

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

In the arbitration proceeding between

**VATTENFALL AB; VATTENFALL GMBH; VATTENFALL EUROPE NUCLEAR  
ENERGY GMBH; KERNKRAFTWERK BRUNSBÜTTEL GMBH & Co. oHG;  
KERNKRAFTWERK KRÜMMEL GMBH & Co. oHG**

Claimants

and

**FEDERAL REPUBLIC OF GERMANY**

Respondent

**ICSID Case No. ARB/12/12**

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**ORDER OF THE TRIBUNAL TAKING NOTE OF THE  
DISCONTINUANCE OF THE PROCEEDING**

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***Members of the Tribunal***

Professor Albert Jan VAN DEN BERG, President of the Tribunal  
The Honourable Charles N. BROWER, Arbitrator  
Professor Vaughan LOWE QC, Arbitrator

***Secretary of the Tribunal***

Ms. Jara MÍNGUEZ ALMEIDA

***Assistant to the Tribunal***

Ms. Emily HAY

*Date of dispatch to the Parties: 9 November 2021*

## REPRESENTATION OF THE PARTIES

*Representing Vattenfall AB and others:*

**Prof. Dr. Kaj Hobér**  
3 Verulam Buildings  
Gray's Inn  
London WC1R 5NT  
United Kingdom

and

**Mr. Jakob Ragnwaldh**  
**Mr. Robin Rylander**  
**Mr. Alexander Foerster**  
**Mr. Jacob Rosell Svensson**  
**Mr. Malcolm Robach**  
**Mr. Mattias Arnesson**  
MANNHEIMER SWARTLING ADVOKATBYRÅ AB  
Norrandsgatan 21  
Box 1711  
SE-111 87 Stockholm  
Sweden

and

**Dr. Richard Happ**  
**Mr. Sebastian Wuschka**  
**Mr. Tim Rauschning**  
LUTHER RECHTSANWALTSGESELLSCHAFT MBH  
Gänsemarkt 45  
20354 Hamburg  
Germany

*Representing the Federal Republic of Germany:*

**Dr. Sabine Konrad**  
**Dr. Maximilian Pika**  
MORGAN, LEWIS & BOCKIUS LLP  
OpernTurm, Bockenheimer Landstr.4  
60306 Frankfurt am Main  
Germany

and

**Ms. Annette Tiemann, LL.M.**  
BUNDESMINISTERIUM FÜR WIRTSCHAFT UND  
ENERGIE  
Referat VC7  
10115 Berlin  
Germany

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## **I. INTRODUCTION AND PARTIES**

1. This case concerns a dispute submitted to the International Centre for Settlement of Investment Disputes (“**ICSID**” or the “**Centre**”) on the basis of the Energy Charter Treaty (the “**ECT**”) and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, dated 14 October 1966 (the “**ICSID Convention**”).
2. The claimants are (i) Vattenfall AB, a Swedish public limited liability company; (ii) Vattenfall GmbH, a German private company with limited liability; (iii) Vattenfall Europe Nuclear Energy GmbH, a German private limited company; (iv) Kernkraftwerk Brunsbüttel GmbH & Co. oHG, a German partnership; and (v) Kernkraftwerk Krümmel GmbH & Co. oHG, a German partnership (together, “**Claimants**”).
3. The respondent is the Federal Republic of Germany (“**Germany**” or “**Respondent**”).
4. Claimants and Respondent are collectively referred to as the “**Parties**.” The Parties’ representatives and their addresses are listed above on page (i).
5. The Parties’ dispute relates to the shutdown and phase-out of nuclear power plants by the 13<sup>th</sup> Amendment to the Atomic Energy Act in Germany, which entered into force on 6 August 2011. The 13<sup>th</sup> Amendment was passed following an accident at the Fukushima Dai-Ichi nuclear power plant in Japan in March 2011.
6. Claimants hold shares in three nuclear power plants in Germany, the Brunsbüttel, Krümmel and Brokdorf nuclear power plants, that Claimants claim have been affected by the 13<sup>th</sup> Amendment.
7. Claimants assert that Respondent has breached its obligations towards Claimants under the ECT by enacting the 13<sup>th</sup> Amendment of 2011. In particular, Claimants allege that Respondent has (i) unlawfully expropriated their investments; (ii) breached its obligations entered into with Claimants; (iii) breached its obligation under the fair and equitable treatment standard; (iv) acted unreasonably and in a discriminatory manner; and (v) failed to offer Claimants the most constant protection and security.

8. Respondent contests the Tribunal's jurisdiction *ratione personae* and *ratione materiae* in several respects, and denies any breach of its obligations under the ECT.
9. In the course of these proceedings it has become evident that this is not a case about the question whether Germany should or should not have nuclear power plants. Rather, this case is about the question whether owners of nuclear power plants should receive compensation for shutting down plants prior to the end of their economic life once a democratic decision has been made to end nuclear power generation.
10. This is a case where the proceedings were of an extraordinary length, which is explained by its complexity and the procedural conduct of the Parties.

## **II. PROCEDURAL HISTORY**

### **A. REQUEST FOR ARBITRATION**

11. On 14 May 2012, ICSID received the request for arbitration of Vattenfall AB, Vattenfall Europe AG, Vattenfall Europe Nuclear Energy GmbH, Kernkraftwerk Krümmel GmbH & Co. OHG, Kernkraftwerk Brunsbüttel GmbH & Co. OHG, submitted against the Federal Republic of Germany, together with Exhibits C-001 through C-039 (the “**Request**”).<sup>1</sup>
12. In accordance with Article 36 of the ICSID Convention, on 31 May 2012, the ICSID Secretary-General registered the Request for Arbitration and so notified the Parties. In the Notice of Registration, the Secretary-General invited the Parties to proceed to constitute an arbitral tribunal as soon as possible pursuant to Articles 37 to 40 of the ICSID Convention.

### **B. CONSTITUTION AND RECONSTITUTION OF THE TRIBUNAL**

13. In the Request, Claimants appointed Mr. Daniel M. Price, a national of the United States of America, as arbitrator. Upon the Parties' agreement on the method of constitution,

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<sup>1</sup> As of 17 September 2012, Vattenfall Europe AG ceased to exist and its rights and obligations were transferred by operation of law to Vattenfall (Deutschland) GmbH, which was substituted for Vattenfall Europe AG as a Claimant in this arbitration.

ICSID sought Mr. Price's acceptance of his appointment by Claimants, and Mr. Price subsequently accepted his appointment.

14. On 13 July 2012, Respondent appointed Prof. Vaughan Lowe, a national of the United Kingdom, as arbitrator, and Prof. Lowe subsequently accepted his appointment.
15. By letter of 18 October 2012, Claimants requested that the President be appointed by the Chairman of the Administrative Council in accordance with Article 38 of the ICSID Convention and Rule 4(1) of the ICSID Rules of Procedure for Arbitration Proceedings (the "**ICSID Arbitration Rules**").
16. To assist the Parties in reaching agreement on the presiding arbitrator, from 29 October to 6 December 2012, the ICSID Secretariat conducted two ballot procedures with the Parties. As the ballot procedure did not result in the selection of a mutually-agreeable candidate, by letter of 6 December 2012 the Secretary-General informed the Parties that the Chairman of the ICSID Administrative Council would proceed to appoint the presiding arbitrator in accordance with Articles 38 and 40(1) of the ICSID Convention.
17. By email of 11 December 2012, the Parties informed ICSID that they were discussing the possibility of reaching an agreement on the President, and they requested that ICSID withhold any appointment until 12 December 2012. On the same day, the Secretariat confirmed that no candidate for presiding arbitrator would be proposed before the 12 December deadline.
18. By email of 12 December 2012, the Parties informed ICSID that they had agreed on the appointment of Prof. Albert Jan van den Berg, a national of the Kingdom of the Netherlands, to serve as President of the Tribunal. Prof. van den Berg subsequently accepted his appointment.
19. On 14 December 2012, the Secretary-General notified the Parties that all three arbitrators had accepted their appointments and that the Tribunal was therefore deemed to have been constituted on that date. Attached to the Secretary-General's notice were copies of the declarations required under ICSID Arbitration Rule 6(2) signed by Mr. Price, Prof. Lowe and Prof. van den Berg, as well as the statements of Mr. Price and Prof. Lowe. Ms. Eloïse

Obadia, ICSID Legal Counsel, was designated to serve as Secretary of the Tribunal. Ms. Obadia was subsequently replaced as Secretary by Ms. Martina Polasek, ICSID Legal Counsel. Ms. Polasek was subsequently replaced as Secretary by Ms. Lindsay Gastrell, ICSID Legal Counsel. Ms. Gastrell was subsequently replaced as Secretary by Ms. Jara Mínguez Almeida, ICSID Legal Counsel.

20. On 21 September 2012, Mr. Price provided a supplemental disclosure to his original statement. Subsequently, on 17 December 2012, Respondent requested that Mr. Price answer a number of questions related to his disclosures. Mr. Price provided answers to Respondent's questions the next day.
21. By letter of 21 December 2012, Respondent submitted further observations on Mr. Price's disclosures and requested that he provide his reaction. Mr. Price responded to Respondent's letter the same day.
22. On 7 January 2013, Respondent requested further information from Mr. Price and asked that he submit an amended formal statement under ICSID Arbitration Rule 6(2). Mr. Price responded the next day. By letter of 11 January 2013, Respondent expressed dissatisfaction with Mr. Price's response.
23. On 11 January 2013, Mr. Price submitted his resignation to the other Members of the Tribunal, stating: "In order to avoid the possibility of any unnecessary delay in the arbitration proceedings, I hereby resign as a member of the Tribunal pursuant to Arbitration Rule 8(2)." On the same day, Prof. van den Berg and Prof. Lowe consented to Mr. Price's resignation pursuant to ICSID Convention Article 56(3) and Arbitration Rule 8(2).
24. Also on 11 January 2013, ICSID informed the Parties that Mr. Price had resigned and that as a result, in accordance with ICSID Arbitration Rule 10(2), the proceeding was suspended and would remain suspended until the vacancy was filled. Pursuant to ICSID Arbitration Rule 11(1), ICSID invited Claimants to promptly appoint an arbitrator to fill the vacancy.
25. On 21 February 2013, Claimants appointed the Honourable Charles N. Brower, a national of the United States of America, as arbitrator. On 25 February 2013, the Secretary-General informed the Parties that Judge Brower had accepted his appointment, filling the vacancy

on the Tribunal. Therefore, in accordance with ICSID Arbitration Rule 12, the Tribunal was deemed to be reconstituted as of that date, and the proceeding resumed.

