

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**NiQuan Energy LLC and NiQuan Energy Trinidad Limited
v.**

Trinidad and Tobago

(ICSID Case No. ARB/24/17)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Dr. Laurent Lévy, President of the Tribunal
Dr. Stanimir A. Alexandrov, Arbitrator
Prof. Zachary Douglas KC, Arbitrator

Secretary of the Tribunal

Mr. Oladimeji Ojo

Assistant to the Tribunal

Dr. Magnus Jesko Langer

11 December 2024

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Introduction

The first session of the Tribunal was held on 3 December 2024, at 1:30 p.m. (Eastern Standard Time), by video conference via Zoom. The session was adjourned at 2:05 p.m.

A recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the Parties.

Participating in the conference were:

Members of the Tribunal:

Dr. Laurent Levy, President of the Tribunal
Dr. Stanimir Alexandrov, Arbitrator
Prof. Zachary Douglas KC, Arbitrator

ICSID Secretariat:

Ms. Aurélie Antonietti, Acting Secretary of the Tribunal
Ms. Marine Chepda, ICSID Secretariat

Assistant to the Tribunal:

Dr. Magnus Jesko Langer

On behalf of the Claimants:

Mr. Andy Moody, Baker & McKenzie LLP
Ms. Judith Mulholland, Baker & McKenzie LLP
Mr. Kartik Singh, Baker & McKenzie LLP
Mr. Janek Bednarz, Baker & McKenzie LLP
Mr. Roberto Kehinde, Baker & McKenzie LLP
Mr. Ainsley Gill, Founder & Group Chief Visionary Officer, NiQuan Energy LLC
Mr. David Dhanoo, Group Chief Legal Officer & Board Secretary, NiQuan Energy LLC

On behalf of the Respondent:

Mr. Matthew Coleman, Steptoe International (UK) LLP
Mr. Thomas Innes, Steptoe International (UK) LLP
Ms. Letizia Busso, Steptoe International (UK) LLP
Mr. Richard M. Beckles, The Legal Consultancy
Ms. Chrishaunda Baboolal, The Legal Consultancy

The Tribunal and the Parties considered the following:

- The Draft Procedural Orders No. 1 and No. 2 circulated by the Tribunal Secretary on 23 October 2024; and
- The Parties' jointly agreed proposals on the Draft Procedural Orders received on 29 November 2024, indicating that they agreed to dispense with the Draft Procedural

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Order No. 2 and to include in this Order their agreements on the publication of awards, decisions and procedural orders as well as the redaction process.

Having considered the above documents and the Parties' views, the Tribunal now issues the present Order:

Order

Pursuant to ICSID Arbitration Rules 27 and 29, this Procedural Order sets out the Procedural Rules that govern this arbitration and includes the procedural timetable in **Annex B**.

1. Applicable Arbitration Rules

Convention Article 44; Arbitration Rule 1

1.1. These proceedings are conducted in accordance with the ICSID Convention and the ICSID Arbitration Rules in force as of 1 July 2022.

2. Constitution of the Tribunal and Tribunal Members' Declarations

Arbitration Rule 21

2.1. The Tribunal was constituted on 10 October 2024, in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Tribunal was properly constituted and that no Party has any objection to the appointment of any Member of the Tribunal.

2.2. The Members of the Tribunal submitted their signed declarations in accordance with ICSID Arbitration Rule 19(3)(b) in a timely fashion. Copies of these declarations were distributed to the Parties by the ICSID Secretariat upon acceptance of each arbitrator's appointment on 29 August, 6 September, and 10 October 2024.

2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case and that they will use best efforts to meet all time limits for orders, decisions and the Award, in accordance with ICSID Arbitration Rule 12(1).

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3. Fees and Expenses of Tribunal Members
Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees; Memorandum on Fees and Expenses
 - 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses in force at the time the fees and expenses are incurred.
 - 3.2. Non-refundable expenses incurred due to postponement or cancellation of a hearing shall be reimbursed.
 - 3.3. In the event the Members of the Tribunal are asked to reserve more than one day for a hearing or meeting, and that hearing or meeting is either cancelled or postponed by more than one week by one or both of the Parties, the Members of the Tribunal shall be remunerated for each day reserved as follows (based on an eight-hour day):
 - 3.3.1. Where the cancellation or postponement occurs within three months of the first day of such hearing, 25% of the applicable fees;
 - 3.3.2. Where the cancellation or postponement occurs within one month of the first day of such hearing, 50% of the applicable fees; or
 - 3.3.3. Where the cancellation or postponement occurs within three calendar days of the first day of such hearing, 100% of the applicable fees.
4. Presence and Quorum
Arbitration Rule 33
 - 4.1. The participation of all the Members of the Tribunal by any appropriate means of communication is required at the first session, case management conferences, hearings and deliberations, except as otherwise provided in the Arbitration Rules or unless the Parties agree otherwise.
5. Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 10, 11(4), 12, 27 and 35
 - 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
 - 5.2. Orders, decisions and the Award may be made by any appropriate means of communication.

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- 5.3. Orders and decisions may be signed electronically. The Award must be signed in wet ink.
- 5.4. The President is authorized to sign procedural orders and decisions on behalf of the Tribunal.
- 5.5. When the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 5.6. The Tribunal's orders and decisions shall indicate the reasons upon which they are made. The reasons may be minimal for non-controversial or minor procedural, administrative and organizational matters, e.g., extensions of time.
- 5.7. The Tribunal will use best efforts to issue all rulings, including the Award, within the time limits prescribed by the ICSID Arbitration Rules. If the Tribunal cannot comply with an applicable time limit, it will advise the Parties of the special circumstances justifying the delay and the date when it anticipates rendering the ruling, in accordance with ICSID Arbitration Rule 12(2).
- 5.8. Any ruling of the Tribunal, including the certified copy of the Award, will be dispatched electronically and/or in hard-copy format to the Parties, subject to the Parties' request.

