreements include 12 turbines as a condition precedent, with an additional two turbines on a best-efforts basis. As a result, a discrepancy arose. In an attempt to extract payments from the Respondent for the Four Unsolicited Turbines, Mr. Wilson da Costa and Mr. Machado addressed the discrepancy by forging and submitting the Forged Letters ("**Forged Letters**") (**Section 2.1.**).

29. For its part, the Respondent has acted lawfully at all times, starting in 2018 when it became aware of the Forged Letters and unauthorized use of Angola's funds. The Respondent initiated legal proceedings to confirm its ownership of the Four Unsolicited Turbines and took steps to prevent their deterioration or sale. Maintenance and use of the Turbines by PRODEL was authorized by IGAPE, while ensuring that the Trustee retained custody of the seized turbines and would be able to return them to the rightful owner upon a final decision by the Provincial Court of Luanda (**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

30. The Claimant maintains that it purchased eight turbines to fulfill the 13 Contracts, and acquired six additional turbines to address Angola's potential future needs.[3] Mr. Machado further alleges that Mr. Wilson da Costa, then CEO of GE Power Angola, (i) submitted forged documentation to

[3] SoC, p. 4, §§ 18—19.

GE Capital to authorize the financing of the Four Unsolicited Turbines, and (ii) was subsequently convicted in the United States on charges of fraud and identity theft.[4] Additionally, the Claimant asserts that, although he was not involved in or responsible for any alleged falsification, Angola nevertheless unlawfully terminated the 13 Contracts.[5]

31. In reality, AEnergy first signed a Framework Agreement for the sale of 15 turbines, and under the umbrella of this agreement entered into four supply contracts with GE to purchase 14 turbines. However, AEnergy entered into 13 Contracts with Angola, which covered the supply of just eight turbines, creating a gap (**Section 2.1.1**.). The situation became even more critical when GE established that the disbursement would be contingent upon including 12 turbines as a condition precedent and two additional turbines on a best-efforts basis. This put AEnergy in a dire position, which led Mr. Machado and his associates to forge letters to facilitate payment for the turbines under the Facility Agreement (**Section 2.1.2.**).

32. In light of the unauthorized use of funds under the Facility Agreement, the Respondent terminated the 13 Contracts by Presidential Order—a decision that was subsequently upheld as lawful by the Angolan administrative courts. Despite this serious breach, Angola nevertheless sought to amicably resolve the dispute (**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

33. The Claimant alleges that it had purchased eight turbines for the fulfillment of the 13 Contracts with Angola, and acquired six additional turbines to address any potential future needs Angola might have.[6]

34. The reality, however, is that, *first*, AEnergy initially committed to purchasing 15 TM2500 turbines from GE, and to selling them to Angola.[7] Under the umbrella of the Framework Agreement, it

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4 SoC, p. 5, § 22.

5 SoC, pp. 4—5, § 21.

6 SoC, p. 4, §§ 19—20.

7 **C-0038**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, p. 4.

signed four supply agreements to buy 14 TM2500.[8] AEnergy made such commitments prior to Angola's knowledge or consent. *Second*, AEnergy did not have sufficient funds to pay for these turbines. It could only pay for them once Angola's funds under the Facility Agreement were disbursed.[9] As the Respondent will explain, this contractual structure placed the Claimant in a position where it urgently needed to secure Angola's agreement to buy more than the original eight turbines under the 13 Contracts.

35. *First*, on 30 June 2016, AEnergy signed a Framework Agreement with GE ("**Framework Agreement**"), forming an exclusive commercial relationship.[10] According to Articles III(A) and (D) of the Framework Agreement, GE could only sell the TM2500 turbines for use within Angola to AEnergy and, on the other hand, AEnergy could only purchase these types of turbines from GE.[11]

36. The central idea of this relationship was that AEnergy would serve as an intermediary between GE and the Angolan market. In this sense, AEnergy agreed with GE that it would execute several contracts with Angola regarding major Energy and Water Sector Projects of the State ("**Energy and Water Sector Projects**"). Under these contracts, AEnergy would sell Angola various GE equipment, primarily the TM2500 turbines, which were crucial to the implementation of said projects. These assets would first be purchased from GE by AEnergy and then sold to Angola.[12] What is more, AEnergy claims that only had to pay GE for these purchases once Angola complied with its own payment obligations.[13]

37. As such, under Article III(A)(1) of the Framework Agreement, AEnergy was contractually obliged

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8 **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.

9 **C-0038**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, p. 4.

10 **C-0038**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, p.2.

11 **C-0038**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, p. 4.

12 **C-0038**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, p. 5, Article III(F) and (G).

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

to purchase 15 TM2500 gas turbines and other equipment from GE.[14] Ultimately, under the four Supply Contracts signed between the parties, AEnergy purchased no more than 14 turbines from GE.[15]

38. As stated above, and contrary to the Claimant's submissions,[16] all turbines purchased by AEnergy (*i.e.* 14 TM2500 units) had to be sold to the Republic of Angola.[17] This obligation to allocate the purchased turbines to contracts between AEnergy and the Respondent arises from Articles III(F) and (G) of the Framework Agreement, entitled "*Exclusive Purchase By Seller*", where it is provided that the Buyer *"shall not lease, rent, sell or otherwise transfer any Equipment to a third party otherwise than for Projects in Angola listed in EXHIBIT 1*" and that "[a]*ll equipment purchased by the BUYER under this Framework Agreement shall be supplied for the Projects identified in EXHIBIT 1* (…)."[18] The mentioned EXHIBIT 1, annexed to the Framework Agreement, laid out a series of projects between AEnergy and Angola.[19]

39. Contrary to the Claimant's assertions, the facts show that the additional turbines were not purchased with the goal of "*ensuring AEnergy's readiness to meet future supply opportunities arising from Angola´s long-term energy development plans.*"[20] In fact, AEnergy purchased those additional turbines because it was contractually obligated to do so under Article III(A)(1) of the

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14 **C-0038**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, p. 4, Article III(A).

15 **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.

16 SoC, p. 4, § 18, "*While Aenergy was not contractually obligated to sell any specific quantity of GE products, the combination of exclusivity rights and restrictions on dealing with competitors ensured that Aenergy had a strong commercial incentive to develop the Angolan market for GE technology*."

17 **C-0038**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, p. 4.

18 **C-0038**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, p.6.

19 **C-0038**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, pp. 12—13, §§ 1, 2 and 16.

20 SoC, p. 4, § 20.

Framework Agreement.[21]

40. Therefore, the Claimant's statement that "*AEnergy was not contractually obligated to sell any specific quantity of GE products*"[22] is false. AEnergy purchased 14 Turbines from GE and, under the Framework Agreement, was required to sell them to Angola for use in the project specified in EXHIBIT 1.[23] Thus, from the terms of the Framework Agreement and the Supply Contracts subsequently celebrated under it, it is evident that the Claimant committed to selling 14 turbines. As a result, AEnergy purchased them for use in projects prior to obtaining Angola's confirmation that it would purchase all these turbines.

41. On 5 July 2017, Presidential Order No. 161/17 authorized the signing of a Facility Agreement between the Republic of Angola and GE Capital for USD 1,100,000,000.00.[24] The purpose of this agreement was to fund the Energy and Water Sector Projects approved by the Angolan Government.[25] It was not until two weeks later, on 17 July 2017, that AEnergy signed the first contract with MINEA for the purchase of turbines and other equipment.[26]

42. In the end, 13 Contracts were executed between AEnergy and MINEA. However, contrary to the Claimant's expectations and contractual obligations before GE, MINEA only agreed to purchase eight TM2500 turbines.

43. Based on this discrepancy between the Supply Contracts and the 13 Contracts, GE established that the disbursement would be subject to a condition precedent requiring their scope to include 12 turbines, with a best-efforts obligation to purchase two additional turbines (TM13 and

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21 **C-0038**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, p. 4.

22 SoC, p. 4, § 18.

23 **C-0038**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, p. 4.

24 **C-0006**, Presidential Order No. 161/17 authorizing funding of USD 1,100,000,000 for the 13 Contracts between Aenergy and Angola (with informal translation into English), dated 5 July 2017.

25 **C-0006**, Presidential Order No. 161/17 authorizing funding of USD 1,100,000,000 for the 13 Contracts between Aenergy and Angola (with informal translation into English), dated 5 July 2017.

26 **R-0041**, Contract No. 07.ENDE-PIP.2017.

TM14). Angola was not aware of these conditions, although Mr. Machado was.[27]

44. Thus, having already committed to purchasing 14 turbines—and with GE's funding conditioned on the sale of 12 turbines, plus a best-efforts obligation for two more—AEnergy was left with a surplus of six turbines that were neither sold nor eligible to be included under the Facility Agreement.[28]

45. *Second*, AEnergy did not have available funds to comply with all its obligations towards GE, namely the obligation to pay for the Four Unsolicited Turbines. Therefore, it was crucial for the Claimant to ensure that the funds of the Facility Agreement were disbursed.

46. All the payment obligations arising from the Energy and Water Sector Projects were supposed to flow in a clear sequence, as depicted in the figure bellow representing a theoretical structure of turbine cash flow.[29] Pursuant to the Facility Agreement, Angola was to make direct payments to AEnergy for the turbines, using funds disbursed by GE Capital. Only upon receipt of these funds was AEnergy required to fulfill its own payment obligations to GE under the Supply Contracts.[30]

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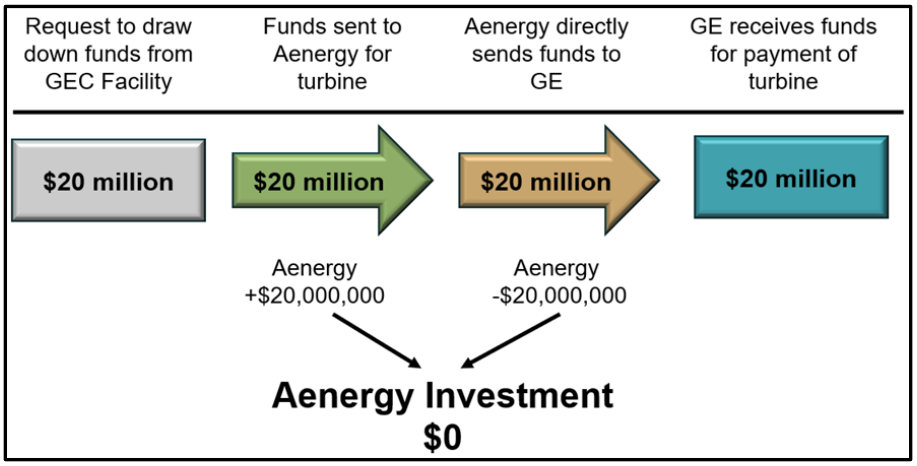
27 **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, pp. 15—18; **R-0042**, AEnergy's Amended Statement of Case in the LCIA arbitration, dated 28 October 2020, p. 20, § 46, aa.

28 **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.

29 **R-0001**, Facility Agreement (Extract), dated 21 August 2017, Clause 3.1 (citing to Schedule 6) and Clause 6.2(a)(iii); **R-0003**, Utilization Request, dated 24 December 2017, Clause 2; **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 21, § 48.

30 **R-0001**, Facility Agreement (Extract), dated 21 August 2017, Clause 3.1. See also **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 21, Figure 3.5, theoretical structure of turbine cash flow.



47. However, this flow of funds was not observed in practice. In reality, the funds disbursed under the Facility Agreement did not pass through AEnergy before being paid to GE. Instead, GE and AEnergy allocated the payments between themselves directly.[31] Namely, the acquisition of the Four Unsolicited Turbines bypassed AEnergy entirely, with payments made directly from Angola's funds under the Facility Agreement to GE.[32]

48. All in all, the Four Unsolicited Turbines were directly paid to GE with Angola's funds under the Facility Agreement. Thus, it is not true that they were purchased with AEnergy's own resources.[33] In fact, the contractual structure created by the parties ensured that AEnergy was not required to make upfront payments for these turbines. The Claimant itself recognized this structure in previous proceedings when it stated that "*the Supply Contracts would be paid off […] only once Angola drew on the $1.1 billion facility.*"[34]

49. What is more, these Supply Contracts were even amended "*to facilitate the overall transactions among AE, GE and Angola […] to align the payment terms in these contracts to those in the AE-*

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

32 **R-0037**, Statement of Case in the LCIA between AEnergy and GE, dated 28 October 2020, pp. 14—18, §§ 45-46.

33 SoC, pp. 5—6, § 26.

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

Angolan Contracts, in terms of both amounts and due dates."[35]

50. In light of this, AEnergy contractually agreed with GE to sell the Four Unsolicited Turbines to Angola without requiring upfront payment. However, AEnergy was obliged to include the turbines in the Facility Agreement because GE had established as a condition precedent for disbursement that the scope of the 13 Contracts include 12 turbines. As a result, AEnergy could only be paid—and could only pay for the turbines supplied and services rendered—if the 12 turbines were included in the scope of the 13 Contracts.[36]

51. Considering all the facts, it is easy to understand why the Claimant needed Angola to purchase (and, pay for) more than the eight Turbines agreed under the 13 Contracts. Given the deep interconnection between the two commercial relationships, without Angola's agreement to purchase the additional turbines, AEnergy would not have received payment for the services and goods it had already provided under the 13 Contracts, nor for those it was still obliged to supply.

52. This interconnection between the Framework Agreement, the Supply Agreements, the 13 Contracts and the Facility Agreement was also at the origin of two arbitrations involving AEnergy and GE. The latter terminated the Framework Agreement in May 2019 for, among other things, AEnergy's failure to act as GE's intermediary in Angola, a fundamental breach of the Framework Agreement.[37]

53. Following this termination, AEnergy initiated an arbitration administered by the London Court of International Arbitration ("**LCIA**") against GE, based on the alleged unlawful termination of the Framework Agreement.[38] Although the Respondent does not have access to important elements of these proceedings, it knows that the LCIA Tribunal ("**LCIA Tribunal**") analyzed the fraud scheme between Mr. da Costa and the Claimant, and found that the latter had participated

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35 **R-0037**, Statement of Case in the LCIA between AEnergy and GE, dated 28 October 2020, p. 13, § 43.

36 **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, p. 2.

37 **R-0037**, Statement of Case in the LCIA between AEnergy and GE, dated 28 October 2020, pp. 39—40, § 133.

38 **R-0037**, Statement of Case in the LCIA between AEnergy and GE, dated 28 October 2020, p. 6, § 15.

in the forging of documents in order to deceive both Angola and GE,[39] as further detailed in the next Section.

54. Conversely, GE initiated arbitration proceedings administered by the International Court of Arbitration of the International Chamber of Commerce ("**ICC**"), claiming that AEnergy owed it USD 47,693,200 under the four Supply Contracts.[40] Based on a news article of 28 November 2023, the Respondent discovered that the GE and the Claimant reached an amicable agreement, putting an end to all their pending disputes.[41]

55. While the Respondent does not have access to some crucial documents regarding these arbitration proceedings, it understands that they would be of the utmost importance in order to gather indispensable proof concerning (i) the absence of risk on the Claimant's side; (ii) the possibility that AEnergy has already been compensated under the settlement made in the ICC arbitration; and, ultimately, (iii) Mr. Machado's involvement in the fraud scheme further developed in the next Section. Accordingly, the Respondent will request the relevant documents in the document production phase.

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56. Ultimately, AEnergy acquired 14 TM2500 turbines from GE, under the obligation to supply them to Angola. However, AEnergy entered into 13 Contracts with MINEA that covered only eight turbines. To make matters worse, GE conditioned funding for these 13 Contracts on a requirement that their scope include 12 turbines, with an additional two turbines on a best-efforts basis. To address this gap, the Respondent will demonstrate that Mr. Machado and Mr. da Costa devised a scheme to persuade GE that the scope of the 13 Contracts had been amended, enabling AEnergy to improperly use funds from the Facility Agreement to pay for Four Unsolicited Turbines that Angola had never agreed to purchase.

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39 **R-0043**, GE'S Lawyers Letter to the Public Prosecutors, citing excerpts from the LCIA Arbitral Award, dated 29 March 2024, pp. 4—6.

40 **R-0044**, Aenergy's Answer to Request for Arbitration and Counterclaims in the ICC arbitration, dated 26 November 2020, p. 12, § 38.

41 **R-0034**, Aenergy and General Electric (GE) reached an agreement in the United States, dated 28 November 2023.

57. These Four Unsolicited Turbines purchased by the Claimant without Angola's authorization are at the heart of the present dispute.

2.1.2 The Claimant did not use his own funds to purchase the Turbines; instead, AEnergy improperly used funds from the Facility Agreement by submitting letters forged by the Claimant and his associates

58. The Claimant alleges that AEnergy used its own funds to pay for the Four Unsolicited Turbines.[42] This is not true. In fact, the Respondent will demonstrate that, contrary to the Claimant's assertions,[43] publicly available evidence shows that Mr. Machado and his associates forged letters from Angolan authorities in order to obtain payment for the Four Unsolicited Turbines from the Facility Agreement.

59. AEnergy and MINEA concluded 13 Contracts, under which MINEA expressly consented to purchase only eight TM2500 turbines. However, as shown in the previous Section, AEnergy had already purchased 14 TM2500 turbines from GE. As evidenced bellow, the Claimant sought a way out of this unfavorable situation by deceiving Angola. The Claimant participated in a scheme involving the falsification of letters, which ultimately allowed AEnergy to pay for the Four Unsolicited Turbines using Angola's funds.

60. On 21 August 2017, MINFIN and GE Capital signed the Facility Agreement.[44] The sole purpose of this agreement was to fund the payment of MINEA's obligations under the 13 Contracts with AEnergy, namely the obligation to pay for the eight TM2500 turbines.[45] GE Capital, however, believed "*that Angola would use the Credit Facility to purchase twelve TM 2500s.*"[46] Moreover, as far as the available evidence shows, GE established as a condition precedent that the disbursement under the Facility Agreement would cover 12 turbines, while the acquisition of

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42 SoC, pp. 5—6, § 26.

43 SoC, p. 5, § 22.

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

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

46 **R-0045**, Memorandum of Law in support of the government's motions *in limine*, Case no. 23 Cr. 610 (PKC), dated 6 September 2024, p. 6; **R-0036**, United States v. Freitas da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, pp. 2 and 15—18.

the additional two turbines (TM13 and TM14) would be pursued on a best-efforts basis.[47] This was a fact well known to the Claimant, but unknown to the Respondent.

61. For the foregoing reasons, the Claimant was left with no choice but to disregard the true scope of the 13 Contracts in order to access funds from the Facility Agreement and, as a consequence, made unauthorized payments for the Four Unsolicited Turbines. These unauthorized payments were facilitated by two key actions: (i) the forging of letters, with the Claimant's involvement, that falsely indicated Angola's agreement to alter the scope of Contracts 7 and 11 and purchase the Four Unsolicited Turbines; and (ii) the allocation of Facility Agreement funds by the Claimant and GE themselves—without the Respondent's oversight and in a manner inconsistent with the approved invoices—which hindered the Respondent's ability to monitor and control the use of funds.

62. *First*, although the 13 Contracts only covered the purchase of eight turbines, Forged Letters were created in October 2017 to enable the inclusion of the Four Unsolicited Turbines in the withdrawals from the Facility Agreement.[48]

63. In his Statement of Claim, the Claimant alleges that these irregularities originated solely from GE representatives, asserting that Mr. da Costa—who was convicted in the United States of fabricating correspondence from Angola—acted independently to "*authorize the financing of four additional turbines*"[49] and thereby satisfy "*GE Capital's internal lending criteria and release funding to Angola.*"[50] The Claimant has further maintained in prior proceedings this alleged lack of awareness, stating that "*AE did not know that GE's employees had fabricated the Fake Letters; neither AE nor any of its employees had any involvement in their creation; and AE never used the Fake Letters*."[51] Overall, the Claimant repeatedly asserts that he had no knowledge of, or

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47 **R-0042**, AEnergy's Amended Statement of Case in the LCIA arbitration, dated 28 October 2020, p. 20, § 46; **R-0036**, United States v. Freitas da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, pp. 2 and 15—18.

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

49 SoC, p. 8, § 22.

50 SoC, p. 8, § 22.

51 **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, dated 7 May 2020, p. 31, § 111.

involvement in the creation or use of the Forged Letters.

64. The Claimant's statements are misleading and incorrect. It is revealing that the Claimant has decided not to submit a witness statement in this arbitration. Instead, he has decided to conceal relevant and material facts from the Tribunal's scrutiny (and seeking to avoid cross-examination). However, the documentary evidence in the Respondent's possession – including evidence of payments from Mr. Machado to Mr. da Costa – contradicts the Claimant's assertions.

65. While it is accurate that Mr. da Costa was convicted in the United States for wire fraud and aggravated identity theft, it is essential to consider the broader picture in which these events happened, as the Claimant is purposefully omitting critical facts.[52]

66. Both AEnergy and GE were not satisfied with Angola's decision to purchase only eight turbines. AEnergy had already acquired 14 turbines from GE.[53] However, as far as the evidence publicly available shows, for GE, the agreement was "*underwritten for 12 TMs*" because "*the risks to GE Capital increased if the transaction included fewer turbines.*"[54] Therefore, GE refused to fully fund the Facility Agreement unless AEnergy obtained "*a letter or comparable document from the Angolan government agreeing to amend On Sale Contracts #7 and #11 to include two additional TM 2500s in each contract, bringing the total number of TM 2500s from eight to twelve.*" [55] This condition precedent was of AEnergy's knowledge.[56] Consequently, without amending the 13 Contracts to include the Four Unsolicited Turbines, the Facility Agreement

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52 **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, p. 1.

53 **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.

54 **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, pp. 2, 7—9 and 15—18.

55 **R-0045**, Memorandum of Law in support of the government's motions *in limine*, Case no. 23 Cr. 610 (PKC), dated 9 June 2024, p. 6; **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, pp. 2—3 and 15—18.

56 **R-0043,** GE'S Lawyers Letter to the Public Prosecutors, citing excerpts from the LCIA Arbitral Award, dated 29 March 2024, p. 5, Final Award, § 287: "[…] *AE, likewise by Mr. Machado, knew that such letters would be used to deceive GE Capital into releasing Credit Facility funds that it otherwise would not have disbursed, had it known the letters were not genuine*."

funds could not be used to make payments to AEnergy.[57]

67. As such, both GE and AEnergy sought to persuade Angola to purchase more turbines. Mr. da Costa (of GE) was specifically "*tasked with the responsibility of obtaining those amendment letters,"* increasing the number of turbines purchased from eight to 12 in the least.[58] On AEnergy's side, it formally asked MINEA to sign amendment letters agreeing to purchase four additional turbines: two under Contract 7 and the other two under Contract 11.[59] These conditions precedent demonstrated their absolute priority and clarified how the parties intended to allocate the funds disbursed under the Facility Agreement once the contract amendments were secured.[60]

68. As a result of these efforts, on 12 October 2017, ENDE and PRODEL responded to AEnergy's formal requests to amend the 13 Contracts. However, contrary to the Claimant's expectations, the Respondent did not accept the amendments, but merely issued two non-binding letters indicating that Angola may consider purchasing more turbines, but stressing that such an option was subject to a technical analysis and the fulfillment of further requirements.[61] It was clear for all parties involved that Angola never agreed to purchase the extra turbines.[62] Accordingly, GE indicated that it was not satisfied with these non-binding letters.[63]

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57 **R-0045**, Memorandum of Law in support of the government's motions *in limine*, Case no. 23 Cr. 610 (PKC), dated 9 June 2024, p. 6; **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, pp. 2, 7—9.

58 **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, p. 2; **R-0045**, Memorandum of Law in support of the government's motions *in limine*, Case no. 23 Cr. 610 (PKC), dated 9 June 2024, p. 6.

59 **R-0006**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case no. 20 cv 3569, Complaint, dated 7 May 2020, § 96.

60 **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.

61 **R-0007**, ENDE's letter, dated 12 October 2017; **R-0008**, PRODEL's letter, dated 12 October 2017.

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

63 **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.

69. The forged versions of these non-binding letters (*i.e.*, the Forged Letters) are the center of Mr. da Costa's conviction in the United States.

70. The Southern District of New York Court ("**SDNY**") found that there was compelling evidence that Mr. da Costa photoshopped these letters in order to give the appearance of "*an express agreement on the part of the Angolan government, through MINEA, to purchase four additional turbines.*"[64] These Forged Letters were created to show that Angola had agreed to amend Contracts 7 and 11 in order to include the purchase of the Four Unsolicited Turbines.[65]

71. GE was also a victim of this murky falsification scheme, having disbursed around USD 267 million to AEnergy under the Facility Agreement. GE did so, believing (incorrectly) that the content of the Forged Letters was real, and that Angola had actually intended to amend the contracts, which was imperative in order for GE to make a disbursement.[66] This disbursement (procured through fraud) permitted the unauthorized purchase of the Four Unsolicited Turbines using Angola's funds.[67]

72. Although it is correct that Mr. da Costa was convicted in the United States for falsifying the correspondence used to "*authorize the financing of four additional turbines,*"[68] the Claimant's statements are incomplete and misleading. They omit the fact that both the SDNY and the LCIA Tribunal found that Mr. Machado was also involved in the scheme.

73. In fact, the SDNY's decision considered that:[69]

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64 **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, p. 3.

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

66 **R-0043,** GE'S Lawyers Letter to the Public Prosecutors, quoting the LCIA Final Award, § 287, dated 29 March 2024, pp. 2—3; **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, dated 14 February 2025, pp. 3 and 7.

67 **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, p. 3.

68 SoC, p. 8, § 22.

69 **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.

> *[T]he evidence showed that Da Costa acted with the purpose of facilitating disbursements to AE in order and obtain an undisclosed payment from AE's Machado.*

74. Moreover, the SDNY concluded that:[70]

> *The evidence showed Da Costa's awareness that GE Capital would not make disbursement from the credit facility unless Angola agreed to purchase twelve turbines. The evidence demonstrated Da Costa's false statements about the agreements and his circulation of the forged agreements, including photo images of the documents sent to GE Capital decisionmakers, were intended to cause the disbursement of funds to AE. Da Costa had the intent to harm GE Capital by causing it to disburse funds premised on his falsehoods, with the ultimate goal of personal self-enrichment based on his expected payments from Machado.*

75. Indeed, as far as the evidence publicly available shows, at least since May 2016, Mr. da Costa had been engaging in illicit affairs with Mr. Machado. In May 2016, Mr. da Costa created a group chat titled "AE/GE" with the Claimant and two other GE employees.[71] In November 2016, Mr. da Costa created a group chat named "Friends" to coordinate further actions.[72] These group chats[73] were used to "*extract millions of U.S. dollars from AE's Founder in exchange for 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*."[74] Overall, these alliances functioned as a win-win situation for the involved: GE employees received payments from the Claimant in exchange for forgeries and the sharing of confidential and privileged information, and the

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70 **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, dated 14.02.2025, p. 7.

71 **R-0045**, Memorandum of Law in support of the government's motions *in limine*, Case no. 23 Cr. 610 (PKC), dated 6 September 2024, p. 17.

72 **R-0045**, Memorandum of Law in support of the government's motions in limine, Case no. 23 Cr. 610 (PKC), dated 6 September 2024, p. 18.

73 In January 2018 Mr. Machado suggested moving the WhatsApp group to a different encrypted messaging service after a GE Employee shared an article about group chats being vulnerable. See **R-0045**, Memorandum of Law in support of the government's motions *in limine*, Case no. 23 Cr. 610 (PKC), dated 6 September 2024, p. 18.

74 **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.

Claimant was provided with illicit commercial advantages in return.[75]

76. Whitin this alliance, besides the Forged Letters, it seems that Mr. Machado and the other two GE employees also aligned to forge a letter in which PRODEL "*purported to purchase two additional TM2500s,*"[76] thus amending Contract 12 so that it included the last two turbines out of the 14 purchased by AEnergy under the Facility Agreement. This forgery, however, did not succeed as "*GE Capital believed that a presidential decree, rather than a letter from PRODEL, was necessary to amend On Sale Contract #12.*"[77]

77. From the above, it is clear that the Claimant was one of the main orchestrators of the schemes. It was Mr. Machado who promised to pay USD 10 million each to Mr. Wilson da Costa and another GE employee. According to the SDNY, "*the government presented evidence that Da Costa and Nelson were frustrated Machado had paid each of them $5 million instead of the expected payout of $10 million each,*"[78] which sparked animosity between the three individuals involved in the fraud scheme as evidenced by text messages between the three in the group chat named "Friends":

> *In a series of messages dated April 24, 2018, Nelson wrote to Da Costa and Machado, "This Friend 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/ Thirdly, this is supposed to be friends where we grow together/ Only one of the friends is growing by himself/ Wilson, if I am wrong let me know but this s*** is not working/ Two friends worked all of 2017 for this and the bull**** continues."*[79]

78. It is also relevant that this was not the first time that the Claimant was involved in a fraud and

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75 **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—19.

76 **R-0045**, Memorandum of Law in support of the government's motions *in limine*, Case no. 23 Cr. 610 (PKC), dated 9 June 2024, p. 9.

77 **R-0045**, Memorandum of Law in support of the government's motions *in limine*, Case no. 23 Cr. 610 (PKC), dated 9 June 2024, p. 10.

78 **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.

79 **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.

falsification scheme. The Claimant has already been convicted in Portugal for the crime of falsification of documents.[80] In that case, the Claimant, along with others, was charged by the Portuguese PPO with both fraud and document falsification. Although the Court declared that his criminal liability for the fraud charges was extinguished at the outset of the trial—as a result of a legal provision in the Portuguese Criminal Code allowing for such an outcome when full restitution has been made by the defendants—it nevertheless convicted him of document falsification.[81] 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 Project in question*."[82]

79. In light of the obscured scheme described above, the Claimant's repeated assertions of non-involvement are plainly untrue. That was also the conclusion of the arbitral tribunal in the LCIA arbitration, which asserted that Mr. Machado was complicit in the creation of the Forged Letters:[83]

> *Having carefully considered the evidence and the submissions relating to the fake letters, we conclude that the evidence demonstrates, to the cogent standard required, that AE knew of, and was complicit in, the creation and deployment of the relevant letters. In particular we conclude: that Mr. Bento signed the Suite Version 2 Letters at the direction of Mr. Machado; that AE, by Mr. Machado, AE's CEO and 99% shareholder, knew about the inauthenticity of the fake letters; and that, AE,*

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80 **R-0047**, Lisbon Lower Court's Decision to condemn Ricardo Machado for the crime of falsification of documents, dated 18 November 1014, pp. 33—34; **R-0048**, Court of Appeal's Decision to deny Machado's appeal, dated 21 May 2015, p. 51.

81 **R-0047**, Lisbon Lower Court's Decision to condemn Ricardo Machado for the crime of falsification of documents, dated 18 November 1014, p. 3.

82 **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.

83 **R-0043**, GE'S Lawyers Letter to the Public Prosecutors, quoting the LCIA Final Award, §287, dated 29 March 2024, p. 5. These conclusions arise from an LCIA case initiated by the Claimant against GE on 7 May 2020. In its Request for Arbitration, AEnergy claimed compensation for the losses resulting from GE's alleged unlawful repudiation of the Framework Agreement between the two Parties (**R-0049**, AEnergy's Request for Arbitration in the LCIA case, dated 7 May 2020, pp. 5-6 and 16, §§ 13 and 57). Although the Respondent does not have access to the LCIA award, GE'S Lawyers Letter to the Public Prosecutors following the award demonstrate how the Tribunal concluded that AEnergy could not be considered a victim since Mr. Machado had been complicit in the creation of the Forged Letters.

> *likewise by Mr. Machado, knew that such letters would be used to deceive GE Capital into releasing Credit Facility funds that it otherwise would not have disbursed, had it known that the letters were not genuine.*

80. Moreover, it was the Claimant's actions that destabilized the scheme orchestrated with Mr. da Costa. Initially, their intention was solely to forge the non-binding letters to mislead GE into believing that the Four Unsolicited Turbines were included within the scope of the 13 Contracts, thereby enabling payment for them with funds from the Facility Agreement.[84]

81. However, Mr. Machado unilaterally decided to cover up the scheme when he saw an opportunity in August 2018, after Angola expressed interest in purchasing four additional TM2500s under Contract 7. AEnergy explained that no funds were available under that contract, as two of the Four Unsolicited Turbines had already been allocated to it, and instead negotiated to allocate them under Contract 6.[85]

82. Mr. Machado's intentions were not approved by its co-orchestrator Mr. da Costa, who, in November 2018, sent a message to the "Friends" group chat with the Claimant warning that "*we are trying to change things that are so obvious especially to GE Capital and it will bring huge problems to all of us we should stop ASAP and follow the original plan.*"[86]

83. However, during the two meetings held in December 2018 between MINEA, AE and GE, Mr. da Costa ended up revealing that the Respondent had already paid for the Four Unsolicited Turbines through their unauthorized allocation to Contracts 7 and 11, thus exposing the Claimant's plan to change Contract 6.[87]

84. This allocation of funds from the Facility Agreement for the payment of the Four Unsolicited Turbines was confirmed by the Claimant himself. As depicted in the image bellow, when confronted with an email from Mr. da Costa requesting confirmation that GE Capital had funded

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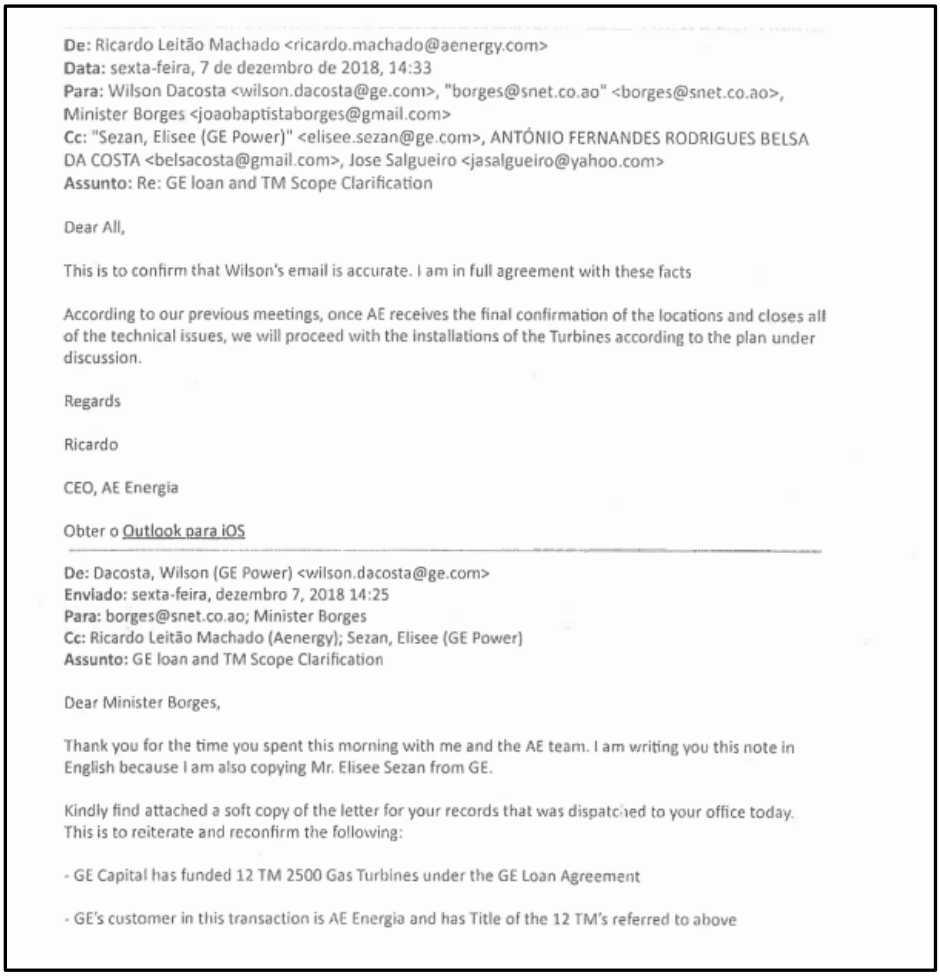
84 **R-0045**, Memorandum of Law in support of the government's motions *in limine*, Case no. 23 Cr. 610 (PKC), dated 9 June 2024, p. 19.

85 **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. 20—21.

86 **R-0045**, Memorandum of Law in support of the government's motions *in limine*, Case no. 23 Cr. 610 (PKC), dated 9 June 2024, p. 19.

87 **R-0050**, Appeal for Challenge of the Administrative Act, dated 10 January 2020, p. 75, § 349.

not only the original eight turbines, but also the additional Four Unsolicited Turbines, Mr. Machado acknowledged that this information was "*accurate.*"[88]



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

Dear All,

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

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

Regards

Ricardo

CEO, AE Energia

Obter o Outlook para iOS

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

Dear Minister Borges,

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

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

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

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

85. Based on the foregoing facts, an ongoing criminal investigation in Angola is being conducted against AEnergy and Mr. Machado for their involvement in the forgery of the Non-Binding Letters and illicit use of the funds from the Facility Agreement.[89]

86. Even if the Tribunal disregards the Claimant's participation in the falsification scheme, the truth

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88 **R-0012**, Emails exchanged between GE Power (Wilson da Costa), AEnergy (Ricardo Machado) and MINEA, between 07 December 2018 and 17 December 2018.

89 **C-19,** Angola's lawsuit against Aenergy, filed in the Provincial Court of Luanda (with informal translation into English), Article 77, p. 22.

is that these Forged Letters still enabled AEnergy to purchase the Four Unsolicited Turbines with Angola's funds. In fact, when writing the Request under rule 41, Angola believed that only Mr. da Costa had participated in the crime, as the United States Court merely reached a decision regarding the criminal proceedings against Mr. da Costa on 14 February 2025.[90]

87. The Claimant clearly benefited from the Forged Letters. As the Respondent has just demonstrated, the allocation of Angola's funds from the Facility Agreement for the payment of the Four Unsolicited Turbines was confirmed by Mr. Machado.[91]

88. Thus, the news that Mr. Machado had been an actual co-orchestrator of the falsification scheme is a mere confirmation of what the Respondent already knew: AEnergy illicitly used Angola's funds to purchase the Four Unsolicited Turbines.

89. *Second*, the Claimant and GE unilaterally allocated funds from the Facility Agreement, thereby hindering the Respondent's ability to monitor and control fund usage and facilitating the unauthorized acquisition of the Four Unsolicited Turbines.

90. In this regard, the Claimant states that "*Angola alleged that AEnergy had manipulated the Credit Facility to finance the acquisition of these additional turbines, despite the fact that AEnergy was not a party to the financing agreement and had no control over its disbursement*."[92]

91. This statement is once again deeply misleading and does not reflect the reality of the contractual arrangements.

92. AEnergy knew the terms of the Facility Agreement, as evidenced by its reference in the Framework Agreement with GE.[93] Even though the Facility Agreement was only signed by MINFIN (the Borrower), GE Capital (the Lender), and TMF Global Services (the Agent), its sole purpose was to fund the 13 Contracts between AEnergy and MINEA. In turn, this would enable

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90 **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025.

91 **R-0012**, Emails exchanged between GE Power (Wilson da Costa), AEnergy (Ricardo Machado) and MINEA, between 07 December 2018 and 17 December 2018.

92 SoC, p. 8, § 25.

93 **R-0051**, Amendment 1 to the Contractual Services Agreement, dated 30 June 2017.

AEnergy to fulfill its own payment obligations under the Supply Contracts with GE.[94] As such, the Facility Agreement functioned, in reality, as a means to fund both AEnergy's obligations and profits.

93. Documentary evidence confirms that these contractual relationships were tightly interconnected. The Claimant himself has acknowledged that AEnergy's commercial arrangements with GE were predicated upon, and dependent on, the existence of the Facility Agreement.[95]

94. In fact, the Facility Agreement mirrors this connection between the contractual relationships. Article 6 of the Facility Agreement provides that, in order for a disbursement to be made, a utilization request meeting certain requirements is necessary. Specifically, such a utilization request must be accompanied by "*a written confirmation from the Supplier and Purchaser confirming that the Purchaser issued the relevant instruction to pay such amount to the relevant payee […].*"[96] To recall, AEnergy is the Purchaser under the Facility Agreement.[97]

95. This exact procedure was followed in the Utilization Request issued on 24 December 2017, where the Purchaser's confirmation of payment to order was attached.[98]

96. The procedure for the disbursement started with MINEA approving 39 of AEnergy's invoices for USD 643,314,360.00 worth of goods and services. These invoices contained descriptions of the goods and services supplied.[99] To ensure the payment of these 39 invoices and the specific goods and services described therein, MINEA submitted a clear withdrawal request.[100] However, this money allocation was not complied with. Instead, during the second half of 2017, GE and

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94 **R-0001**, Facility Agreement (extract), dated 21 August 2017, p. 17, 3.1/a).