**C. RESPONDENT’S OBJECTION UNDER RULE 41(5) AND INITIAL PROCEDURAL MATTERS**

26. On 10 January 2013, Respondent filed an Objection under Rule 41(5) of the ICSID Arbitration Rules, together with Legal Authorities RL-001 through RL-005 (“**Rule 41(5) Objection**”). Respondent sought dismissal of two claims asserted by Claimants in connection with the Nuclear Fuel Tax (“**NFT**”) on the basis that they were “manifestly without legal merit” under Rule 41(5).
27. On 5 March 2013, following the reconstitution of the Tribunal and resumption of the proceeding, the Tribunal held a conference call with the Parties to discuss the next procedural steps. By letter of 7 March 2013, the Tribunal confirmed the agreed next steps, including the Parties’ agreement to extend the 60-day period for the first session as set forth in Rule 13(1) of the ICSID Arbitration Rules and to hold the first session in Washington, D.C., on 17 June 2013. In addition, the Tribunal decided to hear oral submissions on the Rule 41(5) Objection during the first session.
28. In accordance with the schedule determined during the 5 March 2013 conference call, the Parties filed the following submissions:
  - Claimants’ Reply to Respondent’s Rule 41(5) Objection, dated 15 March 2013, together with Legal Authorities CL-001 through CL-006;
  - Respondent’s Response to Claimants’ Reply to the Rule 41(5) Objection, dated 19 April 2013, together with Exhibits R-001 through R-005 and Legal Authorities RL-006 through RL-023; and
  - Claimants’ Rejoinder to Respondent’s Rule 41(5) Objection, dated 24 May 2013, together with Legal Authorities CL-007 through CL-017.
29. On 17 and 18 June 2013, the Tribunal held a first session and a hearing on the Rule 41(5) Objection at the World Bank Headquarters in Washington, D.C. In addition to the Members of the Tribunal and the Secretary of the Tribunal, the following individuals attended:

For Claimants

*Counsel*

- Prof. Dr. Kaj Hobér, 3 Verulam Buildings
- Mr. Jakob Ragnwaldh, Mannheimer Swartling Advokatbyrå AB
- Mr. Fredrik Andersson, Mannheimer Swartling Advokatbyrå AB
- Dr. Richard Happ, Luther Rechtsanwaltsgesellschaft

*Parties*

- Dr. Andreas Metzenthin, Vattenfall GmbH

For Respondent

- Dr. Sabine Konrad, McDermott Will & Emery
- Ms. Lisa Richman, McDermott Will & Emery
- Mr. Arne Fuchs, McDermott Will & Emery

*Parties*

- Dr. Hans-Joachim Henckel, Government of the Federal Republic of Germany
- Ms. Annette Tiemann, Government of the Federal Republic of Germany
- Dr. Siegbert Schneider, Government of the Federal Republic of Germany
- Mr. Lars Beyer, Government of the Federal Republic of Germany
- Mr. Ilja Schmidtke, Government of the Federal Republic of Germany

30. On 2 July 2013, the Tribunal issued its Decision on the Rule 41(5) Objection. The Tribunal found that Claimants' claims in connection with the NFT were not "manifestly without legal merit" and required further and more detailed submissions from both sides, thereby rejecting the Rule 41(5) Objection.
31. Following further submissions from the Parties on procedural matters after the first session, on 17 July 2013, the Tribunal issued Procedural Order No. 1 ("**PO 1**"). PO 1 reflects the Parties' agreements and the Tribunal's decisions on the procedure governing the arbitration. It provides, *inter alia*, that the applicable Arbitration Rules are the ICSID Arbitration Rules in force as of 10 April 2006, the procedural language is English, and the place of arbitration is Washington, D.C. Annex A of PO 1 sets forth the procedural calendar.

**D. WRITTEN PHASE OF THE PROCEEDING**

32. In accordance with the procedural calendar, on 27 September 2013, Claimants filed a Memorial on the Merits ("**Memorial**"), together with the following supporting documents: Exhibits C-040 through C-181; Legal Authorities CL-001 through CL-046; Witness Statement of Mr. Guido Egbers; Witness Statement of Mr. Andreas Hüttmann; Witness

Statement of Dr. Uwe Kleen; Witness Statement of Mr. Uwe Neugebauer; Witness Statement of Dr. Norbert Portugall; Witness Statement of Mr. Gunnar Post; Witness Statement of Prof. Bruno Thomauske; Witness Statement of Dr. Manfred Timm; Expert Report of Prof. Dr. Rudolf Dolzer with Exhibits D-001 through D-045; Expert Report of Mr. Brent Kaczmarek with Exhibits NAV-001 through NAV-195; Expert Report of Mr. William Bohlke with Exhibits WHB-001 through WHB-023; and Expert Report of Mr. Robert Charles with Exhibits SL-001 through SL-027.

33. Also in accordance with the procedural calendar, on 25 November 2013, Respondent served a request for documents on Claimants in the form of a Redfern Schedule. The completed Redfern Schedule, including Claimants' objections to production and Respondent's responses to the objections, was submitted to the Tribunal on 6 December 2013, together with Respondent's letter of the same date. Legal Authorities RL-024 to RL-026 were attached to Respondent's letter. On 20 December 2013, the Tribunal issued Procedural Order No. 2 ("**PO 2**"), containing its decisions on each of the contested document requests.
34. Between 27 January and 7 February 2014, the Parties made submissions to the Tribunal on the following contested issues: (i) a draft confidentiality order covering certain documents produced by Claimants; (ii) Claimants' request to extend the scope of the proposed confidentiality order; and (iii) Respondent's allegation that Claimants had failed to produce all documents in accordance with PO 2.
35. On 11 February 2014, the Tribunal issued Procedural Order No. 3 ("**PO 3**") to address the issues regarding confidentiality. In PO 3, the Tribunal issued a confidentiality order covering certain documents produced by Claimants and rejected Respondent's requests relating to Claimants' document production. The Tribunal noted that the confidentiality order did not extend to the additional documents as requested by Claimants, but that Claimants could make a separate application for it to be so extended.
36. Claimants made such an application on 13 February 2014, and Respondent submitted observations on the application on 21 February 2014.

37. On 27 February 2014, the Tribunal issued Procedural Order No. 4 (“**PO 4**”), finding that the relevant documents contained highly sensitive information and therefore granting Claimants’ application to extend the confidentiality order to cover those documents.
38. By letter of 28 February 2014, Respondent requested that the Tribunal grant an exemption to the Ministry for Environment of Schleswig-Holstein and Respondent’s legal counsel at McDermott Will & Emery from the obligation set forth in the confidentiality order that third parties certify in writing that all confidential documents have been destroyed, deleted or returned to Claimants within five months after the conclusion of the proceedings. Claimants submitted observations on this request by letter of 3 March 2014, and Respondent replied by letter of 7 March 2014.
39. On 18 March 2014, the Tribunal issued Procedural Order No. 5 (“**PO 5**”), denying Respondent’s 28 February request on the basis that it failed to meet the second evidentiary requirement under paragraph 4 of PO 4, which requires that the relevant third party be restricted by law from complying with the confidentiality order.
40. By letter of 28 March 2014, Respondent objected to PO 5. In response, on 31 March 2014, the Tribunal informed the Parties that it did not find it necessary to amend PO 5 on the basis of submissions in the record at that time, but offered Respondent a further opportunity to submit evidence of a legal restriction under paragraph 4 of PO 4. In this regard, the Tribunal received Respondent’s letters of 7 April and 5 May 2014 and Claimants’ letters of 14 April and 9 May 2014.
41. After considering these submissions, on 19 May 2014, the Tribunal issued Procedural Order No. 6 (“**PO 6**”), granting certain specific exceptions to the confidentiality order in respect of the Ministry for Environment of Schleswig-Holstein and Respondent’s legal counsel at McDermott Will & Emery.
42. On 17 June 2014, Respondent requested a two-month extension of time to file its Counter-Memorial. Claimants objected to this request by letter of 17 June 2014. Respondent submitted further comments on 23 June 2014, and Claimants replied on 25 June 2014.

43. On the basis of the Parties' submissions, the Tribunal issued Procedural Order No. 7 on 4 July 2014 ("**PO 7**"), granting Respondent a one-month extension to file its Counter-Memorial. The procedural calendar was amended accordingly.
44. On 22 August 2014, Respondent filed a Counter-Memorial on the Merits and Memorial on Jurisdiction ("**Counter-Memorial**"), together with the following supporting documents: Appendices 001 through 003; Exhibits R-006 through R-216; Legal Authorities RL-027 through RL-099; Witness Statement of Prof. Dr. Miranda Schreurs; Witness Statement of Dr. Wolfgang Cloosters with Exhibits CLOOSTERS-001 through CLOOSTERS-006; Witness Statement of Mr. Dirk Wendel with Exhibits WE-001 through WE-010; Expert Report of Ms. Laura Hardin with Exhibits LH-001 through LH-085; Expert Report of Dr. Robin Cohen with Exhibits RC-001 through RC-063; Expert Report of Dipl.-Ing. Michael Sailer with Exhibits SA-001 through SA-055; Expert Report of Dr. Eberhard Grauf with Exhibits GRAUF-001 through GRAUF-018; and Expert Report of Dipl.-Ing. Klaus-Dieter Bandholz with Exhibits BANDHOLZ-001 through BANDHOLZ-035.
45. Together with the Counter-Memorial, Respondent submitted a request to address the objections to jurisdiction as a preliminary question ("**Request for Bifurcation**").
46. On 5 September 2014, Claimants filed observations on the Request for Bifurcation, opposing Respondent's request for a separate jurisdictional phase of the proceeding.
47. On 7 September 2014, the Tribunal issued Procedural Order No. 8 concerning the Request for Bifurcation ("**PO 8**" or "**Decision on Bifurcation**"). In the Decision, the Tribunal rejected Respondent's Request for Bifurcation, noting that as a result, the proceeding would continue under Scenario 2 of the procedural calendar. The Tribunal offered the Parties the opportunity to request, or to agree to, the bifurcation of the proceedings into (i) a jurisdiction/admissibility and liability phase and (ii) a quantum phase. Neither Party made such a request.
48. In accordance with the procedural calendar, on 3 October 2014, Claimants served a request for documents on Respondent in the form of a Redfern Schedule. The completed Redfern

Schedule, including Respondent's objections to production and Claimants' responses to the objections, together with a letter from Claimants, was submitted to the Tribunal on 24 November 2014. On 8 December 2014, the Tribunal issued Procedural Order No. 9 ("PO 9"), containing its decisions on each of the contested document requests. In PO 9, the Tribunal also rejected requests for the production of documents that Respondent had set forth in its objections to Claimants' Redfern Schedule, which the Tribunal determined were not permitted at that stage of the proceeding under PO 1.

49. By letter of 16 January 2015, Respondent: (i) asserted privilege with respect to certain documents identified on an attached privilege log, and (ii) stated that it could not produce certain documents responsive to Claimants' documents requests until a confidentiality order was in place. Claimants made observations on these issues on 21 January 2015. Respondent then made further submissions by email of 23 January 2015 and letter of 28 January 2015, to which Claimants replied on 3 February 2015.
50. On 11 February 2015, the Tribunal issued Procedural Order No. 10 ("PO 10"), containing its decision on each of the contested entries in Respondent's privilege log. With respect to confidentiality, the Tribunal instructed Respondent to provide a complete version of its proposed draft confidentiality order and instructed Claimants to submit any amendments they wished to make to their proposed draft confidentiality order.
51. On 16 February 2015, Respondent submitted its proposed draft confidentiality order, together with a document containing information that Respondent considered to be particularly sensitive ("attorneys' eyes-only information"). On the same day, Claimants requested the Tribunal to instruct Respondent to immediately produce all documents still being withheld and to hold that these documents would be subject to the terms of the confidentiality order proposed by Claimants.
52. On 26 February 2015, the Tribunal issued Procedural Order No. 11 ("PO 11"), containing a confidentiality order applicable to certain documents to be produced by Respondent. The Tribunal ordered Respondent to immediately produce the relevant responsive documents.