6. Power to Fix Time Limits

Arbitration Rules 10 and 11

- 6.1. The President may exercise the Tribunal's power to fix and extend time limits for the completion of each procedural step in the proceeding under Arbitration Rules 10(1) and 11(3), in accordance with Arbitration Rules 10(3) and 11(4).
- 6.2. In exercising the power to fix time limits under Arbitration Rule 10(1), the President shall consult with the Parties as far as possible. If the matter is urgent, the President may fix time limits without consulting the Parties, subject to possible reconsideration of such decision by the full Tribunal.
- 6.3. The Parties may also grant between themselves short extensions of time on the basis of mutual courtesy, as long as these do not materially affect the Procedural Timetable, and the Tribunal is informed.
- 6.4. A time limit shall be satisfied if a procedural step is taken or a document, written submission and/or correspondence is sent to the Tribunal Secretary by 11.59 p.m. (London time) on the relevant date, or on the subsequent business day if the time

limit falls on a Saturday or Sunday or an official holiday at the place of the relevant Party or its counsel.

7. Secretary of the Tribunal

Administrative and Financial Regulation 28

7.1. The Tribunal Secretary is Mr. Oladimeji Ojo, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the Parties from time to time.

7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Mr. Oladimeji Ojo

ICSID

[REDACTED]

7.3. For local messenger deliveries, the contact details are:

[REDACTED]

8. Assistant to the Tribunal

8.1. By letter of 23 October 2024, the ICSID Secretariat, acting on instructions of the Tribunal, noted that it would benefit the overall cost and time efficiency of the proceedings if the Tribunal had an assistant, who would undertake the tasks described in that letter. In the same letter, the Tribunal proposed that Dr. Magnus Jesko Langer of Lévy Kaufmann-Kohler be appointed as Assistant to the Tribunal.

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The proposed assistant's *curriculum vitae* and disclosures were distributed to the Parties on the same date.

- 8.2. The tasks of the Assistant to the Tribunal shall be the following:
 - 8.2.1. The Assistant to the Tribunal shall carry out administrative tasks, such as organizing documents, proofreading, and assisting with the organization of procedural matters, under the supervision of the President.
 - 8.2.2. The Assistant to the Tribunal shall attend hearings, meetings and deliberations.
 - 8.2.3. The Assistant to the Tribunal may, under the strict supervision of the President and following the President's specific instructions, carry out substantive tasks such as summarizing submissions, reviewing authorities, as well as assist the Tribunal in preparing first drafts of decisions, awards and procedural orders.
- 8.3. The President further explained that the Assistant to the Tribunal shall undertake only such specific tasks as identified above and assigned to him by the President, that the Tribunal will not delegate to the Assistant to the Tribunal any decision-making functions, and that the Assistant to the Tribunal shall be subject to the same confidentiality obligations as the Members of the Tribunal and would sign a declaration to that effect.
- 8.4. The Parties consented to the appointment of Dr. Langer as Assistant to the Tribunal on the terms set out in the letter referred to in §8.1. The Parties also agreed that the Assistant would receive US\$300 for each hour of work performed and reimbursement of reasonable actual expenses on the same terms as the arbitrators.
- 8.5. The contact details of the Assistant are:

Dr. Magnus Jesko Langer

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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11. Apportionment of Costs and Advance Payments to ICSID – Division of Advances
Convention Article 61(2); Administrative and Financial Regulation 15; Arbitration Rule 50

- 11.1. The Parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 11.2. Following registration of the Request for arbitration, by letter of 31 May 2024, ICSID informed the Parties that US\$ 400,000 will be necessary to cover the estimated costs of the initial phase of the proceeding through the first session of the Tribunal, as well as the subsequent phase, and requested that the Claimants pay US\$ 200,000. ICSID received the Claimants' payment on 8 July 2024. Upon the constitution of the Tribunal, by letter of 10 October 2024, ICSID requested that the Respondent pay US\$ 200,000. ICSID received the Respondent's payment on 8 November 2024.
- 11.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.

12. Place of Proceeding and Hearings
Convention Articles 62 and 63; Arbitration Rule 32

- 12.1. Washington, D.C., shall be the place of the proceeding.
- 12.2. London, England, shall be the place of the hearings.
- 12.3. The Tribunal may hold in-person hearings at any other place that it considers appropriate if the Parties so agree. The method of holding a hearing will be determined in accordance with §22.2.
- 12.4. The Tribunal Members may deliberate at any place and by any appropriate means they consider convenient.

13. Procedural Language, Translation and Interpretation
Administrative and Financial Regulation 32; Arbitration Rule 7

- 13.1. English is the procedural language of the arbitration.

For Documents and Communications

- 13.2. The Tribunal and the Secretariat shall communicate with the Parties in the English language.

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- 13.3. Documents filed in any other language must be accompanied by a translation into English.
- 13.4. It is sufficient to translate only the relevant part of a supporting document, provided the translated parts are sufficient for the reader to understand the context. The Tribunal may order a Party to provide a fuller or complete translation.
- 13.5. Translations need not be certified, unless the translation is disputed, and the Tribunal orders a Party to provide a certified translation.
- 13.6. Documents exchanged between the Parties in a language other than English under §17 below (Production of Documents) need not be translated.