95 SoC, p. 3, § 16.

96 **R-0001**, Facility Agreement (extract), dated 21 August 2017 p. 7, Article 6.2(a)(v).

97 **R-0052**, Facility Agreement, dated 21 August 2017, p. 11.

98 **R-0003**, Utilization Request, dated 24 December 2017, p. 4, § 3; **R-0004,** Addendum of the Utilization Request, dated 28 December 2017.

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

100 **R-0003**, Utilization Request, dated 24 December 2017; **R-0004,** Addendum of the Utilization Request, dated 28 December 2017.

AEnergy were engaged in negotiations to establish an escrow account and side letters to formalize the disbursement arrangement.[101] Ultimately, on 22 December 2017, AEnergy and GE made an internal, distinct Invoice Summary, allocating the funds received without specifically identifying the goods and services they were allocated to, contrary to what MINEA had previously done in the 39 approved invoices disregarded by the Claimant.[102]

97. As demonstrated in the table below, this disregard for the MINEA-approved invoices occurred across all 13 Contracts, as the amounts of the invoices allocated by MINEA for each contract do not match the fund allocation later made by AEnergy:

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

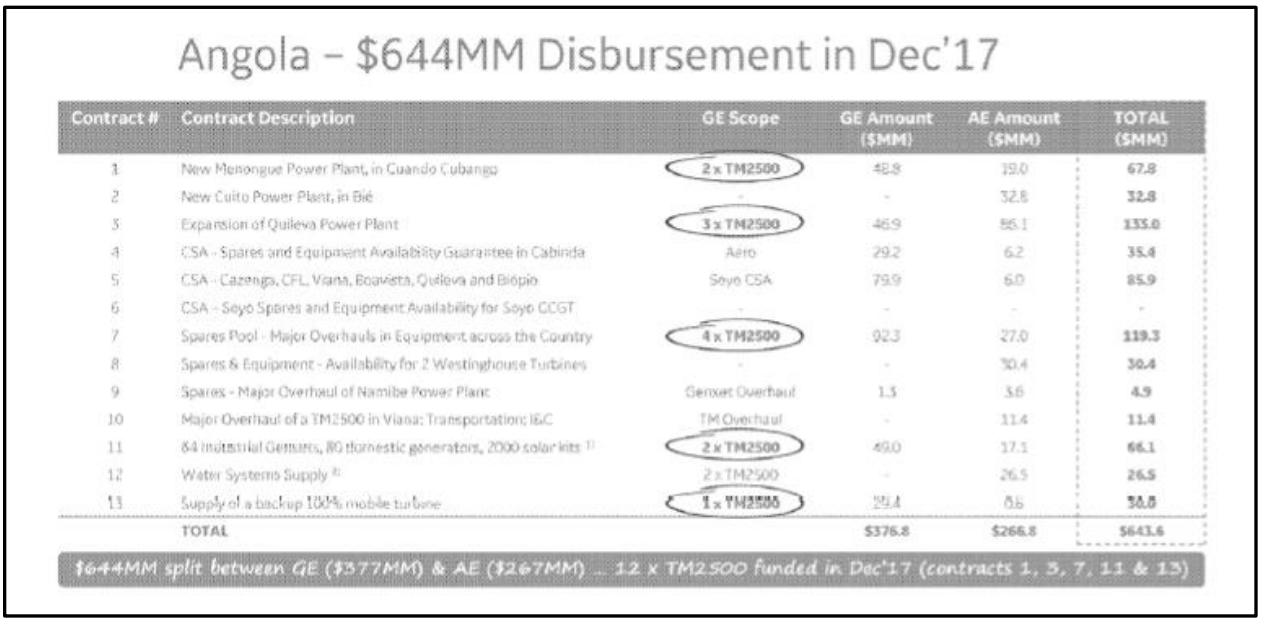
101 **R-0042**, AEnergy's Amended Statement of Case in the LCIA arbitration, dated 28 October 2020, p. 20, §§ 45—46; **R-0053**, Exhibit 1 of AEnergy's complaint against Angola and GE in the Southern District of New York Court, dated 7 May 2020, p. 43.

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

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

98. By allocating funds without transparency or reference to the previous MINEA's allocation, the Claimant made it essentially impossible for the Respondent to monitor compliance with the Facility Agreement. This use provided AEnergy with further cover for the unauthorized sale of the Four Unsolicited Turbines.

99. On 18 December 2018, however, MINEA became aware of the actual allocation of disbursements between GE and AEnergy, as GE presented it with the document bellow. This document demonstrates how, pursuant to agreements between the GE and AEnergy in 2017, the Four Unsolicited Turbines were paid for directly to GE under Contracts 7 and 11:[103]



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	Soyo CSA	79.9	6.0	85.9
6	CSA - Soyo Spares and Equipment Availability for Soyo 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)

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100. In summary, the unauthorized purchase of the Four Unsolicited Turbines TM2500 turbines with

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103 **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.

Angola's funds was enabled by: (i) the forgery of the Forged Letters falsifying Angola's consent to alter the scope of the 13 Contracts; and (ii) the Claimant's and GE's unilaterally and non-transparent allocation and use of the Facility Agreement withdrawals.

101. The evidence demonstrates that the Claimant not only benefited from, but also actively participated in the fraudulent use of Angola's funds. These events confirmed that the Respondent acted appropriately in terminating the 13 Contracts with AEnergy and in filing proceedings in Angola to determine the rightful property of the Four Unsolicited Turbines.

2.1.3 The Respondent lawfully terminated the 13 Contracts by Presidential Order

102. The Claimant's actions described in the previous Section, specifically, the improper use of the Facility Agreement to fund the Four Unsolicited Turbines, inevitably led to the termination of the 13 Contracts on 2 September 2019.[104] Despite the severity of the situation, Angola made sure that the contractual relationship would not end abruptly, giving both parties the opportunity to discuss the specifics of the termination. Nevertheless, from the moment it found out about the illicit used of the funds, the Respondent remained resolute in its intention to terminate the 13 Contracts.[105]

103. As explained above, during meetings held on 5 and 7 December 2018 between MINEA, AEnergy, and GE to discuss amendments to the 13 Contracts regarding the purchase of the Four Unsolicited Turbines, GE's representative, Mr. da Costa, stated that Angola had already paid AEnergy for these Turbines through the December 2017 withdrawal, and that the contracts had already been amended.[106] The Claimant's initial response was to confirm Mr. Wilson da Costa's assertions.[107] This was the first time that the Respondent became aware that it had been the victim of a fraudulent scheme. This disclosure was both surprising and deeply unsettling.

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

105 **R-0055**, MINEA's answer to the Court of Appeal's notification, dated 20 July 2020, p. 7, § IX; **R-0056**, MINEA's letter of intention to terminate the 13 Contracts, dated 10 January 2019.

106 **R-0050**, Appeal for Challenge of the Administrative Act, dated 10 January 2020, p. 75, § 349.

107 **R-0012**, Emails exchanged between GE Power (Wilson da Costa), AEnergy (Ricardo Machado) and MINEA, between 07 December 2018 and 17 December 2018.

104. Therefore, upon learning about the funding of the Four Unsolicited Turbines by AEnergy, MINEA immediately verbally informed the Claimant of its intention to terminate the Contracts.[108]

105. On 10 January 2019, MINEA formalized this position in a letter sent to AEnergy, explicitly stating that the decision to terminate was irreversible.[109] Between this letter and the actual notice of termination on 2 September 2019, MINEA sent two additional letters on 28 March 2019 and 24 May 2019, each reiterating its position and the grounds for termination.[110]

106. Additionally, during this period of time, the parties engaged in communications aimed at reaching an amicable settlement. The Respondent proposed that AEnergy transfer its contractual position to GE.[111] After negotiations failed, MINEA requested Presidential Authorization to terminate the Contracts.[112] On 23 August 2019, Presidential Order No. 155/19 was issued, terminating the 13 Contracts.[113] On 2 September 2019, the Respondent notified AEnergy of the decision to terminate.[114]

107. Following the termination, the Claimant initiated what can only be described as a harassing litigation campaign. *First*, on 10 January 2020, the Claimant filed a complaint before the Administrative Court of Angola, alleging the unlawful termination of the 13 Contracts.[115] On 22 March 2024, the Court upheld the validity of the termination.[116] *Second*, on 7 May 2020, the Claimant filed suit against Angola and GE in the Southern District Court of New York. One of the

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

109 **R-0056**, MINEA's letter of intention to terminate the 13 Contracts, dated 10 January 2019.

110 **R-0058**, MINEA's letter to AEnergy, dated 28 March 2019; **R-0059**, MINEA's letter to AEnergy, dated 24 May 2019; **R-0060**, Final Aurecon Report, dated 22 October 2019, p. 26; **R-0061**, MINEA's answer to the Court of Appeal's notification, dated 20 July 2020, p. 8.

111 **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.

112 **R-0062**, MINEA's Authorization Request to Terminate the 13 Contracts, dated 15 August 2019.

113 **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.

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

115 **R-0050**, Appeal for Challenge of Administrative Act, dated 10 January 2020, pp. 139—140.

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

grounds for the complaint was the Respondent's alleged breach of contract through illegally terminating the 13 Contracts.[117] The Court dismissed the Claimant's allegations based on *forum non conveniens*.[118] *Third*, on 22 August 2022, before a decision was issued by the Administrative Court of Angola regarding the termination of the 13 Contracts, AEnergy filed a lawsuit before the District Court of Columbia.[119] The Court dismissed the Claimant's case.[120] *Fourth*, and still not satisfied, AEnergy filed a Motion for Reconsideration on 18 July 2023[121], which had the same outcome as the other attempts, being dismissed on 27 October 2023.[122] An appeal filed on 4 March 2024 was equally denied.[123]

108. Finally, of course, the Claimant has now started these international arbitral proceedings – seeking what is essentially a plainly abusive fifth bite of the apple.

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109. In sum, the Respondent terminated the 13 Contracts as soon as it became aware of the fraudulent and unauthorized use of funds from the Facility Agreement to pay for the Four Unsolicited Turbines. Despite the seriousness of these actions, Angola sought to resolve the dispute amicably and even attempted to transfer the agreement to GE. However, the Claimant not only refused to accept this solution, but also engaged in abusive conduct and has continued

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117 **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, p. 71, § 230.

118 **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.

119 **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.

120 **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.

121 **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.

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

123 **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; **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.

to pursue a strategy of litigation to this day.

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

110. The Claimant alleges that the unlawful interference with Mr. Machado's investment began in 2022 and continues to the present day. This alleged interference is said to include the removal of the Four Unsolicited Turbines from judicial custody, their installation in Angolan state-owned power plants, and their connection to the national grid.[124] The Claimant further claims this was done with the involvement, or at least the acquiescence, of IGAPE and the Provincial Court of Luanda, who failed to protect the Four Unsolicited Turbines or to respond to information requests. The Claimant also points to the alleged sudden revival of legal proceedings concerning the turbines as further evidence of alleged collusion.[125] These claims do not withstand scrutiny.

111. The Respondent acted lawfully at all times. The Respondent initiated legal proceedings in Angola to confirm its rightful ownership of the Four Unsolicited Turbines and requested their preventive seizure to prevent deterioration or sale (**Section 2.2.1.**). Moreover, due to the Turbines' inactivity and resulting deterioration, MINEA requested that IGAPE, as Trustee, authorize their maintenance and use by PRODEL to prevent further damage and to serve the public interest. This authorization was granted on 5 May 2020 (**Section 2.2.2.**).

112. Following IGAPE's authorization in May 2020, PRODEL implemented a series of measures to operate the turbines and regularly updated IGAPE on their status (**Section 2.2.3.**). Furthermore, should the Angolan Court ultimately determine that the Four Unsolicited Turbines belong to AEnergy, their installation is fully reversible, and the Turbines can be returned accordingly (**Section 2.2.4.**). Finally, 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

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124 SoC, p. 1, § 3.

125 SoC, p. 1, §§ 4—5.

113. Although the Claimant alleges that unlawful interference with its investment began in 2022,[126] Mr. Machado contradicts himself by questioning Angola's behavior since 2019. In this sense, the Claimant states that Angola relied on an "*illogical and internally inconsistent legal theory*" to support the preventive seizure of the Four Unsolicited Turbines in October 2019.[127]

114. As the Respondent will proceed to demonstrate, this is not true. Angola has acted lawfully, consistently, and transparently from the beginning.

115. On 2 March 2020, Angola initiated declaratory proceedings against AEnergy to declare its rightful ownership of the Four Unsolicited Turbines. Moreover, given the risk of deterioration or of unauthorized sale of the turbines, Angola was previously forced to initiate Preventive Seizure Proceedings. As such, on 4 October 2019, following the termination of the 13 Contracts, the Respondent initiated the Preventive Seizure Proceedings against AEnergy before the Provincial Court of Luanda.[128]

116. The Claimant alleges that Angola's request was based on unfounded accusations of manipulation of the Facility Agreement "*despite the fact that AEnergy was not a party to the financing agreement and had no control over its disbursement*."[129] Additionally, the Claimant maintains that "*all funds received by AEnergy under the Credit Facility corresponded to invoices duly approved by Angolan authorities pursuant to valid contracts, and that AE had acquired all 14 turbines from GE*."[130]

117. As previously explained,[131] these allegations are misleading and not in line with documentary evidence. *First*, although AEnergy was not a party to the Facility Agreement, it was involved in

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126 SoC, p. 1, § 3.

127 SoC, pp. 5-6, § 26.

128 **R-0116**, Application for interim measure for the seizure of the Four Unsolicited Turbines, dated 4 October 2019, 4 October 2019.

129 SoC, p. 5, § 25.

130 SoC, p. 5, § 26.

131 Section 2.1.2.

its disbursement process.[132] *Second*, even though MINEA had submitted a clear withdrawal request to ensure the payment of specific goods and services described in the 39 invoices "*duly approved by Angolan authorities*"[133], this money allocation was not complied with.[134]

118. The Respondent's request for provisional seizure sought to demonstrate these events, illustrating how AEnergy first used funds from the Facility Agreement to pay for the Four Unsolicited Turbines by forging letters to alter the scope of Contracts 7 and 11 without Angola's knowledge, and then sought to sell the same turbines to Angola under an amendment to Contract 6.[135] Additionally, the Respondent explained how, upon discovering this scheme, it expressed the intent to retain the Turbines and credit AEnergy, thereby transferring the ownership.[136]

119. The preventive seizure was not intended, as the Claimant suggests, to "*facilitate or guarantee the future of ownership of the seized assets.*"[137] Rather, it was crucial to safeguard the Four Unsolicited Turbines. Due to AEnergy's financial instability, the Turbines were at a serious risk of loss and unavailability, as they were easily movable assets that were particularly likely to be sold.[138] It is entirely reasonable that MINEA did not wish for AEnergy to retain possession of the turbines or to possibly dispose of them while the proceedings were pending.

120. The Court fully acknowledged these risks. On 5 December 2019, it ordered the preventive

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132 **R-0003**, Utilization Request, dated 24 December 2017, p. 4, § 3; **R-0004**, Addendum of the Utilization Request, dated 28 December 2017.

133 Soc, p. 5, § 26.

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

135 **R-0116,** Application for interim measure for the seizure of the Four Unsolicited Turbines, dated 4 October 2019, §§ 8—36.

136 **R-0116**, Application for interim measure for the seizure of the Four Unsolicited Turbines, dated 4 October 2019, §§ 41—47.

137 SoC, p. 6, § 27.

138 **R-0116**, Application for interim measure for the seizure of the Four Unsolicited Turbines, dated 4 October 2019, §§ 67—82.

seizure of the Four Unsolicited Turbines and related equipment, appointing IGAPE as Trustee.[139]

121. By granting the preventive seizure under Article 403(1) of the Angolan Civil Procedure Code ("**CPC**"), the Court found both requirements to be satisfied.[140] *First*, regarding *fumus boni iuris* - a serious probability that the right exists -, the Court accepted documentary evidence that AEnergy used the Facility Agreement funds to purchase the Four Unsolicited Turbines without authorization, a fact that AEnergy had admitted.[141] *Second*, for *periculum in mora* - urgency and the risk of irreparable or substantial harm -, the Court ruled that, without appropriate safeguards, a decision on the merits could end up "*merely platonic and misaligned with justice*", given both the risk of asset deterioration and AEnergy's conduct, which suggested possible asset dissipation.[142]

122. Following the Court's decision, on 6 December 2019, the Four Unsolicited Turbines were seized and removed from AEnergy's warehouse with the Claimant's knowledge.[143] AEnergy released the Turbines to PRODEL, which then delivered them to IGAPE, the Trustee.[144]

123. On 2 March 2020, Angola initiated the Main Action. In these proceedings, the Respondent reiterated the claims made in the Preventive Seizure Proceedings, arguing that Angola should be declare as the rightful owner of the Four Unsolicited Turbines.[145] Through these proceedings, Angola requested: (i) the recognition of the State's ownership over the Four Unsolicited Turbines as well as assets removed from them; (ii) an order for AEnergy to deliver the seized and non-

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139 **C-17**, Judgement of the Provincial Court of Luanda on the freezing of AEnergy's four turbines, dated 5 December 2019, pp. 14—15 (Original version) and p. 31 (English translation); **C-18**, Order of the Provincial Court of Luanda for the preventive seizure of AEnergy's Four Turbines (with informal translation into English).

140 **C-17**, Judgement of the Provincial Court of Luanda on the freezing of AEnergy's four turbines, dated 5 December 2019, pp. 12—14 (Original version) and pp. 28—29 (English translation).

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

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

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

144 **R-0014**, Term of delivery, dated 9 December 2019, p. 1 (Original version) and p. 20 (English version).

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

seized assets to the Angola; and (iii) compensation for damages. Alternatively, the Respondent requested the return of the amount paid to AEnergy under the Facility Agreement, in an amount no less than USD 100,000,000.00.[146]

124. Overall, Angola took the appropriate steps to safeguard its rights over the Four Unsolicited Turbines, first requesting a preventive seizure and only then initiating declaratory proceedings in the competent Angolan Court, thus protecting the Turbines and its rights over them.

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

125. The Claimant alleges that IGAPE and the Provincial Court of Luanda failed to uphold their judicial custodial responsibilities by allowing Angola, in 2022, to install the Four Unsolicited Turbines at state-owned power plants without either a final decision in the underlying case or authorization from AEnergy.[147]

126. As the Respondent will demonstrate, this authorization was granted by IGAPE at MINEA's request after due consideration of advice received from the Attorney General. No authorization from the Provincial Court of Luanda was required under Angolan law.

127. On 4 March 2020, four months after the Provincial Court of Luanda had ordered the preventive seizure of the Four Unsolicited Turbines belonging to AEnergy, MINEA requested the Attorney General —the entity representing the Republic of Angola in judicial proceedings—to seek authorization for the use of the seized Turbines.[148]

128. MINEA made this request for three main reasons: (i) in accordance with the manufacturer's recommendations, the seized GE TM 2500 turbines require maintenance even while in storage; (ii) their operation was necessary to prevent further deterioration; and (iii) it was in the public interest of the Republic of Angola to use these turbines to generate electricity and provide

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

147 SoC, p. 7, § 34.

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

energy to more remote areas of the country.[149]

129. *First*, as provided in the technical report presented by MINEA to the Attorney General, the preservation of the turbines requires specialized maintenance.[150] Following the seizure of the Four Unsolicited Turbines, a technical assessment found that AEnergy was not meeting those requirements. Much to the contrary, the Turbine's condition was unacceptable: they were not fully assembled, were stored in multiple boxes, and some key components were missing because AEnergy had cannibalized them for use in other projects.[151]

130. In order to restore the necessary maintenance, the technical report referenced above by MINEA sets out a series of specific measures that must be taken into account. The Respondent will further describe these measures.

131. To provide context for the maintenance measures required for the TM2500 turbines, as explained by the Respondent below - the Tribunal may refer to their operational configuration:[152]

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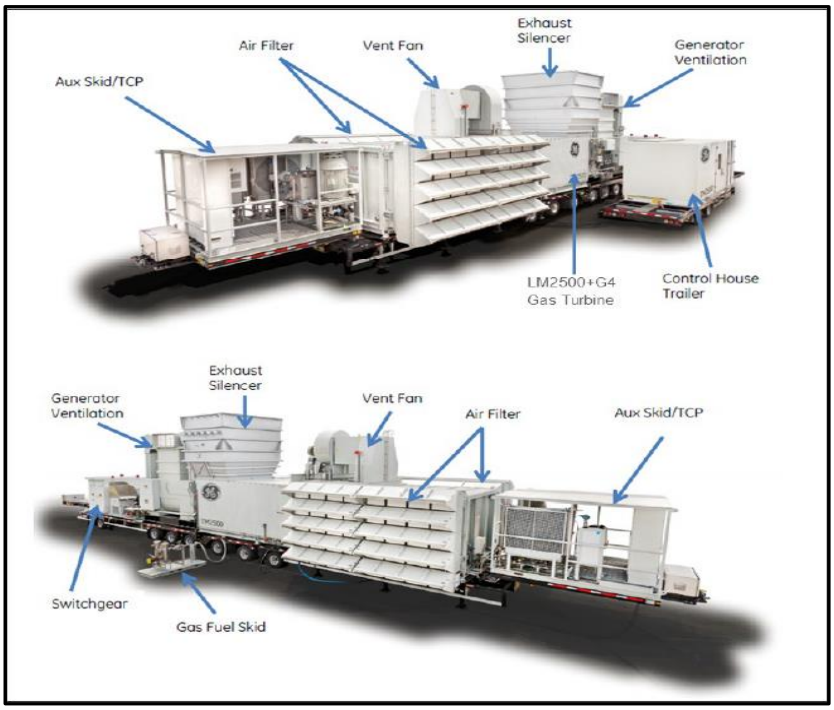
149 **R-0065**, Letter from MINEA to the PPO and attached technical report, dated 4 March 2020, pp. 2—5 of the PDF.

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

151 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, pp. 5 – 6, §15; **R-0066**, Technical inspection report of the four turbines, dated 8 December 2019, § 15; **R-0014**, Term of Delivery, p. 20 (PDF) dated 9 December 2019.

152 **AP-007**, GE Power & Water, TM2500 GEN8 Mobile Gas Turbine Generator Set Product Specification, p. 32 of 124.



132. The preservation of the Turbine Trailer/Turbine Chassis requires among others: (i) the tires to be calibrated and parked on a flat paved surface protected from direct sunlight; (ii) the wheels to be turned at least once a month; (iii) the pneumatic system to be pressurized to activate the brakes and prevent apprehensions; and (iv) the hydraulic axes to be exercised with the wheels off the ground.[153] In turn, to ensure the preservation of the Alternator/Generator, the following measures are required: (i) powering up the generator exciter and applying safety labels to the wiring inputs; (ii) applying fresh anti-rust to all electromechanical parts exposed to rust or moisture; (iii) energizing the cooling system after 30 days.[154]

133. Additionally, the preservation of the Engine/Turbine requires: (i) the engine to be placed under a cover in a clean, dry place; (ii) the protection of the bearing from excessive moisture by maintaining the circulating air temperature; (iii) reinforcement of the insulation resistance layer; (iv) lubricating the bearings and couplings every 3 months with Exxon Mobil lubricant; and (v)

153 **R-0065**, Letter from MINEA to the PPO and attached technical report, dated 4 March 2020, pp. 10 and 22 of the PDF.

154 **R-0065**, Letter from MINEA to the PPO and attached technical report, dated 4 March 2020, pp. 10—11 and 22—23 of the PDF.

lining the main components.[155]

134. Finally, the preservation of the command, control and protection rooms requires: (i) sealing all external openings around the cubicles; (ii) sealing the turbine control panel, main turbine terminal box, main generator terminal box, junction box, boxes containing electrical equipment, battery terminals and all other electrical equipment with Cortec VPCI – 308 bags; (iii) monitoring and replacing the VPCI-308 bags on the components TCP, MGTB, GLAC, and GNAC components, verify that the "Cortec Installed" label remains visible; (iv) disconnecting the batteries on the Rx3i controller do not reconnecting them until power is restored to the Rx3i at the time of restart; (v) the diagnosis of the software and its update for the Rx3i controller before start-up; (vi) checking the panels in accordance with the specified pre-commissioning work procedures; and (vii) the inspection of all cables and wires in the "interface" to ensure that there is no possible friction, or degradation. [156]

135. *Second*, after the storage of the seized turbines, PRODEL conducted a technical assessment and identified the need to implement preventive measures to preserve the turbines.[157] This technical report concluded, as noted by Mr. Arlindo Cambungo, Executive Director of PRODEL for thermal production, that turbines that remain idle deteriorate more rapidly, leading to increased maintenance costs; for this reason, their operation was necessary to prevent deterioration. In his words: [158]

> *The technical report concluded, in summary, that a series of preventive maintenance measures needed to be taken in accordance with the manufacturer's instructions in order to ensure the preservation of the turbines and increase the lifespan of their main components.*

136. *Third*, MINEA's concern regarding the status of the seized turbines is intertwined with the fact that preserving the turbines is a matter of public interest. As MINEA notes in its request to the

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155 **R-0065**, Letter from MINEA to the PPO and attached technical report, dated 4 March 2020, pp. 12 and 16 of the PDF.

156 **R-0065**, Letter from MINEA to the PPO and attached technical report, dated 4 March 2020, pp. 12 and 16 of the PDF.

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

158 **RWS-01**, Witness Statement of Arlindo Camungo, p. 6, §17.

PPO, the Four Unsolicited Turbines have cost the Republic of Angola approximately USD 110.000.000,00, and their ownership is currently being disputed in ongoing court proceedings before the Provincial Court of Luanda.[159]

137. Therefore, the seized turbines were required to serve the public interest of Angola by ensuring the production of electricity for remote areas, while also allowing for the preventive maintenance recommended by the manufacturer.[160]

138. In this regard, it is necessary to point out that the production of electricity to supply, specifically, more remote areas of Angola is a key national and social interest. According to Angola's Action Plan of the Energy and Water Sector of 2018-2022, Angola's electricity access rate in 2017 was only about 36%.[161] In the short term, Angola's goal was to raise this rate to 50% by 2022.[162]

139. To this end, the Government has undertaken several initiatives in accordance with the Action Plan aimed at optimizing and expanding electricity production and supply across the country.[163]

140. In light of this pressing public interest issue, and in accordance with the Trustee's duties to properly administer and ensure the conservation of the seized turbines, MINEA requested the PPO to take the appropriate measures to ensure that the Turbines were put at the service of Angola's public interest, while guaranteeing that they were subject to proper maintenance measures by specialized engineers.[164]

141. Following MINEA's request, on 5 May 2020, the Prosecutor's Office sent a letter to the Angolan Ministry of Finance seeking authorization for IGAPE to deliver the seized turbines into PRODEL's care.[165] Along with the letter, the PPO included a legal opinion stating its understanding that, under Angolan law, the trustee of seized goods is permitted to put them to use in order to

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

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

161 **C-36**, Action Plan of the Energy and Water Sector 2018-2022, dated 1 July 2018, p. 30.

162 **C-36**, Action Plan of the Energy and Water Sector 2018-2022, dated 1 July 2018, p. 24.

163 **C-36**, Action Plan of the Energy and Water Sector 2018-2022, dated 1 July 2018, pp. 37—41.

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

165 **R-0068**, Letter from the PPO to the Ministry of Finance, dated 5 May 2020.

prevent their deterioration. Therefore, the PPO conveyed its view that, according to Angolan law, IGAPE may entrust the seized turbines to MINEA's care, as long as IGAPE remains informed about the Turbines' status.[166]

142. Following the above-mentioned letters and opinions and careful consideration of its duties, IGAPE sent a letter to the Minister of Energy and Water authorizing the delivery of the seized Turbines, into the care of MINEA.[167] According to IGAPE, the decision to deliver the seized turbines was taken:[168]

> *[I]n order to prevent corrosion and deterioration of the turbines and its parts, pursuant to the provisions of Articles 843 of the Angolan Civil Procedure Code, according to which it is incumbent upon the Trustee to administer the assets with diligence and care of a prudent family man (…) so that the Ministry of Energy and Water can ensure their maintenance and use for electricity production.*

143. IGAPE also emphasized that this decision to deliver the seized turbines to MINEA was made without prejudice to its duty to inform the Court about the turbines' administration. To that end, IGAPE specifically requested that MINEA provide quarterly reports on the status of the Turbines.[169]

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144. All in all, the Claimant's assertion that IGAPE and the Provincial Court of Luanda have unduly relinquished the custody of the seized Turbines is entirely unfounded. The decision to deliver the Turbines to MINEA was based on (i) a well-substantiated request, supported by a technical report; and (iii) IGAPE's obligation, as the Court-appointed Trustee, to preserve the seized turbines.

2.2.3 Following IGAPE's authorization in May 2020, MINEA, through PRODEL, undertook a series of actions to operate the turbines and kept IGAPE informed on a regular basis

166 **R-0069**, PPO's legal opinion sent to the Ministry of Finance, dated 5 May 2020.

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

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

169 **R-0070**, IGAPE's letter to the Minister of Energy and Water, dated 5 May 2020; see also Section 2.2.3.

145. The foundation of the Claimant's argument is that Angola's alleged unlawful interference with Mr. Machado's investment began in 2022 and continues to this day, specifically through the removal of the Four Unsolicited Turbines from judicial custody, their installation in Angolan state-owned power plants, and their connection to the national power grid.[170]

146. However, as previously noted, as early as 5 May 2020, following the Public Prosecutor's Office's favorable opinion, IGAPE authorized and carried out the transfer of the seized turbines to MINEA for deployment.[171]

147. Immediately thereafter, MINEA, through its electricity-producing company PRODEL, undertook technical planning, site preparation, and the contracting required for installation, consistently keeping IGAPE informed in its capacity as Trustee, as the Respondent will further explain.

148. In line with IGAPE's decision, the Four Unsolicited Turbines and related components have been utilized by PRODEL, with regular updates provided to the Trustee since May 2020.

149. In regard to the seized components and accessories, in May 2020, PRODEL used seized MAN filters and parts in various thermal power plants across. Immediately upon their use, PRODEL reported these actions to IGAPE, fulfilling its reporting obligations and evidencing transparency.[172]

150. In August 2020, PRODEL utilized a seized drum of Mobil Jet II lubricant for the upkeep of critical turbine components, once again informing IGAPE of this maintenance measure. [173]

151. In January 2021, PRODEL deployed various seized accessories and consumables to bolster generation capacity in areas with electricity deficits, specifically in Lunda Norte, Namibe, and Lubango. The use and allocation of each seized item was immediately and thoroughly reported

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170 SoC, p. 1, § 3.

171 See Section 2.2.2.

172 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, pp. 6—7, § 22; **R-0071,** PRODEL's letter to IGAPE, dated 13 May 2020.

173 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, pp. 6—7, § 22; **R-0072,** PRODEL's letter to IGAPE, dated 21 August 2020.

to IGAPE.[174]

152. By January 2022, PRODEL provided IGAPE with a comprehensive summary of all seized accessories and consumables used during 2021 and their respective deployments, underscoring the rigor and transparency of PRODEL's management.[175]

153. In August 2022, PRODEL notified IGAPE of the use of seized Mobil Jet II lubricant drums and Zook degreaser drums in the Buebe Thermal Plant (Cuando Cubango), Lubango, Xitoto (Namibe), and Soyo (Zaire), demonstrating continued diligence in both maintenance and communications.[176]

154. In parallel, as illustrated in the table included Arlindo Cambungo's witness statement,[177] the Four Unsolicited Turbines were transferred from PRODEL's facilities to various provincial power plants to meet specific energy generation and supply needs.

155. This process began in October 2020, when PRODEL dismantled, transported and installed the engine from Turbine #7267575 at the the Xioto Thermal Power Plant in Namime to supply electricity to the city of Moçâmedes and its surrounding areas. The engine began operating on 4 November 2020. The logistical and engineering effort was documented in PRODEL's contemporaneous communications to IGAPE.[178]

156. The remaining components of Turbine #7267575 were transferred to the Naipola Thermal Power Plant in Cunene (Ondjiva) to ensure power supply capacity in the provinces of Huília (Lubango) and Cunene (Ondjiva). Accordingly, on 14 June 2021, IGAPE was informed of the transfer and subsequent installation of those components at the Naipola Thermal Power

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174 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 7, § 23; **R-0073**, PRODEL's letter to IGAPE, dated 7 January 2021.

175 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 7, § 24; **R-0074**, PRODEL's letter to IGAPE, dated 27 January 2022.

176 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 7, § 25; **R-0075,** PRODEL's letter to IGAPE, dated 29 August 2022.

177 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 9.

178 **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.

Plant,[179] that began operating on 7 December 2022.[180]

157. Turbines #7267025 and #7267577 were also mobilized from PRODEL's facilities for use. On 14 September 2020, PRODEL informed IGAPE that, to ensure the supply of electric power to the Quilemba area and the outskirts of the city of Lubango, these turbines would be sent and installed at the Lubango II Thermal Power Plant (Huíla).[181] On 14 June 2021, the corresponding transport certificate was issued to the company Orey for the transport of the Turbines.[182]

158. Turbine #7267025 was moved to the Lubango II Thermal Power Plant and entered into operation on 9 January 2022.[183]

159. In turn, Turbine #7267577, although initially intended for the Lubango II Thermal Power Plant, was then transferred to and installed at the Tchicumina Plant -Saurimo-Lunda Sul due to operational reasons.[184] This turbine ultimately entered into operation on February 20 February 2024.[185]

160. Finally, Turbine #7266027 was delivered to the Central Térmica do Malembo in Cabinda on 13 April 2022[186], and entered into operation on 12 October 2022.[187]

161. All Four Unsolicited Turbines were reported to be fully operational, maintained on a regular schedule, and equipped with the required components at each respective location, demonstrating continuous compliance with PRODEL's technical and stewardship obligations.

162. PRODEL implemented a preventive and corrective maintenance program specifically designed for the TM2500 turbines. This included periodic rotation of the shafts and inspections to prevent

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179 **R-0079**, PRODEL's letter to IGAPE, dated 14 June 2021.

180 **R-0080**, Table of the Ondjiva Thermal Power Plant (Cunene), dated 7 December 2022.

181 **R-0081**, PRODEL's letter to IGAPE, ref. 00002284/770/GPCA/GSE/2020, dated 14 September 2020.

182 **R-0082**, Transportation Certificate issued by PRODEL to OREY dated 14 June 2021.

183 **R-0115**, Table of the Lubango Thermal Power Plant, dated 9 January 2022.

184 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 9, note (6) of the Table.

185 **R-0083**, PRODEL's Letter to RNT dated 1 March 2024.

186 **R-0084**, PRODEL's letter to IGAPE, dated 29 June 2023.

187 **R-0085**, Table of the Malembo Thermal Power Plant, dated 12 October 2022.

deterioration during idle periods, as well as the regular replacement of filters and oils and the calibration of critical components when the turbines were operational.[188]

163. The technical team at PRODEL consistently followed the manufacturers' recommendations, ensuring adherence to best industry practices. For specialized tasks, such as work on control systems, PRODEL engaged external experts.[189]

164. As a result, the Turbines have remained highly reliable and operational, with all maintenance activities reported to the appropriate authorities in line with PRODEL's stewardship obligations.[190]

165. Finally, as requested by IGAPE in its authorization of the utilization of the turbines on 5 May 2020, PRODEL has maintained—and continues to maintain—periodic reporting to the Trustee regarding all relevant actions and the status of the assets.[191]

166. IGAPE's active monitoring and oversight of the turbines further demonstrates the transparency and accountability maintained throughout this process. From the outset, IGAPE required MINEA and its operating company PRODEL to submit regular reports on all actions concerning the seized turbines. While updates were often provided, they did not always adhere strictly to the scheduled quarterly intervals. On those occasions, IGAPE intervened directly to request the necessary information, thereby ensuring continuous supervision over the operation and

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188 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 10, §32.

189 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 10, §§33—35.

190 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, pp. 10-11, §§ 36—39.

191 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, pp. 11—12, §§ 40—42; **R-0071,** PRODEL's letter to IGAPE, dated 13 May 2020; **R-0072,** PRODEL's letter to IGAPE, dated 21 August 2020; **R-0081**, PRODEL's letter to IGAPE, ref. 00002284/770/GPCA/GSE/2020, dated 14 September 2020, **R-0076,** PRODEL's letter to IGAPE, dated 14 October 2020; **R-0073**, PRODEL's letter to IGAPE, dated 7 January 2021; **R-0079**, PRODEL's letter to IGAPE, dated 14 June 2021; **R-0074**, PRODEL's letter to IGAPE, dated 27 January 2022; **R-0075**, PRODEL's letter to IGAPE, dated 29 August 2022; **R-0084**, PRODEL's letter to IGAPE, dated 29 June 2023; **R-0089,** PRODEL's letter to IGAPE, dated 9 October 2023; **R-0090,** PRODEL's letter to IGAPE, ref. 00004056/1400/GPCA/ADM-PT/2024, dated 12 November 2024; **R-0091,** PRODEL's letter to IGAPE, ref. 00004057/1399/GPCA/ADM-PT/2024, dated 12 November 2024; **R-0092**, PRODEL's letter to IGAPE, ref. 00004058/1398/GPCA/ADM-PT/2024, dated 12 November 2024; and **R-0093,** PRODEL's letter to IGAPE, ref. 00001914/862/GPCA/ADM-PT/2025, dated 23 May 2025 and **R-0094,** PRODEL's letter to IGAPE, ref. 00001915/863/GPCA/ADM-PT/2025, dated 23 May 2025.

maintenance of the turbines and fulfilling its responsibilities as trustee.[192]

167. In addition, IGAPE is fully aware that, at the conclusion of its administration of the provisionally seized turbines, it will be required to submit a final report to the Court detailing all relevant actions taken. This comprehensive report will include the basis for permitting the use of the Turbines and the record of monitoring and management by PRODEL. IGAPE's commitment to diligent oversight and transparent reporting will thereby be formally presented for judicial review, assuring compliance with its legal obligations throughout the administration period.[193]

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168. In sum, following IGAPE's authorization in May 2020, MINEA through PRODEL, undertook a series of actions to operate the turbines and kept IGAPE informed on a regular basis.

2.2.4 The installation of the Four Unsolicited Turbines is reversible

169. The Claimant contends that the installation and use of the Four Unsolicited Turbines was intended as a final and definitive measure, given (i) the complexities and logistics involved in connecting them to the power grid, and (ii) the high installation costs, which, according to the Claimant, confirm that such an installation was not merely a temporary measure.[194]

170. However, this assertion is misplaced. As the Respondent demonstrates below, the Four Unsolicited Turbines, which correspond to the GE TM2500 model,[195] are specifically designed to be movable and transported from one site to another. Furthermore, installation costs borne by the Respondent have no bearing on the fact that the Respondent will return the Four Unsolicited Turbines to AEnergy if ordered by the court. The Respondent was willing to incur such costs

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192 **RWS-02**, Witness Statement of Ms. Marinela Monteiro, pp. 6—7, §§ 16—17; **R-0070**, IGAPE's Letter to the Minister of Energy and Water, 5 May 2020; **R-0095**, IGAPE's letter to PRODEL, dated 6 November 2020; **R-0096**, IGAPE's letter to PRODEL, dated 9 February 2022; **R-0054**, IGAPE's letter to PRODEL, dated 2 May 2022, **R-0097**, IGAPE's letter to PRODEL, dated 15 June 2023; **R-0098**, IGAPE's letter to PRODEL, dated 18 October 2024.

193 **RWS-02** - Witness Statement of Ms. Marinela Monteiro, pp. 6—7, §§ 18—19.