53. On 5 March 2015, Respondent submitted a supplemental privilege log asserting privilege over three additional documents. Claimants responded by letter of 9 March 2015, in which they also asserted that Respondent was not complying with its document production obligations. Respondent replied to Claimants' letter on 19 March 2015. On 24 March 2015, the Tribunal issued Procedural Order No. 12 ("**PO 12**"), addressing these document production issues.
54. On 24 July 2015, the European Commission ("**EC**") filed an Application for Leave to Intervene as a Non-Disputing Party pursuant to ICSID Arbitration Rule 37(2) ("**EC Application**"). On that same date, the Tribunal invited the Parties to submit their observations on the EC Application; Respondent filed its observations on the EC Application on 30 July 2015, and Claimants filed their observations on 31 July 2015.
55. On 7 August 2015, the Tribunal issued Procedural Order No. 13 concerning the EC Application ("**PO 13**" or "**Decision on EC Application**"). In the Decision on EC Application, the Tribunal granted the EC's request to submit a written submission in the proceeding, to be filed no later than 30 September 2015. The Parties were invited to submit their comments on the EC's written submissions by 29 April 2016.
56. On 1 September 2015, Claimants filed a Reply on the Merits and a Counter-Memorial on Jurisdiction ("**Reply**"), together with the following supporting documents: Annexes A and B; Appendices 001 through 003; Exhibits C-182 through C-260; Legal Authorities CL-047 through CL-110; Witness Statement of Dr. Uwe Kleen and Mr. Dirk Schümann with Exhibits 001 and 002; Supplemental Witness Statement of Dr. Uwe Kleen with Exhibits 001 through 005; Witness Statement of Mr. Tim Gansczyk; Supplemental Witness Statement of Mr. Gunnar Post; Supplemental Witness Statement of Mr. Andreas Hüttmann; Supplemental Witness Statement of Mr. Guido Egbers with Exhibit 001; Expert Report of Dr. Helmut Bläsig and Mr. William Bohlke with Exhibits BB-001 through BB-018; Expert Report of Dr. Armin Roth and Dr. Renate Kilian with Exhibits RK-001 through RK-033; Expert Report of Dr. Jens Neumann on Technical Status; Expert Report of Dr. Jens Neumann on Categorization; Expert Report of Dr. Jens Neumann on Costs; Expert Report of Dr. Uwe Kischel with Exhibits K-001 through K-006; Expert Report of

Prof. Dr. Hans-Wolfgang Arndt on NEVP with Exhibits AI-001, AI-002, AI-015 and AI-024; Expert Report of Prof. Dr. Hans-Wolfgang Arndt on Reliability with Exhibits AII-001 through AII-008 and AII-017; Expert Report of Prof. Dr. Bruno Thomauske with Exhibits T-001 through T-038; Expert Report of Mr. Walter Hackel; Second Expert Report of Mr. Brent Kaczmarek with Exhibits NAV-196 through NAV-202, NAV-204, NAV-205 and NAV-208 through NAV-260; Second Expert Report of Mr. Robert Charles; Expert Report of Prof. Christoph Schreuer with Exhibits S-001 through S-079; and Second Expert Report of Prof. Dr. Rudolf Dolzer with Exhibits D-046 through D-048.

57. On 30 September 2015, as contemplated in the Decision on the EC Application, the EC submitted its written submission pursuant to ICSID Arbitration Rule 37(2) (“**EC Submission**”).
58. By letter of 3 November 2015, Respondent sought information regarding any relationship between the President of the Tribunal and Claimants’ expert Prof. Rudolf Dolzer. Exhibits R-217 and R-218 were attached to Respondent’s letter. The President of the Tribunal responded the next day, confirming that he had no professional or social relationship with Prof. Dolzer.
59. On 20 November 2015, Prof. Lowe provided the Parties with a disclosure. In relation to this disclosure, as well as to the President’s letter of 4 November 2015, Respondent submitted a list of questions for Prof. Lowe and Prof. van den Berg on 9 December 2015. They both provided their responses on 21 December 2015.
60. Meanwhile, from 5 to 26 November 2015, the Parties made a number of submissions to the Tribunal in connection with Respondent’s arguments that Claimants had failed to submit a complete Reply and to fulfil their document production obligations. Along with its submissions on these issues, Respondent filed Exhibits R-219 through R-222. On 7 December 2015, the Tribunal issued Procedural Order No. 14 (“**PO 14**”), in which it (i) took note of Claimants’ undertaking to produce one of the sets of documents requested by Respondent and ordered Claimants to do so; (ii) did not order Claimants to produce the other documents requested by Respondent; and (iii) noted that the deadline for Respondent

to seek leave to request the production of additional documents under Section 12.3 of PO 1 had expired.

61. On 11 January 2016, Respondent submitted two letters: the first requested that the Tribunal order Claimants to comply with their existing document production obligations set forth in PO 2; and the second requested that the Tribunal order Claimants to produce documents contained in a document titled “Respondent’s Supplemental Document Requests.” On 15 January 2016, Claimants responded to both of Respondent’s letters, asking the Tribunal to deny all of Respondent’s requests. Respondent made further observations on these issues by letter of 22 January 2016, to which Claimants replied on 28 January 2016.
62. On 18 February 2016, the Tribunal issued Procedural Order No. 15 (“**PO 15**”), containing its decision on each of Respondent’s requests related to PO 2, and on each of Respondent’s supplemental document requests.
63. By letter of 28 March 2016, Claimants sought leave from the Tribunal under paragraph 12.3 of PO 1 to serve on Respondent a new request for production of documents relating to an interview with Chancellor Angela Merkel held on 6 November 2015, and to submit into the record any documents produced. Respondent submitted its observations on this request on 1 April 2016, asking the Tribunal to deny it. Claimants submitted further comments on 6 April 2016, to which Respondent replied by email of 11 April 2016.
64. On 13 April 2016, the Tribunal issued Procedural Order No. 16 (“**PO 16**”), granting Claimants’ 28 March request for leave to request the documents from Respondent.
65. On 27 April 2016, Respondent filed a Rejoinder on the Merits and Reply on Jurisdiction (“**Rejoinder**”), together with the following supporting documents: Exhibits R-223 through R-284; Legal Authorities RL-100 through RL-132; Supplementary Witness Statement of Mr. Dirk Wendel with Exhibits WE-011 through WE-014; Second Expert Report of Ms. Laura Hardin with Exhibits LH-086 through LH-202; Second Expert Report of Dr. Robin Cohen with Exhibits RC-064 through RC-123; Second Expert Report of Dipl.-Ing. Michael Sailer with Exhibits SA-056 through SA-067; Second Expert Report of Dr. Eberhard Grauf with Exhibits GRAUF-019 through GRAUF-068; Second Expert

Report of Dipl.-Ing. Klaus-Dieter Bandholz with Exhibits BANDHOLZ-036 through BANDHOLZ-045; Expert Report of Mr. Henry Cordes with Exhibit CO-002; Expert Report of Dr. Oskar Grözing with Exhibits GRO-001 through GRO-062; Expert Report of Prof. Dr. Dres. h.c. Hans-Jürgen Papier on Atomkonsens with Exhibits PAPIER-I-001 through PAPIER-I-033; Expert Report of Prof. Dr. Dres. h.c. Hans-Jürgen Papier on Constitutional Law with Exhibits PAPIER-II-001 through PAPIER-II-052; and Legal Opinion of Prof. Dr. Wolfgang Ewer with Exhibits EW-001 through EW-022.

66. On 29 April 2016, the Parties filed their observations on the EC Submission.
67. By letter of 25 May 2016, Claimants sought leave under paragraph 12.3 of PO 1 to serve on Respondent a new request for production of documents relating to what Claimants considered to be new, contentious matters arising out of the Rejoinder. In its response of 10 June 2016, Respondent objected to Claimants' request. On 14 June 2016, the Tribunal issued Procedural Order No. 17 ("**PO 17**"), denying Claimants' request for lack of specificity.
68. By email of 30 May 2016, Claimants informed the Tribunal that they had served a request on Respondent pursuant to PO 16 and that Respondent had produced transcripts of the 6 November 2015 interview with Chancellor Merkel (the "**Merkel transcript**"). Claimants stated that they would submit the Merkel transcript into the record once it had been translated. By email of the same date, Respondent objected to Claimants' statement that they would submit the Merkel transcript into the record. In response to this exchange, on 7 June 2016, the Tribunal invited Claimants to make a proper application to introduce the document into the record.
69. By letter of 21 June 2016, Claimants sought to introduce the Merkel transcript into the record. Respondent provided its observations on 24 June 2016. On 27 June 2016, the Tribunal issued Procedural Order No. 18 ("**PO 18**"), in which it granted Claimants' request to introduce the Merkel transcript into the record, and granted Respondent the right to submit observations on the transcript within two weeks after the date of its filing. On 30 June 2016, Claimants filed the Merkel transcript as Exhibit C-261. Respondent

submitted its observations on 14 July 2016, reattaching the Merkel transcript as Exhibit R-285.

70. On 18 July 2016, Claimants filed a Rejoinder on Jurisdiction (“**Rejoinder on Jurisdiction**”), together with the following supporting documents: Legal Authorities CL-111 through CL-131; and Supplementary Expert Report of Prof. Christoph Schreuer.
71. In preparation for the hearing, on 21 July 2016, the Tribunal provided the Parties with a list of questions (“**Certain Tribunal Questions**”) and requested that the Parties submit answers to these questions by 31 August 2016. The Parties were offered the opportunity to then respond to the other Party’s responses by 21 September 2016.
72. On 8 August 2016, the Tribunal wrote to the Parties regarding transparency of the hearing. The Tribunal requested the Parties to consult and agree to managed transparency of the hearing, for example, by way of a delayed video streaming via an internet link. The Parties eventually agreed to livestream the hearing (except for confidential portions), but Claimants initially insisted that the video not be made publicly available following the hearing (see further paragraph 92 below).
73. In the meantime, by letter of 2 August 2016, Claimants sought leave from the Tribunal under paragraph 13.3 of PO 1 to submit seven sets of documents into the record, asserting that exceptional circumstances exist because the documents were published after Claimants’ Reply, or relate to new matters arising out of Respondent’s Rejoinder; included in these documents was a transcript of the 15 to 16 March 2016 hearing of the proceeding before the German Constitutional Court (the “**Constitutional Court Transcript**”). By letter of 8 August 2016, Respondent objected to Claimants’ request. On 9 August 2016, the Tribunal granted (i) Claimants the opportunity to respond, by 12 August 2016, to Respondent’s letter of 8 August; and (ii) Respondent to make any further comments on Claimants’ response by 17 August 2016. Responses were subsequently received from both Parties.
74. On 19 August 2016, the Tribunal issued Procedural Order No. 19 (“**PO 19**”) deciding on Claimants’ request of 2 August 2016. The Tribunal dismissed Claimants’ request for leave

to submit additional documents into the record with respect to each of the seven categories of documents identified by Claimants.

75. On 31 August 2016, each Party filed its answers to the 21 July 2016 list of Certain Tribunal Questions. Together with its answers, Respondent submitted Exhibit R-211a and Legal Authority RL-133; Claimants submitted with their answers Exhibits C-261 and C-262 and Legal Authorities CL-132 through CL-204.
76. By letter of 3 September 2016, the Tribunal proposed the appointment of Ms. Emily Hay as Assistant to the Tribunal. Both Parties subsequently confirmed that they had no objection to Ms. Hay's appointment.
77. On 9 September 2016, the Tribunal held a pre-hearing organizational meeting with the Parties by teleconference.
78. By letter of 15 September 2016, Claimants requested from the Tribunal that certain of its experts be given leave to address at the upcoming hearing what they alleged to be "new issues and arguments raised by Respondent's experts in reports filed with the Rejoinder." Claimants also made several other requests concerning the time allotted for, and scope of, certain expert testimony. By letter of 23 September 2016, Respondent objected to Claimants' requests.
79. On 17 September 2016, the Tribunal issued Procedural Order No. 20 ("**PO 20**") concerning the organization of the upcoming hearing.
80. On 21 September 2016, the Parties exchanged their reply answers to the 21 July 2016 list of Certain Tribunal Questions ("**Reply Answers**"). Before these submissions were transmitted to the Tribunal, by email of later that date, Respondent asserted that Claimants had filed with their Reply Answers a copy of the Constitutional Court transcript as Exhibit C-263. Respondent further stated that Claimants had breached PO 19 and therefore requested that the Tribunal order Claimants to file amended Reply Answers, deleting any reference to Exhibit C-263 as well as the Exhibit itself. By email of 22 September 2016, Claimants provided a response to Respondent's request that Exhibit C-263 be stricken from the record, wherein they objected to the request.