For Hearing

- 13.7. The Parties will notify the Tribunal, as soon as possible upon notification of which witnesses and experts are called for examination at the hearing, and no later than at the pre-hearing organizational meeting, which witnesses or experts require interpretation.
- 13.8. The testimony of a witness called for examination who gives evidence in a language other than in English shall be interpreted simultaneously if possible.
- 13.9. The costs of interpretation will be paid from the advance payments made by the Parties, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs.

14. Routing of Communications

Arbitration Rule 6

- 14.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.
- 14.2. Each Party's written communications shall be transmitted by email or other electronic means to the opposing Party and to the Tribunal Secretary, who shall send them to the Tribunal.
- 14.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing Party and the Tribunal.
- 14.4. The Tribunal Secretary shall not be copied on direct communications between the Parties when such communications are not intended to be transmitted to the Tribunal.

15. Number of Copies and Method of Filing of Parties' Pleadings
Arbitration Rules 4, 5 and 9

- 15.1. By the relevant filing date, the Parties shall submit by email to the Tribunal Secretary and the opposing Party an electronic version of the pleading with witness statements, expert reports (without appended documentation) and an index of all supporting documentation, i.e. factual exhibits, legal authorities, documents appended to witness statements and expert reports.¹
- 15.2. Within two business days of filing the Memorial on the Merits, Counter-Memorial on the Merits (and Memorial on Jurisdiction), the Reply on the Merits (and Counter-Memorial on Jurisdiction), Rejoinder on the Merits (and Reply on Jurisdiction) and the Rejoinder on Jurisdiction, the Parties shall upload the aforementioned pleading with all the supporting documentation and updated index to the file sharing platform that has been created by ICSID for purposes of this case.² For all other written submissions to be filed in these proceedings, the Parties shall upload the relevant documentation to the file sharing platform by the relevant filing date.
- 15.3. Electronic files of pleadings, witness statements, expert reports, exhibits and legal authorities shall be text searchable (i.e., OCR PDF or Word).
- 15.4. All pleadings shall contain consecutively numbered paragraphs and pages, the text shall be 12-point, with 12-point paragraph break spacing, 1.5 line spacing and 1-inch margins, and shall be accompanied by a cumulative index of all the supporting documentation that the Party has submitted up to the date of the pleading. The index shall indicate the document number and the pleading with which it was submitted, and shall follow the naming conventions contained in **Annex A**.
- 15.5. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the Parties shall upload to the file sharing platform, in a format that can be readily downloaded, an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.
- 15.6. The official date of receipt of a pleading or written communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.
- 15.7. A filing shall be deemed timely if sent by a Party by 11.59 pm, London time, on the relevant date. If a filing falls on a Saturday or Sunday or an official holiday at the place of the relevant Party or its counsel, the relevant date is the subsequent business day.

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

² Supporting documentation shall be uploaded as individual files, not in .zip format.

16. Number and Sequence of Pleadings – Procedural Calendar

Arbitration Rule 30

- 16.1. The arbitration shall proceed in accordance with the procedural timetable attached hereto as **Annex B**, except if the Tribunal, upon a showing of good cause by either Party or on its own initiative, decides to amend the timetable.
- 16.2. In the first exchange of submissions on a given matter (in principle Memorial and Counter-Memorial on the Merits (and Memorial on Jurisdiction)), the Parties shall set forth all the facts and legal arguments and submit all the documentary and written witness and expert evidence on which they intend to rely in support of their respective cases (the Parties are encouraged not to repeat facts verbatim from the witness statements, where a cross-reference would suffice). Allegations of fact and legal arguments shall be presented in a detailed, specified and comprehensive manner, and shall respond to all allegations of fact and legal arguments made by the other Party.
- 16.2.1. The Parties agree that the Memorial and Counter-Memorial on the Merits (and Memorial on Jurisdiction) shall be no longer than 200 pages.³
- 16.3. In the second exchange of submissions (in principle Reply on the Merits (and Counter-Memorial on Jurisdiction), Rejoinder on the Merits (and Reply on Jurisdiction) and Rejoinder on Jurisdiction), if any, the Parties shall limit themselves to responding to fact allegations, legal arguments, and evidence put forward by the other Party in its preceding submission, subject to facts, legal arguments and documents resulting from the document production phase or new facts arisen after the filing Party's last submission.
- 16.3.1. The Parties agree that the Reply on the Merits (and Counter-Memorial on Jurisdiction) and Rejoinder on the Merits (and Reply on Jurisdiction) shall be no longer than 150 pages, and that the Rejoinder on Jurisdiction shall be no longer than 75 pages.⁴
- 16.4. Following each factual allegation, the Parties shall, whenever possible, identify the evidence adduced in support of that allegation. Following each legal argument, the Parties shall, whenever possible, identify the legal authority adduced in support of that argument.
- 16.5. All written submissions shall be divided into consecutively numbered paragraphs.
- 16.6. The Parties shall include in their submissions a list of abbreviations, which shall be neutral insofar as possible. Each Party shall strive to use the same abbreviations as

³ The page limits shall not apply to any cover page, index / table of contents, or glossary / list of abbreviations.

⁴ The page limits shall not apply to any cover page, index / table of contents, or glossary / list of abbreviations.