194 SoC, pp. 23—24, §§ 115—116.

195 SoC, p. 1, § 2.

given Angola's critical need for electricity supply to remote areas of the country.

171. *First*, in accordance with the manufacturer's website description, the GE TM2500 model is "[o]*ne of the world's most modular, reliable, and experienced mobile gas turbines*".[196]

172. Additionally, the product's description states that: "[t]*he trailer system allows for simplified transportation and set up of the package.*"[197] This ease of transportation, combined with rapid installation features, makes these types of turbines well-suited for servicing areas with limited electricity capacity. As further explained in GE's website: "[w]*ith installation and commissioning in as few as 11 days, a TM2500 can help you respond quickly to emergency situations – or help generate back up power during natural disaster relief, plant shutdowns or grid instability*".[198]

173. Tellingly, this technology is currently being used in Ukraine to help restore the electricity supply in the areas most affected by the ongoing armed conflict. As Aman Joshi, general manager of GE's aeroderivative business, stated in a press report:[199]

> *GE is uniquely positioned to be able to support Ukraine in their infrastructure rebuilding efforts, and our mobile aero technology has a proved track record for emergency power response situations due to its mobility, reliability, and flexibility.*

174. Indeed, as summarized in the same GE's press report: [200]

> *[T]he TM2500 is a giant, mobile gas generator – a power plant on wheels, Joshi says. (TM stands for "trailer mounted.") Whereas building a new plant takes one to four years, the approximately 28-megawatt machine, capable of powering the equivalent of more than 100,000 homes in Ukraine, can be trucked to a location and attached to a damaged plant, or hooked directly into the electrical grid, within a few weeks.*

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196 **R-0100**, TM2500 presentation in GE's website, p. 1. (emphasis added). The Respondent notes that the TM2500 presentation available in GE's references the improved TM2500 DLE model. However, as per the indication provided in page 5 of the presentation of GE's website submitted as exhibit **R-0100**, the only difference between the original TM2500 and the DLE model is that the latter has "*reduced emissions*" and operates "*without the need for water*".

197 **R-0101**, TM2500 General Equipment Supply, Engineering and Installation Proposal, p. 10.

198 **R-0100**, TM 2500 presentation in GE's website, p. 3.

199 **R-0102**, GE's press release regarding the use of TM2500 in Ukraine, dated 7 March 2023, p. 2.

200 **R-0102**, GE's press release regarding the use of TM2500 in Ukraine, dated 7 March 2023, p. 2. (emphasis added).

175. Consequently, the specific features of the GE TM2500 make the Claimant's assertion—that "[t]*he complexities and logistics of connecting these turbines to the power grid (…) confirm that this was not a temporary measure*"[201]—completely unfounded.

176. This is because the modular design of the Four Unsolicited Turbines allows for transportation, reducing the "*complexities and logistics*" of their reallocation.[202] As Mr. Arlindo Cambungo from PRODEL refers:[203]

> *The TM2500s are designed for mobility and not for permanent installation, and can be moved within short operational windows — typically around two weeks, provided the site is prepared and logistics are authorized —, always with strict handling and documentation procedures due to the nature and value of the assets.*

177. Therefore, it follows from these facts that the installation of the Four Unsolicited Turbines is reversible. Meaning that, if the Angola courts ultimately determine that the Four Unsolicited Turbines belong to AEnergy, they can and will be returned.

178. *Second*, contrary to the Claimant's assertion, the fact that Angola has incurred installation costs does not mean that the Four Unsolicited Turbines will not be return to AEnergy if it ultimately prevails in the Angolan court proceeding. As aforementioned, the Claimant argues that "*the high installation costs confirm that this was not a temporary measure*", considering that:[204]

> *[T]he installation is itself costly. For example, Presidential Order No. 177/21 included costs of Kz 6,714,397,724.88 (approx. USD 10,400,000) for installing two turbines in Lubango, Kz 10,984,814,028.30 (approx. USD 15,600,000) for two turbines in Onjdiva, and Kz 4,068,967,066.56 (approx. USD 5,778,512.60) for one turbine in Malembo.*

179. However, the costs expended by Angola with the works pertaining to the installation of the Four Unsolicited Turbines are completely unrelated to the unavoidable reality that the Four Unsolicited Turbines are capable of being disconnected to the grid and returned to AEnergy at any time. The Claimant would have this Tribunal believe that Angola would violate the decision

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201 SoC, p. 23, §§ 115—116.

202 **R-0100**, TM 2500 presentation in GE's website, p. 3.

203 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 5, § 13.

204 SoC, pp. 23—24, § 116.

of an Angolan court simply because Angola has already incurred certain costs to install these turbines. MINEA, as a responsible State organ, abides by Angolan law and court decisions, and the Claimant has no reasonable basis to suggest that it would not do so here.

180. Additionally, these expenditures are justified by Angola's public interest in expanding electricity access to remote areas of the country. Therefore, they are fully warranted and are not specifically linked to any intention of making the installation of the Turbines permanent.

181. In summary, contrary to the Claimant's assertion, the installation of the Four Unsolicited Turbines and the associated costs do not prevent Angola from returning them to AEnergy if the Angolan court process ultimately results in an order to MINEA to do so.

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

182. The Claimant alleges that the Provincial Court of Luanda's inaction for more than five years, followed by the preliminary hearings on 5 September 2025, was a procedural maneuver which highlights the lack of independence between the Angolan Courts and the Government.[205]

183. These conspiratorial allegations are manifestly unfounded. The civil proceedings are taking their ordinary course, and there is no scheme, let alone evidence of such, between the Provincial Court of Luanda and the Government that "*enabled and cemented the unlawful taking of the turbines*".[206]

184. On 2 March 2020, in order to reach that end, Angola initiated declaratory proceedings against AEnergy in the Provincial Court of Luanda following the Court's order for the preventive seizure of the Four Unsolicited Turbines.[207] As previously explained, Angola's main request was for the Court to recognize the State's ownership right over the Four Unsolicited Turbines and other goods.[208] Angola advanced the same arguments articulated in the preventive seizure request,

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205 SoC, pp. 12—13, §§ 54—59.

206 SoC, p. 13, § 59.

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

208 SoD, p. 33, § 115; Respondent's Request under Rule 41, p. 20, § 66; **C-19**, Statement of Claim in the Declaratory Proceedings, dated 2 March 2020.

namely that MINEA "ratified" AEnergy's unauthorized procurement, thereby justifying the State's ownership of the turbines.[209]

185. Following Angola's complaint, AEnergy submitted its defense on 27 September 2020.[210] On 4 November 2020, Angola filed its Reply.[211] The preliminary hearing, initially scheduled for 17 July of 2025, was rescheduled at the Claimant's request and held on 5 September 2025.[212]

186. While the Respondent acknowledges that there was a hiatus between Angola's Reply on 4 November 2020 and the 5 September 2025 preliminary hearing, this interval merely reflects systemic timelines in Angolan civil proceedings, rather than any case-specific irregularity.

187. A study conducted in 2015 observed that, from a sample of 208 civil proceedings in Angola, more than half of them required more than 3 years for the Court to reach a decision, and approximately 15% exceeded 5 years.[213]

188. Subsequent reports corroborate that these extended timelines persist in Angolan Courts to this day.[214] Particularly relevant is an article excerpt stating that:[215]

> *Cases with complex legal issues, many Parties involved, or a large amount of evidence may take longer to be resolved, but in Angola, simple issues take a long time.*

189. In light of this background, the timelines observed in this case are consistent with ordinary

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209 SoD, p. 34, § 118 **R-0016**, Application for interim measure for the seizure of the Four Unsolicited Turbines, dated 4 October 2019, §§ 41—47.

210 **R-0015**, Statement of Defense in the Declaratory Proceedings (extract), dated 27 September 2020.

211 **R-0103**, Angola's Reply in the Declaratory Proceedings, dated 4 November 2020.

212 **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.

213 **RL-0055**, Raúl Araújo/Conceição Gomes (Coor.), *A Justiça em Recurso em Angola*, 2019, p. 126.

214 **R-0046**, News article *Politicians, civil society and NGOs disappointed with the delay of legal proceedings in the country, which are causing enormous damage to litigants*, dated 4 July 2024; **R-0057**, News Article *The drama of procedural morosity in Angola*, dated 23 September 2025.

215 **R-0046**, News article *Politicians, civil society and NGOs disappointed with the delay of legal proceedings in the country, which are causing enormous damage to litigants*, dated 4 July 2024.

Angolan judicial practice. They are not the result of any type of coordination between the Government and the Provincial Court of Luanda. Accordingly, there is clearly no evidence of this alleged coordination, and the Claimant presents none, relying solely on unsubstantiated assertions. Thus, the Angola Court remains the competent forum to settle the dispute concerning the ownership of the Four Unsolicited Turbines.

190. Notably, as set out further below, the US Courts reached similar conclusions in rejecting the Claimant's efforts to litigate these issues in the United States, holding that Angola is an adequate forum.[216]

191. On 7 May 2020, AEnergy filed suit against the Respondent, PRODEL, ENDE and GE in the District Court for the Southern District of New York, alleging that Angola had unlawfully expropriated AEnergy's property without due process.[217] The SDNY dismissed AEnergy's complaint based on the doctrine of *forum non conveniens*, finding that Angola is an adequate forum and rejecting AEnergy's generalized allegations of judicial corruption in the Angolan Courts.[218]

192. On 8 September 2021, the Claimant's companies appealed the decision, arguing once again that Angolan Courts would not provide due process.[219] However, the Court of Appeal confirmed the First American Decision, concluding that AEnergy merely sought a tactical advantage in New York, disregarding the due process accusations.[220] The Claimant's companies still sought

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216 Respondent's Request under Rule 41, pp. 15—16.

217 Respondent's Request under Rule 41, p. 22, § 75; **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, see Counts one to eight, pp. 71—82.

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

219 **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, dated 8 September 2021, p. 9.

220 **R-0019**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A., v. Republic of Angola, et al and General Electric Company, et al., Case No. 21-1510-CV and Case No. 21-1752-CV, Decision on the Appeal, dated 13 April 2022, pp. 19—22; Respondent's Request under Rule 41, pp. 25—26, §§ 83—88.

certiorari review by the United States Supreme Court, but this petition was denied.[221]

193. After losing in the New York Courts, AEnergy filed a new complaint on 22 August 2022, before the District Court of Columbia, this time based on the unilateral termination of the 13 Contracts.[222] As previously explained,[223] this complaint was once again dismissed, as well as its Motion for Reconsideration.[224]

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194. In sum, the timelines for the Main Action in the Provincial Court of Luanda reflect ordinary conditions rather than any procedural maneuver. Consequently, the Claimant's continuous allegations of coordinated interference must be rejected.

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

195. Mr. Machado frames as protected investments (i) his shares in AEnergy, which were constituted on 10 December 2012 and (ii) the Four Unsolicited Turbines bought on 31 March 2017.[225] Furthermore, the Claimant bases his claims on the installation of the Four Unsolicited Turbines in state-owned power plants and the abdication of custodial responsibilities by the provincial Court of Luanda and the legal depository, IGAPE.[226]

196. Because the Claimant's claims do not meet the fundamental requirements for investment

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221 Respondent's Request under Rule 41, p. 26, § 89; **R-0020**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Memorandum of Points and Authorities in Support of the Angolan Defendants' motion to dismiss, dated 25 January 2023, p. 9.

222 **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.

223 Section 2.1.3, p. 109, §§ 30—31.

224 **R-0025**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Memorandum of Opinion, 20 June 2023, pp. 1 and 8; **R-0028**, AEnergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, Order, dated 27 October 2023.

225 SoC, p. 16, § 79—80.

226 SoC, p. 14, § 67.

protection and are made in abuse of process, this Tribunal lacks jurisdiction.

197. *First*, the acquisition of the Four Unsolicited Turbines does not have the characteristics of an investment under the ICSID Convention, since it does not constitute a substantial contribution, nor does it satisfy the duration requirement, nor does it involve any risk to the Claimant. Consequently, the Tribunal lacks jurisdiction *ratione materiae* to decide the present case (**Section 3.1.**).

198. *Second*, the Four Unsolicited Turbines were acquired and paid for through fraud, as the Claimant and his associates forged letters to include those Turbines in the Facility Agreement. Fraud and dishonest conduct cannot grant investor protection, under the BIT and the ICSID Convention, not only because they constitute a breach of Angolan law, but also because they violate international principles of international investment law. The Tribunal lacks jurisdiction *ratione materiae* for this additional reason (**Section 3.2.**).

199. *Third*, the Claimant and AEnergy have pursued the Respondent in various jurisdictions, by altering the characterization of the facts he alleges constitute an expropriation. In these proceedings, this strategy is employed to manufacture ICSID jurisdiction, rendering the submissions inadmissible as they constitute an abuse of process (**Section 3.3**).

200. *Fourth*, although the Claimant tries to cast light on post-treaty conduct, the reality is that by 22 December 2021 (when the BIT came into force), all the relevant events to the present dispute had already unfolded, and the State's post-treaty conduct could never amount to an independent and separable actionable State conduct. Therefore, the Tribunal lacks jurisdiction *ratione temporis* (**Section 3.4.**).

201. Finally, the Claimant dispatched the Notice of Dispute for these proceedings on 9 June 2022. This is the last point in time at which the Four Unsolicited Turbines had to be installed and connected to the grid for expropriation. However, at the time of the Notice of Dispute, there is an absence of an actual dispute (as alleged by the Claimant) relating to at least two turbines, which deprives the Tribunal of consent-based jurisdiction over those claims. Accordingly, the Tribunal lacks *ratione voluntatis* jurisdiction to decide any alleged breach connected thereto (**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

202. The Claimant argues that he made an investment protected under the BIT and the ICSID Convention in the acquisition of the Four Unsolicited Turbines through AEnergy.[227] However, the acquisition of the Four Unsolicited Turbines does not constitute an investment and consequently the Tribunal lacks jurisdiction *ratione materiae* to decide on the present case.

203. In order to establish jurisdiction, it is necessary to determine whether an investment was made under Article 25 of the ICSID Convention and the applicable BIT. This reflects the prevalent and preferred (double-barrel) approach, under which the BIT's definition is insufficient, by itself, to determine the Tribunal's jurisdiction.[228]

204. The absence of an express definition of the concept of investment under the ICSID Convention was not meant to allow the parties to determine without restriction the scope of the *ratione materiae* jurisdiction of ICSID Tribunals. Rather, Article 25 is widely understood to set outer limits for the concept of investment that cannot be overruled by parties in their BITs.[229]

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227 SoC, p. 16, § 80.

228 **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, pp. 622 – 623, §§ 52–58.; **RL-0035,** Christoph H. Schreuer, *The ICSID Convention: A Commentary*, Second Edition, 2009, p. 117, § 124. **RL-0036**, Noah Rubins *et al.,* Investor- State Arbitration, Second Edition, 2019, p. 345, §§ 10.28- 10.33; **RL-0037**, *Aguas del Tunari S.A. v. Republic of Bolivia*, ICSID Case No. ARB/02/3, Decision on Jurisdiction, dated 21 October 2005, p. 64, §§ 278-286, **RL-0038**, *Malaysian Historical Salvors v. Malaysia*, ICSID Case No. ARB/05/10, Award on Jurisdiction, dated 17 May 2007, p. 16, § 55.

229 **RL-0039**, History of ICSID Convention – Documents Concerning the Origin and the Formulation of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States – Vol II - part 2, p. 727 (p. 89 of the pdf), ICSID, 1968; **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: ("The fact that the Convention has not defined the term investment does not mean, however, that anything consented to by the parties might qualify as an investment under the Convention. The Convention itself, in resorting to the concept of investment in connection with jurisdiction, establishes a framework to this effect: jurisdiction cannot be based on something different or entirely unrelated. In other words, it means that 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. The parties to a dispute cannot by contract or treaty define as investment, for the purpose of ICSID jurisdiction, something which does not satisfy the objective requirements of Article 25 of the Convention. Otherwise, Article 25 and its reliance on the concept of investment, even if not specifically defined, would be turned into a meaningless provision.").

205. It is long established that Tribunals must therefore apply the general criteria developed in ICSID jurisprudence, namely the Salini criteria, 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.[230]

206. The Claimant contends that its acquisition of the Four Unsolicited Turbines constitutes a protected investment under the BIT.[231] The Respondent will show that the transaction concerning the Four Unsolicited Turbines was, at most, a contract for the sale of goods in which the Claimant merely served as an intermediary between GE and the Respondent. Accordingly, the Claimant's acquisition of the Four Unsolicited Turbines does not (i) constitute a substantial contribution (**Section 3.1.1.**), (ii) satisfy the requirement of duration (**Section 3.1.2.**), or (iii) involve investment-specific risk (**Section 3.1.3.**).

3.1.1 The Claimant did not make a substantial contribution

207. For a transaction to qualify as an investment, it must reflect a contribution by the investor with economic value and have a nexus to host State. Although this contribution does not have to be purely financial, it must amount to a concrete and material contribution with an economic objective.[232] Consequently, tribunals have frequently declined jurisdiction where the parties'

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230 **RL-0034**, *Salini Costruttori S.p.A and Italstrade S.p.A vs the Kingdom of Morocco*, ICSID Case No. ARB/0074, 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. 22—23, §§ 105—113.

231 SoC, p. 16, § 80.

232 **RL-0044,** *Consortium Groupement L.E.S.I.- DIPENTA v République Algérienne Démocratique Et Populaire*, ICSID Case N.o ARB/03/08, Award, dated 10 January 2005, p. 20, § 14: ("there can be no investment unless a portion of the contribution (…) brings with it economic value. This would presumably involve financial commitments, in the first place, but it would be too restrictive an interpretation not to admit other sacrifices. These contributions could, then, consist of loans, materials, works, or services, provided they have an economic value. In other words, the Contractor must have committed outlays, in some way, in order to pursue an economic objective."); **RL-0045,** *Patrick Mitchell v. Democratic Republic of Congo, ICSID Case No. ARB/99/7*, Annulment Decision, dated 1 November 2006, p. 12 § 27; **RL-0046,** *Fedax N.V. v. Republic of Venezuela*, ICSID Case No. ARB/96/3, Decision on Jurisdiction, dated 11 July 1997 p. 1387, § 43; **RL-0034,** *Salini Costruttori S.p.A and Italstrade S.p.A vs the Kingdom of Morocco*, ICSID Case No

relationship is limited to isolated sales of goods without additional elements typical of an investment, e.g., durable asset allocation, market risk in the host State, or temporal commitment.[233]

208. This standard was applied in the case of *Joy Mining v Egypt*, where a dispute arose from a contract for the sale of mining equipment to a state-owned entity. The Tribunal denied jurisdiction on the basis that the transaction constituted a single sale-of-goods rather than an investment. The Tribunal emphasized that ordinary procurement of equipment, even when connected to other services, could not constitute an investment under Article 25 of the ICSID Convention.[234] Considering otherwise, would allow general sales or procurement contracts to be subject to international investment protection, despite not being included within the scope of the ICSID Convention.[235]

209. The same reasoning applies in the present case, as the simple supply of the Turbines by GE, (through its intermediary in Angola, AEnergy), even if combined with the acquisition of services, cannot qualify as an investment. Indeed, the Claimant did not make any substantial contribution to the acquisition of the Turbines as (i) it did not make any financial commitment and (ii) it only acted as an intermediary between GE (as seller) and the Respondent (as buyer).

210. *First*, as discussed above,[236] the Claimant did not make any financial contribution to Angola. The Claimant entered into an agreement with GE which bound the Claimant to act only as "*the*

ARB/0074, Decision on Jurisdiction, dated 16 July 2001, p. 622, §§ 52—53; **RL-0047,** *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, dated 14 November 2005, p. 30-320, §§ 105—120.

233 **RL-0044**, *Consortium Groupement L.E.S.I.- DIPENTA v République Algérienne Démocratique Et Populaire*, ICSID Case No. ARB/03/08, Award, dated 10 January 2005, p. 21, § 14; **RL-0048***, KT Asia Investment Group B.V v Republic of Kazakhstan*, ICSID Case No ARB/09/8, Award, dated 17 October 2013, p. 54, § 206; **RL-0049**, *Romak S.A v The Republic of Uzbekistan, PCA Case No AA280*, Award, dated 26 November 2009, p. 64, § 242; **RL-0050**, *Mihaly International Corp. v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/00/2, Award, dated 15 March 2002, p. 155, § 48.

234 **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. 12—14, §§ 55—58.

235 **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. 12—14, § 59.

236 See Section 2.1.1, pp. 11 — 12, §§ 45 — 46.

distributor of GE Transportation (…) in the railway and electricity production sectors"[237] for the supply of electricity production equipment in Angola.[238]

211. Under the Framework Agreement, the Claimant had a clear obligation to sell the Turbines exclusively to the Respondent and not any other entity. In this sense, the Claimant only had to act as an intermediary between GE (as seller) and the Respondent (as buyer).[239]

212. Second, neither AEnergy nor the Claimant committed any meaningful assets or capital to Angola in connection with the supply of the Four Unsolicited Turbines. AEnergy did not "pay" for the Four Unsolicited Turbines with its own money or with money that it borrowed. It was the Respondent who paid for the Four Unsolicited Turbines from funds available through the Facility Agreement concluded between GE Capital and the Respondent. AEnergy was merely the go-between for the payments between the Respondent and GE.

213. The Claimant's allegation that it used its own funds to pay for the Four Unsolicited Turbines[240] is not true. As the District Court of Columbia confirmed, the Claimant and his associates forged letters in order to access Angola's funds under the Facility Agreement.[241] As previously mentioned,[242] the Four Unsolicited Turbines which were not included in the 13 Contracts, were subsequently incorporated into the Facility Agreement through this fraudulent scheme. Through the Forged Letters[243], the Claimant was able to use the funds under the Facility Agreement to acquire the Four Unsolicited Turbines, without due authorization from the Respondent.

214. Consequently, the acquisition of the Four Unsolicited Turbines by the Claimant cannot be viewed as representing a substantial (or any) contribution as there was no commitment of resources (either from the Claimant or from AEnergy). AEnergy acted as a mere conduit between the seller,

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237 **C-35**, Memorandum of Understanding between GE and the Government of Angola, 24 June 2013, recital F.

238 SoC p. 2, § 11.

239 **C-38**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., p. 2.

240 SoC, pp. 5—6, § 26.

241 **RER-01**, Expert Report by HKA, pp. 17—18, §§ 38—41; p. 19, § 44.

242 Section 2.1.2.

243 Respondent's Request under Rule 41, p. 11, § 33.

GE, and the buyer, the Respondent (both for the turbines and for the funds used to pay for the turbines) – and, in any event, it manifestly abused that role through the Forged Letters. Accordingly, the transaction does not qualify as a protected investment under the ICSID Convention.

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

215. The "duration" requirement is a core criterion for determining whether an operation qualifies as a protected investment under ICSID Article 25. It stipulates that the investment must demonstrate a medium-to long-term horizon, indicating sustained economic engagement in the host State, rather than a one-off commercial sale.[244]

216. As mentioned by Professor Schreuer:[245]

> *[I]t seems possible to identify certain features that are typical to most of the operations in question. The first such feature is that the projects have a certain duration. Even though some break down at an early stage, the expectation of a longer-term relationship is clearly there.*

217. This approach excludes ordinary or one-off commercial transactions and reserves protection for continuous economic undertakings.[246] Indeed, tribunals have also concluded that the element of duration could not be met in cases, the contribution made by the investor was the acquisition

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244 **RL-0051,** *Mr. Saba Fakes v Republic of Turkey*, ICSID Case No. ARB/07/20, Award, dated 14 July 2010, p. 47, § 147; **RL-0045,** *Patrick Mitchell v. Democratic Republic of Congo*, ICSID Case No. ARB/99/7, Annulment Decision, dated 1 November 2006, p. 12 § 27; **RL-0046,** *Fedax N.V. v. Republic of Venezuela*, Decision on Jurisdiction, ICSID Case No. ARB/96/3, dated 11 July 1997, p. 1387, § 43; **CLA-100,** *Deutsche Bank AG v. Democratic Social Republic of Sri Lanka*, ICSID Case No. ARB/09/02, Award, date 31 October 2012, p. 61, §§ 301—303; **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; **RL-0049**, *Romak S.A v The Republic of Uzbekistan*, PCA Case No. AA280, Award, dated 26 November 2009, p. 64, § 242.

245 **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.

246 **RL-0053**, *Manchester Securities Corp. v The Republic of Poland*, PCA Case No. 2015-18, Award, dated 7 December 2018, p. 94, § 377; **RL-0040,** *Joy Mining Machinery Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/03/11, Decision on Jurisdiction, dated 6 August 2004, pp. 13—15, §§ 57—63; **RL-0054,** *Alps Finance and Trade AG v. The Slovak Republic*, ad hoc arbitration, Award, dated 5 March 2011, pp. 78—79, § 245; **RL-0048,** *KT Asia Investment Group B.V v Republic of Kazakhstan*, ICSID Case No. ARB/09/8, Award, dated 17 October 2013, p. 56, §§ 210—212.

of an asset that the parties *a priori* knew would be disposed of shortly after.[247]

218. In *KT Asia Investment Group B.V v Kazakhstan*, the case concerned a short-lived shareholding structure through which the Claimant—a Dutch vehicle—briefly held BTA Bank shares during turmoil and planned an immediate on-sale to a third party. The Tribunal found that the duration requirement was not met as "*the transfer of the ownership of shares in a company to KT Asia* on *an intended short-term basis (…) does not support the finding that KT Asia had any intention to hold an investment in BTA Bank for any material term*." The tribunal further held that the Claimant was only considered a "*convenient staging point*" as its role was purely transactional.[248]

219. The same reasoning applies to present case where there was never ever intention by the Claimant (or his local vehicle, AEnergy) to hold the Four Unsolicited Turbines on a medium or long-term basis. Rather – even were the transaction not entirely fraudulent – the Claimant's role involved nothing more than to act as a convenient "go-between" for the transaction between Angola and GE.[249]

3.1.3 The Claimant did not assume investment risk

220. A transaction qualifies as an investment only if the investor assumes risks stemming from the development of an activity over an extended period, including political, commercial,

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247 **RL-0048,** *KT Asia Investment Group B.V v Republic of Kazakhstan*, ICSID Case No. ARB/09/8, Award, dated 17 October 2013, p. 56, §§ 210- 212; **RL-0049**, *Romak S.A v The Republic of Uzbekistan*, PCA Case No. AA280, Award, dated 26 November 2009, p. 64, § 242**; RL-0054** *Alps Finance and Trade AG v. The Slovak Republic*, ad hod arbitration, Award, dated 5 March 2011, pp. 78-79, § 245; **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, pp 12-14, §§ 53-56; **RL-0004,** *Global Trading Resource Corp. and Globex Int'l, Inc. v. Ukraine*, ICSID Case No. ARB/09/11, Award, 1 December 2010, p. 19, § 56.

248 **RL-0048**, *KT Asia Investment Group B.V v Republic of Kazakhstan*, ICSID Case No. ARB/09/8, Award, dated 17 October 2013, p. 56, § 213; **RL-0049,** *Romak S.A v The Republic of Uzbekistan*, PCA Case No AA280, Award, 26 November 2009, p. 64, § 242; **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, pp. 12—14, §§ 53—56; **RL-0004,** *Global Trading Resource Corp. and Globex Int'l, Inc. v. Ukraine*, ICSID Case No. ARB/09/11, Award, dated 1 December 2010, p. 19, § 56; **RL-0054,** *Alps Finance and Trade AG v. The Slovak Republic,* Ad hoc arbitration, Award, dated 5 March 2011, pp. 78—79, § 245.

249 SoC, pp. 3—4; §§ 13—19.

environmental, and other risks.[250]

221. Some tribunals take a broad view, finding risk where investors face legislative changes, unforeseeable events short of force majeure, or disputes that signal uncertainty and exposure.[251] Others take a narrower view, distinguishing commercial or sovereign risks from true investment risks, focusing on potential loss of capital, uncertain returns, and regulatory or policy exposure.[252] The common standpoint holds that risks in ordinary commercial contractual relations, such as breach of contract, are, as a rule, insufficient to satisfy this criterion. Only genuine economic operations that entail effective exposure to investment risks in the host State merit treaty protection.[253]

222. Given the fact that AEnergy did not make any payments to acquire the Turbines from GE, it incurred no risk of losing that (inexistent) contribution[254] (and, by extension, neither did the Claimant).[255]

223. The Claimant acted merely as an intermediary in the transaction concluded between GE and the Respondent, and it did not incur any risk related to the transaction as the price was only due once the Turbines were paid by the Respondent.[256] Even with regard to the payment by the Respondent, the risks assumed by the buyer and the seller were practically non-existent as the price of the Turbines was paid with resort to external financing from GE Capital through the Facility Agreement.

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250 **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, pp. 12—14, §§ 53—56.

251 **CLA-100**, *Deutsche Bank AG v. Democratic Social Republic of Sri Lanka*, ICSID Case No. ARB/09/02, Award, dated 31 October 2012, p. 61, §§ 301—303.

252 **CLA-100**, *Deutsche Bank AG v. Democratic Social Republic of Sri Lanka*, ICSID Case No. ARB/09/02, Award, dated 31 October 2012, p. 61, §§ 301—303.

253 **RL-0043**, *Nova Scotia Power Incorporated v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/1, Award, dated 30 April 2014, p. 20 § 105.

254 See Section 2.1.1, p. 11—12, §§ 45-47.

255 See Section 2.1.12.1.2, p. 11—12, §§ 45-47.

256 **R-0037**, Statement of Case in the LCIA between AEnergy and GE, dated 28 October 2020, p. 13, § 42; **C-0038**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., p. 5, Article III(F) and (G), dated 30 June 2016; **RER-01**, Expert Report by HKA, pp. 17—18, § 31.

224. As mentioned by HKA in its expert report, the Claimant has not shown any evidence capable of demonstrating that AEnergy used its own funds, or that the Claimant used his personal funds, to complete the specific transaction at issue in this arbitration (namely, that related to the Four Unsolicited Turbines). In particular, the Claimant has not produced any financial or bank statements that would demonstrate such payments.[257]

225. The Claimant's payment obligation to GE arose only after receiving the corresponding payment from the Respondent[258], as such, the Claimant did not incur in a financial risk with regard to the payment of the price. Once again, the transaction took place between GE and the Respondent, and the Claimant acted only as an intermediary.

226. Given that the price of the Four Unsolicited Turbines was paid by the Respondent (to say nothing of the fact that such payment was procured unlawfully by the Claimant and his associates), the Claimant faced no risk with the transaction.

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227. In sum, the acquisition of the Four Unsolicited Turbines by the Claimant does not comply with the requirements under the ICSID Convention to be considered an investment, as it involves no contribution or long-term commitment, and the Claimant, as alleged investor did not assume any risks. Consequently, the Tribunal lacks jurisdiction *ratione materiae* and cannot decide upon the claims brought by the Claimant.

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

228. The Tribunal would lack jurisdiction *ratione materiae* for the reasons set out above. In any event, the Respondent will demonstrate that, in the present case, the Claimant's investment breaches the legality requirement under the BIT and is contrary to applicable principles of international

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257 **RER-01**, HKA Report, p. 17, § 41; Section 2.1.1., p. 12, §§ 48—50.

258 **R-0037**, Statement of Case in the LCIA between AEnergy and GE, dated 28 October 2020, pp. 12—13, §§ 42-43.

law. The Tribunal therefore lacks jurisdiction *ratione materiae* for this reason also.

229. Many States specifically and expressly condition treaty protection by requiring that investments comply with the host state's laws. This is the case under Article 2(1) of the Angola-Portugal BIT, where the State determined that the BIT applies to *"investments made in accordance with the applicable law under the host state*".[259] Accordingly, in addition to the previously mentioned requirements governing the jurisdiction of an ICSID tribunal,[260] there is an additional requirement, whereby the investment must comply with the host state's domestic laws.

230. The legality requirement (including the one found in Article 2(1)) comprises two distinct elements: (i) the investor's breach of the host State's law must be serious; and (ii) the illegality must have occurred at the time the investment was established.[261]

231. *First*, not every breach of domestic law suffices; arbitral practice generally requires (i) a serious violation of national law; (ii) infringements of the host State's investment requirements; or (iii) investments obtained through fraud or corruption.[262]

232. Therefore, pursuant to Article 2(1), investments obtained through criminal conduct such as fraud or corruption will not attract protection under the BIT. Fraud means the deliberate deception (misrepresentation, concealment or corrupt payment) by which an investor obtains an advantage or right from the host state.[263]

233. Pursuant to investment treaty jurisprudence, an investment procured by such wrongful means,

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259 **RL-0056**, *Gustav F W Hamester GmbH & Co KG v. Republic of Ghana*, ICSID No. ARB/07/24, Award, dated 18 June 2010, p. 39 § 124.

260 Section 3.1.

261 **RL-0056**, *Gustav F W Hamester GmbH & Co KG v. Republic of Ghana*, Case ICSID No. ARB/07/24, Award, dated 18 June 2010, p. 37**,** §§ 126—128.

262 **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, p. 90, §§ 266—267.

263 **RL-0058,** Adilbek_Tussupov *et. all*, *Corruption and Fraud in Investment Arbitration - Procedural and Substantive Challenges*, European Yearbook of International Economic Law Vol. 22, Springer, 2022, p. 136.

cannot be deemed as being in accordance with the law of the host state.[264] And, by extension, a State cannot be required to extend protection to an investment obtained in contravention of its laws and principles, especially when a purported investor profits from his own fraud perpetrated against the State.[265]

234. In *Inceysa v. El Salvador* case, the tribunal concluded that:[266]

> *[T]he foreign investor cannot seek to benefit from an investment effectuated by means of one or several illegal acts and, consequently, enjoy the protection granted by the host State, such as access to international arbitration to resolve disputes, because it is evident that its act had a fraudulent origin and, as provided by the legal maxim, "nobody can benefit from his own fraud".*

235. The *Inceysa v. El Salvador* case concerned a Spanish company participating in a public tender for vehicle inspection services, where the tribunal found that the concession had been obtained through fraudulent misrepresentations and falsified documents. The tribunal concluded that the claimant had submitted false and incorrect documentation to win the bidding process in the host state, namely documents reflecting the company's financial condition, an essential element for adjudication. Accordingly, the tribunal denied jurisdiction under the BIT which prescribed specific limitations to protecting investments made against the host state's law.[267]

236. In *Quiborax v. Bolivia case*, Quiborax S.A., a Chilean company, was awarded mining concessions

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264 **RL-0059**, *Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, dated 2 August 2006, p. 73 § 242; **CLA-103**, *Plama Consortium Limited v. Bulgaria,* ICSID Case No. ARB/03/24, Award, dated 27 August 2008, pp. 44—47, §§ 143—145; **RL-0061**, *Metal-Tech Ltd. v. Republic of Uzbekistan,* ICSID Case No. ARB/10/3, Award, dated 4 October 2013, pp. 130—136, § 389; **RL-0062**, *World Duty Free* Company *Limited V. Republic of Kenya,* ICSID Case No. ARB/00/7, Award, dated 4 October 2006, pp. 38—46, §§ 179—181; **RL-0063**, *Frankfurt Airport Services Worldwide v. Republic of Philippines*, ICSID Case No. ARB/03/25, Award, dated 16 August 2007, pp. 123—130, §§ 397—401.

265 **RL-0059**, *Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, dated 2 August 2006, p. 73, § 240; **RL-0062**, *World Duty Free* Company *Limited V. Republic of Kenya,* ICSID Case No. ARB/00/7, Award, dated 4 October 2006, pp. 38—46, §§ 179—181; **RL-0035**, Christoph H. Schreuer et al., *The ICSID Convention: A Commentary*, 2nd ed., Cambridge University Press, 2009, Art. 25, §§ 160—162.

266 **RL-0059**, *Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, dated 2 August 2006, p. 73, §§ 242—244; **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. 36, § 123.

267 **RL-0059**, *Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, dated 2 August 2006, pp. 77—79, §§ 258—264.

at Salar de Uyuni. When Bolivia revoked those concessions, it alleged that the investment had been made through illegal actions and fraud, specifically citing irregularities in obtaining the concessions and falsification of corporate documents. The tribunal recognized that an investment obtained through fraud could not qualify as an investment for the purposes of investment protection treaties and international law.[268]

237. *Second*, to deny treaty protection, it is also necessary that the infringement of national law occurs at the outset of the investment, focusing on the moment of establishment of the investment.[269] In other words, the violation of domestic law must be serious, to annul or invalidate the investment—at the time it was made—under the law of the host state and that violations need to have occurred at the outset of the investment meaning that the investment was based on actions committed against the state and its general principles.[270]

238. In addition to complying with the host state law, therefore, it is generally accepted that even if the applicable BIT does not explicitly require compliance with national laws of the host state, an investment cannot be protected if it was obtained in violation of international principles of good faith, by way of corruption, fraud or deceitful conduct, or if its creation itself constitutes a misuse of the system of international investment protection under the ICSID Convention.[271] This is an additional, standalone reason for denying jurisdiction *ratione materiae*.[272] In fact, international

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268 **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, p. 90, §§ 266—267.

269 **RL-0063**, *Frankfurt Airport Services Worldwide v. Republic of Philippines*, ICSID Case No. ARB/03/25, Award, dated 16 August 2007, p. 164 § 345; **RL-0051**, *Mr. Saba Fakes v Republic of Turkey*, ICSID Case No. ARB/07/20, Award, dated 14 July 2010, p. 47, § 119; **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. 39, § 127.

270 **RL-0064**, *Alvarez Y Marin v. Panama*, ICSID Case No. ARB/15/14, Award, dated 12 October 2018, p. 44 §151; **RL-0065**, *Michael Anthony Lee-Chinv. Dominican Republic*, ICSID Case No. UNCT/18/3, Award, dated 6 October 2023, p. 53, §§ 186—187.

271 **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. 39, § 123; **RL-0066**, *Mamidoil Jetoil Greek Petroleum Products Societe S.A v. Republic of Albania*, ICSID Case No. ARB/11/24, Award, dated 30 March 2015, p. 71, § 359; **CLA-103,** Plama Consortium Limited v. Bulgaria, ICSID Case No. ARB/03/24, Award, dated 27 August 2008, pp. 44—47, §§ 143—145; **RL-0023**, Phoenix Action Ltd. v. The Czech Republic, ICSID Case No. ARB/06/5, Award, dated 15 April 2009, p. 39, §§ 101—105.

272 **CLA-103**, *Plama Consortium Limited v. Bulgaria*, ICSID Case No. ARB/03/24, Award, dated 27 August 2008, p. 40, §§ 138—139; **RL-0063**, *Frankfurt Airport Services Worldwide v. Republic of Philippines*, ICSID

public policy dictates that an investment procured through criminal conduct or corruption cannot enjoy the protection of a bilateral investment treaty.[273]

239. With regards to corruption, it has been increasingly recognized that the standard of proof to be applicable by tribunals in assessing jurisdiction over an investment obtained by fraud and corruption should be lowered, not entailing clear and unequivocal proof.[274] This necessity comes from the fact that corruption and fraud itself are behaviors which entail particularly difficult probatory demands. In fact, "*the actors of illicit schemes do not tend to act openly and leave a paper-trail behind […] and perhaps more so, acts of corruption and collusion [which]are specifically designed not to be able to be identified or detected*."[275]

240. In the present case, however, the Respondent has sufficiently proven that Claimant concluded the alleged investment in breach of not only the national law of the host state but also international principles of good faith, by way of fraud and deceitful conduct. Mr. Machado claims that his investment should be protected under the BIT. Nevertheless, the Tribunal should deny jurisdiction over Mr. Machado's claim as this alleged "investment" was procured through fraud perpetrated on the Respondent.

241. As previously explained in section 2.1. above, the Claimant advances a misleading narrative regarding the acquisition of the Turbines, knowing that the actual circumstances surrounding the acquisition demonstrate clear indicia of fraud.

242. In fact, the Claimant, through deliberate actions, was not only an accomplice in the falsification

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Case No. ARB/03/25, Award, dated 16 August 2007, pp. 188-192, §§ 396-404; **RL-0023**, *Phoenix Action Ltd. v. The Czech Republic,* ICSID Case No. ARB/06/5, Award, dated 15 April 2009, pp. 39—41, §§ 101—105; **RL-0067**, *Alasdair Ross Anderson ET AL v. Republic of Costa Rica*, ICSID Case No. ARB (AF)/07/3, Award, dated 19 May 2010, p. 21, §§ 55—56.