81. Following an additional email from Respondent on 22 September 2016 and an additional email from Claimants on 23 September 2016, on 26 September 2016, the Tribunal issued Procedural Order No. 21 (“**PO 21**”) concerning Respondent’s 21 September request. By this Order, the Tribunal: (i) granted Respondent’s request that Exhibit C-263 be stricken from the record; and (ii) ordered Claimants to file amended Reply Answers without any reference to Exhibit C-263. Respondent’s Reply Answers and Claimants’ amended Reply Answers were subsequently transmitted to the Tribunal. Together with their amended Reply Answers, Claimants submitted Legal Authorities CL-205 through CL-207. In its Reply Answers, Respondent requested that Claimants’ Exhibits C-261 and C-262 (submitted with Claimants’ 31 August 2016 answers to Certain Tribunal Questions) be struck from the record, on the grounds that Claimants violated PO 1 by submitting these exhibits without prior leave from the Tribunal.
82. On 28 September 2016, the Tribunal issued Procedural Order No. 22 (“**PO 22**”) concerning Claimants’ 15 September requests. By this Order, the Tribunal directed that the examination of certain experts be limited to issues addressed in the experts’ presentations. By letter of later that date, Respondent objected to PO 22. By letter of 30 September 2016, Claimants provided their observations on Respondent’s objection.
83. On 30 September 2016, the Tribunal issued Procedural Order No. 23 (“**PO 23**”), wherein it stated that it considered Respondent’s letter of 28 September to be an application for reconsideration of PO 22. By its PO 23, the Tribunal amended the wording of one sentence in PO 22, but otherwise denied Respondent’s application.
84. Following exchanges between the Parties, on 1 October 2016, the Tribunal issued Procedural Order No. 24 (“**PO 24**”) concerning the modalities of witness and expert testimony at the upcoming hearing.
85. By letter of 2 October 2016, Respondent requested leave from the Tribunal to conduct direct examination of three of its experts on what it alleged to be “new arguments raised by Claimants’ experts at the oral hearing regarding the subject matters identified in [certain paragraphs of PO 22] and [certain paragraphs of PO 23].” By letter of 5 October 2016, Claimants objected to Respondent’s request.

86. On 6 October 2016, the Tribunal issued Procedural Order No. 25 (“**PO 25**”) wherein it confirmed the scope of the direct examination of the three experts identified in Respondent’s 2 October request.
87. Also on 6 October 2016, the Secretary of the Tribunal sent a letter to the Parties on behalf of the Tribunal: (i) inviting them, as a matter of efficiency, to raise any procedural matters or questions with the Tribunal in advance of the hearing; (ii) transmitting a Joint Chronological List of Exhibits; and (iii) transmitting a timetable regarding the order of witnesses. By email of later that date, Respondent, *inter alia*, (a) requested that the Tribunal clarify its position on Respondent’s request regarding Exhibits C-261 and C-262; and (b) stated that “the present dispute has in part become moot due to a settlement in national courts” (the “**Settlement Agreement**”).
88. On 7 October 2016, Claimants provided their response to Respondent’s email of 6 October. In their response, Claimants objected to Respondent’s request to strike Exhibits C-261 and C-262 from the record. Claimants also contested Respondent’s statement regarding the Settlement Agreement. By email of later that day, Respondent requested leave from the Tribunal to submit the Settlement Agreement into the record for discussion at the hearing. The Tribunal invited Claimants to comment on Respondent’s request by 8 October 2016; Claimants subsequently did so, stating that they had no objection to the introduction of the Settlement Agreement into the record.
89. On 8 October 2016, the Tribunal issued Procedural Order No. 26 (“**PO 26**”) addressing procedural matters at the upcoming hearing, as well as Respondent’s request that Exhibits C-261 and C-262 be struck from the record. The Tribunal granted Respondent’s request and instructed Claimants to file a redacted version of their 31 August 2016 answers to Certain Tribunal Questions, without reference to Exhibits C-261 and C-262, by 10 October 2016.
90. On 9 October 2016, the Tribunal granted Respondent’s 6 October 2016 request to introduce the Settlement Agreement into the record. Respondent subsequently filed the Settlement Agreement as Exhibit R-286.

## **E. THE HEARING**

91. A hearing on jurisdiction, merits and quantum was held at the World Bank Headquarters in Washington, D.C. from 10 to 21 October 2016 (the “**Hearing**”). The following individuals attended the Hearing:

### Members of the Tribunal

Prof. Albert Jan van den Berg  
The Hon. Charles N. Brower  
Prof. Vaughan Lowe

### Assistant to the Tribunal

Ms. Emily Hay

### Secretary of the Tribunal

Ms. Lindsay Gastrell

### For Claimants

#### *Counsel*

- Prof. Dr. Kaj Hobér, 3 Verulam Buildings
- Mr. Jakob Ragnwaldh, Mannheimer Swartling Advokatbyrå AB
- Mr. Fredrik Andersson, Mannheimer Swartling Advokatbyrå AB
- Mr. Alexander Foerster, Mannheimer Swartling Advokatbyrå AB
- Mr. Robin Rylander, Mannheimer Swartling Advokatbyrå AB
- Dr. Friederike Strack, Mannheimer Swartling Advokatbyrå AB
- Mr. Brian Kotick, Mannheimer Swartling Advokatbyrå AB
- Dr. Richard Happ, Luther Rechtsanwaltsgesellschaft mbH
- Dr. Katrin Liebner, Luther Rechtsanwaltsgesellschaft mbH
- Mr. Sebastian Wuschka, Luther Rechtsanwaltsgesellschaft mbH
- Ms. Emily Sipiorski, Luther Rechtsanwaltsgesellschaft mbH
- Mr. Nikita Kondrashov, Luther Rechtsanwaltsgesellschaft mbH
- Dr. Ulrich Karpenstein, Redeker Sellner Dahs

#### *Parties*

- Dr. Andreas Metzenthin, Vattenfall GmbH
- Mr. Tim Gansczyk, Vattenfall GmbH
- Mr. Manfred Milde-Büttcher, Vattenfall GmbH
- Ms. Anne Gynnerstedt

#### *Witnesses*

- Mr. Guido Egbers, Vattenfall GmbH
- Dr. Uwe Kleen, (formerly) Vattenfall Europe Nuclear Energy GmbH
- Prof. Bruno Thomauske, Nuclear Safety Engineering GmbH / (formerly) RWTH Aachen University

#### *Experts*

- Dr. Helmut Bläsig, (formerly) Kernkraftwerk Gundremmingen GmbH
- Mr. William Bohlke, Bruce Power

- Dr. Jens Neumann, Areva GmbH
- Prof. Bruno Thomauske, Nuclear Safety Engineering GmbH / (formerly) RWTH Aachen University
- Mr. Robert Charles, Sargent & Lundy, LLC
- Prof. Dr. Uwe Kischel, Ernst-Moritz-Arndt-Universität Greifswald
- Prof. Dr. Hans-Wolfgang Arndt, (formerly) University of Mannheim
- Prof. Dr. Dr. Rudolf Dolzer, University of Bonn
- Prof. Dr. Christoph Schreuer, Zeiler.Partners / (formerly) University of Vienna
- Mr. Brent Kaczmarek (with Mr. Stuart Dekker, Mr. Kiran Sequeira and Ms. Martina Kljenak), Navigant Consulting Inc.
- Mr. Walter Hackel, (formerly) RWE Power AG

#### For Respondent

##### *Counsel*

- Dr. Sabine Konrad, McDermott Will & Emery
- Mr. Arne Fuchs, McDermott Will & Emery
- Ms. Lisa Richman, McDermott Will & Emery
- Mr. Bajar Scharaw, McDermott Will & Emery
- Ms. Katrine Ritto Tvede, McDermott Will & Emery

##### *Parties*

- Mr. Moritz Lumma, Federal Ministry for Economic Affairs and Energy
- Ms. Annette Tiemann, Federal Ministry for Economic Affairs and Energy
- Dr. Anne Kleinschrodt, Federal Ministry for Economic Affairs and Energy
- Dr. Katharina Diel-Gligor, Federal Ministry for Economic Affairs and Energy
- Ms. Juliane Spangenberg, Federal Ministry for Economic Affairs and Energy
- Dr. Siegbert Schneider, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety
- Mr. Lars Beyer, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety
- Mr. Thomas Helling-Junghans, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety
- Mr. Thomas Klippstein, Federal Ministry of Justice
- Mr. Josef Brink, Federal Ministry of Justice
- Mr. Wilhelm Rissmann, Federal Ministry of Finance
- Mr. Cornelius Link, Federal Ministry of Finance
- Mr. Anton Hufnagl, Federal Foreign Office
- Ms. Yvonne Schreiber, Federal Chancellery
- Mr. Benjamin George, Federal Chancellery
- Mr. Achim Zerres, German Federal Network Agency

##### *Witnesses*

- Dr. Wolfgang Cloosters, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety
- Mr. Dirk Wendel (not testifying), Federal Central Tax Office

##### *Experts*

- Ms. Laura Hardin (with Mr. Almir Smajlovic, Mr. Christian Gruschwitz and Mr. Nathan Aguiar), Alvarez & Marsal
- Dr. Robin Cohen, Charles River Associates

- Dr. Eberhard Grauf, SE-Engineering
- Dipl.-Ing. Michael Sailer (with Mr. Gerhard Schmidt), Ökoinstitut
- Mr. Henry Cordes, EWN
- Prof. Wolfgang Ewer, Weißleder & Ewer
- Dr. Oskar Grözing
- Prof. Hans-Jürgen Papier (with Mr. Leonhard Hollander)
- Dipl.-Ing. Klaus-Dieter Bandholz (*not testifying*), ESN Sicherheit und Zertifizierung GmbH

#### Interpreters

- Mr. Stefan Brechtel, M.A., Independent Interpreter
- Ms. Anna Koch, MATI, Independent Interpreter
- Ms. Stephanie Rosenberg, Syntax Sprachen GmbH

#### Court Reporters

- Mr. David Kasdan, B&B Reporters

92. In accordance with the Parties' agreement, video of the Hearing was made publicly available over the internet via delayed livestream; in addition, the Parties subsequently agreed that the videos of the first day and the final day of the Hearing would remain available on the ICSID website following the Hearing.

### **F. POST-HEARING PROCEDURAL MATTERS**

93. By letter of 23 November 2016, Respondent sought leave from the Tribunal under paragraph 13.3 of PO 1 to submit into the record a document containing a report of Claimants' expert Mr. Brent Kaczmarek dated 27 May 2016. Respondent argued that the report had only recently been made publicly available and was relevant to assessing Mr. Kaczmarek's cross-examination at the Hearing.
94. By email of 30 November 2016, Claimants responded to Respondent's 23 November letter, objecting to Respondent's request.
95. On 5 December 2016, the Tribunal issued Procedural Order No. 27 ("**PO 27**") denying Respondent's 23 November request. The Tribunal found that Respondent had neither asserted nor shown the existence of exceptional circumstances as required under paragraph 13.3 of PO 1.

96. By emails of 13 and 14 December 2016, the Parties submitted their proposed corrections to the Hearing transcripts, together with joint and separate comments. A dispute as to the purpose of the transcript corrections had arisen between the Parties. Claimants' position was that the transcript should reflect what the interpreter said, in English, while Respondent argued that the corrections should include corrections to interpretation errors.
97. The Tribunal provided directions to the Parties on this issue by letters of 19 and 27 December 2016. The Tribunal decided that the English transcript should record what was said at the Hearing, in English, via certified interpreters. Therefore, any dispute as to what was said in English would be verified according to the English audio to create the "Final English Transcript." Once the Final English Transcript was finalised, the Parties would then prepare an "Annotated Transcript" with corrections to interpretation errors, since paragraph 19.5 of PO 1 provided that the sound recording in the language used by the relevant speaker shall prevail as the authentic version in the event of a conflict.
98. On 6 and 7 January 2017, the Parties submitted their joint corrections to the transcripts for days 1 to 9 of the Hearing, identifying a limited number of disagreements concerning certain portions of the transcripts. On 9 January 2017, the Tribunal issued Procedural Order No. 28 ("PO 28") concerning the Parties' disputed corrections. The final corrections were entered into the transcripts by the court reporter, and the Final English Transcript was provided to the Parties on 11 January 2017.
99. From 18 to 31 January 2017, the Parties submitted their proposed corrections to interpretation errors, together with schedules of numerous disputed corrections. Upon the Tribunal's proposal, the Parties agreed that a native German speaker, Ms. Niuscha Bassiri of the President's firm Hanotiau & van den Berg, would assist the Tribunal in finalising the corrections to interpretation errors. Ms. Bassiri was appointed as an Assistant for this purpose and provided a declaration of confidentiality and independence to the Parties on 10 February 2017.
100. By letter of 10 February 2017, Respondent sought leave from the Tribunal under paragraph 13.3 of PO 1 to submit into the record three letters dated 27 January 2017 concerning recent transfers of original electricity production volumes ("OEPVs"). By

letter of 16 February 2017, Claimants stated that they did not object to Respondent's request, but sought to comment on the new documents, including by submitting an additional two documents into the record.