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the other Party, and no inferences shall be inferred by reason of having done so. The Parties shall update their list of abbreviations in subsequent submissions.

17. Production of Documents

Convention Article 43(a); Arbitration Rules 5 and 36-40

17.1. The Tribunal shall be guided but not bound by the 2020 IBA Rules on the Taking of Evidence in International Arbitration.

17.2. Within the time limit set in **Annex B**, each Party may request from the other Party the production of documents or categories of documents within the other Party's possession, custody or control, in the form of a Stern Schedule as attached in **Annex C** hereto, in both Word and .pdf format. The Parties shall send such requests to the Secretary of the Tribunal, who will circulate the Parties' requests to the Parties once both Stern Schedules have been received.

17.3. Each request for production shall:

17.3.1. Identify with specificity: (i) the documents or narrow category of documents whose production is sought (for example, letters, emails, minutes of meetings, memoranda, notes, reports). The Parties shall not use a generic formulation, such as "all documents" or "all records", nor use such formulation and then define it to "include" specific types of documents; (ii) the author, sender, recipient, and/or custodian of the requested document or category of documents (i.e., by the name of the individual, department, entity, or organ, as the case may be), being specified that a Party asserting that such identification is not possible must adequately substantiate such assertion; and (iii) a date for individual documents or a narrow and proportionate period for a category of documents;

17.3.2. Describe the subject matter in sufficient detail and with necessary particulars to enable an effective search for responsive documents to be carried out;

17.3.3. Specify that the documents requested are not in the possession, custody or control of the requesting Party (or explain why it would be unreasonably burdensome for the requesting Party to produce them), and that they are likely to exist and be in the possession, custody or control of the other Party; and

17.3.4. Explain, with specific references to the record, why the document or category of documents sought is relevant to the case and material to its outcome and, more specifically, which fact alleged in the arbitration the document sought is intended to prove or disprove.

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- 17.4. Within the time limit set forth in **Annex B**, the other Party shall either produce the requested documents or, using the Stern Schedule provided by the first Party, submit its reasons for its refusal to produce responsive documents (objections). The Parties shall send such objections to the Secretary of the Tribunal, who will circulate the Parties' objections to the Parties once both Stern Schedules have been received.
- 17.5. Within the time limit set forth in **Annex B**, the requesting Party may seek an order for production of documents sought and not produced, in which case it shall reply to the other Party's objections in that same Stern Schedule. At the same time, it shall submit the Word and .pdf copies of the Stern Schedule to the Tribunal through the Secretary of the Tribunal.
- 17.6. Unless the Tribunal opts to exercise its discretion to hear oral submissions, the Parties shall make no submissions in respect of the steps set out in §§17.2, 17.4, and 17.5 above other than those incorporated in the Stern Schedules.
- 17.7. On or around the date set forth in **Annex B**, the Tribunal will, exercising its discretion, rule upon the production of the documents or categories of documents, having regard to the requirements of §17.3, the legitimate interests of the Parties and all relevant circumstances, including applicable privileges. If a request does not meet the requirements of §17.3, in particular if it is insufficiently specific, the Tribunal will in principle not narrow down the scope of the request on its own initiative but will retain its discretion to do so.
- 17.8. If either Party is concerned about the confidentiality of documents, the Party may apply to the Tribunal for a confidentiality order.
- 17.9. Documents which the Tribunal orders to be produced shall be communicated directly to the requesting Party without copying the Tribunal, the Secretary, and the Assistant. Documents so communicated shall not be deemed on record unless and until a Party subsequently files them as exhibits in accordance with §18 below.
- 17.10. The Tribunal may order a Party to produce documents on its own initiative at any time. In that case, the documents shall be submitted to the other Party and to the Tribunal in accordance with §18 below and shall be considered to be on record.
- 17.11. If a Party fails to comply with an order to produce a document or specific category of documents, the Tribunal may draw such inferences as it considers appropriate, in light of all relevant circumstances, including the reasons for the non-production.

18. Submission of Documents

Convention Article 44; Arbitration Rule 5

18.1. Documents, including exhibits and legal authorities, shall be submitted together with the memorial or written submission that refers to them in conformity with §§16.2 and 16.3 above.

18.2. The documents shall be submitted in the manner and form set forth in §15, above.

18.3. Neither Party shall be permitted to submit additional documents after the filing of its respective last written submission, unless the Tribunal determines that special circumstances exist based on a timely and reasoned written request followed by observations from the other Party.

18.3.1. Should a Party request leave to file additional documents, that Party may not annex the documents that it seeks to file to its request.

18.3.2. If the Tribunal grants such a request, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such documents, and (where necessary) to file further documents in response.

18.4. Documents shall be submitted in the following form:

18.4.1. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities.

18.4.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-0001” and “RL-0001”, respectively. The number of the exhibit or legal authority shall appear on the first page of the document and shall be incorporated into the file name in accordance with §18.4.5.

18.4.3. Where a document does not have its own internal page numbering, or has multiple sets of internal page numbering (e.g. lengthy documents with multiple page 1’s), the Party submitting the document shall number each page separately and consecutively, with the first page of each document being page 1.

18.4.4. A Party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and

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consecutively (such that there is at least one consecutive numbering throughout the entire exhibit, allowing clear and precise cross-referencing).