273 **RL-0062**, *World Duty Free* Company *Limited V. Republic of Kenya,* ICSID Case No. ARB/00/7, Award, dated 4 October 2006, pp. 38-46, §§ 179-181; **RL-0061**, *Metal-Tech Ltd. v. Republic of Uzbekistan,* ICSID Case No. ARB/10/3, Award, dated 4 October 2013, pp. 130-136, § 389; **RL-0063**, *Frankfurt Airport Services Worldwide v. Republic of Philippines*, ICSID Case No. ARB/03/25, Award, dated 16 August 2007, pp. 123—130, §§ 397—401.

274 **RL-0061**, *Metal-Tech Ltd. v. Republic of Uzbekistan,* ICSID Case No. ARB/10/3, Award, dated 4 October 2013, pp. 130—136, § 243.

275 **RL-0058,** Adilbek_Tussupov *et. all*, *Corruption and Fraud in Investment Arbitration - Procedural and Substantive Challenges*, European Yearbook of International Economic Law Vol. 22, Springer, 2022, p. 136.

of documents but also paid Mr. Wilson da Costa for his collaboration in deceiving both GE and the Respondent, in such a way as to include the Four Unsolicited Turbines within the scope of the 13 Contracts, and thereby within the scope of the Facility Agreement.[276]

243. The Respondent submits that this scheme, including the falsification of documents and the subsequent payment, represents very serious violations of the Angolan national law as they constitute one or several crimes under Angolan national law,[277] specifically when made with purposes of obtaining undeserved benefits from third parties.

244. In fact, and as far as the Respondent is aware, the Claimant is being subject to a criminal investigation led by the Public Prosecutor's Office (DNIAP) in relation to this specific scheme that culminated in the inclusion of the Four Unsolicited Turbines within the scope of the 13 Contracts and the Facility Agreement.[278]

245. Furthermore, this fraudulent scheme and its underlying facts have already led to the conviction of Mr. da Costa for fraud in the US Proceedings.[279]

246. It happens so that this scheme, in which the Claimant took unrebukable part – so much so that the Claimant paid his associates for it, namely Mr. Wilson da Costa –, is at the origin of the Claimant's alleged investment.

247. As mentioned above,[280] in 2016, AEnergy committed to purchasing 12 TM2500 turbines from GE and selling them to Angola.[281] However, GE imposed a condition for the disbursement of funds under the Facility Agreement, namely that these funds be used to pay for 12 turbines. This requirement left AEnergy and the Claimant in a precarious situation since the original 13

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276 **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, pp. 7—8.

277 Cf., e.g., **RL-0095**, Criminal Code of Angola, Articles 251, 417 and 418.

278 **C-0019,** Angola's lawsuit against Aenergy, filed in the Provincial Court of Luanda (with informal translation into English), dated 2 March 2020, § 77, p. 22.

279 SoC, p. 5 § 22.

280 Sections 2.1.1 and 2.1.2, p. 32—41.

281 **C-0038**, Framework Agreement between AEnergy, S.A. and GE Packaged Power, Inc., dated 30 June 2016, p. 4.

Contracts between MINEA and AEnergy covered only eight turbines. This difference created a gap between the scope of the 13 Contracts and the necessary requirements for the disbursement under the Facility Agreement. To address this situation, the Claimant needed to secure that Angola would agree to purchase more than the eight turbines originally agreed upon.[282]

248. The solution chosen by the Claimant and his associate Mr. da Costa, was to forge and submit documentation to GE Capital, namely letters purportedly written by the Respondent,[283] which allowed the Claimant to include the Four Unsolicited Turbines in the funds granted to Angola under the Facility Agreement.[284] It is now established that in 2017, Angola never authorized nor requested the Four Unsolicited Turbines to be included in the scope of the contracts. The Respondent only became aware of the fraud after the meetings held on 5 and 7 December 2018.[285]

249. Although it was established in the US Proceedings that Mr. da Costa was the individual who directly falsified the documents, it was also proven therein that both Mr. Wilson da Costa and another GE employee each received approximately 5 million USD from the Claimant as compensation for their collaboration in the fraud scheme, namely forging the letters.

250. As previously mentioned,[286] it was Mr. Machado who promised to pay Mr. da Costa and another GE employee 10 million USD each in exchange for the Forged Letters. According to the SDNY, "*the government presented evidence that Da Costa and Nelson were frustrated Machado had paid each of them $5 million instead of the expected payout of $10 million each*".[287]

251. These Forged Letters enabled the Claimant to include the Four Unsolicited Turbines within the

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282 **RER-01**, Expert Report by HKA, 26 November 2025, pp. 13—22, §§35—51.

283 See Section 2.1.3. Also, SoC, p. 5, § 22.

284 SoC, p. 5, § 22.

285 **R-0012**, Emails exchanged between GE Power (Wilson da Costa), AEnergy (Ricardo Machado) and MINEA, between 7 December 2018 and 17 December 2018.

286 Section 2.1.2

287 **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025, pp. 7—8.

scope of the Facility Agreement, without the Respondent's knowledge or consent. As the Claimant itself notes, the Four Unsolicited Turbines are at the center of the misrepresentation and are the subject of this dispute.[288]

252. Nevertheless, even if the previous allegations were insufficient to establish the necessary standard that the Claimant's alleged investment was obtained through fraud, this conclusion would still be reached by reference to the evidence demonstrated in the HKA report.

253. According to HKA, fraud examiners use an analytical tool composed of three sides in order to explain why and how people commit fraud, including: (i) pressure, which creates a feeling of need through a *problem which may "threaten[] the status of the subjects, or [which may] threaten to prevent them from achieving a higher status… at the time of their violation;"*(non-shareable" problems); (ii) a perceived opportunity, which concerns the preparator's belief in the ability to solve the non-shareable problem without getting caught; and (iii) rationalization, which denotes the process by which the perpetrator justifies the fraudulent conduct to themselves based on possible past behaviors.[289]

254. In the present case, the three sides of the fraud triangle are met.

255. *First*, the Claimant was financially pressured into completing the contracts with the Respondent for the 12 turbines as this was a necessary condition for the disbursement of the funds from GEC and the Claimant lacked sufficient capital to pay for the turbines solely through Anergy.[290]

256. *Second*, given the delicate position the Claimant created by allowing a mismatch between the contractual terms agreed with GE and those agreed with the Respondent, the Claimant perceived an opportunity to act so as to conceal its own conduct. [291]

257. Finally, the rationalization requirement is also satisfied in the present case, as the Claimant had

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288 **S**oC, p. 16, § 80.

289 **RER-01**, Expert Report by HKA, 26 November 2025, p. 9, quoting **[HKA-2]** Association of Certified Fraud Examiners, Fraud EXAMINERS Manual, dated 2015, p. 4.239-241.

290 Section 2.1.1.

291 Section 2.1.2.

previously been convicted of fraudulent behavior by the Portuguese national courts. The conduct at issue here—where the Claimant carried out fraudulent actions with the intention of deceiving both the Respondent and GE—constitutes yet another instance of the Claimant's recurring *modus operandi*. This pattern demonstrates that the Claimant did not regard such misconduct as wrongful, thereby fulfilling the rationalization element of the fraud triangle.[292]

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258. In conclusion, the investment the Claimant alleges was expropriated was, from the outset, procured by fraud perpetrated by the Claimant acting through Mr. Wilson da Costa. Consequently, it cannot be deemed to have been made in accordance with Angolan law — specifically, under Article 251 of the Angolan Criminal Code — and therefore does not qualify for special protection under the Angola – Portugal BIT.

259. Moreover, even if the BIT does not expressly exclude protection for investments that breach the host state's national law, the international principle of good faith[293] would in any case preclude such protection. Having deliberately deceived the Respondent, the Claimant cannot invoke ICSID jurisdiction to insulate himself from the consequences of his own fraud.

260. Requiring the Respondent to grant special protection under ICSID jurisdiction in this case would allow the Claimant to benefit from their own fraudulent acts including misrepresentation, mischief and other dishonest conduct. Such protection cannot be granted.

261. Accordingly, the Tribunal lacks jurisdiction *ratione materiae* and cannot decide upon the claims brought by the Claimant regarding the alleged investment.

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

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292 Section 2.1.2.; **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.

293 **RL-0059**, *Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, dated 2 August 2006, pp. 77-79, §§ 258-264; **RL-0023**, *Phoenix Action Ltd. v. The Czech Republic*, ICSID Case No. ARB/06/5, Award, dated 15 April 2009, pp. 39—41, §§ 101—105.

abuse of rights/process

262. Where a party engages in conduct designed solely to manufacture the jurisdiction of an ICSID tribunal by manipulating the factual basis of an investment claim, such behavior constitutes an abusive manipulation inconsistent with the purpose of the treaty and contrary to the objectives of the investment arbitration regime.[294] This represents the doctrine of abuse of process which derives from the broader doctrine of abuse of rights and the principle of good faith.[295]

263. Arbitral tribunals have applied this doctrine to dismiss claims where an investor seeks to obtain an illegitimate procedural advantage from arbitration, or where a tribunal finds that a party has acted in bad faith. Therefore, this is grounds for an objection to the tribunal's jurisdiction.[296]

264. In *Phoenix Action v. Czech Republic*, where an Israeli company acquired two Czech companies that were involved in domestic arbitration for the sole purpose of gaining access to ICSID jurisdiction, the Tribunal concluded that "[*a]though, at first sight, the operation realized by Phoenix looks like an investment, numerous factors converge to demonstrate that the apparent investment is not a protected investment. All the elements analyzed lead to the same conclusion of an abuse of rights. The abuse here consists of the Claimant's creation of a legal fiction in order to gain access to an international arbitration procedure to which it was not entitled.*"[297]

265. Additionally, tribunals such as the previously mentioned *Inceysa v. El Salvador* have often considered that when the constitutive elements of the investment reveals manipulation, the conclusion is also one of abuse of rights as good faith means *"absence of deceit and artifice*

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294 **RL-0026,** *ST-AD GmbH v. the Republic of Bulgaria***,** PCA Case No. 2011-06, Award on Jurisdiction, dated 18 July 2013, p. 106, § 423.

295 **RL-0068,** Eric De Brabandere, Good Faith, Abuse of Process and the Initiation of Investment Treaty Claims, in *Journal of International Dispute Settlement, Vol. 3, Issue 3*, Oxford, p. 11.

296 **RL-0069**, *Abaclat and others v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, dated 4 August 2011, p. 253, § 646; **RL-0070**, *Cementownia "Nowa Huta" S.A. v. Republic of Turkey*, ICSID Case No. ARB(AF)/06/2), Award, 17 September 2009, p. 47, § 159.

297 **RL-0023**, Phoenix Action Ltd. v. The Czech Republic, ICSID Case No. ARB/06/5, Award, dated 15 April 2009, p. 70, § 143.

during the negotiation and execution of instruments that gave rise to the investment parties."[298]

266. In *Phoenix Action Ltd. v. Czech Republic*, the corporate restructuring of an investor to obtain treaty protection may constitute an abuse of rights. In that case, the tribunal emphasized that "*the Tribunal has to ensure that the ICSID mechanism is not used to protect investments that were made for the sole purpose of gaining access to ICSID jurisdiction. Such an abusive manipulation of the system of international investment protection is not acceptable*." The tribunal concluded that the determination of abuse of rights "*must be carried out on a case-by-case basis, in light of all relevant circumstances*".[299]

267. In the Waste Management Inc. vs United Mexican States, the investor had filled two different arbitration proceedings, one of which was dismissed for jurisdictional defects which were later restructured, and the case refiled in an attempt to overcome the jurisdictional obstacles. The tribunal concluded that the claimant could not alter its procedural or factual position opportunistically to gain advantage across proceedings.[300]

268. The Claimant has acted with abuse of process by dishonestly and knowingly manipulating the facts of the present case to fulfil the requirements of jurisdiction under the Angola-Portugal BIT. In fact, (i) Ricardo Machado cannot recharacterize the facts of this dispute by departing from AEnergy's allegations in prior proceedings, simply by invoking their separate legal personality, and (ii) Ricardo Machado's claims constitute an abuse of process, as they misstate what actually occurred to manufacture jurisdiction under the BIT.

269. On the one hand, assuming that the Claimant and AEnergy are different entities, and may therefore alter their position regarding the facts of this case, allows for Ricardo Machado to

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298 **RL-0059**, *Inceysa Vallisoletana S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, dated 2 August 2006, p. 70, § 231.

299 **RL-0023**, Phoenix Action Ltd. v. The Czech Republic, ICSID Case No. ARB/06/5, Award, dated 15 April 2009, p. 70, § 143; **RL-0070**, *Cementownia "Nowa Huta" S.A. v. Republic of Turkey*, ICSID Case No. ARB(AF)/06/2), Award, 17 September 2009, pp. 66—67, §§ 157—159; **CLA-103**, *Plama Consortium Limited v. Bulgaria,* ICSID Case No. ARB/03/24, Award, dated 27 August 2008, p. 40, §§ 140-144; **RL-0071**, *Mobil Corporation et al. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Decision on Jurisdiction, dated 10 June 2010, p. 48, § 177.

300 **RL-0072**, *Waste Management, Inc. v. United Mexican States*, ICSID ARB(AF)/00/3, Award, dated30 April 2004, pp. 7—9, §§ 25–27 and 38—41.

create a legal fiction with the only intention to avail himself of BIT's protection that it would otherwise not benefit from.

270. However, as acknowledged in the Claimant's Rejoinder to the Request under Rule 41, Ricardo Machado and AEnergy cannot be treated as independent entities for the purpose of presenting the facts of this case. The Claimant is the sole shareholder and owner of all AEnergy shares; accordingly, the investment should be regarded as his property and under his control.

271. Allowing Ricardo Machado to recast the factual narrative between the U.S. proceedings and this arbitration solely because AEnergy was the claimant in the first one, would entrench an abusive posture. It would enable Ricardo Machado to reshape the facts at will to fabricate jurisdiction, without legal consequence. This cannot be accepted by an ICSID tribunal.

272. On the other hand, the distortion of the facts by Mr. Machado amounts to an abusive exercise of procedure rights as it is done with the only intention to extend the Angola-Portugal BIT's *ratione temporis* to events predating the entry into force of the BIT.

273. Indeed, the Claimant submits in this arbitration that he was deprived of control, use, and economic value with the installation and deployment of the Turbines in 2022. However, in previous instances he claimed different facts regarding the same matter.

274. *First*, in letters sent by Mr. Machado (in representation of AEnergy) to IGAPE in 2019, he claims that AEnergy was no longer in possession of the Turbines which were removed from their initial location.[301]

275. *Second,* on 7 May 2020, Mr. Machado, through AEnergy, filed a civil complaint in the District Court for the Southern District of New York (Case No. 20 CV 3569) alleging that "*AE has been entirely deprived of the control, use, and economic value (…)"* of Four Unsolicited Turbines in December 2019 pursuant to an unlawful seizure decision.[302]

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301 **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.

302 **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.

276. The same emerges from the letter sent to IGAPE by Mr. Machado (again, acting on behalf of AEnergy), in which he requested IGAPE to "*not allow the misappropriation or abusive use of unlawfully seized assets*."[303]

277. After the New York Court dismissed the Complaint on the grounds of *forum non conveniens*, Mr. Machado submitted the matter to a different court on a different factual footing.[304]

278. Therefore and *third*, in the subsequent memorandum, Ricardo Machado once again changed the version of the facts, stating that he was not deprived of control, use, and economic value with the seizure of the Turbines but rather with the issue of Presidential Order in August 2019 enabling the termination of the 13 Contracts and the declaration by the Respondent that he was the owner of the turbines.[305] This claim was dismissed and the decision on *forum non conveniens* upheld.[306]

279. However, unlike Mr. Machado's allegations, the Respondent has never declared that he was already the owner of the Turbines. In fact, in 2020 the Respondent brought an action before the courts of Angola to determine who is the owner of the Turbines.[307]

280. *Fourth*, on 15 February 2023, Mr. Machado through AEnergy, filled a new complaint in the District Court of Colombia, alleging that he was deprived of control, use, and economic value with the installation of the turbines in the Angolan power grid in 2021.[308]

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303 **R-0110**, Letter sent by Claimant to IGAPE on 14 April 2020, p. 3.

304 **R-0016**, 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, Opinion and Order Southern District of New York, 19 May 2021, p. 42.

305 **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, dated 2 November 2020.

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

307 See Section 2.2.5.

308 **R- 0022**, Aenergy, S.A. v. Republic of Angola, et al, Case No. 22-CV-02514, First Amended Complaint, dated 15 February 2023, p. 23, § 62.

281. This claim was also dismissed by the Court[309] which, again, ultimately led Mr. Machado to the present proceedings, where, following the entry into force of the Angola–Portugal BIT, the Claimant had a new opportunity to present his claim (even though he had no basis to do so).

282. Across multiple instances, the Claimant has repeatedly reshaped its account of the moment when he was deprived of control, use, and economic value of the Four Unsolicited Turbines to serve jurisdictional objectives.

283. While the Tribunal recognizes[310] the Claimant's latitude to present its case as it sees fit and thus is not limited to AEnergy's allegation in the previous proceedings, it cannot accept a deceitful and repeatedly misconceived presentation of the facts that intends to secure unfair access to investment arbitration—namely, in the case of ICSID jurisdiction by extending the BIT's *ratione temporis* to encompass conduct that occurred before the treaty entered into force.

284. If this was the case, the Tribunal would be allowing the Claimant to manipulate the facts of the case to manufacture jurisdiction which would protect an investment not designed to be sheltered and thus represent an abuse of the system of international arbitration.[311]

285. In sum, the Tribunal lacks jurisdiction, as the relevant submissions are inadmissible because they constitute an abuse of process aimed at manufacturing jurisdiction.

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

286. Despite bearing the burden of proof to establish the Tribunal's jurisdiction, the Claimant devotes a single page of his Statement of Claim in support of the Tribunal's *ratione temporis* jurisdiction.[312] According to the Claimant, the Tribunal's *ratione temporis* jurisdiction derives from claims "*grounded in facts that occurred from 2022 onwards*", namely "*the installation of*

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

310 Tribunal's Decision on the Respondent's Rule 41 Objection, p. 27, § 88.

311 **RL-0026,** *ST-AD GmbH v. Republic of Bulgaria,* PCA Case No. 2011-06, Award on jurisdiction, 18 July 2013, p. 106, § 432.

312 SoC, p. 14.

the Four Turbines […] and the abdication of custodial responsibilities by the Provincial Court of Luanda and the legal depositary, IGAPE".[313]

287. The Claimant tries to focus on conduct following the treaty's entry into force. He does this in order to artificially circumvent the fact that, by 22 December 2021, all the relevant events to the present dispute had already unfolded.

288. The Parties do not dispute that Article 2(1) of the BIT bars post-entry claims rooted in pre-entry facts. Applying this rule to the facts of the case, if the Tribunal sequences Angola's relevant acts or omissions concerning the Four Unsolicited Turbines through to 22 December 2021 cut-off date, it will conclude that the constitutive facts giving rise to this dispute had already crystallized by that time (**Section 3.4.1.**).

289. Furthermore, the Claimant rests his expropriation claim on "*the installation of the Four Turbines in Angola state-owned power plants and their connection to the national power grid, coupled with the Angolan authorities' complicity*".[314] However, by 22 December 2021, installation of the Four Unsolicited Turbines was already in place, and, in any event, this is plainly a concocted and ex post facto trigger for alleging Angola's expropriatory conduct. The installation and connection to the grid is, at most, the implementation of pre-existing conduct and therefore does not "*constitute an actionable breach in its own right*" for ratione temporis purposes (**Section 3.4.2.**).

290. Two additional reasons support the Tribunal's lack of *ratione temporis* jurisdiction. Any alleged non-expropriatory (as well as expropriatory) violation predicated on IGAPE's actions fall outside the jurisdiction of the Tribunal (**Section 3.4.3.**). Finally, any damages related to the Claimant's loss in the value of AEnergy's shares also predate the entry into force of the Amended Version of the BIT (**Section 3.4.4.**).

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

291. As a preliminary remark, the Parties do not dispute that Article 2(1) of the Amended Version of the BIT excludes from the Tribunal's jurisdiction disputes and/or claims arising from facts that

313 SoC, p. 14, § 67.

314 SoC, p. 20, § 98.

occurred before the Treaty's entry into force:[315-316]

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

292. Unlike more general non-retroactivity formulations,[317] Article 2(1) of the Amended Version of the BIT sets the cut-off at the facts giving rise to the claim. Interpreting a materially similar *ratione temporis* "*double exclusion*" clause, the tribunal in *Mabco Constructions SA v. Kosovo*[318] observed that such wording "*suggests that the exclusion from* [treaty's] *coverage may start at an earlier point than the time at which the dispute as such emerged*".[319] In other words, claims arising out of pre-entry-into-force facts are excluded even if the dispute surfaced later.

293. Likewise, the tribunal in *Spence v. Costa Rica* applied an analogous nonretroactivity clause and held that a post-entry claim is cognizable only if the post-entry measure is sufficiently detached from earlier acts and facts to "*constitute an actionable breach in its own right*", *i.e.*, to be independently justiciable.[320]

294. The necessary conclusion is that Article 2(1) of the Amended Version of the BIT establishes a stringent *ratione temporis* criterion. The purpose, of course, is to draw a line under the pursuit

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315 SoC, p. 14, § 67.

316 **RL-0010**, Article 2(1) of the Consolidated version of the Angola-Portugal BIT, p. 1 of the PDF (original version and English translation) (emphasis added).

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

318 **RL-0018**, Agreement between the Swiss Confederation and the Republic of Kosovo on the Promotion and Reciprocal Protection of Investments, which entered into force on 13 June 2012, p. 4: ("*Article 2. Scope of application. The present Agreement applies to investments in the territory of one Contracting Party established or acquired in accordance with its laws and regulations by investors of the other Contracting Party, whether prior to or after the entry into force of this Agreement. It does however not apply to claims or disputes arising out of events which occurred prior to its entry into force*.").

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

320 **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. 129, § 217.

of historic claims.[321]

295. In light of this framework, the Tribunal's task is twofold. *First*, it must identify the Claimant's claims under the Angola-Portugal BIT and delineate the dispute. *Second*, it must identify the constitutive facts giving rise to the dispute and place them relative to the 22 December 2021 cut-off. If those facts predate that cut-off, the Tribunal lacks *ratione temporis* jurisdiction under the BIT.

296. Jurisdiction concerning post-entry-into-force events exists only if that conduct constitutes a stand-alone, distinct, independently actionable treaty breach—*i.e.*, if it is sufficiently detached from earlier acts and facts.[322] A mere continuation, implementation, or consequential effect of pre-entry conduct does not meet that criterion.

297. In *Spence v. Costa Rica*, the claimants alleged an unlawful expropriation of coastal residential real estate located in or near Las Baulas National Park, asserting that development restrictions effectively deprived them of the use and value of their properties.[323] Costa Rica raised a *ratione temporis* objection, arguing that, if there were any actionable breach, the State conduct constituting an expropriation would necessarily have occurred before CAFTA's entry into force between Costa Rica and the United States on 1 January 2009.[324] Notably, Article 10.1.3 of the CAFTA sets out a *ratione temporis* criterion similar to that contained in the Amended Version of the BIT: [it] "*does not bind any Party in relation to any act or fact that took place or to any*

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321 **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. 125—126, § 208.

322 **RL-0013**, *Astrida Benita Carrizosa v. Republic of Colombia*, ICSID Case No. ARB/18/5, Award, dated 19 April 2021, pp. 50-51, §§ 160-164; **RL-0016**, *Mondev International Ltd. v. United States of America*, ICSID Case No ARB (AF) 992, Award, dated 11 October 2002, p. 23, § 70; **RL-0017**, *Marvin Karpa v. United Mexican States*, ICSID Case No. ARB(AF)99/1, Interim Decision on Preliminary Jurisdictional Issues, dated 6 December 2000, p. 28, § 62.

323 **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. 41, § 57.

324 **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. 89—90, §§ 116—118.

situation that ceased to exist before the date of entry into force of this Agreement".[325]

298. The *Spence v. Costa Rica* tribunal confirmed that the treaty does not extend to disputes arising from pre-entry-into-force facts and held that any post-entry claim must be "*sufficiently detached*" from earlier acts and facts to be "*independently justiciable*."[326] Applying that standard, it concluded that the post-2009 measures were, at most, the continuation or implementation of a pre-existing legal regime and therefore could not, in themselves, constitute an actionable breach.[327]

299. This conclusion aligns both with the treaties' non-retroactivity rule and the Tribunal's prior finding: regardless of how the Claimant chooses to (re)frame his (old) claim,[328] the Tribunal may assert jurisdiction only if it finds that, by 22 December 2021, the bulk of the facts relating to the Parties' dispute had not yet crystallized. Put differently, the critical *ratione temporis* question is whether, by that date, entangled events were already in place involving the title, possession, or access to benefit and economic use of the Four Unsolicited Turbines. The evidentiary record shows that the answer is affirmative.

300. Indeed, the Claimant seeks to anchor jurisdiction in just the latest event in an extended sequence. This is an artificial effort to break down his claim into increasingly finer sub-components *ex post facto* so as to bring it within the Tribunal's *ratione temporis* jurisdiction.

301. The Respondent acknowledges the Tribunal's prior ruling that whether the alleged facts amount to an expropriation is a question for the merits, not jurisdiction.[329] This ruling, however, sits alongside, and does not override, the Respondent's jurisdictional objection. As a threshold matter, the Tribunal can and should determine the temporal *locus* of the constitutive facts – *i.e.*,

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325 **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. 128, § 214.

326 **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.

327 **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. 144—146, §§ 269—272.

328 Tribunal's Decision on the Respondent's Rule 41 Objection, p. 21, § 84.

329 Tribunal's Decision on the Respondent's Rule 41 Objection, p. 22, § 89.

when the relevant facts that led to the dispute have occurred.

302. By adopting this approach, the Respondent has demonstrated that the decisive steps predate 22 December 2021: (i) IGAPE's decision to deliver the seized turbines to PRODEL in 2020,[330] (ii) the 2020-2021 installation engagements,[331] and (iii) Presidential Order No. 177/21, published on 26 October 2021.[332] These pre-entry acts are the constitutive facts that gave rise to the Parties' dispute and place the Claimant's claim outside the Tribunal's *ratione temporis* jurisdiction.

303. In conclusion, by sequencing Angola's relevant acts or omissions concerning the Four Unsolicited Turbines across the 22 December 2021 cut-off, the Tribunal will conclude, as a matter of law, that the constitutive facts giving rise to this dispute had already crystallized by then. Accordingly, the Tribunal lacks *ratione temporis* jurisdiction to entertain the Claimant's case in its entirety.

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

304. Relating to the installation of the Four Unsolicited Turbines, the Tribunal must determine whether that post-entry event could—legally—amount to an expropriation or to a breach of the FET standard.

305. The Claimant rests his expropriation claim on "*the installation of the Four Turbines in Angolan state-owned power plants and their connection to the national power grid, coupled with the Angolan authorities' complicity*".[333] As for his FET claim, Mr. Machado asserts that Angola has breached the standard "*through a series of actions and omissions by its public authorities*".[334]

306. However, installation predates the BIT's entry into force (**Section 3.4.2.1.**) and, be as it may, the installation and connection to the grid is, at most, the implementation of pre-existing conduct and therefore cannot "*constitute an actionable breach in its own right*" for *ratione temporis*

330 Secção 2.2.2.

331 Secção 2.2.3.

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

333 SoC, p. 20, § 98.

334 SoC, pp. 29—30, § 137.

purposes (**Section 3.4.2.2.**).

3.4.2.1 Installation predates the BIT's entry into force

307. Assuming, *arguendo*, that the installation and connection to the grid constitute an expropriation—a legal argument with which Angola vehemently disagrees—, the Respondent has demonstrated[335] that, as early as October 2020, PRODEL dismantled, transported, and installed the seized engine of Turbine #7267575 at the Xitoto Thermal Power Plant located in Namibe province.[336] Moreover, other major components of Turbine #7267575—the power house, control room, and auxiliary equipment—, as well as Turbines #7267577 and #7267025 were sent for installation on 14 June 2021:[337]

335 Section 2.2.3., p. 43, § 155.

336 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 9; **R-0076,** PRODEL's letter to IGAPE, dated 14 October 2020.

337 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 9; **R-0079**, PRODEL's letter to IGAPE, dated 14 June 2021.

TURBINE SERIAL NO.	COMPONENTS	DATE OF SHIPMENT	SHIPPING LOCATION	DATE OF COMMENCEMENT OF OPERATIONS
7267575	Engine	21/10/2020[338]	Xitoto Thermal Power Plant[339]	04/11/2020[340]
	Control Room	14/06/2021[341]	Naipola Thermal Power Plant – Ondjiva Cunene[342]	07/12/2022[343]
	Auxiliary equipment			
	Power House-Without compressor			
7267577	Turbocharger	14/06/2021[344]	Tchicumina Thermal Power Plant - Saurimo - Lunda Sul[345]	20/02/2024[346]
	Generator			
	Command and Control Room			
	Exhaust Chimney			
	Filter House			
	Peripherals...			
7267025	Turbocharger	14/06/2021[347]		09/01/2022[349]
	Generator			
	Command and Control Room			

338 **R-0076**, Letter from PRODEL to IGAPE, 002543/893/GPCA/GSJ/2020, dated 14 October 2020; **R-0077**, Credential issued by PRODEL to the company OREY, dated 20 October 2020.

339 **R-0076**, Letter from PRODEL to IGAPE, 002543/893/GPCA/GSJ/2020, dated 14 October 2020; **R-0077,** Credential issued by PRODEL to the company OREY, dated 20 October 2020.

340 **R-0078**, Report on Work Performed, dated 18 December 2020, p. 15.

341 **R-0079**, Letter from PRODEL to IGAPE, 00002207/779/GPCA/ADM-PT/2021, dated 14 June 2021.

342 **R-0079**, Letter from PRODEL to IGAPE, 00002207/779/GPCA/ADM-PT/2021, dated 14June 2021.

343 **R-0080**, Table of the Ondjiva Thermal Power Plant (Cunene), dated 7 December 2022.

344 **R-0081**, Letter from PRODEL to IGAPE, ref. 00002284/770/GPCA/GSE/2020, dated 14 September 2020; **R-0082**, Credential issued by PRODEL to the company OREY, dated 14 June 2021.

345 Although the documents refer to it being installed in Lubango, for operational reasons it was installed in Tchicumina-Saurimo-Lunda Sul.

346 **R-0083**, Letter from PRODEL to the National Transport Network (RNT) regarding the entry into service of Turbine and 20.02.2024, dated 1 March 2024.

347 **R-0081**, Letter from PRODEL to IGAPE, ref. 00002284/770/GPCA/GSE/2020, dated 14 September 2020; **R-0082**, Credential issued by PRODEL to the company OREY, dated 14 June 2021.

349 **R-0115**, Table of the Lubango Thermal Power Plant, dated 9 January 2022.

	Exhaust Chimney Filter House Peripherals...		Lubango II Thermal Power Plant Huila[348]	
7266027	Compressor Alternator Control Room & Auxiliary Equipment	13/04/2022[350]	Malembo Cabinda Thermal Power Plant[351]	12/10/2022[352]

308. The only possible conclusion is that, even if the Tribunal were to apply the Claimant's own standard, it would still lack *ratione temporis* jurisdiction to decide the present dispute, as Angola could not have violated the Amended Version of the BIT by conduct that predated its entry into force.

309. In sum, the Claimant's effort to anchor jurisdiction in that post-entry event fails, and the Tribunal should dismiss the Claimant's claims for lack of *ratione temporis* jurisdiction.

3.4.2.2 The alleged but-for event predates 22 December 2021

310. By the time the Amended Version of the BIT entered into force, the Claimant's so-called investment was not only subject to essentially all of the State action giving rise to the present dispute, but the dispute itself had already crystallized. Moreover, Angola's conduct—allegedly in violation of international law—was already being (wrongfully) contested in another (incorrect) jurisdiction.[353]

311. Yet now in this arbitration, according to the Claimant, the final installation and deployment of the Four Unsolicited Turbines in 2022 must be considered to constitute a final and definitive

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348 **R-0081**, Letter from PRODEL to IGAPE, ref. 00002284/770/GPCA/GSE/2020, dated 14 September 2020; **R-0082**, Credential issued by PRODEL to the company OREY, dated 14 June 2021.

350 **R-0084**, Letter from PRODEL to IGAPE, 002212/614/ADM/PT-ER/2023, dated 29 June 2023.

351 **R-0084**, Letter from PRODEL to IGAPE, 002212/614/ADM/PT-ER/2023, dated 29 June 2023.

352 **R-0085**, Table of the Malembo Thermal Power Plant, dated 12 October 2022.

353 **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, dated 2 November 2020, p. 32; **C-11**, Presidential Order No. 155/2019, regarding the unilateral termination of the 13 Contracts between AEnergy and Angola, dated 23 August 2019.

stand-alone expropriation.[354] This allegation does not withstand scrutiny.

312. Before addressing the alleged expropriation "but-for" event itself, Angola draws the Tribunal's attention to two preliminary points.

313. *First*, as demonstrated in **Section 2.2.4**, the Four Unsolicited Turbines were engineered for easy relocation and transport from one site to another. Angola's decision to install and deploy them was therefore neither final nor definitive; it is rather an interim operational measure.

314. *Second*, given the specific nature of proceedings under Rule 41(1), the Respondent mainly advanced its arguments while "accepting", for purposes of that application, the Claimant's factual premises. In that limited context, the Respondent posited Presidential Order 177/21, dated 16 October 2021, as the relevant but-for event for the Claimant's expropriation case.[355] Now that Angola has the opportunity to present its full case, the record shows that the Claimant's alleged expropriation but-for event arose even earlier in time, as the Respondent will now establish.

315. In the Claimant's own words, "[d]*uring 2022, Angola finalised the contracting procedure for installing the Four Turbines, installed them, and connected them to the national grid*".[356] The Claimant does not deny that the relevant facts involving the installation of the Four Unsolicited Turbines were already underway before 2022. Moreover, during the present arbitration, the Claimant has repeatedly conceded that his case rests on pre-Amended BIT impugned conducts.[357]

316. The *Astrida Benita Carrizosa v. Colombia* tribunal had a similar case at hand. The discussion in that case revolved around two judicial decisions (one pre and one post-NAFTA) and the parties disputed whether a post-treaty claim must necessarily be unrelated to the pre-treaty conduct for the purposes of asserting an investment tribunal's *ratione temporis* jurisdiction. The investor

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354 SoC, pp. 23—24, §§ 115—116.

355 Respondent's Reply under Rule 41, Section 3.2.2.1.

356 SoC, p. 23, § 112.

357 Claimant's Response to Rule 41 Objection, p. 20, § 84; Request for Arbitration, Section IV(B), p. 9, §§ 40—41.

stated that Colombia's postdate judicial order "*had the effect of finally removing, without compensation*",[358] her entitlement to the value of her investment.

317. The *Astrida* tribunal found that the investor did not point to an independent allegation raised against the post-date judicial order, but "*rather corroborate*[d] *that the proceedings ending with the 2014 Order necessarily called for a finding about the lawfulness of the 2011 Decision*"— a pre-NAFTA decision.[359] Therefore, the tribunal declined jurisdiction to hear the merits of that case.

318. Much like the *Astrida* award, for this Tribunal to rule on the lawfulness of the installation and connection to the grid of the seized turbines, it would necessarily have to rule on the lawfulness of IGAPE's 2020 decision to deliver them to PRODEL.

319. On 5 May 2020, IGAPE—acting in its capacity as Trustee and bound to administer the assets with the diligence and care of a prudent person—determined to deliver the Four Unsolicited Turbines to MINEA so that they could be put to use and thereby protected from deterioration.[360] This course of action comported with IGAPE's duties under Article 843 of the Angolan CPC.[361]

320. As already established,[362] this determination followed MINEA's request to the Attorney General seeking authorization to place the seized turbines in operation.[363] Consistent with that request, on 5 May 2020, the Prosecutor's Office sought MINFIN's authorization and, in support, submitted a legal opinion concluding that, under Angolan law, a trustee of seized property is

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358 **RL-0013**, *Astrida Benita Carrizosa v. Republic of Colombia*, ICSID Case No. ARB/18/5, Award, dated 19 April 2021, p. 50, § 160.

359 **RL-0013**, *Astrida Benita Carrizosa v. Republic of Colombia*, ICSID Case No. ARB/18/5, Award, dated 19 April 2021, pp. 50—51, § 161.

360 **R-0086**, IGAPE's letter to the Minister of Energy and Water, dated 5 May 2020.

361 **RL-0074**, Civil Procedural Code of Angola, dated 28 December 1961, Article 843(1): ("*1. In addition to the general duties of a depositary, the judicial depositary is responsible for managing the assets with the diligence and zeal of a good family man, while bearing the obligation to provide proper accountability*".) (with informal translation to English); **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 8, §§ 34—35; p. 9, § 38; Also, Section 5.2.

362 Section 2.2.2.

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

permitted to put such property to use.[364]

321. Simply put, without IGAPE's decision to deliver the Four Unsolicited Turbines to MINEA, the installation and deployment—which the Claimant contends amount to an expropriation—could not have occurred. In short, it was IGAPE's decision that allowed the Four Unsolicited Turbines not only to be delivered to MINEA for maintenance, but also to be "*used for electricity production*".[365]

322. Thus, this official decision constitutes the very foundation that allowed the so-called 2022 relevant facts (as alleged by the Claimant) to come to existence. Those 2022 installations cannot be viewed in isolation from the very decision that authorised them in the first place.

323. The circumstances of the present arbitration also fall squarely within the analysis of the tribunal in *Mabco Constructions SA v. Kosovo*. Indeed:

a. The *Mabco* expropriation claim revolved around the withdrawal of shares of the Grand Hotel in Pristina, Kosovo, with relevant events ranging from October 2011 to July 2012;[366]

b. The Swiss-Kosovo BIT entered into force on 13 June 2012 and has an identical double exclusion *ratione temporis* clause;[367]

c. Kosovo took the official decision to order execution of the withdrawal of shares in

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364 **R-0068**, Letter from the PPO to the MINFIN, dated 5 May 2020; **R-0069**, PPO's legal opinion sent to the MINFIN, dated 5 May 2020.

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

366 **RL-0014**, *Mabco Constructions SA v. Kosovo*, ICSID Case No. ARB/17/25, Decision on jurisdiction, dated 30 October 2020, pp. 133—134, §§ 466—467.

367 **RL-0018**, Agreement between the Swiss Confederation and the Republic of Kosovo on the Promotion and Reciprocal Protection of Investments, which entered into force on 13 June 2012, p. 4: ("*Article 2 Scope of application. The present Agreement applies to investments in the territory of one Contracting Party established or acquired in accordance with its laws and regulations by investors of the other Contracting Party, whether prior to or after the entry into force of this Agreement. It does however not apply to claims or disputes arising out of events which occurred prior to its entry into force*.").

May 2012 (a pre-BIT event);[368] and

d. The actual withdrawal of the shares was only executed in July 2012 (a post-BIT event).[369]

324. Given this context, the *Mabco* tribunal found that Kosovo's official decision to order the execution of the withdrawal of shares "*was already sufficiently definitive*" and manifestly marked the arising of the dispute itself, and not only a mere fact that led up to it.[370] That tribunal also found that Kosovo's subsequent actions were merely executory in nature.

325. For these reasons, the Mabco tribunal found that "*by virtue of BIT Article 2, it lack[ed] jurisdiction over Mabco's expropriation claim ratione temporis*",[371] a decision that the present Tribunal should also reach.

326. There can be no serious dispute that IGAPE's decision to deliver the Four Unsolicited Turbines to MINEA for operational use is *the* relevant fact underlying the controversy over their installation and deployment (the Claimant's alleged expropriation and part of its FET case).