101. On 2 March 2017, the Tribunal issued Procedural Order No. 29 ("**PO 29**") wherein it: (i) granted Respondent's 10 February request for leave to submit three letters into the record; (iii) granted Claimants' 16 February request for leave to submit the two additional documents into the record; and (iii) set a revised briefing schedule for the Parties' post-hearing submissions. The Parties were invited to file the additional documents by 6 March 2017.
102. Pursuant to PO 29, on 6 March 2017, Respondent filed the three letters into the record as Exhibits R-287 through R-289. On 7 March 2017, Claimants filed their two additional documents as Exhibits C-264 and C-265.
103. On 13 April 2017, Respondent wrote to the Tribunal regarding Claimants' expert Mr. Brent Kaczmarek. According to Respondent, Mr. Kaczmarek had apparently been excluded from another investment arbitration; Respondent requested that the Tribunal order Mr. Kaczmarek to provide a statement in this regard. The Tribunal invited Claimants to comment on Respondent's request. Claimants provided their response by email of 18 April 2017, together with a letter from Mr. Kaczmarek of the same date. Upon the invitation of the Tribunal, Respondent commented on Mr. Kaczmarek's statement by email of 24 April 2017 but did not request further relief.
104. On 18 April 2017, the Tribunal issued Procedural Order No. 30 ("**PO 30**") in which it confirmed the Parties' agreed corrections to interpretation errors in the Hearing transcripts and provided its decisions on the disputed corrections. The Tribunal also revised the procedural timetable governing the Parties' post-hearing submissions previously determined in PO 29. The Annotated Transcript was finalised on 26 April 2017.
105. The Parties filed their post-hearing submissions on 2 May 2017 ("**C-PHS**" and "**R-PHS**," respectively).

106. By email of 23 May 2017, Respondent sought leave from the Tribunal under paragraph 13.3 of PO 1 to introduce a new document into the record. By email of 30 May 2017, Claimants objected to Respondent's request, stating that the new document was irrelevant. Additional comments were received from Respondent by email of 2 June 2017 and from Claimants by email of 6 June 2017.
107. By letter of 10 June 2017, the Tribunal granted Respondent's 23 May 2017 request to introduce a new document into the record and offered Claimants the opportunity to comment on the document's content. Respondent subsequently submitted the new document into the record as Exhibit R-291, and Claimants provided their comments on 20 June 2017.
108. The Parties filed their reply post-hearing submissions on 14 September 2017 ("C-RPHS" and "R-RPHS," respectively).

**G. PROCEDURE RELATING TO THE GERMAN FEDERAL CONSTITUTIONAL COURT'S JUDGMENTS**

109. In the meantime, the German Federal Constitutional Court, the *Bundesverfassungsgericht* (the "**Constitutional Court**" or "**BVerfG**"), had been considering whether the 13<sup>th</sup> Amendment was compatible with the German constitution, the Basic Law, in the proceedings 1 BvR 321/12, 1 BvR 1456/12 and 1 BvR 2821/11. On 6 December 2016, the Constitutional Court issued its judgment on the matter (the "**Constitutional Court Judgment**"). By letter of 12 December 2016, the Tribunal invited the Parties to: (i) submit a jointly agreed English translation of the Constitutional Court Judgment by 16 January 2017; and (ii) include in their forthcoming post-hearing memorials comments on the relevance, if any, of the Constitutional Court Judgment for the present case. Following exchanges between the Parties, the Parties subsequently agreed that they would await the Court's official translation of the Judgment around the end of January 2017 and then submit it into the record once available.
110. On 31 January 2017, the Constitutional Court released a partial translation of the Judgment. Upon direction of the Tribunal, the Parties exchanged subsequent letters concerning their

attempts to agree on a complete translation. Ultimately, however, no agreement was reached.

111. In the absence of an agreed complete translation by the Parties, on 21 March 2017, the Tribunal invited each Party to submit its own proposed translation of the Constitutional Court Judgment, attested to by a duly certified official translator.
112. On 21 March 2017, Claimants submitted the official partial translation of the Constitutional Court Judgment as Exhibit C-266a and on 24 March 2017, Claimants provided their certified translation of the Judgment as Exhibit C-266b. On 28 March 2017, Respondent provided its certified translation of the Constitutional Court Judgment as Exhibit R-290.
113. By email of 3 April 2017, Claimants objected to Respondent's Exhibit R-290, stating that the individual providing the translation was "not a duly certified official translator." Claimants requested that the Tribunal strike Exhibit R-290 from the record. By email of 7 April 2017, Respondent provided its observations on Claimants' request. The Tribunal subsequently decided not to strike Respondent's translation from the record.
114. On 11 May 2017, the Tribunal provided the Parties with a list of Tribunal Questions Concerning the Constitutional Court Judgment of 6 December 2016 and requested that the Parties submit answers to these questions by 1 June 2017; this deadline was subsequently extended to 15 June 2017. The Parties were offered the opportunity to then respond to the other Party's responses in their reply post-hearing submissions.
115. On 23 May 2017, Respondent requested leave from the Tribunal to submit into the record a document concerning the decommissioning of the Brunsbüttel nuclear power plant. Upon invitation from the Tribunal, Claimants responded by email of 30 May 2017, objecting to the request. Following an additional round of comments from the Parties, the Tribunal on 10 June 2017 granted Respondent leave to file the document, on the condition that Claimants be allowed to comment. On 13 June 2017, Respondent filed the document as Exhibit R-291. Claimants provided their comments by letter of 20 June 2017.
116. On 7 June 2017, the Constitutional Court issued its decision in a separate proceeding concerning the Nuclear Fuel Tax Act (the "**NFT Decision**"). By email of 9 June 2017,

Claimants informed the Tribunal of the NFT Decision and requested leave to introduce the NFT Decision into the record and to provide observations. Claimants also informed the Tribunal that they had ordered a certified translation of the NFT Decision.

117. Upon the Tribunal's invitation, on 14 June 2017 Respondent provided its observations on Claimants' request concerning the NFT Decision. Respondent consented to the introduction of the NFT Decision into the record on the conditions that: (i) Respondent have access to tax data concerning the Brokdorf plant; and (ii) the Parties provide amended expert reports accounting for the NFT Decision. Claimants objected to these conditions by letter of 20 June 2017, and Respondent provided further comments on 28 June 2017.
118. On 15 June 2017, the Parties submitted their Answers to the Tribunal Questions Concerning the Constitutional Court Judgment of 6 December 2016. Claimants submitted Legal Authorities CL-208 through CL-216 with their Answers, and Respondent submitted Legal Authorities RL-134 through RL-136 with its Answers.
119. On 16 June 2017, Claimants filed an application requesting that the Tribunal (i) strike from the record the German court rulings that Respondent had submitted as Legal Authorities RL-134 through RL-136, and (ii) order Respondent to file an amended version of its 15 June 2017 Answers without any reference to those Legal Authorities. Claimants argued that the court rulings constituted factual evidence, which was not permitted to be filed with the Answers. By letter of 21 June 2017, Respondent objected to Claimants' application, and then additional comments were received from the Parties on 20 and 28 June 2017.
120. On 30 June 2017, the Tribunal issued Procedural Order No. 31 ("**PO 31**") addressing: (i) the procedure governing the Parties' observations on the NFT Decision; and (ii) Claimants' application to strike from the record Legal Authorities RL-134 through RL-136 and certain portions of Respondent's 15 June 2017 Answers.
121. With respect to the NFT Decision, the Tribunal: (i) invited Claimants to submit into the record the German original of the NFT Decision; (ii) set a briefing schedule for each Party to submit its own English translation of the NFT Decision and provide observations on the NFT Decision in the form of a written submission and/or an updated report from its

quantum expert; (iii) invited the Parties to respond to the other's observations in their reply post-hearing submissions; and (iv) amended the deadline for the Parties' reply post-hearing submissions.

122. Regarding Claimants' 16 June application, the Tribunal (i) granted Claimants' request that Legal Authorities RL-134 through RL-136 be struck from the record; and (ii) ordered Respondent to file an amended version of its 15 June 2017 Answers, deleting any reference to those Legal Authorities.
123. In accordance with PO 31, on 5 July 2017, Claimants submitted the German original of the NFT Decision as Exhibit C-267a, and Respondent filed the amended version of its 15 June 2017 Answers.
124. Also on 5 July 2017, Respondent objected to the Tribunal's PO 31. First, Respondent argued that the Tribunal's decision to strike Respondent's Legal Authorities was "a serious violation of fundamental rules of procedure within the meaning of Article 52 of the Convention," although Respondent did not request any specific relief in this regard. Second, Respondent objected to the Tribunal's determination that it was not necessary to issue directions regarding Respondent's access to tax information about the Brokdorf plant. Respondent "formally repeat[ed]" its request for an order that Claimants procure consent for Respondent to access information about the Brokdorf plant's NFT payments and repayments.
125. In accordance with PO 31, on 12 July 2017 Claimants submitted their translation of the NFT Decision as Exhibit C-267b, and Respondent submitted its translation as Exhibit R-292.
126. On 14 July 2017, the Tribunal issued Procedural Order No. 32 ("**PO 32**"), directing Claimants to provide certain information regarding repayments made to Brokdorf oHG. In accordance with PO 32, on 21 July 2017, Claimants submitted (i) written confirmation from Brokdorf oHG of the amounts of NFT repayments; and (ii) a letter clarifying Claimants' position on Brokdorf's entitlement to interest payments.

127. By letter of 28 July 2017, Respondent asserted that Claimants' submission of 21 July concerning NFT repayments made to Brokdorf oHG did not comply with PO 32 and requested that the Tribunal order Claimants to provide the amount of interest paid. The Tribunal invited Claimants to provide this information, and Claimants responded on 1 August 2017. However, by email of 4 August 2017, Respondent again requested that the Tribunal compel Claimants to comply with its PO 32.
128. On 7 August 2017, in accordance with PO 31, the Parties filed their Observations on the NFT Decision. Together with their Observations, Claimants filed an Expert Report of Mr. Brent Kaczmarek, and together with its observations, Respondent filed an Expert Report of Ms. Laura Hardin.
129. On 21 August 2017, the Tribunal addressed Respondent's letter of 4 August 2017, ruling Respondent's request moot in light of Claimants' Observations on the NFT Decision. Respondent objected to this ruling on 8 September 2017. In response, the Tribunal asked Respondent to elaborate on certain points so that the Tribunal could better understand the objection. Respondent provided its response to the Tribunal's inquiry on 14 September 2017 but did not make any specific application to the Tribunal.