- 18.4.5. Electronic files and the accompanying indexes shall follow the naming conventions contained in **Annex A**.
- 18.5. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a Party within a reasonable time of becoming aware of the circumstances underpinning the relevant objection, in which case the Tribunal will determine whether authentication is necessary.
- 18.6. The Parties shall file all documents only once by submitting them with their pleadings, and if a Party has already submitted a document it should not be resubmitted by the other Party. Documents need not be resubmitted with witness statements even if referred to in such statements, but should be cross-referenced using the original exhibit number so that it can be easily located.
- 18.7. Demonstrative exhibits, i.e. documents, including PowerPoint slides, compiling information in the record and not presented in such form, such as charts, tabulations, etc., may be used at a hearing, provided that they (i) contain no new evidence, (ii) identify the source in the record from which the information is derived, and (iii) are submitted to the other Party at the time specified in the relevant pre-hearing order, and (iv) are numbered consecutively with a number introduced by “CD-”, respectively “RD-”.
- 18.8. In addition, promptly after the conclusion of the hearing day on which the corresponding demonstrative exhibit is used, the Parties shall upload such demonstrative to the case folder in the BOX filesharing platform.

19. Witnesses

Convention Article 43(a); Arbitration Rule 38

- 19.1. Any person may present evidence as a witness, including a Party or a Party’s officer, employee, or other representative.
- 19.2. For each witness, a written, signed and dated witness statement, which shall stand as direct testimony, shall be submitted to the Tribunal, unless a person refuses or is unable to provide such a statement. A person who has not submitted a written witness statement may provide testimony to the Tribunal only in special circumstances, and subject to the procedure as set out at §18.3 (including that the other Party shall be given an appropriate opportunity to respond to such testimony).
- 19.3. Each witness statement shall be signed and dated by the witness and include:

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- 19.3.1. the witness's name, professional address (if any), date of birth, and involvement in the case;
 - 19.3.2. a disclosure statement detailing any past and present relations of the witness with any Party, counsel, Member of the Tribunal, or the Assistant to the Tribunal;
 - 19.3.3. a description of the witness' position and qualifications, if relevant;
 - 19.3.4. a full and detailed description of the facts, and the source of the witness's information as to those facts, sufficient to serve as that witness's evidence in the matter in dispute;
 - 19.3.5. any documents on which the witness relies that have not already been submitted (which shall be submitted with sequential numbering as exhibits, not as a new group of numbered documents attached to a witness statement);
 - 19.3.6. a statement as to the language in which the witness statement was originally prepared and the language in which the witness anticipates giving testimony at the Hearing;
 - 19.3.7. a declaration regarding whether the witness received any form of compensation for his or her testimony; and
 - 19.3.8. an affirmation of the truth of the witness statement.
- 19.4. Witness statements shall be submitted in a searchable PDF format and have consecutive numbering on pages, headings and paragraphs; the text shall be 12-point, with 12-point paragraph break spacing, 1.5 line spacing and 1-inch margins.
 - 19.5. In accordance with §§16.2 and 16.30 above, each Party will submit its witness statements together with its written submissions. The witness statements shall be numbered independently from other documents and properly identified. If a Party submits two witness statements by the same witness, the subsequent witness statement shall be identified as "Second".
 - 19.6. It shall not be improper per se for counsel to meet witnesses and potential witnesses to establish the facts, prepare the witness statements and the examinations.
 - 19.7. On the date provided in **Annex B**, each Party shall identify the witnesses and experts of its opponent whom it intends to cross-examine. A witness whose cross-examination is not sought shall not testify unless the Tribunal directs his or her appearance.

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- 19.8. Each Party shall be responsible for summoning its own witnesses to the hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance.
- 19.9. Each Party shall be responsible for the practical arrangements, cost and availability of any witness it offers. The Tribunal will decide upon the appropriate allocation of any related costs in the Award.
- 19.10. If a witness fails to appear when first summoned to a hearing, the Tribunal may in its discretion summon a second time the witness to appear if satisfied that (i) there was a compelling reason for the first failure to appear, (ii) the testimony of the witness appears relevant, and (iii) providing a second opportunity for the witness to appear will not unduly delay the proceedings.
- 19.11. Whether in the context of an online hearing or otherwise, the Tribunal may hear witnesses by videoconference and will issue appropriate directions, if necessary.
- 19.12. The Tribunal may consider the written statement of a witness who provides a valid reason for failing to appear when summoned to a hearing (including if a second opportunity to appear has been given to the relevant witness in accordance with §19.10), or of a witness who was not called for cross-examination, having regard to all the surrounding circumstances, including the fact that the witness was not subject to cross-examination. The Tribunal shall not consider the witness statement of a witness who fails to appear if there is no valid reason to that failure.
- 19.13. At the hearing, the examination of each witness shall proceed as follows, subject to further specifications to be addressed in a subsequent procedural order:
 - 19.13.1. Direct examination shall be limited to questions about corrections to the written statement and about any matters which have arisen after the last opportunity for the Party who presented the witness to file witness statements. Any proposed change to the substance of the witness statement shall be notified to the opposing Party as soon as possible, and, if necessary, the Tribunal shall determine the admissibility of the proposed change. It shall in principle not last more than 5 minutes, unless otherwise agreed between the Parties, and notified to the Tribunal at the Pre-hearing videoconference, or unless ordered otherwise by the Tribunal upon prior application by the Party calling the witness;
 - 19.13.2. The other Party may then cross-examine the witness about relevant facts within the witness' knowledge;
 - 19.13.3. The Party who has presented the witness may then re-examine the witness with respect to any matters arising out of the cross-examination; and