327. For the same reason, the Tribunal may also draw guidance from the *Spence v. Costa Rica* award, in which the tribunal concluded that the post-entry-into-force measures were, at most, the continuation or implementation of a pre-existing legal regime and, therefore, could not, in themselves, constitute an actionable breach.[372]

328. Thus, even if the Tribunal were to reject the Respondent's position that the seizure and storage of the Four Unsolicited Turbines form part of a single expropriation claim grounded in a single

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

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

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

371 **RL-0014**, *Mabco Constructions SA v. Kosovo*, ICSID Case No. ARB/17/25, Decision on jurisdiction, dated 30 October 2020, p. 134, § 468.

372 **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.

cause of action culminating in their installation and deployment (*quod non*), the conclusion remains the same: the State's relevant (purported) interference with AEnergy's alleged property occurred before the entry into force of the Amended Version of the BIT.

329. Put differently, IGAPE's decision to hand over the seized turbines is the "but-for" event of the Claimant's expropriation theory—further confirming that this claim arises from facts predating the Amended Version of the BIT's entry into force. Consequently, the Tribunal should find that it cannot exercise jurisdiction over the Claimant's expropriation claim based on the installation and deployment of the Four Unsolicited Turbines.

3.4.3 Any alleged non-expropriatory (as well as expropriatory) violation predicated on IGAPE's actions fall outside the jurisdiction of the Tribunal

330. The Claimant asserts that the Respondent has breached FET and FPS standards through a series of actions and omissions by its public authorities.[373] Specifically, the Claimant impugns the following alleged behaviors:

a. IGAPE's breach of fiduciary duty as Trustee of the Four Unsolicited Turbines by allowing them to be removed from judicial custody and permitting their installation and connection to the national grid;[374]

b. Angola's failure to apply its substantive and procedural laws in a consistent, reasonable and transparent manner,[375] especially in relation to (i) the alleged non-existence of a provision in Angola's CPC authorizing the use of movable seized assets, (ii) the lack of AEnergy's and/or the Provincial Court of Luanda's prior consent or judicial authorization, and (iii) the Court's failure to provide an answer to AEnergy's information requests;[376]

c. Angola's alleged breach of due process, rooted in the same acts provided for in letter

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373 SoC, pp. 29—30, § 137; p. 39, § 175.

374 SoC, p. 31, § 146.

375 SoC, p. 32, § 151.

376 SoC, pp. 31-32, §§ 148—150 ; p. 41, §§ 183—185.

(b), *supra*;[377] and in Angola's use of the seized turbines in the absence of a decision in the court proceedings;[378]

d. The Provincial Court of Luanda's failure to give AEnergy or Mr. Machado an opportunity to object to the alleged removal of the turbines from judicial custody;[379]

e. The Angolan's courts' lack of independence from governmental influence, allegedly including a collusion by the courts with the Angolan government for the removal of the Four Unsolicited Turbines, and AEnergy's summoning to a hearing in May 2025;[380]

f. The Court's unjustified delay in processing the local proceedings;[381] and

g. Angola's breach of the FPS standard by physically damaging the Four Unsolicited Turbines;[382]

331. As the Respondent has explained,[383] the Provincial Court of Luanda and IGAPE did not breach their custodial responsibilities. In any event, for purposes of the present objection and assuming *arguendo* that such duties were violated, IGAPE delivered the Turbines to PRODEL in May 2020, well before the Amended Version of the BIT entered into force. Any alleged non-expropriatory (as well as expropriatory) violation predicated on IGAPE's actions must consequently fall outside the Tribunal's jurisdiction.

332. Finally, the latest point in time when an obligation to safekeep and preserve the Four Unsolicited Turbines could have been breached is the date of the expropriation itself. Therefore, if the Tribunal finds that it does not have jurisdiction to hear the expropriation claim because the facts

377 SoC, pp. 34-35, § 161(ii)-(iv).

378 SoC, p. 35, § 161(v).

379 SoC, p. 34, § 161(i).

380 SoC, p. 35, § 161(vi).

381 SoC, p. 35, § 161(vii).

382 SoC, pp. 39—40, §§ 176—180.

383 See Section 2.2.2; Section 2.2.3; Section 5.2.

leading up to it occurred before the BIT's entry into force, it will automatically lack *ratione temporis* jurisdiction to decide whether Angola breached any alleged FET and FPS obligation to safekeep and preserve the Four Unsolicited Turbines. In other words, IGAPE's and the Provincial Court of Luanda's alleged failure to safekeep and preserve the Four Unsolicited Turbines are intrinsically related to the expropriation claim and would have occurred prior to the BIT's entry into force as well.

333. As a result, the Tribunal should also dismiss the Claimant's FET and FPS claims for lack of *ratione temporis* jurisdiction.

3.4.4 Be 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

334. The Claimant further contends that, should the Tribunal find that Mr. Machado lacks standing to bring direct claims for breaches of FET and FPS in relation to the Four Unsolicited Turbines, he is nonetheless entitled, in the alternative, to recover the loss in value of his shares in AEnergy.[384]

335. However, any alleged diminution in the value of Mr. Machado's AEnergy's shares—which Angola denies—would necessarily flow from pre-entry-into-force measures: (i) MINEA's termination of the 13 Contracts on 2 September 2019,[385] or, at the latest, (ii) the Provincial Court of Luanda's seizure of the Four Unsolicited Turbines on 6 December 2019.[386]

336. By the Claimant's own version of events, it was these pre-entry events that "destroyed" AEnergy's value:[387]

> *Since the Government of Angola terminated AE's contracts, AE's previously thriving energy business has been completely destroyed. The lawsuit that Angola filed and the seizure of AE's property based on public allegations of misappropriated state*

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384 SoC, p. 46, § 210.

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

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

387 **R-0112**, Declaration of Ricardo Machado in Support of Plaintiff`s Opposition to Defendant`s Motions to Dismiss before the SDNY, dated 2 November 2020, p. 6, §§ 18, 18 d) and e).

> *funds, pursued in civil litigation over the court of more than a year, has exacerbated this and entirely destroyed AE's reputation, making it impossible at this time to operate in the energy sector.*
> *[…]*
> *d) counterparts have declined to do business with Plaintiffs […]*
> *[…]*
> *e) […] impossible to continue to operate.*

337. In conclusion, even if the Claimant could—in theory—recover the loss in value of his shares in AEnergy, the conceded fact that AEnergy was—in the Claimant's own words— "destroyed" well before the installation and deployment of the Four Unsolicited Turbines puts his claim outside the Tribunal's jurisdiction and, additionally, defeats his case on causation: no post-entry measure could have caused additional compensable loss.

3.5 Fifth Objection: Alternatively, the Tribunal lacks *ratione voluntatis* jurisdiction

338. In accordance with Article 15(1)(2) of the Amended Version of the BIT,[388] the dispatch of a Notice of Arbitration marks the moment at which an investor raises its legal dispute to the host State's attention.

339. Moreover, pursuant to Article 25 of the ICSID Convention,[389] one of the requirements for ICSID jurisdiction is that both parties to a legal dispute consent in writing to submit that specific legal dispute to the Centre. A State's consent to arbitrate a defined dispute is thus a cornerstone of ICSID jurisdiction.[390]

340. A dispute had been classically defined as "a disagreement on a point of law or fact, a conflict of

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388 **RL-0010**, Consolidated version of the Angola-Portugal BIT, dated 21 December 2021: ("*Disputes between an investor of one of the Parties and the other Party relating to an investment of the former in the territory of the latter shall, as far as possible, be settled amicably through negotiations between the Parties to the dispute. 2 - If the dispute cannot be resolved according to the provisions of paragraph 1 of this article, the investor may, within six months of the dispute being raised by either party, submit the dispute at his request to […]*.").

389 Article 25 of the ICSID Convention: ("*(1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally*.").

390 **RL-0075**, Report of the Executive Directors on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Section V, p. 36, §§ 23—24.

legal views or interests between two persons";[391] as a "situation in which two sides hold clearly opposite views concerning the question of the performance or non-performance"[392] of a legal obligation. In short, a dispute can be held to exist when the parties assert clearly conflicting legal or factual claims bearing on their respective rights or obligations or that "the claim of one party is positively opposed by the other".[393]

341. Bearing these legal foundations in mind, even if the Tribunal considers (*quod non*) that it has *ratione temporis* jurisdiction, because the Parties' consent cannot be presumed, expanded by implication, or retroactively perfected in the absence of a present legal dispute, this Tribunal will inevitably conclude that 9 June 2022—the date of the dispatch of the Claimant's Notice of Dispute—[394] is the last day on which a present legal dispute could have arisen from the installation and connection to the grid of the Four Unsolicited Turbines.

342. Thus, the temporal window for any violation of the Angola-Portugal BIT is very tight: from 22 December 2021 (the entry into force of the BIT) to 9 June 2022. This means that the Claimant bears the burden of asserting the existence of a present legal dispute concerning the installation and connection to the grid of the Four Unsolicited Turbines by 9 June 2022 at the latest.

343. Consequently, even if the Tribunal were to apply the Claimant's legal theory of the moment of expropriation—the installation and connection to the grid of the turbines—(*quod non*), Angola's alleged "*expropriation, without the adequate and effective compensation set forth by section 7 (Expropriation) of the APPRI having been paid*" [395] would necessarily have to have happened by 9 June 2022. The same conclusion applies to the Claimant's legal theory relating to FET and FPS violations.

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391 **RL-0076**, *The Mavrommatis Palestine Concessions (Greece v. Britain),* PCIJ, Judgement, dated 30 August 1924, p. 11 (p. 13 of the PDF).

392 **RL-0070**, *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania,* Advisory Opinion of March 1950, I.C.J. Reports 1950, p. 74 (p. 12 of the PDF).

393 **RL-0078**, *South West Africa Cases,* I.C.J., Judgement 21 XII 62, dated 21 December 1962, p. 328 (p. 12 of the PDF).

394 **C-26**, Claimant's Notice of Dispute, dated 9 June 2022.

395 **C-26**, Claimant's Notice of Dispute, dated 9 June 2022, pp. 3—4.

344. However, by 9 June 2022, the Claimant relied on (i) a news report dated 18 March 2022 to assume the installation of only two 25 MW GE TM2500 turbines, *i.e.* the turbines' expropriation, and (ii) IGAPE's and the Provincial Court of Luanda's alleged lack of response for 34 business days relating to AEnergy's information requests regarding the turbines' whereabouts[396] in circumstances where neither entity had a duty to respond.[397] Further, and importantly, the Claimant did not mention the installation of the other two turbines in his Notice of Dispute.

345. During the present proceedings, the Claimant has been consistently ignoring these concrete facts in an attempt to artificially expand or retroactively perfect the Parties' legal dispute:

a. Request for Arbitration: the Claimant alleges that the facts leading up to the dispute have taken place "*during the course of 2022*".[398]

b. Response to Rule 41 Objection: the Claimant alleges he had reason to believe that two turbines were installed "*in August 2022*" (nearly two months *after* he filed his Notice of Dispute).[399]

c. Rejoinder to Rule 41 Objection: the Claimant asserted that his case "*is based on facts that occurred during 2022*".[400]

d. Statement of Claim: the Claimant stated that "[t]*he other two turbines were likely installed in early August 2022*".[401]

346. The incontrovertible conclusion is that two out of the Four Unsolicited Turbines could never have fallen within the Claimant's identification of the dispute by 9 June 2022. Even this is unduly generous to the Claimant. In reality, and as demonstrated,[402] out of the Four Unsolicited

396 **C-26**, Claimant's Notice of Dispute, dated 9 June 2022, pp. 3—4.

397 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, pp. 10-11, §§ 44—51.

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

399 Claimant's Response to Rule 41 Objection, p. 12, § 43(ii).

400 Claimant's Rejoinder to Rule 41 Objection, p. 1, § 1.

401 SoC, p. 9, § 39.

402 Section 2.2.3.

Turbines, only one of them was sent for installation within the tight temporal window for Angola's alleged violation of the Angola-Portugal BIT:

TURBINE SERIAL NO.	COMPONENTS	DATE OF SHIPMENT	SHIPPING LOCATION	DATE OF COMMENCEMENT OF OPERATIONS
7267575	Engine	21/10/2020[403]	Xitoto Thermal Power Plant[404]	04/11/2020[405]
	Control Room	14/06/2021[406]	Naipola Thermal Power Plant – Ondjiva Cunene[407]	07/12/2022[408]
	Auxiliary equipment			
	Power House-Without compressor			
7267577	Turbocharger	14/06/2021[409]	Tchicumina Thermal Power Plant - Saurimo - Lunda Sul[410]	20/02/2024[411]
	Generator			
	Command and Control Room			
	Exhaust Chimney			
	Filter House			
	Peripherals...			
7267025	Turbocharger	14/06/2021[412]		

403 **R-0076**, Letter from PRODEL to IGAPE, 002543/893/GPCA/GSJ/2020, dated 14 October 2020; **R-0077**, Credential issued by PRODEL to the company OREY, dated 20 October 2020.

404 **R-0076**, Letter from PRODEL to IGAPE, 002543/893/GPCA/GSJ/2020, dated 14 October 2020; **R-0077**, Credential issued by PRODEL to the company OREY, dated 20 October 2020.

405 **R-0078**, Report on Work Performed, dated 18 December 2020, p. 15.

406 **R-0079**, Letter from PRODEL to IGAPE, 00002207/779/GPCA/ADM-PT/2021, dated 14 June 2021.

407 **R-0079**, Letter from PRODEL to IGAPE, 00002207/779/GPCA/ADM-PT/2021, dated 14 June 2021.

408 **R-0080**, Table of the Ondjiva Thermal Power Plant (Cunene), dated 7 December 2022.

409 **R-0081**, Letter from PRODEL to IGAPE, ref. 00002284/770/GPCA/GSE/2020, dated 14 September 2020; **R-0082**, Credential issued by PRODEL to the company OREY, dated 14 June 2021.

410 Although the documents refer to it being installed in Lubango, for operational reasons it was installed in Tchicumina-Saurimo-Lunda Sul.

411 **R-0083**, Letter from PRODEL to the National Transport Network (RNT) regarding the entry into service of Turbine and 20.02.2024, dated 1 March 2024.

412 **R-0081**, Letter from PRODEL to IGAPE, ref. 00002284/770/GPCA/GSE/2020, dated 14 September 2020; **R-0082**, Credential issued by PRODEL to the company OREY, dated 14 June 2021.

	Generator Command and Control Room Exhaust Chimney Filter House Peripherals...		Lubango II Thermal Power Plant Huila[413]	09/01/2022[414]
7266027	Compressor Alternator Control Room & Auxiliary Equipment	13/04/2022[415]	Malembo Cabinda Thermal Power Plant[416]	12/10/2022[417]

347. The conclusion is straightforward: the Claimant's 9 June 2022 Notice of Dispute[418] did not and could not have encompassed a legal dispute about the alleged treaty violations relating to at least two of the Four Unsolicited Turbines. The absence of a present dispute (as alleged by the Claimant) at the time of the Notice of Dispute deprived Angola of an opportunity to understand the precise nature of the dispute and deprives this Tribunal now of consent-based jurisdiction over those claims. Therefore, the Tribunal lacks *ratione voluntatis* jurisdiction to decide any alleged breach connected thereto.

4. The Claimant does not have standing to bring claims of FET and FPS in relation to the Turbines

348. The Claimant argues that he has standing under the Angola-Portugal BIT to bring direct claims for expropriation, FET, and FPS in respect of the Four Unsolicited Turbines, notwithstanding that legal title to those turbines is held by AEnergy.[419]

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413 **R-0081**, Letter from PRODEL to IGAPE, ref. 00002284/770/GPCA/GSE/2020, dated 14 September 2020; **R-0082**, Credential issued by PRODEL to the company OREY, dated 14 June 2021.

414 **R-0115**, Table of the Lubango Thermal Power Plant, dated 9 January 2022.

415 **R-0084**, Letter from PRODEL to IGAPE, 002212/614/ADM/PT-ER/2023, dated 29 June 2023.

416 **R-0084**, Letter from PRODEL to IGAPE, 002212/614/ADM/PT-ER/2023, dated 29 June 2023.

417 **R-0085**, Table of the Malembo Thermal Power Plant, dated 12 October 2022.

418 **C-26**, Claimant's Notice of Dispute, dated 9 June 2022.

419 SoC, Section IV.

349. Regarding his legal standing as to the expropriation claims, the Claimant pleads that even though the Four Unsolicited Turbines are not directly owned by him, but rather by his company AEnergy, they are covered by the protection set forth in Article 7 of the Angola – Portugal BIT.[420] The Respondent does not dispute the Claimant's standing to bring an expropriation claim (albeit the Tribunal has no jurisdiction over such a claim and, in any case, it is doomed to fail on the merits). The Claimant also argues that he is entitled to bring direct claims under Article 4(2) of the BIT for breach of the FET and FPS standards of protection, even though the Four Unsolicited Turbines belong to AEnergy, and not to him.[421]

350. The Claimant is aware that the BIT, while providing standing for shareholders that qualify as investors to bring direct claims regarding expropriation of assets belonging to their local incorporated companies – as per Article 7 (4) of the BIT –, it does not provide such standing to bring direct claims pertaining to the host State's FET and FPS obligations regarding the assets of those same companies. In fact, the protection granted under the BIT for those standards applies only to an investor's direct investment – *i.e.*, the shares–, not to the assets of a locally incorporated company in which the investor holds shares.

351. To circumvent this limitation the Claimant makes two arguments. *First*, the Claimant contends that his legal standing stems from an interpretation of the BIT in light of its object and purpose, and of the principle of good faith in accordance with Article 31(1) VCLT.[422] *Second*, he refers to other awards and doctrine according to which shareholders that qualify as investors are in principle entitled to bring direct claims regarding the assets of their companies.[423]

352. The Respondent disagrees with this position and disputes the Claimant's standing for direct claims pertaining to FPS and FET obligations regarding AEnergy's assets.

353. In fact, as explained bellow, the Claimant overlooks the fact that, under the Angola - Portugal BIT, shareholders can only make direct claims on behalf of the local company for expropriation

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420 SoC, p. 17, §§ 82—83.

421 SoC, pp. 17—19, §§ 85—97.

422 SoC, p. 18, § 90. See also, SoC, p. 18, § 91.

423 SoC, pp. 18—19, §§ 92—96.

claims.

354. Thus, to rebut the Claimant's stance, the Respondent will advance three arguments. First, the rules on the interpretation of treaties cannot be used to extend the rationale of the Article 7 (4) of the BIT – which is a specific provision pertaining solely to expropriation claims – to FET and FPS claims. Additionally, the protection provided by international investment law to shareholders that qualify as investors primarily concerns to reflective loss claims, rather than direct claims. Finally, if one were to portray the Claimant's claims as a reflective loss claim, then the quantification of damages cannot follow the method advanced by the Claimant,[424] as it does not consider the value of the Claimant's shares in AEnergy.

355. *First*, contrary to the Claimant's assertion, an interpretation of the Angola – Portugal BIT according to the dictates of good faith, and in line with the object and purpose of the BIT, as per Article 31 (1) of the VCLT, does not provide the Claimant with standing for FET and FPS claims in the circumstances of this case. [425]

356. Pursuant to Article 7(4) of the BIT:[426]

> *Article 7 – Expropriation*
> *4 – If a Party expropriates the assets of a company incorporated in accordance with the law in force and in which the investors of the other Party hold assets, bonds or other forms of participation, the provisions of this Article shall apply.*

357. In turn, in regard to the FET and FPS standards, Articles 4(2) and (3) provide:[427]

> *Article 4 – Investment promotion and protection*
> *2 – Investments made by investors of each Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Party.*
> *3 – Neither Party shall subject to arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments made in its territory by investors of the other Party.*

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424 SoC, Section VI.

425 SoC, p. 18, § 90.

426 **RL-0010**, Consolidated version of the Angola-Portugal BIT, p. 6.

427 **RL-0010**, Consolidated version of the Angola-Portugal BIT, p. 3.

358. It proceeds from the clear wording of the BIT that, whereas Article 7(4) explicitly provides standing for shareholders that qualify as investors to directly pursue claims pertaining to unlawful expropriations of their companies' assets, such a standing does not apply (or extend) to FET and FPS claims.

359. The Claimant assumes (wrongly) that the shareholder protection explicitly provided for in Article 7(4) automatically applies to Article 4 (which does not explicitly extend protection to shareholders of companies).[428]

360. However, the Claimant's interpretation is fatally undermined by the clear wording of the BIT.

361. Indeed, the fact that pursuant to Article 31(1) VCLT a treaty must be interpreted "*in good faith*" and "*in light its object and purpose*", does not change the fact that it must be interpreted "*in accordance with the ordinary meaning to be given to the terms of the treaty*".[429] As provided in the Draft Articles on the Law of Treaties with commentaries of 1966, adopted by the International Law Commission in the context of the preparatory works of the VCLT: [430]

> *The article [27(1) of the Draft Articles, which corresponds to Article 31(1) of the VCLT] 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.*

362. Additionally, the International Law Commission further pointed out that:[431]

> *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.*

363. An example of this reasoning is the International Court of Justice's Judgement in the *Case*

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428 SoC, p. 18, § 89.

429 **RL-0011**, Vienna Convention on the Law of Treaties, dated 23 May 169, Article 31(1).

430 **RL-0079**, Draft Articles on the Law of Treaties with commentaries, adopted by the International Law Commission in 1966, p. 220.

431 **RL-0079**, Draft Articles on the Law of Treaties with commentaries, adopted by the International Law Commission in 1966, pp. 220-221.

Concerning the Rights of Nationals of the United States of America in Morocco. The Court addressed a similar attempt to read an expansive, general rule into a treaty regime that reflected a more limited, carefully circumscribed intent.

364. In that case, the United States argued that the 1906 Act of Algeciras established a broad consular jurisdiction in Morocco. The Court rejected that position, holding that no provision in the Act established consular jurisdiction in the general terms advanced by the United States. To the contrary, the structure and terms of the Act showed that the contracting Parties contemplated consular jurisdiction only for limited purposes. In interpreting the scope of consular jurisdiction under the 1906 Act of Algeciras, the International Court of Justice concluded that:[432]

> *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 rule as to full consular jurisdiction which it does not contain.*

365. The same logic applies to the present dispute. As in that case, the Claimant seeks to manufacture a general rule where the treaty text reflects a deliberate, narrower allocation of rights. The Claimant asks the Tribunal to read Article 7(4) of the BIT as establishing a general rule permitting shareholders to bring direct claims in respect of company assets under every standard of protection (including those contained in Article 4). The Claimant's interpretation is wrong and contrary to the ordinary meaning of these articles.

366. The Contracting Parties to the BIT expressly addressed shareholders' rights to bring direct claims concerning their company's assets and allowed it only for a specific category of claims: expropriation under Article 7(4). That deliberate and targeted drafting confirms that Angola and Portugal intended to limit shareholder standing only to the specific context of expropriations. Therefore, the Tribunal should give effect to the treaty's text and structure, as the Court did in the Act of Algeciras case, and hold that shareholder standing to bring direct claims in respect of company assets is confined to expropriation claims.

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432 **RL-0080**, *Case Concerning the Rights of Nationals of the United States of America in Morocco*, France v. United Stated of America, International Court of Justice's Judgement, dated 27 August 1952, p. 199.

367. Finally, the Respondent's interpretation of these provisions of the BIT do not contradict the principle in Article 31(1) of the VCLT that a treaty must be interpreted in good-faith. Nor does it contradict the BIT's object and purpose, which is the "*mutual promotion and protection of investments made by investors of each Party in the territory of the other Party*".[433]

368. This is because any breach of the FET and FPS standards affecting the assets of a locally incorporated company in which an investor holds shares is protected in any event, provided it results in the loss of value of the directly protected investment, the shares.

369. *Second,* even though the Claimant invokes doctrine and case law to argue that, under investment law, shareholders may bring direct claims regarding their companies' assets[434], that proposition is far from settled. The conclusion the Claimant seeks to draw from the cited doctrine and case law cannot be accepted uncritically, as it disregards the fact that a company and its shareholders are distinct legal entities.

370. As underlined by Professor Zachary Douglas, this distinction is fundamental across different legal systems:[435]

> *Every legal system that recognizes a limited liability company as an independent legal entity insists upon a distinction between the company and its shareholders. A shareholder cannot, for instance, seize a physical asset of the company in return for relinquishing its share with an equivalent value. That would amount to conversion or theft, because the shareholder has no rights in rem over the assets of the company. The company, as a legal entity separate from its shareholders, holds the assets for its own account and its own name. A company does not hold assets as an agent or trustee of its shareholders. Likewise, if a third party seizes an asset of the company unlawfully, then it is not the shareholder who is the victim of conversion or a theft; it is the company.*

371. Professor Douglas goes on to affirm that:[436]

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433 **RL-0010**, Consolidated version of the Angola-Portugal BIT, p. 1.

434 SoC, pp. 18—19, §§ 93—96.

435 **RL-0081**, Zachary Douglas, *The International Law of Investment Claims*, Cambridge University Press, 1.º Ed. 2009, p. 399.

436 **RL-0081**, Zachary Douglas, *The International Law of Investment Claims*, Cambridge University Press, 1.º Ed. 2009, p. 400.

> *An investment treaty tribunal cannot, for instance, wholly discard the basic distinction between the shareholder's property and the company's property merely because the cause of action arises in international law. De Visscher stated the obvious almost half a century ago: 'L'actionnaire qui profite de la distinction des patrimoines et des personnalités doit en accepter les inconvénients comme les avantages'.*

372. It is clear therefore that tribunals must not overlook the basic principle of the separation of legal personality between shareholders and companies.

373. Contrary to what the Claimant seems to imply, it is perfectly possible to provide shareholders with protection under international investment law while preserving the legal distinction between them and their companies. To that end, Juan Fernandez-Armesto explains that shareholders are protected under investment law in respect of damages suffered by their companies, not by way of direct claims, but rather by reflective loss claims:[437]

> *In this area of international law [investment law] protected shareholders are of course entitled to claim for direct losses, if the host States expropriates their shares or impairs their rights as shareholders. But do these shareholders also enjoy standing if the assets expropriated or impaired are owned by the subsidiary in the host State? The answer to this question is the opposite to the customary international law solution: investment treaties do provide protected shareholders (including indirect and minority shareholders) with standing to claim reflective loss. Where is the legal basis for this variance between customary international law and international investment law?*
> *No treaty says that shareholders are authorised to claim their reflective loss, as well as their direct loss; in fact, investment treaties do not even use terminology "reflective loss" vs. "direct loss". Yet all treaties include a definition of protected investments, and the assets which qualify as such invariably include the category "shares" (sometimes including a reference to "indirect" and/or to "minority" participations – but the inclusion or not of the reference is irrelevant for the principle). Using this definition as a springboard, investment arbitration case law has unanimously concluded that shareholders do enjoy this double standing.*

374. This reasoning appears in the *CMS v. Argentina* dispute.[438] In that case, CMS, a company incorporated in the United States, acquired a 29.42% shareholding in TGN, an Argentine

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437 **RL-0082,** Juan Fernández-Armesto, "The Protection of Shareholders in Investment Arbitration", in *Miguel Ángel Fernández – Ballesteros. Liber Amicorum*, June 2023, p. 786.

438 **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.

company that held a license to transport gas in Argentina. At the time, the Argentine peso was pegged to the U.S. dollar, so all relevant gas tariffs were also dollar-linked. Following the Argentine economic crisis in the early 2000s, Argentina amended its legislation and decoupled the tariffs from the U.S. dollar. This measure harmed TGN's ability to carry out its licensed activities, prompting CMS to commence an ICSID arbitration against Argentina, alleging that the new legislation impaired its investment.

375. In light of these claims, Argentina raised an objection to the arbitral tribunal's jurisdiction, arguing that:[439]

> *[W]hile the acquisition of shares qualifies as an investment under the Treaty, neither TGN, as an Argentine corporation, nor the License qualify as an investment under the BIT. TGN, the argument follows, has its own assets, including the License; because these assets do not constitute an investment under the Treaty, CMS's claims, based on the alleged breach of the TGN's rights under the Licence, cannot be considered to arise directly from the investment.*

376. For its part, CMS acknowledged that TGN was not an investor under the treaty and that the TGN license did not constitute an investment. It nevertheless emphasized that its shares in TGN qualified as an investment covered by the treaty, giving CMS standing to bring direct claims for the loss in the value of those shares caused by the Argentine Government's actions.[440]

377. Considering the Parties positions, the arbitral tribunal concluded that:[441]

> *(…) Because, as noted above, the rights of the Claimant can be asserted independently from the rights of TGN and those relating to the License, and because the Claimant has a separate cause of action under the Treaty in connection with protected investment, the Tribunal concludes that the present dispute arises directly from the investment made and therefore there is no bar to the exercise of jurisdiction on this count.*

378. This rationale was then followed by subsequent investment arbitration tribunals. For instance,

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439 **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. 798, § 66.

440 **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. 798, § 67.

441 **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. 798, § 68.

the arbitral tribunal in the *El Paso v. Argentina*, was unequivocal in holding that:[442]

> *The Tribunal has come to the clear conclusion that the investment protected by the BIT was constituted by the shares in the Argentinian companies that belonged to El Paso. The Claimant in fact has itself admitted this conclusion of the Tribunal, if one looks at its Memorial, where it stated that "[i]n summary, El Paso owned certain investments in Argentina, which include indirect non-controlling shareholdings in CAPSA, CAPEX and Costanera and the indirect controlling shareholding in SERVICIOS". The overall conclusion related to the definition of the protected investment could be: what is protected are the shares, all the shares, but only the shares.*

379. Furthermore, as previously noted in Respondent's Reply under Rule 41[443], in the *Poštová banka, a.s., Istrokapital SE v. Hellenic Republic* case, the arbitral tribunal pointed out that:[444]

> *[a] shareholder of a company incorporated in the host State may assert claims based on measures taken against such company's assets that impair the value of the claimant's shares. However, such a claimant has no standing to pursue claims directly over the assets of the local company, as it has no legal right to such assets.*

380. Reaching the same exact conclusion, the arbitral tribunal in *the ST-AD GmbH v. Republic of Bulgaria* held that:[445]

> *It has been repeatedly held by arbitral tribunals that an investor has no enforceable right in arbitration over the assets and contracts belonging to the company in which it owns shares.*

381. Finally, this position was also addressed by the arbitral tribunal in the *Montauk Metals v. Colombia* 2024 award, where the arbitral tribunal noted that:[446]

> *Numerous investment tribunals have clearly indicated that a foreign investor having shares in a local company has no rights to the concessions granted to or the contracts entered into by the local company. Some of the cases concern only*

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442 **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.

443 Respondent's Reply under Rule 41, Section 5.

444 **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.

445 **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.

446 **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.

> *indirectly owned or controlled shares, which can benefit from an international protection, while others discuss the question of indirectly owned or controlled assets of the company in which the foreign shareholder has shares, for which it cannot claim directly, but only for the indirect loss on its shares.*

382. These cases demonstrate that an investor's standing as a shareholder in a company incorporated abroad does not arise directly from a breach of investment law that affects the company's rights or assets. It arises from the breach's effect on the investor's own investment—namely, the shares. The loss in share value gives the investor a cause of action, which is distinct from the company's cause of action under municipal law.

383. Thus, contrary to the Claimant's position, although a shareholder may bring investment claims arising from actions that directly affect the company's rights or assets, the shareholder's cause of action is not the company's own loss. It is the reflective impact of those actions on the value of the shareholder's shares.

384. Additionally, there is still one final note to add to rebut the Claimant's stance in this regard. In order to sustain his reasoning, the Claimant highlights the *von Pezold v. Zimbabwe* case, claiming that it bears resemblance to the case at hand since the Swizerland – Zimbabwe BIT case has got a similar provision to the one embodied in Article 7(4) of the Angola – Portugal BIT.[447] However, the reasoning upheld in that case cannot be accepted as there is a well-grounded reason for BITs to attribute direct legitimacy to shareholders in respect of claims pertaining to the expropriation of their companies' assets, that cannot be extended to other kinds of standards like FET and FPS.

385. As Professor Douglas explains:[448]

> *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*

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447 SoC, p. 19, § 96.

448 **RL-0081**, Zachary Douglas, *The International Law of Investment Claims*, Cambridge University Press, 1.º Ed. 2009, pp. 435—436.

> *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.*

386. Consequently, in the absence of a provision similar to Article 7(4) of the Angola-Portugal BIT applicable to FET and FPS claims, the Claimant lacks legal standing to claim compensation for damage to AEnergy's assets from the Respondent's alleged violations of the FET and FPS provisions of the BIT.

387. Finally, even if the Claimant's claims are based on his shareholding in AEnergy, the damages arising from the alleged breach of the FET and FPS obligations cannot be calculated as the Claimant did in Section VI of his Statement of Claim. Such method does not account for any potential loss in the value of the Claimant's shares in AEnergy. [449]

388. Indeed, insofar as the Claimant's *ius standi* to bring an investment claim against Angola is intertwined with its investment – *i.e.*, its shares –, the damages for any alleged breach of the BIT standards must necessarily be determined by reference to the effect of the alleged wrongdoing on the value of those shares – as we will further demonstrate in **Section 6.3**.[450]

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389. In summary, the Claimant does not have standing to bring direct claims regarding FPS and FET obligations in relation to AEnergy's assets. As demonstrated above, under the Angola-Portugal BIT, shareholders are only permitted to bring direct claims on behalf of the local company in cases of expropriation. The rules of treaty interpretation cannot be used to extend the specific scope of Article 7(4) of the BIT—limited solely to expropriation claims—to include FET and FPS claims. Furthermore, international investment law protects shareholders as investors primarily through reflective loss claims, not direct claims. Finally, even if the Claimant's assertions were reframed as reflective loss claims, the methodology for quantifying damages advanced by the Claimant would be inappropriate, as it does not consider the value of the Claimant's shares in AEnergy.

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449 SoC, Section VI.

450 Section 6.3.

5. The Respondent has not breached its obligations under the BIT

390. The Claimant argues that the Respondent has breached several of its obligations under the BIT, including those related to unlawful expropriation, fair and equitable treatment and full protection and security.

391. None of Mr. Machado's allegations withstand scrutiny.

392. *First*, the Claimant claims that Angola expropriated the Four Unsolicited Turbines by finalizing the contracting procedure for their installation, installing them and connecting them to the grid —all with the complicity of the Angolan authorities.[451] The Respondent will demonstrate that the Claimant's expropriation theory is ill-conceived and legally insufficient. This theory improperly constrains the Respondent's defense. In any event, the installation and deployment of the Turbines do not amount to a deprivation, let alone a lasting one. Therefore, there cannot have been any expropriation. In this context, IGAPE and the Provincial Court of Luanda have never abdicated their custodial duties over the Turbines during the pending proceedings in Angola (**Section 5.1**).

393. *Second*, the Claimant asserts that, when he invested in Angola in 2017, he was entitled to expect that Angola's executive and judiciary would abide by their own laws in a consistent, reasonable and transparent manner—expectations that, he claims were not met. However, the record shows otherwise. No conduct attributable to Angola meets the threshold for a breach of the fair and equitable treatment (FET) standard under Article 4(2) of the BIT. The measures at issue reflect the ordinary, lawful exercise of State authority and were neither arbitrary nor discriminatory. Accordingly, no violation of the FET standard occurred. (**Section 5.2**).

394. Finally, the Claimant contends that the Respondent has breached its obligation of full protection and security (FPS) by interfering with the use of the Turbines and by failing to provide appropriate legal means of redress. This premise is incorrect. The Claimant has significantly inflated the purported levels of protection afforded by the FPS standard under international law. In any case, the Respondent did not breach any due diligence obligations concerning the physical

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451 SoC, p. 23, § 112.

protection of the Claimant's investment. Rather, it acted consistently with the FPS standard by exercising due diligence in the use and maintenance of the Four Unsolicited Turbines (**Section 5.3**).

5.1 The Respondent has not expropriated the Four Unsolicited Turbines

395. As demonstrated in **Section 3.4.**,[452] the Claimant's strategy to cherry-pick the installation and deployment of the Four Unsolicited Turbines as the relevant event for his expropriation claim is a desperate attempt to manufacture the Tribunal's *ratione temporis* jurisdiction. The Claimant's argument finds no support in the Angola-Portugal BIT, in arbitral practice, or in customary international law.

396. It is undisputed that Article 7(1) of the Angola-Portugal BIT provides the standard for expropriation and covers both direct and indirect expropriations:[453]

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

397. The Parties generally concur with the concept of a direct and indirect expropriation.[454] Whilst the former is an open, deliberate transfer of title or possession as owner,[455] the latter will be achieved through State measures that wholly or substantially result in a lasting deprivation of the investor's use, benefits, or value of the asset.[456] In both cases, the investor is left with no reasonable prospect of recovery.

398. The Claimant maintains that Angola expropriated the Four Unsolicited Turbines by (i) finalizing

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452 Section 3.4.

453 **RL-0010**, Consolidated version of the Angola-Portugal BIT, dated 20 December 2021, p. 5.

454 SoC, pp. 20-21, §§ 102—105; **CLA-26**, Campbell McLachlan, Laurence Shore and Matthew Weiniger, *International Investment Arbitration Substantive Principles*, Oxford International Arbitration Series, 2nd ed., 2017, Ch. 8, § 8.68; **CLA-73**, UNCTAD, *Expropriation: A Sequel*, 2012, p. 21.

455 **CLA-0073**, UNCTAD, Expropriation: A Sequel, 2012, p. 6.

456 **RL-0085**, UNCTAD Report Taking of Property, 2000, p. 4.

the contracting procedure for their installation, (ii) installing them, (iii) connecting them to the grid, (iv) with the Angolan authorities' complicity. The Claimant then asserts that "*whether Angola's actions are labelled as an outright taking or as an equivalent measure (*i.e. *direct or indirect expropriation) makes no difference since the ultimate effect is the same: the loss of the Four Turbines by Mr. Machado*".[457]

399. *As a preliminary remark,* the Claimant concedes that the installation of the Four Unsolicited Turbines and their connection to the grid do not, *per se*, constitute an expropriation. At most, the Claimant alleges that these measures effected the removal of the Turbines from judicial custody.[458] To crystallize the alleged expropriation, the Claimant further contends that the "*authorities' complicity*" eliminated any realistic prospect of restoring the Four Unsolicited Turbines to judicial custody.[459] The Claimant's theory is cumulative: it depends on both the installation/connection and the purported abdication of custodial responsibilities. Without both limbs of this theory of expropriation, the claim collapses.

400. Given the above, Angola will demonstrate that (i) the Claimant's characterization of the alleged expropriation is oversimplified and legally insufficient (**Section 5.1.1.**); (ii) the installation and deployment of the Four Unsolicited Turbines' do not constitute a deprivation (**Section 5.1.2.**); and (iii) IGAPE and the Provincial Court of Luanda have never abdicated their custodial duties (**Section 5.1.3**).

5.1.1 The Claimant fails to properly characterize his expropriation claim

401. As explained by the *Electrabel v. Hungary* tribunal, under international law, it is "*for the investor to establish the substantial, radical, severe, devastating or fundamental deprivation of its rights or the virtual annihilation, effective neutralisation or factual destruction of its investment, its value or enjoyment*".[460] In other words, it is up to the investor to articulate and prove either a

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457 SoC, p. 23, § 114.

458 SoC, p. 23, § 112.

459 SoC, p. 23, § 112.

460 **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, p. 19, § 6.62.

direct or indirect expropriation. The Claimant pleads neither with the requisite precision.

402. Although the Claimant asserts a legal standard for expropriation,[461] he does not even attempt to characterize the facts of the case as a direct or indirect expropriation. Instead, he alleges that the label "*makes no difference*" because "*the ultimate effect is the same*". Through this sleight of hand, the Claimant tries to reverse the burden of proof. However, it is the Claimant's duty to particularize attribution, identify the impugned measure(s), and demonstrate the causal link to a substantial, lasting and irreversible deprivation.

403. However, the Claimant does not plead a coherent expropriation case because he does not have one. There is no qualifying State measure, no settled date or modality, no delineated theory of direct or indirect taking, and no demonstration that any State act produced a substantial and definitive deprivation without a reasonable prospect of recovery. These pleading deficiencies are enough to vitiate the Claimant's case from the outset. Furthermore, the deficiencies subvert due process in this arbitration as they serve unfairly to limit the Respondent's right of defense, effectively compelling Angola to fill in the Claimant's gaps instead of responding to a properly particularized expropriation case.