## **H. FURTHER PROCEDURE**

130. On 29 September 2017, Respondent filed an application requesting that: (i) certain parts of C-RPHS be struck from the record; and (ii) PO 31 be reversed to reinstate the redacted parts of Respondent's amended Answers to Tribunal Questions Concerning the Constitutional Court Judgment of 6 December 2016 and Legal Authorities RL-134 through RL-136. Upon the Tribunal's invitation, Claimants provided a response to Respondent's application on 6 October 2017. Claimants objected to Respondent's request as it related to C-RPHS but agreed to the reinsertion of the redacted parts of Respondent's amended Answers and the corresponding Legal Authorities, provided that Respondent submit full translations of the Legal Authorities.
131. On 16 October 2017, the Tribunal issued Procedural Order No. 33 ("**PO 33**"), ruling on Respondent's 29 September application. In its Order, the Tribunal: (i) granted in part and

denied in part Respondent's request that certain parts of C-RPHS be struck from the record; (ii) denied Respondent's request for reconsideration of PO 31; and (iii) pursuant to the Parties' agreement, invited Respondent to file a version of its Answers to Tribunal Questions Concerning the Constitutional Court Judgment of 6 December 2016 reinstating specific paragraphs, together with Legal Authorities RL-134 through RL-136. The Tribunal also offered Claimants the opportunity to provide more fulsome translations of Legal Authorities RL-134 through RL-136 if they so wished. On 19 October 2017, Respondent submitted the unredacted version of its Answers and the Legal Authorities, and on 27 October 2017, Claimants confirmed that they did not wish to submit more fulsome translations of the Legal Authorities.

132. The Parties filed their submissions on costs on 27 October 2017 ("C-CS" and "R-CS," respectively). Together with its submission, Respondent filed Legal Authorities RL-137 through RL-141.
133. By letter of 19 December 2017, Respondent sought leave from the Tribunal under paragraph 13.3 of PO 1 to introduce into the record three new documents relating to the timing of the decommissioning and dismantling of the Brokdorf plant. By letter of 22 December 2017, Claimants objected to Respondent's request as belated and unsupported by exceptional circumstances. On 29 December 2017, the Tribunal issued Procedural Order No. 34 ("PO 34") denying Respondent's request.
134. By letter of 15 February 2018, Respondent sought leave from the Tribunal under paragraph 13.3 of PO 1 to introduce into the record a 6 February 2018 communication from the Supervisory Authority concerning the Brunsbüttel plant. By letter of 21 February 2018, Claimants objected to Respondent's request on the basis that Respondent had failed to show the existence of any exceptional circumstances to warrant admitting the new document at such a late stage in the proceeding. On 23 February 2018, the Tribunal issued Procedural Order No. 35 ("PO 35") denying Respondent's request.
135. On 10 March 2018, Prof. van den Berg provided the Parties with a disclosure. Subsequently, Respondent requested that Claimants provide certain information relating to the disclosure, and Claimants responded to Respondent's request on 19 March 2018. Based

on this information, Respondent requested additional disclosures from Claimants, and Claimants responded on 30 March 2018.

## **I. PROCEDURE RELATING TO THE *ACHMEA* JUDGMENT**

136. On 6 March 2018, the Court of Justice of the European Union (“**ECJ**”) rendered its judgment in Case C-284/16 *Slowakische Republik v. Achmea BV* (the “***Achmea Judgment***”). By letter of 7 March 2018, the Tribunal invited the Parties to file two rounds of comments on (i) the implications of the *Achmea* Judgment on the current proceeding; and (ii) whether the Tribunal should invite comments from the EC in respect of the *Achmea* Judgment.
137. On 4 April 2018, pursuant to the Tribunal’s invitation, the Parties submitted a first round of comments on the *Achmea* Judgment (“**Claimants’ First Submission re the ECJ Judgment**” and “**Respondent’s First Submission re the ECJ Judgment**,” respectively). Together with their Submission, Claimants submitted Legal Authorities CL-217 and CL-218. In its First Submission, Respondent maintained that the Tribunal had no jurisdiction in the light of the *Achmea* Judgment and requested that all claims pending before this Tribunal be dismissed.
138. In their comments, the Parties disagreed on, *inter alia*, whether the EC should be invited to comment on the *Achmea* Judgment. Claimants objected to the proposal, while Respondent was in favour. Before the Tribunal made any decision on the issue, on 19 April 2018, the EC informed the Tribunal that it would be available to update its Submission of 30 September 2015 in light of the *Achmea* Judgment. The EC proposed to set out its view on the consequences of that Judgment for pending arbitration cases based on the ECT.
139. On 23 April 2018, the Parties submitted their reply comments on the *Achmea* Judgment (“**Claimants’ Second Submission re the ECJ Judgment**” and “**Respondent’s Second Submission re the ECJ Judgment**,” respectively). Claimants submitted Legal Authorities CL-219 through CL-226 with their Second Submission, and Respondent submitted Legal Authority RL-142 with its Second Submission.

140. On 25 April 2018, the Tribunal issued Procedural Order No. 36 (“**PO 36**”), permitting the EC to update its 30 September 2015 Submission, with the scope of the update to be limited to the EC’s view on the consequences of the *Achmea* Judgment for pending arbitration cases based on the ECT. The Tribunal instructed the EC to file its update by 9 May 2018 and invited the Parties to file any observations on the EC’s update within two weeks after its receipt.
141. On 8 May 2018, the EC filed an update to its 30 September 2015 Submission, together with nine supporting documents (the “**EC Update**”). Following a request from Claimants, on 17 May 2018, the Tribunal subsequently extended the deadline for the Parties to file their observations on the EC Update.
142. By letter of 11 May 2018, Respondent sought leave from the Tribunal under paragraph 13.3 of PO 1 to introduce into the record three letters from E.ON (now PreussenElektra) dated 3 May 2018. Upon the Tribunal’s invitation, Claimants provided comments on Respondent’s request by letter of 17 May 2018. On 21 May 2018, the Tribunal issued Procedural Order No. 37 (“**PO 37**”) denying Respondent’s request.
143. By letter of 28 May 2018, Respondent recorded its objection to PO 37, alleging, *inter alia*, that PO 37 constituted a violation of its right to be heard. On 1 June 2018, the Tribunal took note of Respondent’s objection while maintaining that it did “not consider Respondent to have accurately characterised the Tribunal’s decision” and did “not accept Respondent’s contention that [the Tribunal] has pre-judged any issue in this arbitration, or that it has denied Respondent its procedural rights.”
144. On 30 May 2018, pursuant to PO 36 and the Tribunal’s extension of 17 May, the Parties filed their observations on the EC Update. Claimants submitted Legal Authorities CL-227 through CL-240 with their observations, and Respondent submitted Legal Authorities RL-143 and RL-144 with its observations.
145. On 18 July 2018, Respondent sought leave from the Tribunal under paragraph 13.3 of PO 1 to introduce into the record the 16<sup>th</sup> Amendment to the Atomic Energy Act (the “**16<sup>th</sup> Amendment**”), which Respondent alleged implemented the Constitutional Court

Judgment of 6 December 2016. Upon the Tribunal's invitation, Claimants provided comments on Respondent's request by email of 23 July 2018, wherein they agreed to the request provided they be granted the opportunity to comment thereon.

146. By letter of 24 July 2018 transmitted by the Secretary of the Tribunal, the Tribunal (i) invited Respondent to file the 16<sup>th</sup> Amendment, together with an English translation, and any comments it may have on the document by 7 August 2018; and (ii) invited Claimants to file subsequent comments on 21 August 2018. Following exchanges between the Parties, the Tribunal amended the deadline for Respondent's comments to 21 August 2018 and the deadline for Claimants' comments to 18 September 2018.
147. By email of 31 July 2018, Respondent filed a request with the Tribunal seeking the Tribunal's order "to oblige Claimants to request document production in the arbitration and subject to the applicable procedural rules applicable and, as a consequence, to cease attempts to obtain documents through extraneous means." Claimants responded by email of 2 August 2018, requesting that Respondent's request be dismissed.
148. By letter of 8 August 2018 transmitted by the Secretary of the Tribunal, the Tribunal rejected Respondent's request of 31 July, stating that it had not been established that the document request referred to by Respondent had been made in the context and for the purposes of the present arbitration.
149. On 21 August 2018, further to the Tribunal's instructions of 24 July, Respondent filed its comments on the 16<sup>th</sup> Amendment, together with Exhibits R-293 (the 16<sup>th</sup> Amendment with an English translation) and R-294 (an explanatory report).
150. On 31 August 2018, the Tribunal issued its Decision on the *Achmea* Issue (the "***Achmea* Decision**"). In the *Achmea* Decision, the Tribunal: (i) declared that Respondent's jurisdictional objection of 4 April 2018 contained in its First Submission re the ECJ Judgment had been raised in a timely manner; (ii) rejected Respondent's request that all pending claims be dismissed; (iii) reserved all other issues relating to the jurisdiction, admissibility and merits of these arbitral proceedings for subsequent determination by the Tribunal; and (iv) reserved its decision on costs.

**J. PROCEDURE FOLLOWING THE *ACHMEA* DECISION**

151. On 6 September 2018, further to the Tribunal’s instructions of 24 July, Claimants filed their comments on the 16<sup>th</sup> Amendment. By email of 12 September 2018, Respondent requested leave to respond to Claimants’ comments. By email of that same day, the Tribunal invited Respondent to respond by 19 September 2019; Respondent subsequently did so.
152. By letter of 26 October 2018 transmitted by the Secretary of the Tribunal, the Tribunal posed eight questions to the Parties regarding certain issues which may be relevant to the Tribunal’s jurisdiction over the Third, Fourth and Fifth Claimants, as well as with respect to damages (the “**Tribunal Questions**”). The Tribunal invited the Parties to file their answers to the Tribunal Questions by 23 November 2018, and to file reply answers by 21 December 2018.
153. By email of 2 November 2018, Claimants requested clarification as to the scope of new evidence that may be submitted in response to Tribunal Question 8. Following exchanges between the Parties, on 6 November 2018, the Tribunal invited Respondent to submit its comments on Claimants’ email by 12 November 2018.

**K. THE DISQUALIFICATION PROPOSAL**

154. By letter dated 12 November 2018 addressed to the ICSID Secretary-General, Respondent filed a request for the disqualification of the entire Tribunal pursuant to Article 57 of the ICSID Convention and ICSID Arbitration Rule 9, together with supporting documentation (“**Disqualification Proposal**”).
155. By letter of 13 November 2018, the ICSID Secretariat informed the Parties that pursuant to ICSID Arbitration Rule 9(6), the proceeding was suspended pending the Chairman of the ICSID Administrative Council’s decision on the Disqualification Proposal. The letter also set forth a procedural calendar for the Parties’ submissions on the Proposal and the Tribunal Members’ explanations.

156. In accordance with that schedule, on 20 November 2018, Claimants submitted a letter containing their response to the Disqualification Proposal, together with supporting documentation.
157. On 26 November 2018, the ICSID Secretariat transmitted the Tribunal Members' explanations to the Parties.
158. On 28 November 2018, Respondent requested an extension of time to submit its further observations on the Disqualification Proposal. The request was approved, and as a result, the deadline for both Parties' further observations was extended from 4 December to 11 December 2018.
159. By email of 11 December 2018, Claimants stated that they agreed with and adopted the observations of the explanations provided by the Members of the Tribunal and had no further comments on the Disqualification Proposal.
160. Also on 11 December 2018, Respondent submitted a letter containing its further observations on the Disqualification Proposal, together with supporting documentation.
161. By emails of 17 and 21 January 2019, Respondent (i) objected "to the Secretary General or another member of the ICSID Secretariat being involved in the process of deciding the [Disqualification Proposal];" and (ii) maintained that the decision on the Disqualification Proposal should be referred to the Permanent Court of Arbitration (the "PCA"). Following comments from Claimants received by emails of 20 and 23 January 2019, on 23 January 2019, the ICSID Secretariat informed the Parties that it would request a recommendation on the Disqualification Proposal from the Secretary-General of the PCA.
162. By letter of 24 January 2019, the ICSID Secretariat wrote to the PCA Secretary-General inquiring whether he would be willing and available to make a recommendation on the Disqualification Proposal to the Chairman of the ICSID Administrative Council. Confirmation from the PCA Secretary-General was received by letter of 28 January 2019.