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- 19.13.4. The Tribunal may ask its questions at any time, likely mainly at the end.
- 19.14. Subject to other arrangements during the case management conference for hearing organization or exceptionally at the hearing, (i) fact witnesses shall be examined prior to expert witnesses, the Claimants' fact witnesses being examined prior to the Respondent's fact witnesses and each Party determining the order of the fact witnesses whom it presents, and (ii) expert witnesses shall be grouped by topics, the Claimants' expert for each topic being examined first.
- 19.15. Subject to a different agreement by the Parties, a fact witness shall not be present in the hearing room during oral testimony and arguments, or read the transcript of oral testimony or argument, or discuss the oral testimony or argument, prior to his or her examination and full release. This limitation does not apply to expert witnesses.
- 19.16. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. In particular, but without limiting the foregoing, the Tribunal may in its discretion:
- 19.16.1. Limit or refuse the examination of a witness if it deals with facts that are already established by other evidence or are irrelevant;
- 19.16.2. Direct that a witness be recalled for further examination at any time; or
- 19.16.3. Provide that some witnesses may be examined together ("witness conferencing"), in which case it will give appropriate directions.

20. Experts

Arbitration Rule 38

- 20.1. Unless inconsistent with this Section, all the rules set forth in §19 above shall apply by analogy to experts.
- 20.2. Each Party may retain and produce evidence of one or more experts.
- 20.3. The Tribunal may, on its own initiative or at the request of a Party, order experts on the same subject matter on both sides to liaise before the hearing to identify disputed and undisputed issues, and to produce joint expert reports identifying disputed and undisputed issues.
- 20.4. The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference and conclusions of any such expert. The Tribunal may, on its own initiative or at the request of any Party, take oral evidence of such expert(s).

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- 20.5. Each expert report shall contain:
- 20.5.1. the full name, and professional address (if any) of the expert;
 - 20.5.2. a disclosure statement detailing any past and present relations of the expert with any Party, counsel, Member of the Tribunal, or the Assistant to the Tribunal;
 - 20.5.3. a description of his or her background, qualifications, training and experience;
 - 20.5.4. A description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;
 - 20.5.5. A statement of his or her independence from the Parties, their legal advisors and the Tribunal;
 - 20.5.6. A statement that the expert owes his or her primary duty to the Tribunal, that the expert understands that his or her duty to assist the Tribunal when providing expert opinion and evidence overrides the expert's duty to his or her client or instructing counsel and that the expert's opinions and conclusions shall be impartial, objective, and unbiased;
 - 20.5.7. A statement of the facts on which he or she is basing his or her expert opinions and conclusions;
 - 20.5.8. His or her expert opinions and conclusions, including a description of the methods, Evidence and information used in arriving at the conclusions;
 - 20.5.9. A statement as to the Language in which the report was originally prepared (provided that it has been translated), and the language in which the expert anticipates giving testimony at the hearing;
 - 20.5.10. An affirmation of his or her genuine belief in the opinions expressed in the expert report;
 - 20.5.11. The signature of the expert and the date and place of signature; and
 - 20.5.12. If the expert report has been signed by more than one person, an attribution of the entirety or specific parts of the expert report to each author.
- 20.6. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted as exhibits with the Parties' submissions, in which case reference to such exhibits shall be necessary and sufficient. Such documents or information shall be subject to the

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rules on language set forth in §13 above. Spreadsheets prepared by experts and submitted as part of or accompanying their report(s) should also be submitted in their native format with all formulae visible.

- 20.7. Experts shall disclose in their reports, or in attachments to their reports, the documents, data, and other information on which they relied in supporting their opinions.
- 20.8. Subject to consultation with the Tribunal, each expert called for cross-examination may give a presentation not exceeding 30 minutes summarizing their methodology and conclusions in lieu of direct examination.

21. Case Management Conferences

Arbitration Rule 31

- 21.1. A case management conference for purposes of discussing hearing organization and logistics will be held on the date provided in **Annex B** in principle by way of videoconference.
- 21.2. The Tribunal may convene other case management conferences with the Parties in accordance with ICSID Arbitration Rule 31 if necessary or appropriate.

22. Hearings

Arbitration Rule 32

- 22.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 22.2. The hearing may be held in-person or by any other means of communication as determined by the Tribunal after consultation with the Parties. An in-person hearing shall be held at the place to be determined in accordance with §12 above.
- 22.3. Having due regard to the views of the Parties and the specific circumstances of the case, including any relevant travel or public health/security restrictions, the Tribunal may decide to hold a hearing remotely or in a hybrid form. In such case, the Centre will conduct tests to ensure that all the participants have adequate connections, and the Tribunal will give the necessary directions.
- 22.4. The hearing shall take place on the dates set in **Annex B**.
- 22.5. The Members of the Tribunal shall endeavor to reserve one day immediately after the hearing to commence deliberations.

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- 22.6. In principle, each Party will have an equal time allocation for examinations and oral arguments, subject to adjustments in the Tribunal's discretion, particularly if there is a severe imbalance in the number of cross-examinations. The allocation will be discussed at the case management conference for hearing organization and set by the Tribunal, which may grant short extensions if appropriate under the circumstances.
- 22.7. In advance of the Hearing on Jurisdiction and Merits, the Tribunal and the Parties shall hold a pre-hearing videoconference to discuss all outstanding matters with respect to the remainder of the pre-hearing phase (including whether the Parties are requested to file pre-hearing skeleton arguments) and the organization of the hearing, including, among others, the order of appearance of witnesses, time allocation, interpretation, and other logistical issues related to the hearing.
- 22.8. The general process will be to start with any procedural matters (and do so each day of the hearing), followed by the Parties' opening statements, the examination of fact witnesses, the examination of expert witnesses and any closing arguments. The allocation of time at the hearings shall be decided by the Tribunal after consultation with the Parties during the pre-hearing videoconference.
- 22.9. All hearings shall be held in private, and any recordings, transcripts, or documents used in relation to the arbitral proceeding shall remain confidential, unless the Parties agree otherwise.