5.1.2 The Four Unsolicited Turbines' installation and deployment do not amount to a taking or deprivation

404. The Claimant's expropriation theory hinges on three post-entry acts that allegedly resulted in a substantial and definitive taking or deprivation of his rights over the Four Unsolicited Turbines. According to the Claimant, during 2022, Angola (i) finalized the contracting process, (ii) installed and connected the Four Unsolicited Turbines to its national grid, and (iii) did so with the complicity of Angola's authorities.[462] The Claimant's contention fails as a matter of law and facts.

405. The decisive questions are whether—and when—State conduct has produced either of the following last effects: (i) the physical taking of the property (direct expropriation) or (ii) the complete (or at least substantial) erosion of rights associated with the ownership (indirect

461 SoC, pp. 20—23, §§ 102—111.

462 SoC, p. 20, § 98.

expropriation).[463] Temporary, good-faith, and proportionate measures to preserve assets or protect the public—particularly where ownership is disputed, and judicial processes are underway—do not meet those requirements.

406. The Claimant alleges that installing/connecting the Four Unsolicited Turbines to the grid somehow converted the prior preventive seizure into a "*final and definitive measure*".[464] Suggesting an analogous expropriation, the Claimant invokes the decision on *Smurfit v. Venezuela*.[465] However, the analogy fails as the cases are materially distinct.

407. *First,* the *Smurfit* case concerns a series of measures gradually implemented by Venezuela, from 2001 to 2018, that ultimately led to the expropriation of the investor's three landholdings.[466] Quite conveniently, the Claimant fails to mention that Venezuelan's impugned actions (legal enactments, administrative and judicial proceedings) lasted 17 years. Meanwhile, Mr. Machado's case relates to Angola's alleged impugned acts during a very specific and limited timeframe: from 22 December 2021 to 9 June 2022—the date of the dispatch of the Claimant's Notice of Dispute.

408. *Second*, in *Smurfit*, the tribunal found that Venezuela had expropriated the investor's landholdings through a series of acts (as noted above), that culminated in a political declaration by Hugo Chávez on national television. These acts enabled the State to (i) grant rights to third-party occupiers; (ii) declare the lands idle and of questionable title; and (iii) authorize their "recovery".[467] These measures bear no resemblance to the facts here. Angola has consistently acknowledged that (i) pending the outcome of the judicial proceedings, AEnergy remains the owner of the Four Unsolicited Turbines (notwithstanding that such disputed ownership lies at

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463 **RL-0087**, Anne K. Hoffmann, *Indirect Expropriation*, in Standards of Investment Protection, ed. August Reinisch, Oxford University Press, 2008, p. 151.

464 SoC, p. 23, § 115.

465 **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, dated 28 August 2024.

466 **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, dated 28 August 2024, pp. 19—38, §§ 95—178.

467 **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, dated 28 August 2024, p. 116, § 361.

the heart of the proceedings),[468] and (ii) keeping the turbines active and properly maintained would prevent the deterioration that would result if they were left idle.[469] Put differently, Angola has neither (i) infringed upon the Claimant's ownership rights, nor (ii) declared or authorized the "recovery" of the Four Unsolicited Turbines by the State. There has been no "substantial deprivation" and no elimination of the realistic prospect of restoration.

409. *Third,* in *Smurfit*, the interim measures remained pending before Venezuelan courts for at least 12 years.[470] That tribunal held that, given the duration and the absence of a final decision as of the date of the award, measures intended to be temporary had, *de facto*, become permanent. This is materially different from what Mr. Machado alleges in the present case. Although the Four Unsolicited Turbines were preventively seized, the Claimant does not contend that the preventive seizure was expropriatory. [471] His theory rests on later alleged acts (installation/connection and purported complicity), not on the seizure itself.[472] There are no analogous circumstances in the present case that could properly allow this Tribunal to find a similar *Smurfit*-style 'transformation' of a temporary measure into a permanent one.

410. *Fourth,* echoing the *Santa Elena v. Costa Rica* tribunal, the *Smurfit* tribunal found that:[473]

> *[w]hat has to be identified is the extent to which the measures taken have deprived the owner of the normal control of his property […] a property has been expropriated when the effect of the measures taken by the state has been to deprive the owner of title, possession or access to the benefit and economic use of his property […].*

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468 **R-0032**, AEnergy, S.A. and Combined Cycle Power Plant Soyo, S.A. v. Republic of Angola, et al and General Electric Company, et al., 20 cv 3569, Angola's Motion to Dismiss Complaint, p. 12 (p. 20 of the PDF): ("*The order did not transfer title to the property to the Angolan government. Title remains with AE, though temporary possession has been transferred to IGAPE pending resolution of the parties' claims. The remedy is "provisional" and subject to further litigation to determine whether the attachment of these assets becomes permanent or is undone*".).

469 **R-0065**, Letter from MINEA to the PPO and attached technical report, dated 4 March 2020, p. 5; **R-0068**, Letter from the PPO to the Ministry of Finance, dated 5 May 2020.

470 **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, dated 28 August 2024, p. 134, § 406.

471 SoC, pp. 5—7, §§ 24—31.

472 SoC, pp. 7—13, §§ 32—59.

473 **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, dated 28 August 2024, p. 139, § 419.

411. According to these decisions, expropriation occurs when the investor is stripped of "*access, use and enjoyment of the property*".[474] In other words, there must be a change in the owner's *status quo* in relation to the property. According to the Claimant's tortuous case theory, no such change occurred here.

412. The Four Unsolicited Turbines were preventively seized on 6 December 2019. At that point, the Claimant temporarily lost physical control over his alleged property, and was temporarily deprived of access, use and enjoyment. On 5 May 2020, IGAPE—acting as the court-appointed Trustee—, authorized their installation and deployment in state-owned power plants.[475] The Claimant's *status quo* vis-à-vis his property did not change from his situation on 6 December 2019; IGAPE continued to exercise custodial powers as Trustee. Moreover, installation of the Turbines began in October 2020.[476] Again, the Claimant's *status quo* in relation to his property was not altered in comparison to his situation on 6 December 2019; the equipment remained under judicial custody and subject to reversal despite that—or any of the subsequent—installation.

413. And even if the Tribunal were to find, *arguendo*, that these events changed the Claimant's *status quo* in substance, the Claimant would in any event be barred from framing them as a violation of the Angola-Portugal BIT because they happened before the Amended Version's entry into force and are outside the timeframe the Claimant posits for his expropriation case—from 22 December 2021 to 9 June 2022.

414. In sum, the facts on *Smurfit* are materially different from the present case and cannot serve as a basis for this Tribunal's decision on the alleged expropriation of the Four Unsolicited Turbines.

415. Also relevant to the characterization of an expropriation is the impugned measures' permanence. The Claimant invokes *Wena v. Egypt* to contend that a nearly one-year seizure

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474 **CLA-78**, *Smurfit Holding B.V. v. Venezuela*, ICSID Case No. ARB/18/49, Award, dated 28 August 2024, p. 139, § 419.

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

476 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 9, **R-0076,** PRODEL's letter to IGAPE, dated 14 October 2020.

ceases to be "ephemeral" and therefore amounts to an expropriation.[477] However, the Claimant omits critical context: in *Wena*, the seizure of two hotels was (i) carried out by force, (ii) without a court order, and (iii) ultimately declared unlawful by the Egyptian courts.[478] The tribunal's conclusion on non-ephemeral interference thus turned on the State's illegal possession during that period—specifically, that the entity which illegally seized and held the hotels was under Egypt's effective control.[479] That is the opposite of what occurred with the Four Unsolicited Turbines. Here, the Claimant does not contest the lawfulness of the preventive seizure. It was carried out by way of judicial custody, against a background of an active domestic proceeding to determine their property rights. Accordingly, *Wena*'s nearly one-year illegal possession is irrelevant to this Tribunal's assessment of whether the seizure here was "ephemeral".

416. Finally, the Claimant repeatedly characterizes the installations as "permanent" ,[480] but offers no legal or technical reason why the units cannot be decoupled and returned should the Provincial Court so order. Taken together, the record confirms that the installations were neither final nor irrevocable and therefore cannot satisfy the permanence element of an expropriation.

417. As a matter of law, the preventive seizure of the Four Unsolicited Turbines is a temporary measure pending resolution of the dispute over their ownership and associated issues. Should the Angolan courts ultimately determine that the Turbines belong to the Claimant (via his company), then ownership will be his as a matter of law.

418. As a matter of fact, and as previously established in **Section 2.2.4.**, the TM2500 GEN8 units at issue are expressly engineered for mobility. Their modular, trailer-mounted configuration enables rapid assembly and disassembly, straightforward grid connection and disconnection, and redeployment on short notice. These attributes are not incidental—they are the defining features of this class of aeroderivative turbines and are precisely why they are routinely

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477 SoC, pp. 22—23, § 110.

478 **CLA-83**, *Wena Hotels v. Egypt*, ICSID Case No. ARB/98/4, Award, dated 8 December 2000, pp. 902—908, §§ 28—62.

479 **CLA-83**, *Wena Hotels v. Egypt*, ICSID Case No. ARB/98/4, Award, dated 8 December 2000, p. 915, § 99.

480 SoC, pp. 23-24, §§ 115—116.

deployed to address contingent needs such as grid instability, outages, and emergency power.[481] The practical implications for permanence are direct.

419. *First*, reversibility is built into the asset itself.[482] The same standardized interfaces that enable accelerated installation also facilitate decoupling from the grid and removal of the units without structural alteration to the sites. In other words, what can be assembled quickly can be dismantled quickly.

420. *Second*, the logistical footprint required to transport these units mirrors their modular design. The turbines are designed to be moved by road and redeployed, which is why they are commonly described—and used—as mobile power plants.[483] These facts refute any suggestion that the connection works or site integration rendered the installations enduring or irreversible.

421. Nor do the installation expenditures alter that analysis.[484] These costs reflected standard civil, electrical, and connection work necessary to bring mobile generators safely into service; they say nothing about the legal character of the State's possession or the ease with which the units can be disconnected and returned. On the contrary, these works are fully consistent with a public-interest objective—bridging power deficits in underserved regions—using technology selected precisely because it can be removed and redeployed as needs evolve. The presence of sunk costs in site preparation does not convert a mobile, modular plant into a permanent fixture. Temporary bridges or emergency field hospitals, for example, do not become permanent simply because they required preparation and the commitment of financial resources.

422. In that context, and in light of the turbines' mobility and the uncontested feasibility of disassembly and removal, there is no basis to find that the measures "crystallized" into an expropriation. Moreover, the record demonstrates that the Four Unsolicited Turbines were—and still are—being handled in a manner aimed at preserving their value while the Angolan

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481 **R-0100**, TM 2500 presentation in GE's website; **R-0102**, GE's press release regarding the use of TM2500 in Ukraine, dated 7 March 2023.

482 **R-0100**, TM 2500 presentation in GE's website.

483 **R-0100**, TM 2500 presentation in GE's website; **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 8, § 29.

484 SoC, p. 23-24, § 116(i).

courts adjudicate the parties' underlying dispute over them.[485]

423. In sum, the installations are functionally reversible and legally provisional; they did not transfer title, eliminate avenues of repossession, or otherwise produce the "*permanent, total or near-total*" deprivation of the investment. Permanence—the touchstone for expropriation—is absent.

5.1.3 IGAPE and the Provincial Court of Luanda have not abdicated their judicial custodial responsibilities

424. The Claimant alleges that, by ignoring AEnergy's requests for information, (i) IGAPE failed to fulfil its court-mandated custodial duties, and (ii) the Provincial Court of Luanda abdicated its judicial custodial responsibilities.[486] On the Claimant's case, this alleged inaction has eliminated any realistic prospect of restoring the Four Unsolicited Turbines to judicial custody.[487] Taken together with the installation and grid connection, the Claimant contends that these measures perfected the expropriation of his purported investment.[488] To support its allegation, the Claimant states that, under Angolan law, the State was required to respond within five days.[489]

425. As the Respondent explains in further detail in this section, the Claimant's allegations are not correct. *First*, IGAPE responded to AEnergy, informing the company that its obligation was to render accounts directly to the Court (and not to it). *Second*, the Court did not breach its duties, as it had no obligation to respond to AEnergy. Indeed, AEnergy had access to appropriate judicial proceedings in which it could defend its rights and present its allegations, but it did not take advantage of any of these procedural rights.

426. *First*, contrary to the Claimant's allegation, IGAPE responded on 3 May 2022 to AEnergy's

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485 Section 2.2.2; Section 2.2.3; Section 2.2.4; Section 2.2.5.

486 SoC, p. 23, § 112.

487 SoC, p. 24, § 117.

488 SoC, p. 23, § 112.

489 SoC, p. 24, § 117.

request for information dated 22 April 2022. In that letter, IGAPE affirmed that:[490]

> *[…] under Article 1023 of the Code of Civil Procedure, Instituto de Gestão de Activos e Participações do Estado (IGAPE), as the court-appointed Trustee designated in the judicial proceedings, reports and is accountable to the Court. Therefore, any requests initiated by the litigating parties for information concerning the preventively seized assets must be addressed to the allocated judge in the context of the pending action, in compliance with the legally established deadlines and formalities.*

427. Consequently, and as explained by the Respondent's Legal Expert, the trustee answers to the Court, and not the parties involved in the dispute:[491]

> *The judicial depositary participates in the proceedings as an auxiliary of the Court in the exercise of its judicial function. In that capacity, the judicial depositary maintains a direct relationship only with the Court; any communication with the parties to the dispute must be mediated by the Court, from which it follows that the judicial depositary must render accounts solely to the Court.*
> *[…]*
> *Accordingly, the judicial depositary is under no obligation to respond to information requests from the owner of the seized assets.*

428. In other words, the Claimant's assertion that IGAPE's failure to respond to AEnergy's 22 April 2022 letter "*eliminat*[ed] *any prospect of restoring the Four Turbines to judicial custody*"[492] is legally and factually wrong as a matter of Angolan law. It should be disregarded by the Tribunal.

429. *Second,* as to the alleged lack of response by the Provincial Court of Luanda, two points are clear. One, the Court was under no obligation to respond within five days. Two, if AEnergy believed IGAPE was failing its role as Trustee, it should have followed one of two courses of action: (i) to commence a special proceeding under Articles 1014—1023 of the Angolan CPC, requesting the Trustee to render accounts; or (ii) under Article 845 of the Angolan CPC, to request the removal of the Trustee.

430. On the one hand, quoting Article 159(2) of the Angolan CPC in support of its allegation,[493] the

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490 **R-0113**, Letter sent from IGAPE to Ricardo Machado, dated 3 May 2022.

491 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, pp. 9—10, §§ 42—46.

492 SoC, p. 23, § 112.

493 **CLA-13**, Civil Procedure Code of Angola, 28 December 1961, article 159(2).

Claimant contends that "Angola" was required to respond to the letter within five days.[494] The Claimant's interpretation of the Angolan law is flawed. As explained by the Respondent's independent legal expert in this arbitration, Hermenegildo Cachimbombo, "[t]*he five-day period referred to in Article 159(2) of the CPC is advisory, not mandatory, and is intended primarily for case-management steps—for example, ruling on requests to conduct evidentiary measures or scheduling hearings*".[495] AEnergy's requests, as characterized by the Claimant himself, do not meet that standard; they are merely requests for information regarding the whereabouts and state of conservation of the Four Unsolicited Turbines.[496]

431. More importantly, according to the Legal Expert, Angolan courts are only obliged to adjudicate issues submitted for judicial determination ("*dever de pronúncia"*). Depending on their relevance, the judge may rule on them immediately or defer them to the final judgment at the court's discretion. Accordingly, because the requests were purely informational in nature, the Court was under no obligation to respond to them.[497]

432. On the other hand, if AEnergy genuinely believed that IGAPE was failing in its role as Trustee, it could have initiated the proceeding set out in Articles 845 and 302–304 of the Angolan CPC. Rather than issuing a Notice of Dispute to commence this international arbitration just 34 business days after submitting its requests for information, the Claimant had a simpler and more appropriate course: petition for IGAPE's removal as Trustee. Article 845 of the Angolan CPC provides:[498]

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494 SoC, p. 24, § 117.

495 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 11, § 50.

496 **C-23**, AEnergy's request to the Provincial Court of Luanda, dated 22 April 2022; **C-25**, AEnergy's request to the Provincial Court of Luanda, dated 24 May 2022: ("*we ask you to notify IGAPE to come and provide the information on the current whereabouts of the seized assets (four GE TM2500+GEN8 mobile turbines, as well as their ancillary parts, consumables and other equipment), on storage conditions and on their state of conservation and maintenance, as per our previous request by the Defendant on the 22nd April of 2022*.").

497 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 11, §§ 48-51.

498 **RL-0074**, Civil Procedural Code of Angola, dated 28 December 1961, article 845: ("Article 845.º. 1. A trustee who fails to perform the duties of the office shall be removed upon the application of any interested party; 2. The trustee shall be notified to respond, in accordance with Articles 302 to 304.")

> *1. A trustee who fails to perform the duties of the office shall be removed upon the application of any interested party.*
> *2. The trustee shall be notified to respond, in accordance with Articles 302 to 304.*

433. Moreover, as IGAPE stated to the Claimant in its letter of 3 May 2022,[499] under the Angolan CPC, AEnergy could have initiated a proceeding, pursuant to Articles 1014–1023 of the Angolan CPC,[500] which governs the trustee's rendering of accounts and establishes a court supervised special proceeding. As referred by the Respondent's Legal Expert:[501]

> *[A]s a judicial depositary, it must carry out the rendering of accounts to which it is subject in accordance with the formalities established in the special procedure for rendering accounts provided for in Article 1014 et seq. of the CPC, with the necessary adaptations. This means that the owner of the seized assets wishing to have the accounts rendered must initiate this special procedure by submitting this request.*
> *In this case, if Aenergy had initiated the special accountability procedure and the Court had granted the request, Article 1023 of the CPC would stipulate that accountability must be annual. However, it would also grant the judge the power to authorize or order the depositary to render accounts at the end of the administration, which is equivalent to the end of the proceedings.*

434. In other words, IGAPE would be obliged to render accounts only if (i) the Claimant had initiated the special proceeding for an accounting, and (ii) the Court had granted the Claimant's request and ordered the accounting. Only then would IGAPE be required to render accounts on an annual basis, unless the judge—pursuant to Article 1023 of the CPC—directs that they be rendered only at the end of the administration.[502]

435. Under the Angolan CPC, the conclusion is clear: AEnergy—as a party to the seizure proceeding and the owner of the seized Turbines—could have petitioned the Court to remove IGAPE as Trustee and/or to order IGAPE to render accounts.[503] It is telling that AEnergy did not avail itself of those remedies; instead, the Claimant initiated this fundamentally flawed investment arbitration premised on a rehashed version of his old expropriation claim.

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499 **R-0113**, Letter sent from IGAPE to Ricardo Machado, dated 3 May 2022.

500 **RL-0074**, Civil Procedural Code of Angola, dated 28 December 1961, article 1023.

501 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 10, §§ 44-45.

502 **RL-0074**, Civil Procedural Code of Angola, dated 28 December 1961, article 1023.

503 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 10, §§ 44-45.

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436. Based on the law and the facts, the Claimant falls woefully short of proving a direct or indirect expropriation. The Four Unsolicited Turbines were seized under a valid court order; entrusted to a judicial trustee; stored, moved, installed and operated to preserve their value and availability; and held pending a still-active judicial process to determine ownership. The measures did not transfer title, foreclose return, or neutralize ownership. Rather, they were reversible, proportionate, and grounded in the IGAPE's recognized custodial responsibilities. Such temporary, good-faith, and reversible measures, which were taken under court supervision to avoid waste and protect assets during litigation, do not amount to the expropriation of the Four Unsolicited Turbines. Therefore, the Claimant's expropriation claim should be dismissed in its entirety.

5.2 Angola has not breached its obligation to provide FET

437. The Claimant argues that he is entitled to bring direct claims under Article 4(2) of the BIT for breach of the FET standard of protection. However, as previously mentioned,[504] the Claimant lacks standing to present such claims as the Four Unsolicited Turbines purportedly belong to AEnergy, and not to him.[505] In this sense, any potential claim by the Claimant under the BIT with regard to the Four Unsolicited Turbines—to the extent that the Tribunal deems such claim to meet the relevant jurisdictional and admissibility thresholds—must be limited to expropriation claims.

438. Even if the Tribunal were to determine that the Claimant is entitled to advance claims pertaining to alleged breaches of the FET standard under Article 4(2) of the BIT, such claims must, in any event, fail. The Respondent has at all times fulfilled its obligations under the FET standard.

439. The Respondent will demonstrate that (i) no conduct attributable to the Angola meets the threshold required to constitute a violation of the fair and equitable treatment standard (**Section 5.2.1**); (ii) Angola has not frustrated the Claimant's purported legitimate expectations (**Section 5.2.2.**); (iii) Angola has not denied AEnergy due process (**Section 5.2.3.**); and (iv) Angola has not

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504 Section The Claimant does not have standing to bring claims of FET and FPS in relation to the Turbines4.

505 SoC, pp. 17—19, §§ 85—97.

arbitrarily impaired the seized turbines (**Section 5.2.4.**).

5.2.1 The FET Standard

440. The Claimant argues that FET standards unquestionably requires both positive actions from the host state to promote foreign investment as well as a negative obligation to refrain from conduct that would disincentivize foreign investment.[506]

441. The Respondent agrees that the FET standard encompasses a positive obligation on States to act in a manner conducive to the promotion and encouragement of foreign investments.[507] However, this standard has been analyzed by different tribunals as not amenable to a rigid or predetermined formula but rather as an open-textured and flexible notion whose precise content cannot be defined in the abstract, but must instead be assessed considering all the circumstances of the case.[508] Nonetheless, the FET standard is a high one; many claimants seek to abuse that same flexibility to push excessive interpretations which would transform FET into a vehicle for incorporating any form of investor grievance and an investor's subjective expectations (no matter how inappropriate or unrealistic those expectations may be).[509]

442. While it is true that FET is closely connected to the expectations of the investor at the time where the investment is made, this connection is necessarily limited to expectations that were

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506 Soc. p. 29, § 134.

507 **CLA-54**, Tecnicas Medioambientales Tecmed S.A. v. United Mexican States, ICSID Case No. ARB(AF)/00/2, Award, dated 29 May 2003, p. 61, § 154; **CLA-93**, LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentina, ICSID Case No. ARB/02/1, Decision on Liability, dated 3 October 2006, p. 37, § 124.

508 **CLA-54**, *Tecnicas Medioambientales Tecmed S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, dated 29 May 2003, p. 61, § 154; **RL-0072**, *Waste Management, Inc. v. United Mexican States*, ICSID ARB(AF)/00/3, Award, dated 30 April 2004, p. 35-36, § 98-99; **CLA-35,** *Saluka Investments B.V. v. The Czech Republic*, UNCITRAL, Partial Award, dated 17 March 2006, p. 61, § 284.

509 **RL-0072**, *Waste Management, Inc. v. United Mexican States*, ICSID ARB(AF)/00/3, Award, dated 30 April 2004, p. 36, § 99; **CLA-93**, *LG&E Energy Corp., LG&E Capital Corp. and LG&E International Inc. v. Argentina*, ICSID Case No. ARB/02/1, Decision on Liability, dated 3 October 2006, p. 37, § 125; **CLA-35,** *Saluka Investments B.V. v. The Czech Republic*, UNCITRAL, Partial Award, dated 17 March 2006, pp. 66-67 §§ 284-285; **RL-0090**, *The Lopez-Goyne Family Trust and others v. Republic of Nicaragua*, ICSID Case No. ARB/17/44, Award, dated 1 March 2023, pp. 101-102, § 415.

legitimate and reasonable, meaning that they should have some objective basis.[510] A host state must therefore refrain from acts that defeat clear and specific assurances attributable to it and upon which the investor reasonably relied at the time it decided to invest.[511]

443. This cannot mean that States are required to maintain the exact circumstances unchanged from the time when the investment occurred and throughout the entire investment relationship. To the contrary, investors should not expect that the host State's legal or regulatory framework will remain entirely unchanged, since the State conserves all its sovereign powers to regulate.[512]

444. As explained by *El Paso v. Argentina*, to be protected under FET standards, the claims brought by the investor cannot therefore be solely subjective but "*have to correspond to the objective expectations than can be deduced from the circumstances and with due regard to the rights of the State*".[513] This reasoning determines the need for a balance between the expectation of the foreign investor to make a fair return on its investment and the right of the host State to regulate its economy in the public interest.[514]

445. Accordingly, a FET violation cannot be exclusively determined by the foreign investors' subjective motivations and considerations. It must be grounded in clear, specific, and objective assurances attributable to the State.[515]

446. As such, the Respondent maintains that the minimum standard of FET may be infringed by

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510 **RL-0065**, *Michael Anthony Lee-Chinv. Dominican Republic*, ICSID Case No. UNCT/18/3, Award, dated 6 October 2023, §437; **RL-0091**, *Discovery Global LLC v. Slovak Republic*, ICSID Case No. ARB/21/51, Award, dated 17 January 2025, pp. 108-109, §§ 415-17; **RL-0092**, *LSG Building Solutions GmbH et al. v. Romania*, ICSID Case No. ARB/18/19, Decision on Jurisdiction, Liability and Principles of Reparation, dated 11 July 2022, p. 211, § 1031; **CLA-54**, *Tecnicas Medioambientales Tecmed S.A. v. United Mexican States,* ICSID Case No. ARB(AF)/00/2, Award, dated 29 May 2003, p. 47, §§ 122.

511 **CLA-54**, *Tecnicas Medioambientales Tecmed S.A. v. United Mexican States,* ICSID Case No. ARB(AF)/00/2, Award, dated 29 May 2003, p. 61, §§ 154.

512 **RL-0093**, *Parkerings v. Lithuania*, ICSID Case No. ARB/05/8, Award, dated 11 September 2007, p. 71, § 332.

513 **RL-0083**, *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award, dated 31 October 2011, pp. 126-128, § 356-358.

514 **RL-0083**, *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award, dated 31 October 2011, pp. 130, § 364.

515 **RL-0089,** *Saluka Investments B.V. v. The Czech Republic*, UNCITRAL, Partial Award, dated 17 March 2006, pp. 66-67 §§ 304—306; **RL-0094**, *EDF v. Romania*, ICSID Case No. ARB/05/13, Award, dated 8 October 2009, p. 61, § 217.

conduct attributable to the State and harmful to the Claimant if the conduct is "*arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety – as might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candor in an administrative process.*"[516]

447. This means that not every act of the host state that prejudices an investor will meet the necessary threshold of FET protection. Rather, these acts need to be of a sufficiently serious nature—arbitrary, discriminatory, lacking due process, or otherwise egregious—to rise to the level of an FET breach. As recognized in *Parkerings v. Lithuania*:[517]

> [F]*air and equitable treatment is denied when the investor is treated in such an unjust or arbitrary manner that the treatment is unacceptable from an international law point of view. Indeed, many tribunals have stated that not every breach of an agreement or of domestic law amounts to a violation of a treaty.*

448. In the case mentioned, the claimant argued that Lithuania had failed to accord FET under the Lithuania-Norway BIT based on alleged arbitrary and non-transparent conduct, the failure to uphold its legitimate expectations, and Lithuania's decision to award the parking project to another investor. The tribunal found that none of the claimant's expectations were grounded in clear or unambiguous representations, since Lithuania's regulatory changes were legitimate exercises of its right to regulate, and that the decision to conclude the project was transparent

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516 **RL-0072**, *Waste Management, Inc. v. United Mexican States*, ICSID ARB(AF)/00/3, Award, dated 30 April 2004, pp. 35—36, § 98; **RL-0096**, *Azurix Corp. vs. the Argentine Republic*, ICSID Case No. ARB/01/12, Award, dated 14 July 2006, p. 134, § 370.

517 **RL-0093**, *Parkerings v. Lithuania*, ICSID Case No. ARB/05/8, Award, dated 11 September 2007, p. 67, § 315. Similarly, **CLA-35,** *Saluka Investments B.V. v. The Czech Republic*, UNCITRAL, Partial Award, dated 17 March 2006, pp. 66—67 §§ 304—306: (*"FET clauses could not be interpreted as 'to penalise each and every breach by the Government of the rules or regulations to which it is subject and for which the investor may normally seek redress before the courts of the host State. […] something more than simple illegality or lack of authority under the domestic law of a State is necessary to render an act or measure inconsistent with the customary international law requirements*"); **RL-0097**, *AES Summit Generation Ltd. and AES-Tisza Erömü Kft. v. Hungary,* ICSID Case No. ARB/07/22, Award, dated 23 September 2010, pp. 63—64, §§ 9.3.36 – 9.3.40; **RL-0098**, *Sun Reserve Luxco Holdings S.à.r.l., Sun Reserve Luxco Holdings II S.à.r.l. and Sun Reserve Luxco Holdings III S.à.r.l. v. Italian Republic*, SCC Case No. 132/2016, Final Award, dated 25 March 2020, pp. 234—236, §§ 688—692.

and non-discriminatory.[518]

449. Given all the above, the Respondent will further demonstrate that no conduct attributable to Angola meets the threshold required to constitute a violation of the fair and equitable treatment standard under Article 4(2) of the BIT as the Respondent's actions cannot be considered to have frustrated any purported legitimate expectations of the Claimant, were the result of the normal and legal exercise of the State's authority and were neither arbitrary nor discriminatory. Therefore, the conduct of the Respondent with regard to the Claimant's alleged investment was consistent with principles of transparency, due process, and good faith.

5.2.2 Angola has not frustrated the Claimant's purported legitimate expectations

450. The Claimant asserts that, when he invested in Angola in 2017, he was "*entitled to expect that Angola's executive and judiciary would abide by their own substantive and procedural laws in a consistent, reasonable and transparent manner*".[519] He further alleges that: (i) IGAPE—acting as Trustee of the Four Unsolicited Turbines—, breached its custodial duties by allowing their removal from judicial custody and permitting their installation and connection to the grid; (ii) AEnergy did not give its prior consent to the installation and use of the seized turbines, nor did IGAPE seek the previous authorization of the Provincial Court of Luanda; and (iii) the Court did not respond to AEnergy's information requests. The Claimant's conclusion is that Angola has manifestly disregarded all legal safeguards governing the seizure and handling of the Four Unsolicited Turbines, frustrating his legitimate expectations.[520]

451. The Respondent will demonstrate that (i) the Claimant's expectation does not meet the threshold for a FET claim (**Section 5.2.2.1.**), and that, in any event, the (ii) Trustee has not breached its custodial duties (**Section 5.2.2.2.**), and the (iii) Court has not breached its procedural rules (**Section 5.2.2.3.**).

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518 **RL-0093**, *Parkerings v. Lithuania*, ICSID Case No. ARB/05/8, Award, dated 11 September 2007, p. 67, § 315.

519 SoC, p. 31, § 144.

520 SoC, p. 32, § 151.

5.2.2.1 The Claimant's expectations do not meet the threshold for an FET claim

452. The concept of legitimate expectations is connected, among others, to the State's specific representations or commitments made to the investor on which the latter has relied.[521] In this sense, one of the most contested issues regarding the FET standard is whether the general regulatory framework in force in the host state at the time of the investment may create a legitimate expectation.[522] There is a theoretical divide between the meanings of the words "specific" and "commitment," and the two approaches relate either to a commitment "*addressed personally to a single investor*"—a stricter approach—, or "*with the aim to induce investments*"/"*addressed to an identifiable group of investors*", —a broader approach—:[523]

> *The adjective 'specific' is interpreted in two distinctive ways. The detrimental reliance approach privileges an understanding of a 'specific' commitment as an act of the host state addressed personally to a single investor. […]. The voluntary approach understands 'specific' commitment more broadly, as: (1) sufficiently precise in their content, object, and purpose with the aim to induce investments and (2) addressed to a targeted and identifiable group of investors.*

453. Even if the Tribunal were to take a broader approach, the Claimant would still need to show that Angola's "*substantial and procedural laws*", and specifically the CPC—the general regulatory framework on which he bases his legitimate expectation[524]—was enacted (i) with the aim of inducing investments, and (ii) for a targeted and identifiable group of investors. This idea is simply absurd.

454. Tribunals have denied FET claims based on a lack of any specific commitments to the investor or

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521 **RL-0099**, UNCTAD, Fair and Equitable Treatment: A Sequel, 2012, p. 68.

522 **RL-0100**, Thomas Lehmann, 'Chapter 2: The Substantive Protection of Legitimate Expectations under the Standard of FET', in *Investment Arbitration and International Climate Change Law: Revaluing Legitimate Expectations*, International Arbitration Law Library, Vol. 73, 2025, pp. 60-61.

523 **RL-0100**, Thomas Lehmann, 'Chapter 2: The Substantive Protection of Legitimate Expectations under the Standard of FET', in *Investment Arbitration and International Climate Change Law: Revaluing Legitimate Expectations*, International Arbitration Law Library, Vol. 73, 2025, p. 64.

524 SoC, pp. 31—32, §§ 145—150.

its investments.[525]

455. In *El Paso v. Argentina*, the tribunal found no breach of FET standard based on frustration of legitimate expectations. El Paso had received no specific assurances, or stabilization guarantees from the State that would insulate its contracts from regulatory changes, nor any concrete commitments. The tribunal further held that Argentina's measures were legitimate, good-faith responses to the country's economic crisis. In the absence of a specific commitment by the State, El Paso could not ground an FET violation on alleged frustration of expectations.[526]

456. Similarly, in *Parkerings v. Lithuania*, the tribunal concluded there was no FET breach because Lithuania had made no specific assurances or guarantees to Parkerings that the legal framework would remain unchanged or that no regulatory measures affecting the investment would be adopted. That tribunal stated that:[527]

> *The legitimate expectations of the Claimant that the legal regime would remain unchanged are not based on or reinforced by a particular behaviour of the Respondent. In other words, the Republic of Lithuania did not give any explicit or implicit promise that the legal framework of the Agreement would remain unchanged.*

457. Accordingly, the Claimant has not demonstrated that he formed any cognizable expectations, much less "legitimate expectations" protected under the BIT. His own formulation—an asserted entitlement to expect Angola's executive and judiciary to apply domestic law consistently, reasonably, and transparently[528]—does not establish that such expectations actually guided his investment decision. There is no contemporaneous evidence that he invested, structured, or expanded his business in Angola in reliance on any specific assurance or on the stability of the legal framework: no business plans referencing reliance on Angola's legal order, no internal memoranda, correspondence, or board materials recording such reliance, and not even witness

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525 **RL-0083**, *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award, dated 31 October 2011, p. 147 § 404; **RL-0093**, *Parkerings v. Lithuania*, ICSID Case No. ARB/05/8, Award, dated 11 September 2007, p. 71, § 334.

526 **RL-0083**, *El Paso Energy International Company v. The Argentine Republic*, ICSID Case No. ARB/03/15, Award, dated 31 October 2011, p. 147 § 404.

527 **RL-0093**, *Parkerings v. Lithuania*, ICSID Case No. ARB/05/8, Award, dated 11 September 2007, p. 71, § 334.

528 SoC, p. 31, § 144.

testimony attesting to it. Absent proof of specific, individualized assurances and reasonable, documented reliance at the time of investment, the Claimant's expectations case fails at the threshold and cannot sustain an allegation of breach of the FET standard.

5.2.2.2 IGAPE has not breached its duties as Trustee

458. Contrary to the Claimant's allegations,[529] IGAPE acted with the diligence and care of a reasonable person placed in the position of a judicial custodian of the Four Unsolicited Turbines, all in accordance with Article 843(1) of the Angolan CPC.[530] As thoroughly analyzed by the PPO's legal opinion, the conclusion is that, under Angolan law, a trustee is authorized to put seized movable assets to use:[531]

> *Procedural law does not expressly contemplate the possibility of the judicial trustee operating seized movable assets, which is understandable given their particular nature. This does not mean, however, that seized movables cannot be operated directly by the custodian when circumstances are analogous to those involving seized immovables—especially since Article 855 of the CPC directs that the regime established for the seizure of immovables applies to the seizure of movables. Consequently, unless expressly agreed otherwise, the judicial trustee, acting under the general principle set out in Article 843 of the CPC, may put seized machinery into operation to prevent its deterioration, without prejudice to the obligation to render accounts to the court.*

459. The PPO's conclusion is (i) grounded in a well-known judgment of the Lisbon Court of Appeals;[532]

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529 SoC, pp. 31—32, §§ 145—149.

530 **RL-0074**, Civil Procedural Code of Angola, dated 28 December 1961, article 843(1): ("*1. In addition to the general duties of a depositary, the judicial depositary is responsible for managing the assets with the diligence and zeal of a good family man, while bearing the obligation to provide proper accountability*".) (with informal translation to English).

531 **R-0069**, PPO's legal opinion sent to the Ministry of Finance, dated 5 May 2020, p. 2 (with informal translation to English).

532 **RL-0101**, Appeal No. 12535, Lisbon Court of Appeal, Judgement, 6 October 1977 in Coletânia de Jurisprudência, Year II, Vol. 5, 1977, p. 1006: ("Summary: I- Procedural law does not expressly contemplate the possibility of the judicial trustee renting or operating seized movable assets, which is understandable given their particular nature. II- This does not mean, however, that seized movables cannot be rented or operated directly by the custodian when circumstances are analogous to those involving seized immovables—especially since Article 855 of the CPC directs that the regime established for the seizure of immovables applies to the seizure of movables. III- Consequently, unless expressly agreed otherwise, the judicial trustee, acting under the general principle set out in Article 843 of the CPC, may rent a factory's seized machinery to halt its stoppage, without prejudice to the obligation to render accounts to the court".).

and (ii) corroborated by Hermenegildo Cachimbombo. The Angolan Expert explains that "*the trustee may put the seized assets into operation, because this authority falls within* [his] *powers of administration*".[533]

460. That is precisely what occurred here. As demonstrated in **Section 2.2.2.**, before authorizing any operation of the seized Turbines, IGAPE obtained and considered a technical report prepared by MINEA—annexed to the PPO's legal opinion—which set out the rationale for requesting that the Turbines be put into operation: (i) in accordance with the manufacturer's recommendations, the seized GE TM 2500 turbines require maintenance even while in storage; (ii) their operation was necessary to prevent further deterioration; and (iii) it was in the public interest of the Republic of Angola to use the Turbines to generate electricity and provide energy to more remote areas of the country.[534] Against this factual background, the Claimant has yet to demonstrate how the prudent use and maintenance of the seized turbines has "*significantly deteriorated them*".[535]

461. The Claimant further asserts that, by analogy to the operation of seized vessels (*navios penhorados*), permitted under Angolan law, IGAPE still had to obtain AEnergy's prior consent and the Court's authorization before installing and operating the Turbines.[536] That interpretation is misconceived for two main reasons.

462. *First*, as Hermenegildo Cachimbombo explains, in a preventive seizure it makes no sense to condition the operation of seized assets on the owner's (potential debtor's) consent: the measure itself temporarily strips the owner of the powers of disposal and enjoyment.[537] As noted by Portuguese academic commentator José Lebre de Freitas, a seizure deprives the debtor

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533 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 9, § 38 (with informal translation to English).

534 **R-0065**, Letter from MINEA to the PPO and attached technical report, dated 4 March 2020, pp. 2-3 and 14-15 of the PDF; **RWS-02**, Witness Statement of Ms. Marinela Monteiro, pp. 5—6, § 13.