163. On 28 January 2019, the ICSID Secretariat transmitted to the PCA Secretary-General the Parties' submissions and Tribunal Members' explanations concerning the Disqualification Proposal.
164. By email of 30 January 2019, Respondent requested that certain of the Parties' pleadings be provided to the PCA Secretary-General; these documents were transmitted by the ICSID Secretariat to the PCA Secretary-General that same day.
165. On 4 March 2019, the PCA Secretary-General transmitted to ICSID his Recommendation Pursuant to the Request by ICSID dated 24 January 2019 on Respondent's Proposal to Disqualify all Members of the Arbitral Tribunal dated 12 November 2018 (the "**PCA Recommendation**").
166. On 6 March 2019, the Acting Chairman of the ICSID Administrative Council issued her Decision on the Proposal to Disqualify the Members of the Tribunal ("**Disqualification Decision**"), which was transmitted to the Parties together with the PCA Recommendation. The Disqualification Decision rejected Respondent's Disqualification Proposal.
167. By letter of 6 March 2019, the Secretary of the Tribunal informed the Parties that the proceeding had resumed as of that date, in accordance with ICSID Arbitration Rule 9(6).

**L. PROCEDURE RELATING TO DAMAGES**

168. On 7 March 2019, the Tribunal invited Respondent to comment, by 14 March 2019, on Claimants' inquiry of 2 November 2018 concerning the scope of new evidence that may be submitted in response to Tribunal Question 8.
169. By letter of 14 March 2019, Respondent submitted its response in relation to Claimants' inquiry on the type of evidence to be submitted in response to Tribunal Question 8. Respondent asserted, *inter alia*, that the Tribunal's request would require a complete update of its quantum evidence that would take at least six months; Respondent also reserved its right to request a hearing on quantum.
170. By letter of 15 March 2019 transmitted by the Secretary of the Tribunal, the Tribunal requested the Parties to provide their respective positions regarding damages and

confirmed that the Parties should include any documentary and expert evidence they consider necessary for their responses. The Tribunal also set forth a procedural calendar for the Parties' submissions, proposing to split the submissions between Tribunal Questions 1-7 and Tribunal Question 8.

171. By letter of 18 March 2019, Claimants, *inter alia*, proposed an alternative procedural calendar in which they would file their answers to both Tribunal Questions 1-7 and Tribunal Question 8 by 22 March 2019. Upon invitation from the Tribunal, Respondent provided its comments on Claimants' letter on 21 March 2019.
172. On 22 March 2019, the Tribunal invited Claimants to file their answers to the Tribunal Questions that day; it also directed that Respondent should review Claimants' submissions and inform the Tribunal as soon as possible how much it would require to respond to (i) Tribunal Questions 1-7 and (ii) Tribunal Question 8.
173. Further to the Tribunal's instructions, later on 22 March 2019, Claimants filed Responses to the Arbitral Tribunal's Question for the Parties on Jurisdiction and Quantum ("**Claimants' Answers to Tribunal Questions**"), with the following supporting documents: Legal Authorities CL-241 through CL-252; and Expert Report of Mr. Brent Kaczmarek with Exhibits IAV-001 through IAV-005.
174. By letter of 27 March 2019, Respondent informed the Tribunal of its position regarding the procedural calendar and asked the Tribunal to provisionally reserve hearing dates in case a hearing be necessary. On that same date, Claimants requested leave to comment on Respondent's letter, which was subsequently granted by the Tribunal; Claimants responded by email of 29 March 2019.
175. Later on 29 March 2019, the Tribunal invited Respondent to comment on Claimants' email of earlier that date concerning the procedural calendar. Respondent's comments were received by email on 1 April 2019.
176. By letter of 11 April 2019 transmitted by the Secretary of the Tribunal, the Tribunal issued an amended procedural calendar concerning the Parties' answers to the Tribunal Questions, providing for: (i) Respondent's submission on Tribunal Questions 1-7; (ii) the Parties'

simultaneous reply submissions on Tribunal Questions 1-7; (iii) Respondent's submission on Tribunal Question 8; (iv) Claimants' reply on Tribunal Question 8; and (v) Respondent's rejoinder on Tribunal Question 8. The Tribunal also inquired as to the Parties' availability to hold a hearing in February–March 2020.

177. On 18 April 2019, each Party responded regarding its availability for a hearing, with Respondent stating that it was unavailable during the proposed dates. In their response, Claimants also requested an extension to the deadline for their reply on Tribunal Question 8.
178. On 19 April 2019, the Tribunal wrote to the Parties stating that, mindful of its duty to conduct the proceedings as efficiently and expeditiously as possible, the Tribunal was “of the view that the remaining issues in these proceedings should be bifurcated between (i) jurisdiction and liability, and (ii) quantum, if any.” The Tribunal further stated that, following receipt of the Parties' submissions on Tribunal Questions 1-7, “the Tribunal intends to issue a decision or award with respect to the remaining issues of jurisdiction and liability, if any. In the event of a finding of liability, a schedule for further submissions on quantum will be determined thereafter.” The Tribunal invited the Parties' comments on this approach by 26 April 2019.
179. By emails of 26 April 2019, the Parties' responded to the Tribunal's message of 19 April. Claimants indicated their acceptance of the Tribunal's proposed approach, while Respondent “strongly object[ed].”
180. On 30 April 2019, Respondent submitted its Responses Answering Tribunal Questions 1-7 of 26 October 2018 (“**Respondent's Answers to Tribunal Questions 1-7**”), with an Annex and Legal Authorities RL-145 through RL-155.
181. By letter of 6 May 2019 transmitted by the Secretary of the Tribunal, the Tribunal stated that upon further reflection, it had “concluded that bifurcation may not be appropriate in this case ... although the Tribunal is concerned by any further delay in these proceedings, the Tribunal has decided not to bifurcate and maintains the previous procedural calendar

issued on 11 April 2019.” The Tribunal also granted Claimants’ 18 April request for an extension and issued an amended procedural calendar.

182. By letter of 7 May 2019, Claimants wrote to the Tribunal proposing that: (i) their own submissions of 22 March 2019 concerning Tribunal Question 8 be stricken from the record; (ii) no further submissions be made on Tribunal Question 8; and (iii) the Tribunal, following the second round of answers to Tribunal Questions 1-7, decide the case on the basis of the record as it stood before Question 8 was raised. The Tribunal subsequently invited Respondent to comment on Claimants’ letter by 15 May 2019.
183. On 10 May 2019, Respondent wrote to the Tribunal to request an extension of the deadline for its rejoinder on Tribunal Question 8. Upon invitation from the Tribunal to comment on this request, Claimants stated their opposition on 28 May 2019.
184. By letter of 15 May 2019, Respondent stated its opposition to the proposals contained in Claimants’ 7 May letter.
185. Following exchanges between the Parties, on 20 May 2019, the Tribunal informed the Parties that it had reserved dates in June 2020 for a potential hearing on the Parties’ submissions on Tribunal Question 8, to be held in Washington, D.C.
186. On 22 May 2019, the Tribunal informed the Parties that it did not consider it appropriate to strike Tribunal Question 8 (and Claimants’ submission on Tribunal Question 8) from the record, thereby denying Claimants’ 7 May proposals.
187. On 3 June 2019, the Tribunal issued an amended procedural calendar, taking into account Respondent’s request for an extension of 10 May.
188. Pursuant to the amended procedural calendar, on 12 June 2019, the Parties filed their simultaneous reply submissions on Tribunal Questions 1-7 (“**Claimants’ Reply Answers to Tribunal Questions 1-7**” and “**Respondent’s Reply Answers to Tribunal Questions 1-7,**” respectively). With their Reply Answers, Claimants submitted Legal Authorities CL-253 through CL-259; with its Reply Answers, Respondent submitted Legal Authorities RL-156 through RL-162.

189. On 20 June 2019, Claimants informed the Tribunal of a domestic litigation between E.ON (now PreussenElektra) and Krummel oHG, and a related settlement, which might affect Claimants' claims in relation to OEPV. Upon invitation from the Tribunal, Respondent provided its comments by letter of 3 July 2019, wherein it voiced certain expectations about the content of E.ON's written submissions to the Hamburg Court, based on information that Respondent's counsel allegedly learned during a Court hearing on 13 June 2019. Respondent's letter further requested an order from the Tribunal directing Claimants to submit the full settlement agreement and certain court files. Alternatively, Respondent asked the Tribunal to write to the Hamburg Court to request access to those files.
190. On 4 July 2019, Claimants requested leave from the Tribunal to comment on Respondent's letter of the previous date. The request was subsequently granted by the Tribunal and Claimants responded by letter of 12 July 2019. In their letter, Claimants, *inter alia*, opposed Respondent's request for the full settlement agreement and certain court files. Also in their letter, Claimants informed the Tribunal that Krümmel oHG had sold OEPV to E.ON (now PreussenElektra) and requested leave to submit an updated damages calculation reflecting the payment (the "**First Offset Implementation**").
191. Following an invitation from the Tribunal, by letter of 29 July 2019, Respondent responded to Claimants' 12 July letter, wherein it requested an extension of the deadline for its submission on Tribunal Question 8, as well as several requests for relief. Together with its letter, Respondent submitted Legal Authorities RL-163 and RL-164. On 30 July 2019, the Tribunal invited Claimants' comments on Respondent's letter; Claimants did so by letter of 6 August 2019.
192. On 13 August 2019, the Tribunal wrote to the Parties to convey the following: (i) Claimants should submit an updated damages calculation by 25 August 2019; (ii) Respondent's request for an extension of the deadline for its submission on Tribunal Question 8 is considered premature; and (iii) the Parties are invited to submit an additional round of submissions on Respondent's requests for relief contained in its 29 July letter.
193. Further to the Tribunal's instructions of 13 August, by letter of 20 August 2019, Respondent made its additional submission on its requests for relief of 29 July and included

Legal Authorities RL-165 and RL-166. Respondent's letter also included several new requests for relief. On 21 August 2019, the Tribunal instructed Claimants that its additional submission should include a response to Respondent's new requests.

194. On 23 August 2019, Claimants filed their First Offset Implementation in the form of an Expert Report of Mr. Brent Kaczmarek, together with Annexes A and B, Appendix X, and Exhibits IAV-006 and IAV-007.
195. By letter of 27 August 2019, Claimants made their additional submission on Respondent's requests for relief of 29 July and responded to Respondent's new requests for relief of 20 August.
196. On 28 August 2019, Respondent wrote to the Tribunal to again request an extension of the deadline for its submission on Tribunal Question 8. In its letter, Respondent also informed the Tribunal that the Hamburg Court was scheduled to issue its judgment in a case between E.ON (now PreussenElektra) and Vattenfall the following day. On that same day, the Tribunal invited Claimants to comment on Respondent's letter; Claimants' response was received on 3 September 2019.
197. On 4 September 2019, Respondent requested leave from the Tribunal to address the Hamburg Court's 29 August decision in the proceedings between E.ON (now PreussenElektra) and certain Claimants (the "**Hamburg Court Decision**"). On that same day, the Tribunal invited Claimants to comment on Respondent's request; Claimants' response was received on 6 September 2019.
198. On 5 September 2019, the Tribunal issued Procedural Order No. 38 ("**PO 38**") concerning Respondent's 29 July and 20 August requests for relief. The Tribunal granted Respondent's requests in part, ordering, *inter alia*: (i) Claimants shall produce to Respondent their own written submissions filed with the Regional Court of Hamburg in relation to 310 O 411/18 (main proceedings) and 310 O 171/19 (proceedings on interim relief) by 12 September 2019 (the "**Hamburg Court Documents**"); and (ii) Claimants shall inform Respondent and the Tribunal of any future settlement with E.ON (now PreussenElektra) concerning the sale of OEPV as soon as possible after such settlement is concluded.