23. Recordings of Hearings and Sessions

Arbitration Rule 29(4)(i)

- 23.1. Recordings shall be made of all hearings and sessions. The recordings shall be provided to the Parties, the Tribunal Members, and the Assistant.
- 23.2. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing other than procedural sessions. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the Parties, the Tribunal and the Assistant on a same-day basis.
- 23.3. The Parties shall agree on any corrections to the transcripts within a time limit to be determined at the end of the hearing. The agreed corrections may be entered by the court reporter in the transcripts ("**revised transcripts**"). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

24. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rules 51

- 24.1. In consultation with the Parties, the Tribunal will determine at the end of the hearing whether there shall be post-hearing briefs. If so, the Tribunal will address the time limits for, and the length, format, and content of the post-hearing briefs. No new evidence may be produced together with the post-hearing briefs, except with leave or on request of the Tribunal, in which case, the Tribunal shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such documents, and (where necessary) to file further documents in response.
- 24.2. The Tribunal will issue directions on the Parties' statements of costs at the end of the hearing.

25. Transparency and Confidentiality

Convention Article 48(5), Arbitration Rules 62-66

- 25.1. The Parties consent to publication of the Award by ICSID on its website and/or by either Party, with any redactions agreed by the Parties or decided by the Tribunal, in accordance with §26 below.
- 25.2. ICSID shall publish the orders and decisions of the Tribunal, with any redactions agreed by the Parties or decided by the Tribunal, in accordance with §26 below.
- 25.3. Unless the Parties agree otherwise, ICSID shall not publish any document other than the Tribunal's orders, decisions and Award. In particular, unless the Parties agree otherwise, ICSID shall not publish:
- 25.3.1. the Parties' written submissions;
 - 25.3.2. supporting documents, including exhibits, legal authorities, witness statements and expert reports (including annexes, appendices or exhibits thereto), correspondence between the Parties and ICSID or the Tribunal, and PowerPoint or other presentations made at a hearing; or
 - 25.3.3. transcripts and recordings of hearings.
- 25.4. Hearings shall not be open to the public.

26. Redaction Process for Confidential and Protected Information
Arbitration Rule 66

- 26.1. Publication of information and documents pursuant to §§25.1 and 25.2 shall be subject to the redaction of confidential and protected information as defined in ICSID Arbitration Rule 66.
- 26.2. With respect to publication pursuant to §§25.1 and 25.2 above, any confidential or protected information as defined in ICSID Arbitration Rule 66 that is submitted to the Tribunal shall be protected from disclosure and publication in accordance with the procedure set forth below:
- 26.2.1. Within 30 days from the date of any document mentioned in §§25.1 and 25.2 above, a Party shall give written notice to the Tribunal and the other Party that it requests the non-disclosure of certain information it considers confidential or protected. The notice shall identify the part(s) of the document sought not to be published in the form of proposed redactions, to be marked on the face of the document itself (for example, using the highlighter function). At this stage, reasons for the redactions need not be given and the Transparency Schedule set out in Annex D to this Order need not be used.
- 26.2.2. Absent such a notice, and unless the Tribunal determines on its own initiative that certain information is not to be made public in accordance with ICSID Arbitration Rule 66, ICSID will publish the document without redactions.
- 26.2.3. Within 14 days of receipt of the notice referred to in §26.2.1, the other Party may raise objections to the requested redactions. At this stage, reasons for the objections need not be given and the Transparency Schedule need not be used.
- 26.2.4. If no objections are raised within the deadline established in §26.2.3, the Tribunal will consider the requested redactions to be agreed and ICSID will publish the document with the agreed redactions.
- 26.2.5. If objections are raised within the deadline established in §26.2.3, the Parties shall confer and seek to agree on redactions within 42 days of receipt of the objections. During this period, the Parties shall complete the Transparency Schedule set out in **Annex D** to this Order; unless the Parties agree or the Tribunal orders otherwise, the Party proposing the redactions shall fill out its part of the Transparency Schedule within 21 days of receipt of the objections, and the other Party shall have 21 days thereafter to fill out its reply. For the avoidance of doubt, the Transparency Schedule need only be

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completed in respect of those redactions to which objections were raised per §26.2.3.

- 26.2.6. The Parties shall cooperate in good faith in resolving any objections and it is the Tribunal's expectation that disputes will only be referred to it in exceptional circumstances. If the Parties reach an agreement, ICSID will publish the document with the agreed redactions.
- 26.2.7. If objections remain unresolved, the disputed redaction requests and the objections thereto shall be submitted to the Tribunal in the form of the Transparency Schedule set out in **Annex D** to this Order (in both Word and .pdf formats).
- 26.2.8. If information is to be redacted from a document in accordance with the paragraphs above, the Parties shall provide a redacted version of the document within 20 days from being requested to do so. ICSID will then publish the redacted document upon receipt.
- 26.2.9. If the Parties agree to publish supporting documents and correspondence, the Tribunal will give appropriate directions on the process to determine whether information contained in those materials must be protected from disclosure.