535 SoC, p. 31, § 146.

536 SoC, pp. 31—32, § 149.

537 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 9, §§ 40—41 (with informal translation to English).

of the powers of use and enjoyment:[538]

> *By seizure, the debtor's right is stripped of the powers of use and enjoyment that comprise it, which are then transferred to the court. Typically, the court exercises these powers through a judicial custodian. When the attachment is imposed on the tangible object of a real right* (direito real) *(seizure of an immovable asset, of a movable asset, or of a share in an undivided asset), the transfer of the powers of enjoyment entails a transfer of possession. The debtor's possession ceases and the court takes possession: the custodian takes possession of the seized asset in the court's name.*

463. Lebre de Freitas also affirms that "[b]*ecause the debtor ceases to be in possession—though he retains title to the underlying right—, he can no longer avail himself of possessory remedies*".[539]

464. *Second*, it is self-evident that vessels operate in motion and can travel long distances over extended periods. Operating such assets while under seizure is inherently riskier than operating other movables: on the one hand, vessels can leave Angola's jurisdiction entirely and, on the other hand, once a vessel departs port, the judicial custodian effectively loses practical control and the ability to exercise custodial duties. Alberto dos Reis, widely regarded as the father of the Portuguese Code of Civil Procedure, in commenting on the applicability by analogy of the regime governing the seizure of vessels to other seized movables, stated that:[540]

> *Article 852 is a special provision and should not be applied by analogy. The seizure (penhora) or conservatory inventory (arrolamento) of a vessel is a highly particular case, given the risks to which a vessel is exposed as a consequence of navigation; no general inference may be drawn from that context to the seizure or conservatory inventory of a factory.*

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538 **RL-0102**, José Lebre de Freitas, *A Ação Executiva*, 8th ed., Gestlegal, 2024, p. 314: ("Pela penhora, o direito do executado é esvaziado dos poderes de gozo que o integram, os quais passam para o tribunal, que, em regra, os exercerá através de um depositário. Quando a penhora incide sobre o objeto corpóreo dum direito real (penhora de bem imóvel, penhora de bem móvel, penhora de quota em bem indiviso), a transferência dos poderes de gozo importa uma transferência de posse. Cessa a posse do executado e inicia-se uma nova posse pelo tribunal: o depositário passa, em nome deste, a ter posse do bem penhorado") (with informal translation to English).

539 **RL-0102**, José Lebre de Freitas, *A Ação Executiva*, 8th ed., Gestlegal, 2024, p. 314, fn. 3A: ("[d]eixando o executado de ser possuidor, sem prejuízo de manter a titularidade do direito de fundo, não lhe é consentido o uso dos meios de defesa da posse.") (with informal translation to English).

540 **RL-0103**, [commentary of] J. Alberto dos Reis, *Revista de Legislação e de Jurisprudência*, Coimbra, a.79.º n.2830, (1946), p. 135.

465. The Tribunal should not draw an analogy from the seizure of vessel to the preventive seizure of the Four Unsolicited Turbines. As explained, the Turbines have been moved to the locations in which they are needed and are now stationary and subject to continuous oversight; PRODEL continues to provide IGAPE with detailed status reports.[541] IGAPE has retained its ability to monitor, inspect, and intervene as necessary to discharge its custodial obligations.

466. Therefore, the analogy construed by the Claimant does not withstand scrutiny. It is inapposite to stationary, judicially preserved power-generation equipment, and should be disregarded by the Arbitral Tribunal in its assessment of the alleged violation of the FET standard.

467. The conclusion is that instead of "*disregarding all legal safeguards governing the seizure and the handling of the Four Turbines*",[542] IGAPE complied with the CPC's custodial regime, exercised its management powers on the basis of legal opinions and technical reports, and prudently authorized operation to preserve the assets—conduct that cannot, as a matter of law or fact, breach the Claimant's legitimate expectations.

468. One final important note regarding IGAPE's conduct as Trustee: if the Claimant believed IGAPE's actions were detrimental to the seized Turbines, the proper course of action—particularly if he seeks to invoke alleged legitimate expectations concerning Angola's civil and procedural framework—was for AEnergy to file one or both of two potential proceedings available to him and AEnergy before the Provincial Court of Luanda: (i) a special proceeding to compel the Trustee to render accounts (*ação de prestação de contas*); and (ii) a request for the removal and replacement of the Trustee (*remoção do depositário)*.

469. *Ação de prestação de contas* is a specific and special proceeding governed by Articles 1014-1023 of the Angolan CPC.[543] As a threshold matter, this proceeding has two phases. The introductory phase ends with the judge's decision on whether the defendant (here, IGAPE) is obliged to

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541 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, pp. 11 – 12, §§ 40 – 42, **R-0084**, PRODEL's letter to IGAPE, dated 29 June 2023; **RWS-02** - Witness Statement of Ms. Marinela Monteiro, pp. 6—7, §§ 16—18.

542 SoC, p. 32, § 151.

543 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 10, §§ 44—45 (with informal translation to English).

render an accounting; only if the answer is affirmative does the court proceed to the second phase, which examines the accounts themselves.[544] Portuguese civil procedure—on which the Angolan CPC is modeled[545]—contains an analogous special proceeding. As the Portuguese Court of Appeal of Porto has held:[546]

> *I — A special proceeding for rendering accounts necessarily has two phases: an introductory phase that ends with the judge's decision on whether the defendant is obliged to render an accounting, and, if so, a second phase involving the evaluation of the accounts themselves.*
> *II — The judge must expressly rule on the defendant's duty to render an accounting before proceeding to the next phase. That duty cannot be inferred merely from the issuance of a preliminary order to examine the soundness of the accounts submitted, where the defendant, in his answer, denies any continuing obligation to render them on the ground that he has already done so.*

470. Because the Angolan civil procedure is structured on the dispositive (party-initiative) principle, under which the procedural impetus (*impulso processual*) lies with the parties,[547] (i) the Claimant was responsible for commencing an *ação de prestação de contas*, and (ii) any entitlement to receive accounts hinges on a prior judicial determination—made in the exercise of the judge's discretion on the evidentiary record—that the defendant is obliged to render them. AEnergy made no attempt to avail itself of this procedural right.

471. Additionally, if AEnergy believed that IGAPE had breached its custodial duties, it could have requested its removal as Trustee. Article 845(1) of the Angolan CPC provides that "*a trustee who fails to perform the duties of the office shall be removed upon the application of any interested*

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544 **RL-0074**, Civil Procedural Code of Angola, dated 28 December 1961, article 1014: ("1. A party seeking to compel the trustee to render accounts shall request the notification [citação] of the defendant, who must, within twenty days, either render the accounts or respond to the action; otherwise, the defendant will be barred from objecting to the accounts later submitted by the plaintiff. […] 5. If the court determines that the defendant is obliged to render an accounting, he shall be notified to submit it within ten days; failing that, he will be precluded from contesting the accounts later submitted by the plaintiff.".) (with informal translation to English).

545 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 6, §§ 23-24.

546 **RL-0104**, Oporto Court of Appeal, Case No. 14898/20.2T8PRT-C.P1, Judgement, dated 17 June 2025 (with informal translation to English).

547 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p.116, §§ 47-48.

party".[548] The Claimant never requested IGAPE's removal as Trustee either.

472. In conclusion, although the Claimant accuses Angola of disregarding legal safeguards, it was the Claimant who failed to avail himself of the safeguards available under Angolan law. In these circumstances, any allegation of a breach of legitimate expectations cannot be sustained.

5.2.2.3 The Court has not breached its procedural rules

473. The Claimant alleges AEnergy sent two information requests to the Provincial Court of Luanda, to which the Court had not responded.[549] The lack of response allegedly amounts to a failure by the Court to apply its procedural laws in a consistent, reasonable, and transparent manner.[550] For the reasons set out above,[551] which the Respondent incorporates by reference for procedural economy, the Provincial Court of Luanda was under no obligation to respond to the Claimant's information requests, let alone in five days. Because the Court fulfilled its procedural rules, the Claimant's legitimate expectations could not have been breached.

5.2.3 Angola has not denied AEnergy due process

474. The Claimant further alleges that Angola failed to afford him due process and acted without transparency. Specifically, Mr. Machado contends that:

a. he was not notified of the decision to install and deploy the Turbines and, as a result, was deprived of any opportunity to object to their removal from judicial custody;[552]

b. no documentary record identifies the State body that made the decision, its reasons, the date, or the manner of execution;[553]

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548 **RL-0074**, Civil Procedural Code of Angola, dated 28 December 1961, article 845: ("*1. A trustee who fails to perform the duties of the office shall be removed upon the application of any interested party; 2. The trustee shall be notified to respond, in accordance with Articles 302 to 304*").

549 SoC, p. 32, § 150.

550 SoC, p. 32, § 151.

551 Section 5.1.3.

552 SoC, pp. 34—35, § 161(i) and (iv).

553 SoC, pp. 34—35, § 161(ii).

c. IGAPE and the Provincial Court of Luanda failed to respond to his requests for information;[554]

d. Angola has, *de facto*, appropriated the turbines;[555] and

e. Angolan courts lack independence from the government, citing (i) purported collusion that led to the removal of the seized turbines from judicial custody, and (i) the scheduling of a hearing only after—and, he claims, because of—the commencement of arbitration proceedings, following five years of judicial inaction.[556]

475. The Respondent underscores that the Claimant chose to serve his Notice of Dispute on 9 June 2022.[557] Therefore, the relevant timeframe for any alleged violation of due process runs from 22 December 2021 to 9 June 2022. Within that period, Mr. Machado bears the burden of demonstrating how Angola's judicial system would have failed to afford him FET treatment.[558] He has established neither (i) the judicial avenues he pursued—or their futility—; nor (ii) a systemic failure producing an outcome that offends basic standards of judicial propriety.

476. Throughout this submission, Angola has addressed each of the Claimant's allegations.[559] In summary, since 2019 MINEA has pursued both precautionary and principal proceedings before the Provincial Court of Luanda to secure and adjudicate issues relating to the Four Unsolicited Turbines. The Court ordered a preventive seizure and appointed IGAPE as Trustee. These are routine, public judicial measures and, critically, the Claimant does not dispute these specific acts. Despite the Claimant's rhetoric, the Parties have recently appeared for a hearing before the Provincial Court of Luanda. AEnergy has had—and continues to have—specific remedies, such

554 SoC, p. 35, § 161(iii).

555 SoC, p. 35, § 161(v).

556 SoC, p. 35, § 161(vi) and (vii).

557 **C-26**, Claimant's Notice of Dispute, dated 9 June 2022.

558 **RL-0105**, *Orazul International España Holdings S.L. v. Argentine Republic*, ICSID Case No. ARB/19/25, Award, dated 14 December 2023, p. 169, § 733.

559 Allegation (a) Section 5.2.2.2. and Section 5.2.2.3.; allegation (b) Section 2.2.2.; allegation (c) Section 5.1.3.; allegation (d) Section 5.1,; allegation (e) Section 5.1.3 and Section 2.2.5.

as an action for an accounting and a petition to remove the custodian, that he chose not to pursue.

477. In *Orazul v. Argentina*, the investor claimed that Argentina had (i) failed to respect key components of the Electricity Law; and (ii) refused to answer any administrative petitions filed by it.[560] The *Orazul* tribunal held that, because the investor could have challenged the government acts before Argentine courts, the State's failure to respond to the investor's petitions did not amount to a due process breach:[561]

> *The mere fact that the Energy Secretariat allegedly did not reply to all petitions made by Cerros Colorados does not amount to a due process breach. Cerros Colorados could have challenged the Energy Secretariat's failure to respond before the Argentine courts.*
> *[…]*
> *The Tribunal has carefully considered the Claimant's contention that the Claimant did not have an opportunity to appear before the adverse measures were put in place. […] The possibility for the Claimant to challenge measures taken on the basis of such regulations sufficed to respect due process.*

478. In the present case, the Claimant served a Notice of Dispute on 9 June 2022, without resorting to available local remedies or showing futility. The Claimant's due process allegations fail on threshold grounds.

479. The case law invoked by the Claimant does not assist his position.

480. *First*, in *Deutsche Bank v. Sri Lanka*, the due process/transparency claim arose from a five-page interim measure rendered less than 48 hours after the petition was filed. In that order, Sri Lanka's Supreme Court (i) suspended all payments due to five international banks under hedging agreements at issue, and (ii) directed the Central Bank to commence investigations into those same banks.[562] Specifically, the Sri Lankan Supreme Court held that:[563]

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560 **RL-0105**, *Orazul International España Holdings S.L. v. Argentine Republic*, ICSID Case No. ARB/19/25, Award, dated 14 December 2023, p. 163, § 717; p. 165, § 720.

561 **RL-0105**, *Orazul International España Holdings S.L. v. Argentine Republic*, ICSID Case No. ARB/19/25, Award, dated 14 December 2023, p. 169, §§ 734-735.

562 **CLA-100**, *Deutsche Bank AG v Sri Lanka*, ICSID Case No. ARB/09/02, Award, dated 13 October 2012, § 476.

563 **CLA-100**, *Deutsche Bank AG v Sri Lanka*, ICSID Case No. ARB/09/02, Award, dated 13 October 2012, § 430.

> *The Petitioners have established a strong prima facie case that these transactions have not been entered into lawfully: that they are not 'arms-length transactions that they are heavily weighted in favor of the Banks; that they are to the detriment of [CPC] and through that to the people of Sri Lanka; that they amount to an abuse of statutory authority which denies the people the equal protection of law'.*

481. The Sri Lankan judge who presided over the hearing publicly stated that the hedge contracts contained "*elements of fraud and corruption*".[564] Yet, in the investment arbitration, Sri Lanka did not allege any fraud. Notably, the same judge later acknowledged that the Supreme Court's interim order was "*issued for political reasons*"—namely, the sharp drop in oil prices in November 2008—, and that "*internationally, Sri Lanka had no defence to present in the arbitration proceedings*".[565] In these circumstances, that ICSID tribunal concluded that the "*far-reaching consequences*" of the interim decision, rendered "*without a proper examination*" by the Court, breached the FET obligation in the form of a due process violation.[566]

482. That tribunal also weighed additional factors against Sri Lanka: the Central Bank's post-"investigation" decisions were identical, word-for-word, for two different banks,[567] and as to Deutsche Bank, the entire "investigation" consisted of "*two or three internal documents*", evidencing a complete absence of documentary record.[568]

483. Contrary to the *Deutsche Bank* case, Angola's measures are not politically driven, but routine, court-supervised, well-documented and certainly not made in a rush:

a. Mr. Wilson da Costa's forgery of the non-binding letters is a proven fact[569]—one that the Claimant has never contested. The forgery—and the Claimant's involvement—is the triggering event for the termination of the 13 Contracts, the request for interim measure and the commencement of the main proceedings—events that in any event

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564 **CLA-100**, *Deutsche Bank AG v Sri Lanka*, ICSID Case No. ARB/09/02, Award, dated 13 October 2012, § 434.

565 **CLA-100**, *Deutsche Bank AG v Sri Lanka*, ICSID Case No. ARB/09/02, Award, dated 13 October 2012, § 479.

566 **CLA-100**, *Deutsche Bank AG v Sri Lanka*, ICSID Case No. ARB/09/02, Award, dated 13 October 2012, §§ 476-478.

567 **CLA-100**, *Deutsche Bank AG v Sri Lanka*, ICSID Case No. ARB/09/02, Award, dated 13 October 2012, § 485.

568 **CLA-100**, *Deutsche Bank AG v Sri Lanka*, ICSID Case No. ARB/09/02, Award, dated 13 October 2012, § 489.

569 **R-0036**, United States v. Freita Da Costa, Case 23-cr-610, Opinion and Order, United States District Judge, dated 14 February 2025.

fall outside the Angola-Portugal BIT's temporal scope;

b. The Provincial Court of Luanda ordered a preventive seizure and appointed IGAPE as judicial custodian in a 16-page reasoned decision[570] two months after it was filed by the PPO[571]—a decision that is not even contested in the present arbitration;

c. IGAPE's decision to allow the installation and deployment of the turbines[572] followed a formal technical report from MINEA[573] and a legal opinion from the PPO,[574] recommending operation of the turbines to prevent deterioration and serve the public interest—a decision that in any event falls outside the Angola-Portugal BIT's temporal scope;

d. The President's decision related to the use of the seized turbines was formalized and published: the emergency contracting authorization for plant works (Presidential Order 177/21).[575] That instrument articulates purposes (ensuring generation capacity), scope (specific plants), and financing. Far from opacity, this act evidences complete transparency by Angola; and

e. Angola has consistently acknowledged AEnergy's ownership pending adjudication of the main proceeding.[576]

484. *Second*, in *Rumeli Telekom v. Kazakhstan*, the State (i) unilaterally terminated an investment contract without prior suspension, as required by the contract; (ii) twice admitted the breach in

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570 **C-17**, Judgement of the Provincial Court of Luanda, dated 5 December 2019.

571 **R-0116**, Application for interim measure for the seizure of the Four Unsolicited Turbines, dated 4 October 2019.

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

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

574 **R-0068**, Letter from the PPO to the MINFIN, dated 5 May 2020.

575 **C-21**, Presidential Order No. 177/21, dated 26 October 2021.

576 **R-0032**, Aenergy, S.A. and Combined Cycle Power Plant Soyo, S.A. v. Republic of Angola, et al and General Electric Company, et al., 20 cv 3569, Angola's Motion to Dismiss Complaint, p. 12 (p. 20 of the PDF), dated 18 September 2020.

contemporaneous ministerial letters; (iii) relied on a hastily convened "Working Group" that issued a three-and-a-half-page, summarily reasoned validation on new grounds; and (iv) gave the investor a two days' verbal notice to attend a meeting at premises controlled by an adverse party, under the cloud of newly announced criminal proceedings.[577] Notably, the Claimant omits that the tribunal also held there was no clear evidence that the Kazakhs' courts decisions "*were wrong procedurally or substantially, or were so egregiously wrong as to be inexplicable other than by a denial of justice*"—whilst deciding the due-process violation allegation.[578]

485. *Third,* for the reasons set out in **Section 5.1.2.**,[579] which the Respondent incorporates by reference for procedural economy, Angola has shown that the facts in *Smurfit* are materially different from what Mr. Machado alleges in the present case and do not assist the Claimant's position.

486. Contrary to the Claimant's assertion and the case law he relies on, the record reflects accessible remedies, public acts with stated reasons, and ongoing judicial control—far from a fundamental due process failure or lack of transparency. The Tribunal should therefore dismiss the Claimant's FET claim premised on alleged due-process violations and lack of transparency for lack of merit.

5.2.4 Angola has not arbitrarily impaired the Four Unsolicited Turbines

487. The Claimant alleges that Angola acted arbitrarily by installing the seized turbines and connecting them to the grid, thereby impairing Mr. Machado's investment in breach of Article 4(3) of the Angola-Portugal BIT.[580] Specifically, Mr. Machado contends that:

a. Installation and deployment of the seized turbines are not found on any legitimate reason or fact and thwarted the purpose of the preventive seizure;[581]

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577 **CLA-51**, *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Kazakhstan*, ICSID Case No. ARB/05/16, Award, dated 29 July 2008, pp. 163—164; §§ 615—617.

578 **CLA-51**, Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Kazakhstan, ICSID Case No. ARB/05/16, Award, dated 29 July 2008, p. 164; § 618.

579 Section 5.1.2., pp. 109—111, §§ 406—414.

580 SoC, p. 36, § 164; p. 38, § 168.

581 SoC, p. 36, § 167(i).

b. The measures do not pursue a legitimate purpose, but constitute a *de facto* appropriation of the seized turbines by bypassing its procedural rules;[582]

c. Angola's actions are contrary to its own legal provisions and violate due process;[583]

d. IGAPE's and the Court's failure to respond to AEnergy's requests for information are relevant in assessing whether there have been arbitrary measures;[584] and

e. Angola has not been forthright regarding "*its real motivations for the expropriation*" of the Four Unsolicited Turbines.[585]

488. Before turning to the necessary standard, two preliminary points. *First*, allegations (a)-(d) largely repackage the Claimant's theories regarding expropriation, legitimate-expectations, and due-process. For reasons of procedural economy, the Respondent incorporates by reference its responses to those allegations as set out elsewhere in this submission.[586] *Second*, allegation (e) about Angola's "*real motivations for the expropriation*" is obviously premised on the assumption that the Four Unsolicited Turbines were expropriated. If the Tribunal rejects the Claimant's expropriation claim, this strand of the "arbitrary measures" claim necessarily becomes moot and must therefore be rejected by the Tribunal.

489. Moving to the standard for arbitrariness, Professor Schreuer, appearing as an expert in *EDF v. Romania*, defined an arbitrary measure as:[587]

> *a. a measure that inflicts damage on the investor without serving any apparent legitimate purpose;*
> *b. a measure that is not based on legal standards, but on discretion, prejudice or personal preference;*

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582 SoC, p. 36, § 167(ii).

583 SoC, p. 37, § 167(iii)

584 SoC, p. 37, § 167(iv).

585 SoC, pp. 37—38, § 167(v).

586 Allegation (a) Section 2.2.2. and Section 2.2.4.; allegation (b) Section 5.1.; allegation (c) Section 5.1.3., Section 5.2.2. and Section 5.2.3; and allegation (d) Section 5.1.3.

587 **RL-0094**, *EDF v. Romania*, ICSID Case No. ARB/05/13, Award, dated 8 October 2009, p. 99, § 303.

> *c. a measure taken for reasons that are different from those put forward by the decision maker;*
> *d. a measure taken in willful disregard of due process and proper procedure.*

490. That tribunal adopted Prof. Schreuer's definition and ultimately rejected the investor's arbitrary measure's claim.[588] Subsequent tribunals have endorsed the same definition.[589]

491. Applying that standard, IGAPE's decision pursued the legitimate aim of placing the seized turbines into operation to preserve them and prevent deterioration—a measure grounded in law, taken in accordance with proper procedure, and consistent with its custodial duty of prudent, diligent administration. As confirmed by Angola's independent legal expert, Article 843 of the Angolan CPC, together with the case law on judicial custodian duties, allows the productive use of seized assets:[590]

> *[T]he custodian is not to merely keep the assets entrusted to him; he must manage them, which means making them produce their ordinary income. Rather than leaving assets idle, the custodian—like a prudent head of household or diligent administrator—should put them to productive use, deriving the benefits they are capable of yielding; he should operate them, as reflected in Article 843(2).*

492. As to impairment, the Claimant must prove that the arbitrary measure(s) had an impact on the investment in order to constitute a violation of the BIT.[591] The Claimant has yet to show any damages traceable to IGAPE's decision—much less that operating the turbines left him somehow worse off than leaving them idle.

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588 **RL-0094**, *EDF v. Romania*, ICSID Case No. ARB/05/13, Award, dated 8 October 2009, p. 99, § 303.

589 **RL-0106**, *Encavis AG and others v. Italian Republic*, ICSID Case No. ARB/20/39, Award, dated 11 March 2024, p. 167, § 718; **RL-0107**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Award, dated 17 May 2024, p. 256, § 894; **RL-0108**, *Red Eagle Exploration v. Republic of Colombia*, ICSID Case No. ARB/18/12, Award, dated 28 February 2024, p. 102, § 306; **RL-0109**, *Antonio del Valle Ruiz et al. v. Kingdom of Spain*, PCA Case No. 2019-17, Award, dated 13 March 2023, p. 164, § 584.

590 **RL-0103**, [commentary of] J. Alberto dos Reis, Revista de Legislação e de Jurisprudência, Coimbra, a.79.º n.2830, (1946), p. 134: ("[T]*he custodian is not to merely keep the assets entrusted to him; he must manage them, which means making them produce their ordinary income. Rather than leaving assets idle, the custodian—like a prudent head of household or diligent administrator—should put them to productive use, deriving the benefits they are capable of yielding; he should operate them, as reflected in Article 843(2)*"; **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 9, §§ 38—39.

591 **RL-0110**, *ELA USA, Inc. v. Republic of Estonia*, PCA Case No. 2018-42, Award, dated 21 February 2025, p. 229, § 899.

493. As a result, Angola's actions are neither arbitrary nor have they impaired the Claimant's investment.

494. Next, the Claimant creatively bids to manufacture several inconsistencies in the Respondent's behavior.

495. *First*, the Claimant mischaracterizes Angola's statements as demonstrating a "sudden" shift in its position. Specifically, Mr. Machado asserts that Angola first said that "*the turbines had to be properly stored to ensure their conservation*", and then reversed course, stating that "*their deployment […] was necessary to avoid decay*".[592] The exhibits cited by the Claimant do not evidence any such "sudden" change of position:

a. In its Request under Rule 41, the Respondent stated that "[t]*o prevent irreparable harm from potential sale and deterioration of the turbines, the Respondent requested their seizure, ensuring they were placed with a trustee*"[593];

b. In the Respondent's Request for the Preventive Seizure of the Turbines, the State asked the Court to appoint either MINEA or IGAPE as Trustee, to be responsible "*for the safekeeping and preservation*" of the seized assets.[594] Angola notes that the Claimant mistranslated the term "*conservação*" as "*whereabouts*",[595] a clear error that vitiates its argument about any purported declaration by Angola. In context, "*guarda e conservação*" means "*safekeeping and preservation*", not location; and

c. In the Respondent's Answer to the Notice of Dispute, Angola stated that PRODEL "*was in a position to ensure the best safekeeping and preservation of the turbines*".[596] The Claimant, however, mistranslated the term "*guarda e conservação*" as "*conservation*

592 SoC, p. 37, § 167(v)(a).

593 Respondent's Request under Rule 41, p. 21, § 69.

594 **R-0116**, Application for interim measure for the seizure of the Four Unsolicited Turbines, dated 4 October 2019, p. 15, § 75.

595 **C-15**, Application for interim measure for the seizure of the Four Unsolicited Turbines, dated 4 October 2019, p. 32, § 75.

596 **R-0117**, Angola's Answer to Mr. Machado's Notice of Dispute, dated 9 December 2022, p. 5, § 23.

and storage",[597] an equally clear error with the same consequences: it misstates Angola's position and thereby fatally undermines the Claimant's argument.

496. The record shows that Angola never stated that the seized turbines must be kept in storage to ensure their safekeeping and preservation. Accordingly, there is no inconsistency: Angola did not contradict itself or act for reasons other than those it has consistently articulated.

497. *Second*, the Claimant complains that Angola simultaneously asserts that it has already paid for the Turbines and that their deployment is temporary.[598] As already demonstrated, (i) installation of the Four Unsolicited Turbines is reversible;[599] and, (ii) ownership of the turbines will be finally determined by the Angolan courts—the only competent jurisdiction to do so.[600] If the Court ultimately finds that the seized assets belong to AEnergy, Angola can and will return them to the Claimant. There is nothing contradictory regarding Angola's declarations and/or motivations.

498. *Third*, MINEA's public-interest rationale for requesting operation of the seized turbines[601] is not "*an inconsistent explanation*" [602] when compared to IGAPE's rationale for allowing their installation and connection to the grid to prevent corrosion and deterioration.[603] Angola expressly articulated both considerations—public interest and preservation—in its Answer to the Notice of Dispute, the very document on which the Claimant relies to allege inconsistency:[604]

> *It should be borne in mind that the turbines, given the social function they can perform in producing electricity and supplying a population lacking this important means of livelihood, should not be kept idle; indeed, their operation, with proper maintenance, does not cause deterioration but rather helps prevent the deterioration that would result from inactivity.*

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597 **C-16**, Angola's Answer to Mr. Machado's Notice of Dispute, dated 9 December 2022, p. 13, § 23.

598 SoC, p. 37, § 167(v)(b).

599 Section 2.2.4.

600 Section 2.2.5.

601 **R-0065**, Letter from MINEA to the PPO and attached technical report, dated 4 March 2020, pp. 2—3 and 14—15 of the PDF.

602 SoC, p. 37, § 167(v)(c).

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

604 **R-0117**, Angola's Answer to Mr. Machado's Notice of Dispute, dated 9 December 2022, p. 5, § 25.

499. *Fourth*, contrary to the Claimant's assertion,[605] the Respondent's repeated acknowledgement that, pending adjudication, "*the turbines in question are of Aenergy S.A.'s property*" is not inconsistent with its declaratory action filed in the Provincial Court of Luanda seeking a judicial determination of ownership of the Four Unsolicited Turbines. The acknowledgment reflects the *status quo* until the Court rules. The declaratory proceedings seek a definitive determination and, if the Court recognizes State rights in the seized assets, "*the transfer of title is formalized, with retroactive effect to the ratification of the acts*".[606]

500. In other words, the decisions were purposeful, reasoned, and even-handed. They do not meet the demanding threshold of "arbitrary impairment" alleged by the Claimant and should therefore be disregarded by the Tribunal.

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501. As a final note, the Respondent points out that:

a. Ownership is contested before the domestic courts. Throughout, Angola has treated the units as assets under judicial control and public stewardship, not as private property beyond the reach of preservation or sectoral planning. The Claimant's FET case attempts to pre-judge those domestic issues;

b. The Claimant's own conduct matters. AEnergy could, but chose not to commence special proceedings to seek the rendering of accounts by IGAPE or the removal of the Trustee; and

c. Causation and damages are not established under FET. The Claimant's alleged harms flow from his contested title and judicial preservation, not from any unfair treatment. He identifies no treaty-based causal chain from a due process or arbitrariness breach

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605 SoC, p. 38, § 167(v)(d).

606 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 9, §§ 38—39: ("*Se na acção principal se decidir que as turbinas pertencem ao Estado angolano, depois de transitada em julgado a decisão, efectivamente, se formaliza a transferência de propriedade, com efeitos retroativos à ratificação dos atos do gestor de negócios, nos termos do artigo 268.º n.º 2 do Código Civil, aplicado por remissão do artigo 471.º do mesmo diploma*".).

to a compensable injury distinct from his expropriation theory.

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502. Based on the above, the Claimant has not met his burden to prove a breach of FET. There were no specific or competent assurances, no reasonable reliance, no fundamental due process failure, and no arbitrary impairment. Angola's measures were transparent, taken for legitimate public purposes, and carried out within published procurement and budgeting instruments, and under judicial oversight while title remains contested. Therefore, the Tribunal should dismiss the FET claim in its entirety and reserve questions of title and any ancillary issues to the proper fora.

5.3 Angola has not breached its obligation to provide FPS

503. The Claimant contends that the Respondent has breached its obligation to provide adequate protection to the Claimant's alleged investment in Angola, both by interfering with the use of the Turbines and by failing to afford appropriate legal means to defend the Claimant's position.[607]

504. As previously noted, however, the Claimant lacks legal standing to advance claims under the Full Protection and Security (FPS) standard in this case, as it is not the direct owner of the Four Unsolicited Turbines. Consequently, the Claimant may only assert indirect claims under the protections afforded by the BIT.[608]

505. Furthermore, and as the Respondent will demonstrate, even if the Claimant was found to have standing to raise such claims, they would nonetheless be inadmissible as the Respondent has fully complied with its obligations under the FPS standard.

506. It is well-established that the FPS obligation requires host States only to ensure the physical protection of foreign investments.[609] The standard arises from the substantive obligations set

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607 SoC, p. 39, § 176 and p. 40, § 181.

608 See Section 4.

609 **RL-0089,** *Saluka Investments B.V. v. The Czech Republic*, UNCITRAL, Partial Award, dated 17 March 2006, p. 98, § 483; **CLA-92**, *Mobil Exploration v. Argentina*, Decision on Jurisdiction and Liability, dated 10 April 2013, p. 298, § 1002; **CLA-58,** *von Pezold and others v. Zimbabwe*, ICSID Case No. ARB/10/15, Award, 28

forth in bilateral investment treaties—such as Article 4(2) of the Angola-Portugal BIT—which provides that investments made under the treaty shall enjoy "*full protection and security*" in the host State.[610]

507. Contrary to Claimant's submission, FPS standards do not extend to protection beyond the physical security of an investment. In fact, considering otherwise would blur the lines between FPS and FET standards. As Tribunals often emphasize, any concerns regarding failure to provide legal protection are properly to be addressed under the fair and equitable treatment standard, not under full protection and security.[611]

508. The case law cited by the Claimant, including *Frontier Petroleum v. Czech Republic*, confirms that "*the standard of full protection and security applies exclusively or preponderantly to physical security and to the host State's duty to protect the investor against violence directed at persons and property stemming from State organs or private parties*." Although the Tribunal recognizes that FPS may, in limited circumstances, relate to actions of the State's judiciary, it does not extend the scope of FPS to encompass legal protection with regard to other acts of the State.[612]

509. Similarly, in *A.M.F. v. Czech Republic*, the tribunal recognizes that there is no broad consensus on an extension of FPS to more than physical protection as these "*interpretations have not been adopted by all other tribunals, however, with the result that the scope and reach of the FPS*

July 2015, p. 195, § 596; **RL-0113**, *UAB E Energija v. Latvia*, ICSID case No. ARB/12/33, Award, dated 22 December 2017, p. 241, § 840; **CLA-51,** *Rumeli Telekom v. Kazakhstan*, Award, dated 29 July 2008, p. 177, § 668; **CLA-112**, *Gold Reserve v. Venezuela*, ICSID case No. ARB(AF)/09/1, Award, dated 22 September 2014, pp. 158—159, §§ 622-623; **RL-0115**, *Liman Caspian Oil BV and NCL Dutch Investment BV v. Republic of Kazakhstan*, ICSID Case No. ARB/07/14, Award, dated 22 June 2010, p.70, §§289; **RL-0066**, *Mamidoil Jetoil Greek Petroleum Products Societe S.A v. Republic of Albania*, ICSID Case No. ARB/11/24, Award, dated 30 March 2015, p. 157 § 821.

610 **RL-0010**, Consolidated version of the Angola-Portugal BIT, dated 21 December 2021, Article 4.2, p. 3.

611 **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; **CLA-35,** *Saluka Investments B.V. v. The Czech Republic*, UNCITRAL, Partial Award, dated 17 March 2006, p. 98, § 484.

612 **CLA-41**, *Frontier Petroleum Services Ltd. v. Czech Republic*, UNCITRAL, Final Award, dated 12 November 2010, p. 88, § 262.

obligation (beyond physical protection) is not yet a matter of broad consensus".[613]

510. Both cases mentioned by the Claimant determine that the obligation of full protection and security requires the State to exercise due diligence to safeguard the physical safety of foreign investments but does not impose absolute liability on States. Accordingly, the physical protection and security of the investment—rather than the legal protection and security — constitutes the FPS obligation, as repeatedly affirmed by arbitral jurisprudence.[614]

511. In practice, the types of acts from which a State is obliged to protect foreign investors under the FPS standard involve physical harm to the investment, such as that resulting from armed conflict, civil unrest, revolutions, riots, or vandalism.[615]

512. In *Pantechniki S.A. Contractors & Engineers v. Albania*, a case arising from the destruction of the claimant's construction site during Albania's 1997 civil unrest, the investor alleged that the State failed to provide full protection and security as required under the BIT. The sole arbitrator however found that the nationwide breakdown of order rendered it impossible for Albania, given its limited resources, to prevent the damages suffered by the Claimant.[616] The sole arbitrator further stated that FPS embodies an international standard of treatment imposing an obligation on Albania to exercise "*due diligence*" in the physical protection of investment. However, the standard of due diligence must be that of the host state in the same circumstances and with the same resources.[617]

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613 **RL-0117**, *A.M.F. Aircraftleasing Meier & Fischer GmbH & Co. KG v. Czech Republic*, PCA Case No. 2017-15, Award, dated 11 May 2020, p. 101, § 646.

614 **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; **RL-0066**, *Mamidoil Jetoil Greek Petroleum Products Societe S.A v. Republic of Albania*, ICSID Case No. ARB/11/24, Award, dated 30 March 2015, p. 157, § 821.

615 **RL-0097**, *AES Summit Generation Ltd. and AES-Tisza Erömü Kft. v. Hungary,* ICSID Case No. ARB/07/22, Award, dated 23 September 2010, p. 92, § 13.3.2; **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; **RL-0066**, *Mamidoil Jetoil Greek Petroleum Products Societe S.A v. Republic of Albania*, ICSID Case No. ARB/11/24, Award, dated 30 March 2015, p. 157-158 § 823–824.

616 **RL-0118**, *Pantechniki S.A. Contractors & Engineers v. Albania* ICSID Case No. ARB/07/21, Award, dated 30 July 2009, pp. 18– 19, §§ 76 –77.

617 **RL-0118**, *Pantechniki S.A. Contractors & Engineers v. Albania* ICSID Case No. ARB/07/21, Award, dated 30 July 2009, p. 20, § 81.

513. Any assessment of a potential breach of FPS must therefore be grounded in the specific circumstances of the case. The applicable standard of due diligence is contextual and must be measured objectively against the concrete risks and the reasonable measures available to the State.[618]

514. In this sense, States are expected to "*exercise reasonable care to protect the investment*"[619] which does not mean that they must avoid any damage to the investor's activity but rather that it must act with reasonable diligence, employing the means at its disposal and considering the specific circumstances. Contrary to the Claimant's argument[620], this constitutes "*an obligation of means and not of result*" on the host states.[621]

515. The Claimant contends that the FPS standard was breached through the installation and operation of the Four Unsolicited Turbines, alleging, in particular, the absence of a formal decision authorizing their operation and the risk of accelerated wear due to environmental conditions and purportedly improper maintenance.

516. The Respondent will demonstrate that it did not violate the FPS standard. The Respondent diligently maintained the Four Unsolicited Turbines in accordance with the instructions of the manufacturer, GE. IGAPE has at all times fulfilled its duties under Angolan law as Trustee for the Fourt Unsolicited Turbines pending the decision of the Angolan courts. The Respondent has therefore maintained the Turbines in sufficient state to allow them to be returned to AEnergy or retained by the Respondent depending on the decision of the Angolan courts.[622] As such, the

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618 **RL-0118**, *Pantechniki S.A. Contractors & Engineers v. Albania* ICSID Case No. ARB/07/21, Award, dated 30 July 2009, pp. 20 - 21, §§ 81–83; **RL-0119**, *American Manufacture & Trading, INC v. Republic of Zaire*, ICSID Case No. ABR/93/1, Award, dated 21 February 1997, p. 28, § 6.05.

619 **RL-0066**, *Mamidoil Jetoil Greek Petroleum Products Societe S.A v. Republic of Albania*, ICSID Case No. ARB/11/24, Award, dated 30 March 2015, p. 121, § 634; **RL-0035**, Christoph H. Schreuer et al., *The ICSID Convention: A Commentary*, 2nd ed., Cambridge University Press, 2009, p. 323.

620 SoC, p. 38, § 172.

621 **RL-0066**, *Mamidoil Jetoil Greek Petroleum Products Societe S.A v. Republic of Albania*, ICSID Case No. ARB/11/24, Award, dated 30 March 2015, p. 121, § 634; **RL-0081**, Zachary Douglas, *The International Law of Investment Claims*, Cambridge University Press, 1.º Ed. 2009, p. 365; **RL-0118**, *Pantechniki S.A. Contractors & Engineers v. Albania* ICSID Case No. ARB/07/21, Award, dated 30 July 2009, pp. 20—21, §§ 81—83.

622 Section 2.2.2.

use of the Turbines cannot be characterized as a violent act toward the Claimant's investment; to the contrary, the investment has at all times benefited from full protection and security. The Respondent elaborates on these points.

517. *First*, as set out above, the installation and use of the Four Unsolicited Turbines was necessary to safeguard the integrity of the equipment and prevent future deterioration. Contrary to the Claimant's assertions,[623] the Respondent was fully aware that TM2500 turbines require highly specialized maintenance even while in storage. Indeed, the Respondent's decision to maintain and use the Four Unsolicited Turbines was based on a technical assessment by PRODEL of the Four Unsolicited Turbines, which identified the need to implement equipment-preservation measures.[624]

518. PRODEL implemented a comprehensive preventive and corrective maintenance program tailored specifically to the TM2500 turbines. The program encompassed periodic shaft rotations and inspections to prevent deterioration during idle periods, as well as the routine replacement of filters and oils and the calibration of critical components during operation.[625] PRODEL's technical team consistently followed the manufacturers' maintenance guidelines, ensuring full alignment with industry best practices. For specialized procedures—particularly in relation to control systems—PRODEL engaged external experts, including technicians from GE, to ensure the highest quality standards.[626] As a result, the Turbines have remained reliable and fully operational, with all maintenance activities duly reported to the competent authorities in accordance with PRODEL's stewardship obligations.[627]

519. As mentioned by Mr. Arlindo Cambungo:[628]

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623 SoC, pp. 39-40, §§ 175—179.

624 Section 2.2.3.; **RL-0065**, Letter from MINEA to the PPO and attached technical report, dated 4 March 2020., pp. 2—3 and 14—15 of the PDF.

625 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 10, §§ 32 and 34.

626 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 10, §§ 35—37.

627 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, pp. 10—11, §§ 32—39.

628 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 10, §§ 33 –34.