27. Data Privacy and Cybersecurity

- 27.1. The Members of the Tribunal, the Assistant, the Parties and their representatives acknowledge that the processing of their personal data is necessary for the purposes of this arbitration proceeding.
- 27.2. The Parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the arbitration proceeding, where necessary. Should compliance with applicable law require action from another participant in the arbitration proceeding, the Parties are invited to bring that to the attention of that other participant and/or to apply to the Tribunal for specific data protection measures to be put in place.
- 27.3. The Parties and their representatives shall ensure that the storage and exchange of the personal data processed in this arbitration is protected by way of appropriate technical and organizational safeguards.

28. Amicable Dispute Settlement

- 28.1. The Tribunal notes that the Parties may seek to reach an amicable settlement of all or part of the dispute, including through mediation under the ICSID Mediation Rules, at any time in the proceeding. The Parties may agree to suspend the arbitration for this purpose.
- 28.2. At any time in the course of the arbitration, considering the circumstances of the dispute and the interests at stake, the Tribunal may suggest to the Parties to resort to mediation or other appropriate methods of amicable resolution.
- 28.3. Beyond making a suggestion to the Parties, the Tribunal will not become involved in mediation or other settlement attempts and will continue the proceedings if the Parties do not agree to follow the Tribunal's suggestion or if they agree but the attempt fails.

29. Disability Inclusion

- 29.1. At any point during the proceedings, but ideally as soon as practicable, either Party may advise the Tribunal of a person who, by reason of disability, requires reasonable accommodation to facilitate their full participation in the arbitration, including site visits and oral hearings. In considering such requests, the Tribunal will take account of the privacy rights of such persons against the unnecessary disclosure of their disability. For the purposes of this provision, disability means any physical or mental health condition that, without reasonable accommodation, would significantly impair a person's ability to participate in work related to an arbitration.

On behalf of the Tribunal,

[signature]

Dr. Laurent Lévy
President of the Tribunal
Date: 11 December 2024

Annex A – Electronic File Naming Guidelines

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-FR</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Quantum-ENG</i>
SUPPORTING DOCUMENTATION Exhibits	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-FR</i>
<i>R-0002-SPA</i>	
Legal Authorities	CL-####–LANGUAGE
	RL-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S LEGAL AUTHORITIES
	<i>CL-0001-ENG</i>
	<i>CL-0002-FR</i>
	RESPONDENT’S LEGAL AUTHORITIES
<i>RL-0001-SPA</i>	
<i>RL-0002-ENG</i>	
Witness Statements	Witness Statement-Name of Witness-Name of Submission-LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	Legal Opinion-Name of Expert-Name of Submission-LANGUAGE
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to Witness Statements, Expert Reports,	WITNESS/EXPERT INITIALS-###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i> <i>MJ-0001</i>

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Legal Opinions	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-#### to C-####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application–[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
<i>Observations to Request for [XX]-[Claimant]-SPA</i>	

Annex B – Procedural Timetable

	Procedural step	Author	Interval	Date
1.	First Session	Parties	N/A	3 December 2024
2.	Respondent’s Application for Security for Costs	Respondent	6 weeks	13 January 2025
3.	Claimants’ Response on Respondent’s Application for Security for Costs	Claimants	4 weeks	7 February 2025
4.	Respondent’s Additional Comments on the Application for Security for Costs	Respondent	1 week	14 February 2025
5.	Claimants’ Additional Comments on Respondent’s Application for Security for Costs	Claimants	1 week	21 February 2025
6.	Memorial	Claimants	14 weeks	30 May 2025
7.	Counter-Memorial on the Merits (and Memorial on Jurisdiction)	Respondent	14 weeks	5 September 2025
8.	Document Production Requests	Parties	4 weeks	3 October 2025
9.	Responses and/or Objections to Document Requests	Parties	2 weeks	17 October 2025
10.	Replies to Objections to Document Requests and submission of completed Stern Schedules to the Tribunal	Parties	2 weeks	31 October 2025
11.	Decision on the Parties’ requests for production of documents	Tribunal	3 weeks	21 November 2025
12.	Production of Documents which are not subject to Objections	Parties	4 weeks	19 December 2025
13.	Production of documents ordered by the Tribunal	Parties	4 weeks	16 January 2026

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14.	Reply on the Merits (and Counter-Memorial on Jurisdiction)	Claimants	12 weeks	10 April 2026
15.	Rejoinder on the Merits (and Reply on Jurisdiction)	Respondent	12 weeks	3 July 2026
16.	Rejoinder on Jurisdiction	Claimants	4 weeks	31 July 2026
17.	Identification of witnesses and experts to be called at the hearing	Parties		
18.	Pre-hearing videoconference	All		
19.	Hearing on Jurisdiction and Merits (London)	All		5 to 16 October 2026
20.	Post-hearing briefs (to be discussed at the end of the hearing)	Parties		
21.	Cost Submissions	Parties		

Annex C – Stern Schedule

Request No:
Documents or Category of Documents Requested
Relevance and Materiality According to Requesting Party
Ref. to Pleadings, Exhibits, Witness Statements or Expert Reports
Comments
Responses / Objections to Document Requests
Replies to Objections to Document Requests
Tribunal's Decisions

Annex D – Transparency Schedule

Claimant/Respondent [Party seeking protection against publication]	Request [1]
Identification of document and part(s) sought to be protected from disclosure	[use one sheet per document/category of documents]
Legal basis for protection	
Comments	
Reply by opposing Party	
Decision	