> *PRODEL has a highly qualified team with extensive experience in the operation and maintenance of this equipment. They are recognized for their reliability and technological excellence (…) In terms of operations, PRODEL has strictly complied with all manufacturer recommendations, adopting a proactive and rigorous approach to equipment maintenance.*

520. Additionally, the Four Unsolicited Turbines were reported to be fully operational and maintained under a regular schedule, each equipped with the requisite components at their respective locations. Their continued performance demonstrates PRODEL's consistent compliance with its technical and stewardship duties and the effective implementation of the established preventive and corrective maintenance regime.[629] In fact, as specifically mentioned by Mr. Arlindo Cambungo, the measures taken by PRODEL with regard to the maintenance of the Turbines "*the longevity of the turbines can exceed three or four decades*".[630] PRODEL has therefore ensured that the Four Unsolicited Turbines are fully protected and secure pending completion of the court proceedings.

521. *Second*, as reported above, the installation and use of the Four Unsolicited Turbines was dully authorized by IGAPE at MINEA's request, after due consideration of the advice received from the Attorney General and the Angolan Ministry of Finance.[631]

522. As also mentioned above,[632] IGAPE's intention with regard to the use of the Turbines was to discharge its custodial duties by taking appropriate measures to preserve the assets, allowing their supervised operation by PRODEL and ensuring they were subject to appropriate maintenance by specialized engineers.[633] It was in this context that IGAPE further concluded that it could entrust the seized turbines to MINEA's custody, as long as IGAPE remained informed about the Turbines' status,[634] which then led to the authorization of installation and use of the seized turbines.[635] Ever since this authorization, PRODEL has maintained—and continues to

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629 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 10, § 32.

630 **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 10, § 36.

631 Section 2.2.2

632 Section 2.2.3.; Section 5.2.2.2.

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

634 **R-0069**, PPO's legal opinion sent to the Ministry of Finance, dated 5 May 2020.

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

maintain—periodic reporting to IGAPE regarding all relevant actions and the status of the assets.[636]

523. Therefore, the Respondent's use of the Four Unsolicited Turbines cannot amount to a breach of the international FPS standard: the use of the turbines was accompanied by adequate protection and maintenance measures to ensure the proper functioning of the equipment, was duly authorized by the competent authorities in accordance with Angolan law and pursued legitimate public-interest objective. The Respondent could not have contributed to any alleged physical deterioration of the Turbines when its actions were aimed precisely at preserving their integrity and operability.

524. In sum, the Respondent did not breach any due diligence obligations concerning the physical protection of the Claimant's investment. Nor did it breach any obligation to provide legal protection and security (assuming *arguendo* that legal protection and security forms part of the FPS standard); rather, it acted consistently with the FPS standard, exercising due diligence in the use and maintenance of the Four Unsolicited Turbines.

6. The Claimant is not entitled to the damages he claims in compensation

525. The Claimant asserts that, under customary international law, Angola is required to provide full reparation for all damages resulting from its breaches of the BIT. According to the Claimant, this standard requires that the Claimant be placed in the same position he would be in if the breaches

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636 **RWS-01,** Witness Statement of Mr. Arlindo Cambungo, pp. 11—12, §§ 40—42**; R-0071**, PRODEL's letter to IGAPE, dated 13 May 2020**; R-0072**, PRODEL's letter to IGAPE, dated 21 August 2020**; R-0081,** Letter from PRODEL to IGAPE, ref. 00002284/770/GPCA/GSE/2020, dated 14 September 2020**, R-0076**, PRODEL's letter to IGAPE, dated 14 October 2020; **R-0073,** PRODEL's letter to IGAPE, dated 7 January 2021; **R-0079**, PRODEL's letter to IGAPE, dated 14 June 2021; **R-0074**, PRODEL's letter to IGAPE, dated 27 January 2022; **R-0075**, PRODEL's letter to IGAPE, dated 29 August 2022; **R-0084**, PRODEL's letter to IGAPE, dated 29 June 2023; **R-0089**, PRODEL's letter to IGAPE, dated 9 October 2023; **R-0090**, PRODEL's letter to IGAPE, ref. 00004056/1400/GPCA/ADM-PT/2024, dated 12 November 2024; **R-0091**, PRODEL's letter to IGAPE, ref. 00004057/1399/GPCA/ADM-PT/2024, dated 12 November 2024; **R-0092**, PRODEL's letter to IGAPE, ref. 00004058/1398/GPCA/ADM-PT/2024, dated 12 November 2024; and **R-0093**, PRODEL's letter to IGAPE, ref. 00001914/862/GPCA/ADM-PT/2025, dated 23 May 2025 and **R-0094**, PRODEL's letter to IGAPE, ref. 00001915/863/GPCA/ADM-PT/2025, dated 23 May 2025.

had not occurred.[637]

526. Even if the Respondent is found to have breached the BIT (*quod non*), the Respondent will demonstrate that: (i) the most probable counterfactual scenario is that the Claimant has not incurred any loss (**Section 6.1.**); if the Tribunal finds otherwise, the Claimant's contributory fault warrants a 100% reduction in any damages payable (**Section 6.2.**); (iii) and, even if some loss were accepted (*arguendo*), the amounts claimed are neither substantiated nor accurately calculated (**Section 6.3.**).

6.1 In the most plausible counterfactual scenario, the Claimant suffered no loss

527. The Claimant contends that, under Article 31 of the ILC Articles on State Responsibility, reparation is owed only for injuries that directly result from an international wrongful act.[638] He further asserts that this reflects the general principle that compensation requires a demonstrable causal link between the breach and the alleged harm.[639] Moreover, Mr. Machado claims that he must establish that the injury would not have occurred but for the wrongful conduct.[640]

528. Relying on the *Chorzów Factory* case, the Claimant asserts that he must establish a counterfactual scenario—which involves determining what would have likely occurred in the absence of the wrongful act. This requires a reasoned projection of how the investment would have progressed under legitimate circumstances.[641] Mr. Machado's contrafactual scenario is that, *but for* Angola's alleged unlawful actions, he would not have been deprived of the Four Unsolicited Turbines.[642] Specifically, he claims that Angola breached the BIT when "*removing the*

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637 SoC, p. 41, § 189.

638 SoC, p. 44, § 198, quoting **RL-0012**, International Law Commission's 2001 Articles on the Responsibility of States for International Wrongful Acts, dated 12 December 2001, Article 31.

639 **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, § 21.31.

640 SoC, p. 44, §199; **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, § 21.33.

641 SoC, p. 44, § 199; **CLA-111**, *Factory at Chorzów (Germany v. Poland)*, PCIJ Series A. No 17, Judgement, 13 September 1928, § 125.

642 SoC, p. 46, § 211.

Four Turbines from judicial custody and depriving Mr. Machado of them."[643]

529. The Claimant's counterfactual scenario (on the basis of which he claims damages) incorrectly assumes that the Claimant would have benefited and profited from the use of the Four Unsolicited Turbines "*but for*" Angola's breaches of the BIT. The Claimant's counterfactual scenario is fundamentally flawed: if the alleged breaches by the Angolan authorities had not occurred, the Turbines would still be under seizure, stored at PRODEL's facilities under the custody of IGAPE. They would not be at the Claimant's disposal.

530. *First*, the fact remains that, since 6 December 2019, these Turbines have been seized and placed under IGAPE's custody, pending a final decision by the Angolan courts regarding their ownership. Notably, Mr. Machado has expressly acknowledged in these proceedings that this judicial seizure does not constitute a breach of the BIT.[644] Consequently, had the Turbines not been used, they would have remained at the Camama facility, entirely beyond the control, use, or economic benefit of AEnergy or Mr. Machado. This fact is indisputable and has been expressly recognized by AEnergy in related US proceedings.[645]

531. *Second*, even in a counterfactual scenario, the main legal proceedings in Angola (which the Claimant does not challenge) would still be ongoing—whether at the Provincial Court, the Luanda Court of Appeal, or the Supreme Court—due to the well-documented reality of multi-year litigation at each stage of adjudication and appeal. As stated by Angola's Legal Expert, "*(…) within the parameters defined by procedural law, decisions of the District Courts may be appealed to the Courts of Appeal, and decisions of the Courts of Appeal may be appealed to the Supreme Court*"[646] and, for the present case:[647]

> [T]*wo appeals may be available from merits decisions of the District Courts: (i) appeal, which generally has suspensive effect on enforcement and is adjudicated by the Court of Appeal (Article 691 of the CPC); and (ii) review, which does not have*

643 SoC, p. 46, § 211.

644 Claimant's Response under Rule 41, p. 9, § 38; Claimant's Rejoinder under Rule 41, p. 27, § 109.

645 **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., 20 cv 3569, dated 7 May 2020, p. 65, § 216.

646 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 4, § 11.

647 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 12, § 55.

> *suspensive effect and is adjudicated by the Supreme Court (without prejudice to possible constitutional scrutiny by the Constitutional Court). Accordingly, the decision becomes final only when it is no longer subject to appeal.*

532. Typically, aggregate time to final resolution for such cases exceeds five years, and often approaches a decade.[648] According to Hermenegildo Cachimbombo:[649]

> *An ordinary declaratory action, including a possible appellate phase - whose pendency is generally suspensive when it concerns a final decision on the merits of the case, Article 692 of the Code of Civil Procedure, CPC) -, is expected to last at least five to six years of great factual and legal complexity.*

533. Thus, in the counterfactual scenario, until a final decision with *res judicata* effect is issued, the undisputed and lawful provisional seizure of the Four Unsolicited Turbines remains in force, precluding Mr. Machado and AEnergy from exercising any control, use, or deriving any economic value from the turbines.

534. *Third*, even if (*arguendo*) a final judgment was rendered in favor of AEnergy, Angola could return the Turbines without any damages being suffered by the Claimant. In fact, installing the Turbines or potentially returning them to PRODEL's Camama warehouse would not affect AEnergy or the Claimant's position: the Turbines could be returned to Camama or to AEnergy without any loss of value. Mr. Machado has provided no evidence to the contrary.

535. The Claimant argues that: [650]

> [e]*ven if operated under ideal conditions, the mere use of gas turbines causes normal wear and tear. The deterioration of the Turbines is very much exacerbated by their use under the conditions prevalent in Angola (i.e., high dust levels, humidity, extreme heat and coastal conditions with salt-laden air).*

536. However, the Claimant did not submit any evidence to support his allegation.

537. Conversely, the Respondent has demonstrated proactive and diligent care in maintaining the Turbines. All Four Unsolicited Turbines were fully operational, regularly maintained, and

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[648] **RL-0055**, Raúl Araújo/Conceição Gomes (Coor.), *A Justiça em Recurso em Angola*, 2019, pp. 125 and following.

[649] **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 4, § 13.

[650] SoC, p. 39, § 176. See also, SoC, p. 40, § 178.

consistently compliant with PRODEL's technical obligations. PRODEL implemented a comprehensive preventive and corrective maintenance program for the TM2500 turbines, which includes periodic shaft rotations, inspections during idle periods to prevent deterioration, regular filter and oil replacement, and calibration of critical components during operation. The technical team strictly followed manufacturers' guidelines and industry best practices, and for specialized tasks—such as work on control systems—external experts, including General Electric technicians, were engaged to maintain the highest quality standards.[651]

538. *Fourth*, if a *res judicata* judgment were rendered in favor of Angola, ownership of the Four Unsolicited Turbines would vest in Angola, thereby foreclosing any claim by AEnergy for damages. As stated by the Respodent's Legal Expert:[652]

> *If, in the main action, it is decided that the turbines belong to the Angolan State, after the decision becomes final (res judicata), ownership is indeed formalized as transferred, with retroactive effect to the ratification of the acts of the manager of business, under Article 268(2) of the Civil Code, applied by reference to Article 471 of the same statute.*

539. In sum, the Claimant has failed to establish any plausible counterfactual scenario in which, absent Angola's alleged breaches of the BIT, the Four Unsolicited Turbines would have reverted to his possession and ownership.

6.2 The Claimant's contributory fault warrants a 100% reduction in any damages

540. It is a well-established principle of international law that the conduct of an injured party must be considered when assessing the extent and form of reparation. As recognized in Article 39 of the ILC Articles on State Responsibility, and widely endorsed in international practice, willful or negligent actions by the claimant that contribute to the occurrence or extent of the alleged damage may justify the reduction or even offsetting of compensation altogether.[653] This

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651 Section 2.2.3., §§ 131 and following; **RWS-01**, Witness Statement of Mr. Arlindo Cambungo, p. 10 – 11, §§ 32—39.

652 **RER-02**, Expert Legal Opinion by Hermenegildo Cachimbombo, p. 12, § 54.

653 **CLA-109**, Irmgard Marboe, *Calculation of Compensation and Damages in International Investment Law*, (Second Edition), Mar 2017, Chapter 3, p. 122, § 3.242. See **RL-0012**, International Law Commission's 2001

foundational rule is grounded on the concept of "*full reparation*," which requires an equitable assessment of the circumstances, including any material contribution to harm by the claimant.[654]

541. Notably, this principle is reflected in arbitral and scholarly authorities. For example, Marboe observes that questions of contributory fault are sometimes intertwined with causation, [655] further reinforcing the need for a careful evaluation of the claimant's conduct in the context of liability and damages.

542. The Tribunal in *Yukos v. Russia* confirmed that while not every act or omission by a claimant will suffice, compensation may be reduced when the claimant's contribution to the harm is "*material and significant*." In this case, the shareholder-claimants alleged that Russia's actions—including tax reassessments, enforcement measures, arrests, and the auction of YNG—ultimately led to Yukos's bankruptcy. The tribunal found that the State's conduct, viewed cumulatively, amounted to unlawful expropriation. However, it also considered the conduct of the investors in assessing damages, holding that bad faith or unlawful acts by the injured party may and should be reflected in the calculation of compensation.[656]

543. In *LSF-KEB (Lone Star) v. Republic of Korea*, the tribunal found that Korea's financial regulator acted wrongfully in orchestrating a reduction of the control premium payable in the Hana transaction yet concluded that the claimant's own misconduct materially contributed to the indivisible loss. Applying the Article 39 contributory fault framework—requiring a willful or negligent act that is both material and significant to the injury—the tribunal held that Lone Star's criminal convictions were expressly invoked by the regulator to delay approvals and to justify measures that depressed the sale price. The tribunal went on to reduce the damages as a result

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Articles on the Responsibility of States for Internationally Wrongful Acts, dated 12 December 2001, Article 39.

654 **CLA-109**, Irmgard Marboe, *Calculation of Compensation and Damages in International Investment Law*, (Second Edition), Mar 2017, Chapter 3, p. 122, § 3.242.

655 **CLA-109**, Irmgard Marboe, *Calculation of Compensation and Damages in International Investment Law*, (Second Edition), Mar 2017, Chapter 3, p. 122, § 3.245.

656 **RL-0120**, *Yukos v. Russian,* UNCITRAL PCA Cases No. AA 226, 227, 228, Award, dated 18 July 2014, pp. 500-510, §§ 1594-1637.

of its contributory fault.[657]

544. In the present case, the Claimant's actions have demonstrably and substantially contributed to the losses for which compensation is sought. As previously explained, Mr. Machado was involved in orchestrating a fraudulent scheme through the fabrication and use of Forged Letters from Angolan authorities, enabling the unauthorized payment of the Four Unsolicited Turbines with Angola's funds under the Facility Agreement. These actions directly prompted the Respondent to terminate the 13 Contracts, initiate a preventive seizure procedure, commence the Main Action, and undertake the maintenance and use of the Turbines in order to prevent their deterioration.[658] Thereby, the Claimant's conduct meets the threshold of "*material and significant*" contribution required by international jurisprudence.[659]

545. Accordingly, under Article 39 of the ILC Articles and under the consistent practice of international tribunals mandate that in the present case any damages awarded (*arguendo*) should be reduced by 100%, as the Claimant's contributory fault is determinative and precludes any entitlement to compensation. This is enough to dispose of the Claimant's case on damages. For completeness, Respondent demonstrates below that even if damages were payable to Claimant (*quod non*), Claimant's assessment of his damages is grossly flawed.

6.3 Claimant has not accurately quantified or substantiated his damages

546. The Claimant argues that when the value of expropriated property increases between the date of expropriation and the date of the award, investment tribunals have held that an expropriating state cannot benefit from this differential in cases of unlawful expropriation by merely paying the property's value at the time of expropriation.[660] Further, the Claimant asserts that he is

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657 **RL-0121**, *LSF-KEB (Lone Star) v. Republic of Korea*, ICSID case No. ARB/12/37, Award, dated 30 August 2022, pp. 299 and following, §§ 792 and following. See also **RL-0122**, *Occidental Petroleum v. Ecuador*, ICSID Case No. ARB/06/11, Award, dated 5 October 2012, pp. 266-267, §§ 686-687; **RL-0123** *Bogdanov v. Moldova,* SCC Case No. 093/2004, Award, dated 22 September 2005, pp. 18 and following, §§ 91 and following; and **RL-0124**, *MTD v. Chile*, ICSID Case No. ARB/01/7, Award, dated 25 May 2004, pp. 89-90, §§ 242-243.

658 Section 2.1.2, p. 15-29, §§ 58—101.

659 See case law cited in fn. 656 and 657.

660 SoC, p. 45, § 204.

simply seeking compensation at the fair market value of the four turbines, which, in his view, satisfies the requirements of full reparation principles in certain cases.[661]

547. Based on this assumption, the Claimant argues that the fair market value of the Four Unsolicited Turbines is USD 128,421,326, as of the estimated dates of their expropriation, and USD 157,657,552, as of 31 July 2025 (the most recent month for which the necessary data is available).[662] Alternatively, if the Claimant lacks standing to bring claims based on breaches of FET and/or FPS, Mr. Machado argues that he is entitled to recover the loss of assets of his investment, and the loss of the Four Unsolicited Turbines will amount to the same amount of depreciation of the value of the shares in AEnergy.[663]

548. Regarding interests, the Claimant argues that he is entitled to both pre-award and post-award interests in order to be fully restored to the position he would have been in *but for* Angola's unlawful actions.[664] The interest should be calculated, he argues, on a compound basis. Pursuant to Article 7(3) of the BIT, the Claimant asserts entitlement to a commercial rate, which could be Angola's borrowing rate (i.e., the one-year yield on Angola's USD-denominated government bond) or, alternatively, a reasonable commercial rate determined by international market standards (such as SOFR plus a 4% margin).[665]

549. The Claimant's position cannot withstand scrutiny. As discussed below, the Claimant bases its valuation on general principles and speculative methods without properly assessing the actual damages suffered. If, as the Claimant asserts, the applicable standard is full reparation, this does not justify an automatic award of fair market value. Awarding fair market value without identifying the specific, causally proven loss could overcompensate the Claimant and contravene the principle of full reparation. Furthermore, selecting the higher valuation between two different valuation dates—without principled criteria or consideration of the specific facts and heads of damage— could improperly inflate the quantum beyond the loss actually suffered.

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661 SoC, p. 48, § 221.

662 SoC, p. 49, § 222.

663 SoC, p. 49, §§ 223—226.

664 SoC, p. 50, § 229.

665 SoC, pp. 50-51, §§ 229—236.

Without evidence of the Claimant's actual damages, the Respondent is unable to exercise its right of defense with respect to the method used to calculate the Claimant's damages.

550. As we are going to show, both the valuation and its underlying basis are flawed (**Section 6.3.1**), the Claimant has failed to demonstrate that Angola's (inexistent) breaches of the BIT caused any loss of value to his shares (**Section 6.3.2.**), and the interest rate selected is not appropriate in the circumstances of this case (**Section 6.3.3.**).

6.3.1 The Claimant's valuation and its underlying basis are flawed

551. The valuation and its underlying basis are flawed for the following reasons: (i) the valuation date chosen by the Claimant is untenable; (ii) the valuation method is incorrect; (iii) the AP Report relies on limited and conflicting information; (iv) the AP Report is generally based on estimates rather than actual, underlying financial data; (v) when the AP Report does rely on specific data, such data is not supported by reliable evidence but is instead drawn from internal documents or drafts

552. *First*, with respect to the valuation date, the Claimant fails to address this critical issue. The Claimant has deliberately opted not to characterize the expropriation as direct or indirect, arguing that this distinction is irrelevant. However, the valuation date differs depending on whether the expropriation is direct or indirect, particularly with respect to identifying the precise moment when the deprivation of property occurs.[666]

553. For instance, in *Stans Energy v. Kyrgyzstan*, the arbitral tribunal addressed a creeping expropriation resulting from a series of measures that effectively prevented subsoil use. Applying the fair-market-value, the tribunal fixed the valuation date at the start of the sequence—i.e., the State's first wrongful act initiating suspension of the license—and then valued the license as of that date while separating pre- and post-taking expenditures.[667]

554. In the present case, however, there is no clear theory of direct or indirect taking, nor any

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666 **CLA-109**, Irmgard Marboe, *Calculation of Compensation and Damages in International Investment Law*, (Second Edition), Mar 2017, p. 143, § 3.306.

667 **RL-0125**, *Stans Energy v. Kyrgyzstan (I)*, MCCI Case No. A-2013/29, Award, dated 30 June 2014, pp. 62 and following.

demonstration that a state act resulted in a substantial and definitive deprivation, with no reasonable prospect of recovery. These deficiencies in the pleadings unfairly limit the Respondent's right of defense. The Claimant is undoubtedly aware of this issue, and it is likely the reason for the deliberate avoidance of a clear characterization. Consequently, the assumption regarding the valuation date is unsubstantiated, and the Respondent is unable to meaningfully assess its validity.

555. Moreover, and as indicated by HKA, AEnergy had already been deprived of economic benefit of the Four Unsolicited Turbines since 10 December 2019, as a result of the preventive seizure. Therefore, any "*damage*" incurred by the Claimant happened years before Claimant's estimated date(s) of expropriation of May and August 2022.[668] By using this date(s) of expropriation in May/August 2022, the AP Report cuts out historical data and therefore inflates the machinery prices.[669] However, the Claimant is seeking damages through the AP Report calculations prior to 2022, i.e., starting as early as March 2017. [670]

556. *Second*, AP Report misconstrues the purpose of the cost approach. The AP Report used a valuation method – known as the "*trending method*" – that is not widely recognized in investment arbitration.[671] This method estimates the "*replacement cost new*", by applying a trend factor to the property's historical cost to convert the known cost into an indicator of current cost.[672] As for the freight costs, the calculation was based on 2022 rates rather than the actual amounts paid by the Claimant.[673] Finally, the Claimant also request additional alleged lost profit on such investments, based of the gross profit margin from alleged comparable companies.[674] Thus, this trending method involves a number of assumptions that the AP Report

668 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 47—48, §§ 105—107.

669 **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 48, § 108.

670 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 48—49, § 108; Appendix 4.2.a of the First Quantum Expert Report by AlixPartners, 11 September 2025.

671 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 50—51, § 114.

672 First Quantum Expert Report by AlixPartners, 11 September 2025, p. 17, § 58.

673 First Quantum Expert Report by AlixPartners, 11 September 2025, p. 18, § 61.

674 First Quantum Expert Report by AlixPartners, 11 September 2025, p. 19, § 63.

does not address[675] and could be quite speculative during period of volatility,[676] as will be discussed in further detail below.

557. However, as observed by Ripinsky and Williams the market value of the investment is determined "*by calculating the sum total spent by the claimant on the investment in question*"[677] because this valuation approach based on actual investment or historic cost "*can be ascertained with a higher certainty and relative ease.*"[678]

558. As mentioned by HKA, the Claimant failed to provide supporting documentation for the actual accounting records, financial statements (including balance sheets, income statements, cash flow statements, and statements of equity), tax returns, documents relating to the payment, by AEnergy, for the Four Unsolicited Turbines, for the freight costs, property, plant, and equipment lists, depreciation schedules, and bank statements evidencing the cash flow of the alleged investment.[679]

559. This omission prevents HKA from assessing the historic cost of the alleged investment (i.e. the Four Unsolicited Turbines), the freight costs and the calculation of any alleged lost profit on such investments—a limitation that AP also faces, as will be discussed below. Specifically, regarding the lost profits, AP should have considered the actual profit margin for each TM2500 sold by AEnergy, and subsequently analyzed these figures to derive an assumed profit margin for 2022, the valuation date adopted by AP. However, as mentioned, neither the Claimant nor AP submitted any actual bank records or financial statements pertaining to AEnergy, documents that the Respondent will request in Document Production.

560. *Third*, the AP Report relies on limited and conflicting information. While it lists various TM2500 supply contracts, the contract dated 30 March 2017—which it identifies as pertaining to the

675 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 49—50, §§ 111—112.

676 **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 50, § 113.

677 **HKA-18**, Ripinsky, Damages in Int'l Invest. Law, p. 226.

678 **HKA-18**, Ripinsky, Damages in Int'l Invest. Law, p. 229.

679 **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 44—46, §§ 97—98.

Four Unsolicited Turbines—bears contract number "1049882."[680] However, the bill of lading for TM2500 MFG #7266027 indicates that this turbine is associated with contract number "10278502," which is not the contract cited in the AP Report as the basis for the purchase of the Four Unsolicited Turbines.[681]

561. As noted by HKA, the inconsistencies extend further, as even the timing of the transfer of ownership from GE to AEnergy is not substantiated.[682] Under Contract #1049882, "[t]*itle to equipment items shall transfer from Seller to Buyer when it has been cleared for export at the port of export."*[683] However, the turbines were shipped from Houston on 27 December 2017 and from Slovenia on 28 December 2017, as evidenced by the respective Bills of Lading.[684] Despite this, the Claimant asserts—without documentary support—that ownership transferred to AEnergy merely one day (31 March 2017) after the contract was signed (30 March 2017),[685] a position which AP also assumes without question.[686] Given the clear contractual requirement that title passes only upon clearance for export, it is not plausible that the turbines were both cleared for export and transferred in ownership the day after the contract was signed, yet not shipped until almost nine months later. This chronological disparity remains unaddressed by the Claimant, and no documentary evidence is provided to reconcile this inconsistency.

562. Moreover, the Claimant asserts that AEnergy acquired the 14 turbines, some of which were

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680 First Quantum Expert Report by AlixPartners, 11 September 2025, pp. 7—8, §§ 25—26; **AP-10**, Contract for Sale of Equipment and Services (No. 1027850), 29 June 2016; **AP-11**, Contract for Sale of Equipment and Services (No. 1049882), 30 March 2017; **AP-12**, Contract for Sale of Equipment and Services (No. 1018058), 2 June 2017; **AP-13**, Contract for Sale of Equipment and Services (No. 1206406), 30 June 2017; **C-8**, GE Notice of Trasnfer of Ownership to Aenergy, 31 March 2017. See **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 35—38, §§ 82—85.

681 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 38—39, §§ 87—88.

682 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 39—40, §§ 89—90.

683 **AP-011**, Contract for Sale of Equipment and Services (No. 1049882), 30 March 2017, p. 7, Clause 4(b)(i).

684 First Quantum Expert Report by AlixPartners, 11 September 2025, pp. 7—8, § 26; **AP-15**, Bill of Lading for MFG#7266027, 27 December 2017; **AP-016**, Bill of Lading for MFG# 7267575, 7267577, 7267025, 28 December 2017.

685 Request for Arbitration, p. 7, § 29; **C-8**, GE notice of transfer of ownership to Aenergy, dated 31 March 2017.

686 First Quantum Expert Report by AlixPartners, 11 September 2025, p. 7, § 26.

purchased "*even prior to the existence of the Credit Facility*."[687] However, neither the Claimant nor the AP Report provides any financial evidence—such as wire transfers or bank statements—to substantiate this assertion. There is also no explanation regarding how the funds from the Facility Agreement were utilized or how these transactions were recorded in AEnergy's books and records. In fact, the payment for the four turbines was made using disbursements from the Facility Agreement in December 2017.[688]

563. *Fourth*, the AP Report is insufficiently substantiated, since it is grounded in estimates instead of real, underlying financial data. Neither the Claimant nor the AP Report provides any evidence to support any payment by AEnergy Four Unsolicited Turbines. Any suggestion that the 13 Contracts would have enabled AEnergy to generate sufficient profit to pay for the additional four turbines is unfounded and speculative.[689] In fact, AlixPartners' selected comparable companies have an average operating profit margin of just 5.4%,[690] which would translate to an operating profit margin for AEnergy of only $14.4 million.[691]

564. As noted by HKA, the AP Report is highly speculative and results in inflated values. The freight costs assessed by AP were not based on the actual amounts paid by AEnergy but were instead calculated using 2022 rates, which peaked due to the invasion of Ukraine. This approach resulted in an 80% increase in the estimated costs, and this increase is also unsubstantiated.[692]

565. Furthermore, in order to bridge the gap between the acquisition price paid by the distributor and the ultimate selling price to the equipment buyer, the AP Report uses margin rates from alleged comparable companies and applies them to the price of the TM2500s sold by GE. However, as noted by HKA, this calculation is highly speculative.[693]

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687 SoC, pp. 5—6, § 26.

688 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 40—42, §§ 91—93.

689 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 45—46, §§ 99—101.

690 Appendix F.2: Financial Summary of AlixPartners' Selected Comparable companies.

691 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 45—46, §§ 100—101; $266.8 million x 5,4% = $14,4 million.

692 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 52—53, § 120.

693 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 53—55, §§ 121-127.

566. Indeed, AP identified 13 companies without providing the detailed reason for excluding or including companies in the sub-population.[694] Even without an explanation, it is evident that these 13 companies are not proper comparable: (i) geographically, the selection is flawed, as only one company operates in Africa—and only in the Moroccan market, which is not comparable to Angola;[695] (ii) some of the companies are large organizations with subsidiaries operating across multiple markets. The types of operations and services of these "comparable" companies differ significantly across the group, and there is no indication that any of them provide services relating to the types of power turbines which are at issue in this arbitration;[696] and (iii) financially, the selected companies vary widely with gross profit margins spanning from 3.8% to 38%.[697]

567. AP's "alternative" valuation is also flawed. That alternative valuation (which results in significantly higher damages) uses the date of the AP Report (i.e., 31 July 2025) as the valuation date. With this scenario the Claimant's damages increased by 22.8%. However, as pointed out by HKA—and as reflected in GE's financial statements—competitive forces have impacted the gas turbine business, significantly in recent years.[698] In particular, "[d]*uring the year ended December 31, 2024, GE Vernova's gas turbine installed base utilization was flat compared to the same period last year."*[699] HKA concluded that GE's financials show the revenue per gigawatt delivered from the gas turbine business was mixed, but overall declined by 16.4% from 2022 to the first half of 2025.[700]

568. A further indication of the speculative nature of AP's assessment is its own sensitivity analysis for reasonableness.[701] The AP Report asserts that its calculation of damages is reasonable based

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694 **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 54, § 122.

695 **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 54, § 123.

696 **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 54, § 123.

697 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 54—55, § 125; AP Report, Appendix 4.3 – Distributor Margin.

698 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 56—59, §§ 129—133.

699 **AP-045**, GE Vernova, 2024, Annual Report, p. 7 (PDF).

700 **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 59, § 133.

701 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 59—61, §§ 134—138.

on: (i) the costs of four aeroderivative gas turbines presented in a U.S. Energy Information Administration report dated 6 December 2023;[702] and (ii) a list of seven TM2500 units that AP identified on equipment sale websites as of 2025.[703]

569. However, the four turbines mentioned in the U.S. Energy Information Administration Report have a larger capacity (54 MW vs. 38.4 MW), which results in greater efficiency and versatility, and commands a higher price. Additionally, these turbines feature Dry Low Emissions ("DLE") technology, enabling waterless operation and improved environmental performance. The higher-capacity DLE-equipped models provide greater value and therefore incur higher costs, making them not directly comparable to the Four Unsolicited Turbines.[704]

570. With regard to the list of seven TM2500 units, as noted by HKA,[705] these are mere sales listings and not records of actual transactions, and therefore do not reflect negotiated prices. Moreover, the variance among the listed prices is extremely high, approaching 200%.[706] In addition, the AP Report selectively includes information and excludes relevant data—for example, AP excludes a set of turbines that were listed for sale at $18,900,000, and another which was sold in 2025 for $16,470,000. These prices are approximately 50% less than the listing price selected in the AP Report.[707] As another example, AP includes a listing of a turbine portion of the 2500 set at $17,600,00, but ignores a turbine set that actually sold in 2025 for $7,506,000, i.e., a price that is more than 50% less than the listing price selected by AP.[708] One other listing the AP Report includes is for a new TM2500 in 2025 listing price of $24,750,000, which claims that its value in

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702 First Quantum Expert Report by AlixPartners, 11 September 2025, pp. 24—25, § 81.

703 First Quantum Expert Report by AlixPartners, 11 September 2025, pp. 25—26, §§ 82—87.

704 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 59—60, § 134.

705 **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 60, § 135.

706 First Quantum Expert Report by AlixPartners, 11 September 2025, Table 9; **AP-69**, Free Olfield Quote, General Electric TM2500 Gen8 Mobile Turbine Generator Sets (71946100), last accessed 12 August 2025.

707 **HKA-22**, Freeoilfieldquote.com, last accessed 20 October 2025; $ 16,470,00/$32,240,000-1 = -49%.

708 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 60—61, § 136; First Quantum Expert Report by AlixPartners, 11 September 2025, Table 9; **AP-70**, ReflowX, GE LM2500 G4 Gas Turbine – 35.5 MW, 50Hz, 11kV -2013, last accessed 12 August 2025; **HKA-22**, Freeoilfieldquote.com, last accessed 20 October 2025; $7,506,000/$17,6000,00-1=-57%.

2022 would be $20,264,744 with reverse of its trending method.[709] However, if the AlixPartners trending method is further applied to adjust the value to December 2017, the resulting price would be $16,716,092, thereby demonstrating that the claimed value is significantly inflated.[710]

571. *Fifth*, the AP Report relies on specific data that is not supported by reliable evidence. Indeed, the AP Report states that the Four Unsolicited Turbines were maintained by GE until December 2018, and subsequently by AEnergy's technical team until December 2019, in accordance with GE's maintenance recommendations.[711] However, as noted by HKA, Claimant provides no evidence to substantiate these claims of maintenance.[712] Thus, the AP Report disregards the actual condition of the TM2500s, which is critical to assessing the extent of reconditioning required to bring the equipment up to working standards.[713]

572. In reality, when the Four Unsolicited Turbines were seized, their condition was far from acceptable. They were delivered not fully assembled, but rather in multiple boxes and were never assembled.[714] Moreover, they were cannibalized by AEnergy for use in other projects.[715] Additionally, three of the four turbines were wet prior to shipment, stored in open areas, had paint scratches, and had broken lifting pallets. All of these facts were ignored by AP.[716]

573. As emphasized by HKA, the AP Report includes a claim for $16,723,036 in damages related to transportation and logistics, which is unsupported. The document submitted by AP as evidence

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709 **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 61, § 137; First Quantum Expert Report by AlixPartners, 11 September 2025, Table 9, Appendix 4.8; **AP-65**, ReflowX, Aeroderivative Gas Turbine – LM2500 Mobile Power Unit, last accessed 12 August 2025.

710 **RER-01**, Expert Report by HKA, dated 26November 2025, p. 61, §§ 137—138.

711 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 42—44, §§ 94—96.

712 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 42—43, § 93.

713 **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 44, § 96.

714 **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 43, § 95.

715 **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 35, § 84; **R-0014**, Term of delivery, dated 9 December 2019, p. 20 of the PDF.

716 **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 35, § 85; **AP-16**, Bill of Landing for MFG# 7267575, 72675777, 7267025, 28 December 2017.

is merely an Excel file—an internal, draft document—not an invoice for Contract No. 1049882.[717]

574. As for the Addition Equipment, AP stated that they were instructed by the Claimant to include a $4.3 million for fuel and other equipment in its damage calculation.[718] However, PRODEL has no record of this purchase order, which is, in any event, an unsigned document.

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

575. Mr. Machado advances the unfounded claim that the loss of the Four Unsolicited Turbines corresponds precisely to the depreciation in the value of the shares in AEnergy.[719] This approach is entirely inappropriate for determining the alleged loss in the value of AEnergy shares and has not even been validated by AlixPartners, which is silent on the subject.

576. As mentioned by HKA, the starting point for determining any loss in value of the shares, particularly if based on a loss of assets, is to review the audited financial statements, including the auditor's report and statement of equity for AEnergy.[720]

577. The fact that the Claimant did not provide any assessment of the impact of Angola's (alleged) unlawful conduct on the value of his shareholding in AEnergy is telling, as the Claimant is aware that, at the time the Four Unsolicited Turbines were transferred to the care of MINEA and PRODEL, his shares were already effectively worthless due to Angola's Claimant's own actions. Consequently, any loss in the value of the Claimant's shares predates both the claims under the BIT and, most significantly, the BIT's entry into force, given that the 13 Contracts were terminated on 13 August 2019, while the BIT only entered into force on 22 December 2021.[721]

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717 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 51—52, §§ 118—119; **AP-20**, Transportation and Logistics Costs for Contract No. 1049882.

718 First Quantum Expert Report by AlixPartners, 11 September 2025, p. 20, § 68.

719 SoC, p. 49, §§ 223—226.

720 **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 46, § 106.

721 **C-11**, Presidential Order No. 155/19, regarding the unilateral termination of the 13 Contracts between AEnergy and Angola, 23 August 2019.

6.3.3 The interest rate selected is not appropriate in the circumstances of this case

578. The Claimant relies on the interest rate set out in Article 7(3) for lawful expropriations, which provides that the applicable rate should be the commercial rate.[722] The Claimant contends that this provision allows for two possible interpretations: (i) the rate applicable in the host country, namely Angola's borrowing rate; or (ii) a reasonable commercial rate determined by international market standards.[723]

579. With respect to the interest rate proposed by the Claimant based on Angola's borrowing rate, HKA notes that the Claimant has not shown to be the rate of interest that Claimant actually paid or the interest he actually earned in Angola to form a basis for an interest cost claim.[724] Even the yield curve data that AlixPartners uses from Bloomberg does not appear to be the actual bonds issued by Angola but rather an extrapolation of spreads.[725]

580. Regarding the proposed pre-award interest rate of SOFR + 4%, the Claimant contends that the additional 4% reflects commercial risk,[726] whereas the AP Report argues that this premium is justified on the grounds that it has been applied in several investor-State cases.[727]

581. As noted by HKA, and as acknowledged by the Claimant when referring to "*commercial risk,*" the proposed premium cannot be justified solely on the basis of previous tribunal decisions, as this approach fails to consider the specific circumstances of the Claimant in this arbitration. There is no historical financial data from the Claimant demonstrating any actual financing costs incurred; therefore, it is not possible to establish any appropriate premium in this case.[728]

582. It is further noted that the AP Report did not submit any legal authority or actual tribunal decisions in support of its position. Instead, it referenced a study containing a table of several

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722 **RL-0010**, Consolidated version of the Angola-Portugal BIT, dated 21 December 2021.

723 SoC, p. 50, §§ 230—232.

724 **RER-01**, Expert Report by HKA, dated 26 November 2025, pp. 61—62, § 139.

725 **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 62, fn. 228.

726 SoC, p. 51, § 235.

727 First Quantum Expert Report by AlixPartners, 11 September, p. 28, § 92.

728 **RER-01**, Expert Report by HKA, dated 26 November 2025, p. 62, § 140.

decisions and the interest rates applied therein. The study itself concludes that, in many cases, tribunals have awarded variable rates plus a premium, most commonly 2%.[729]

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583. In sum, the Claimant's position cannot be sustained, as both the valuation and its underlying basis suffer from significant flaws. These include the selection of an untenable valuation date, the use of an incorrect valuation method, reliance on limited and conflicting information, dependence on estimates rather than actual financial data, unsupported use of specific data sourced mainly from internal documents or drafts, and the selection of an interest rate which is not supported by contemporaneous documents.

7. The Respondent's requests for relief

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

a. **DISMISS** all of Claimant's claims for lack of jurisdiction and lack of admissibility;

b. **DISMISS** all of Claimant's claims for lack of merit;

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

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

729 **AP-071,** Credibility, Study of Damages Awards in Investor-State Cases, 2nd ed., January 2021, p. 60: ("*In many cases there variable rates were awarded plus a premium most commonly 2%*.").

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