199. Also in PO 38, the Tribunal noted that certain of the Parties' communications had contained "a series of very serious accusations of conspiracy, manipulation of the arbitration proceedings, bad faith conduct, and other activities" ("**Bad Faith Allegations**"). As such, the Tribunal stated that if either Party wished to maintain any such allegations on the basis of conduct and events of which it was or should have been aware, it was requested to give notice of that intention in writing to the Tribunal by 12 September 2019, and to make a fully particularised submission with supporting evidence and request for relief by 3 October 2019.
200. On 10 September 2019, Claimants wrote to the Tribunal to request an extension of the deadline contemplated in PO 38 to produce their written submissions filed with the Hamburg Court. On that same day, the Tribunal invited Respondent to comment on Claimants' request; Respondent's response was received by letter of 11 September 2019. In its response, Respondent also advanced certain requests in relation to PO 38, provided notice that it reserved its right to make a submission regarding the Bad Faith Allegations, and requested that the deadline for that submission be extended to 13 November 2019.
201. Later on 11 September 2019, the Tribunal wrote to the Parties to convey the following: (i) Respondent's 4 September request for leave to address the Hamburg Court Decision was granted and Respondent should submit its comments by the next day; (ii) Claimants' 9 September 2019 request for an extension was granted with the new deadline fixed for 19 September 2019; and (iii) Claimants were invited to comment on Respondent's 11 September letter by 17 September 2019.
202. On 12 September 2019, Respondent submitted its comments on the Hamburg Court Decision and requested that the Tribunal order Claimants to disclose whether they have entered into new negotiations with E.ON (now PreussenElektra), and "to provide the Tribunal and Respondent with regular status updates about these negotiations." On 13 September 2019, the Tribunal invited Claimants' comments by 17 September 2019.
203. By letter of 17 September 2019, Claimants responded to Respondent's 11 and 12 September letters.

204. On 24 September 2019, the Tribunal issued Procedural Order No. 39 (“**PO 39**”), addressing Respondent’s requests in relation to PO 38 made in its 11 September letter. In PO 39, the Tribunal: (i) directed Respondent to notify the Tribunal of its intent to make a submission on the Bad Faith Allegations by 1 October 2019; (ii) set the filing deadline for such a submission at 6 November 2019; and (iii) granted Respondent leave to file a witness statement concerning the 13 June oral hearing before the Hamburg Court (see above paragraph 189) by 6 November 2019.
205. On 1 October 2019, pursuant to PO 39, Respondent notified the Tribunal of its intent to file a submission on the Bad Faith Allegations.
206. On 23 October 2019, Respondent filed its response to Tribunal Question 8 (“**Respondent’s Answer to Tribunal Question 8**”), with the following supporting documents: Exhibits R-295 through R-303; Legal Authorities RL-165 through RL-170; Expert Report of Dr. Robin Cohen with Exhibits RC-124 through RC-168; Expert Report of Dipl.-Ing. Michael Sailer with Exhibits SA-068 and SA-069; Expert Report of Ms. Laura Hardin with Exhibits LH-203 through LH-225; and Expert Report of Dr.-Ing. Eberhard Grauf with Exhibits GRAUF-069 through GRAUF-079.
207. On 31 October 2019, Claimants informed the Tribunal that in the course of the next week they planned to file a request to have significant parts of Respondent’s Answer to Tribunal Question 8 stricken from the record.
208. On 6 November 2019, Respondent filed its submission regarding the Bad Faith Allegations pursuant to PO 38 (“**Respondent’s Submission on Alleged Bad Faith**”), together with Legal Authorities RL-171 and RL-172. In its Submission, Respondent alleged that Claimants, their counsel, and several of their experts “have shown numerous instances of bad faith and of conduct violating the high standards of investment arbitration.”
209. On 7 November 2019, the Tribunal invited Claimants to respond to Respondent’s Submission on Alleged Bad Faith by 14 November 2019. By email of 8 November 2019, Claimants requested that this deadline be extended to 27 December 2019. Upon invitation from the Tribunal, Respondent commented on Claimants’ request by email of

13 November 2019, wherein it consented to the extension, on the condition that it reserved the right to request leave to file a reply submission.

210. On 14 November 2019, the Tribunal informed the Parties that Claimants' response to Respondent's Submission on Alleged Bad Faith would be due on 27 December 2019, and Respondent may request, by 10 January 2020, leave to file a reply, provided that Claimants would have an opportunity to submit a rejoinder if leave were granted to Respondent.
211. Also on 14 November 2019, Claimants filed their request to strike significant parts of Respondent's Answer to Tribunal Question 8 from the record, as well as significant portions of the Expert Report of Ms. Laura Hardin, and the Expert Reports of Dr. Robin Cohen, Dipl.-Ing. Michael Sailer, and Dr.-Ing. Eberhard Grauf in their entirety ("**Claimants' Application to Strike**"). Upon invitation from the Tribunal, Respondent filed a response to Claimants' Application on 22 November 2019, together with Legal Authorities RL-173 and RL-174.
212. On 2 December 2019, Claimants wrote to the Tribunal to request the suspension of the deadlines for their reply on Tribunal Question 8 and their response to Respondent's Submission on Alleged Bad Faith, stating that they would request new deadlines following the Tribunal's decision on Claimants' Application to Strike. By email of 3 December 2019, Respondent objected to Claimants' request to suspend the deadline for their reply on Tribunal Question 8.
213. On 3 December 2019, the Tribunal issued Procedural Order No. 40 ("**PO 40**") dismissing Claimants' Application to Strike. Following the issuance of PO 40, on that same date the Tribunal invited Claimants to update their communication of 2 December, as needed, by 4 December 2019, with Respondent to then respond by 6 December 2019.
214. Further to the Tribunal's instructions, on 4 December 2019, Claimants proposed the following filing deadlines: 6 February 2020 for Claimants' reply on Tribunal Question 8; 20 February 2020 for Claimants' response to Respondent's Submission on Alleged Bad Faith; and 6 April 2020 for Respondent's rejoinder on Tribunal Question 8. Respondent responded by letter of 6 December 2019, wherein it, *inter alia*: (i) objected to Claimants'

request for an extension of time to file its response to Respondent's Submission on Alleged Bad Faith; (ii) did not object to Claimants' proposed deadline for their reply on Tribunal Question 8; and (iii) requested until 22 March 2020 to submit its rejoinder on Tribunal Question 8. Also in its letter, Respondent suggested alternative dates for a potential hearing.

215. Following a further round of exchanges between the Parties, by letter of 13 December 2019 sent by the Secretary of the Tribunal, the Tribunal amended the procedural calendar, setting forth the following deadlines: 15 January 2020 for Claimants' reply on Tribunal Question 8; 29 January 2020 for Claimants' response to Respondent's Alleged Bad Faith Submission; and 8 April 2020 for Respondent's rejoinder on Tribunal Question 8. The Tribunal also inquired as to the Parties' availability for a potential hearing in June 2020; both Parties confirmed their availability by communications of 20 December 2019. In its message of 20 December, Respondent also requested an extension of the deadline for its rejoinder on Tribunal Question 8 to 22 May 2020. Upon invitation from the Tribunal, Claimants wrote on 31 December 2019 objecting to Respondent's request for extension but stating that they could accept that each Party be provided one additional week for the remaining submissions only.
216. By letter of 23 December 2019, Respondent informed the Tribunal that it intended to use the Hamburg Court Documents produced by Claimants as directed in PO 38 in domestic proceedings. Respondent argued that it did not need the Tribunal's permission to disclose the Documents, but in the alternative sought leave to do so, citing Article 3(13) of the IBA Rules as the legal basis for its request. Upon invitation from the Tribunal, Claimants by letter of 31 December 2019 stated that the Hamburg Court Documents "shall be kept confidential" and that Respondent may use them "only in connection with the arbitration;" as such, Claimants argued that Respondent's 23 December request be rejected. On that same date, the Tribunal invited Respondent to comment on Claimants' letter by 7 January 2020.
217. Later on 31 December 2019, the Tribunal informed the Parties that it had amended the procedural calendar, setting forth the following deadlines: 22 January 2020 for Claimants'

reply on Tribunal Question 8; 5 February 2020 for Claimants' response to Respondent's Alleged Bad Faith Submission; and 22 April 2020 for Respondent's rejoinder on Tribunal Question 8.

218. On 3 January 2020, Respondent wrote to the Tribunal to request an extension of time to respond to Claimants' 31 December letter regarding the Hamburg Court Documents. On 4 January 2020, the Tribunal informed the Parties that Respondent's request for extension was denied. Respondent subsequently provided its response by letter of 7 January 2020.
219. On 11 January 2020, the Tribunal issued Procedural Order No. 41 ("**PO 41**") concerning Respondent's 23 December request regarding the Hamburg Court Documents. The Tribunal denied Respondent's request, finding that Respondent "had not shown that its intended disclosure of the Hamburg Court Documents is permitted under Article 3(13) of the IBA Rules."
220. In accordance with the amended procedural calendar, on 22 January 2020, Claimants filed their reply submission on Tribunal Question 8 ("**Claimants' Reply on Tribunal Question 8**"), with the following supporting documents: Expert Report of Mr. Brent Kaczmarek with Exhibits IAV-008 through IAV-035; Expert Report of Dr. Helmut Bläsing and Mr. William Bohlke with Exhibit BB-019; Expert Report of Dr. Jens Neumann (Cover Report and Main Report); Expert Report of Prof. Bruno Thomauske with Exhibits T-039 and T-040; and Witness Statement of Dr. Uwe Kleen.
221. On 31 January 2020, Respondent wrote to the Tribunal requesting: (i) an extension until 19 June 2020 to submit its reply on Tribunal Question 8; (ii) the rescheduling of the potential hearing; and (iii) the reservation of eight hearing days. Upon invitation from the Tribunal, Claimants responded by letter of 4 February 2020, in which they opposed all of Respondent's requests.
222. On 5 February 2020, Claimants filed their response to Respondent's Submission on Alleged Bad Faith ("**Claimants' Response on Alleged Bad Faith**").
223. On 6 February 2020, the Tribunal issued Procedural Order No. 42 ("**PO 42**") concerning Respondent's requests of 31 January, wherein it denied the requests.

224. By email of 7 February 2020, Claimants informed the Tribunal that Krümmel oHG had received proceeds from a sale of 6 TWh of OEPV and they requested leave to introduce a “simple claim reduction” (the “**Second Offset Implementation**”). On 8 February 2020, the Tribunal invited Respondent to comment on Claimants’ request. Respondent commented by letter of 11 February 2020, wherein it did not object to the claim reduction, but also made various allegations and requests regarding the sale of Claimants’ residual electricity production volumes.
225. By letter of 13 February 2020 transmitted by the Secretary of the Tribunal, the Tribunal, *inter alia*, granted Claimants leave to introduce a claim reduction by 17 February 2020. The Tribunal also instructed that certain of Respondent’s requests regarding the sale of Claimants’ residual electricity production volumes should be treated as a document production requests and invited Claimants to submit a response on that basis by 17 February 2020.
226. On 14 February 2020, Respondent wrote to the Tribunal requesting clarification regarding a statement about the burden of proof in the Tribunal’s instructions of the previous date. Upon invitation from the Tribunal, Claimants responded by letter of 17 February 2020, requesting that Respondent’s request be denied.
227. Also on 17 February 2020, Claimants (i) filed their Second Offset Implementation in the form of an Expert Report of Mr. Brent Kaczmarek, together with Annexes A and B, Appendix X (updated), and Exhibits IAV-036 and IAV-037; and (ii) provided a response to Respondent’s requests regarding the sale of Claimants’ residual electricity production volumes.
228. By letter of 20 February 2020 transmitted by the Secretary of the Tribunal, the Tribunal, *inter alia*, denied Respondent’s 14 February request regarding the burden of proof.
229. By email of 21 February 2020, Claimants informed the Tribunal that Krümmel oHG had received proceeds from a sale of 5 TWh of OEPV and they requested leave to introduce an additional claim reduction (the “**Third Offset Implementation**”). Upon invitation from the Tribunal, Respondent responded by letter of 25 February 2020. In its letter, Respondent

did not object to the introduction of an additional claim reduction; in addition, Respondent also sought from the Tribunal disclosure of one document and information concerning Claimants' negotiations for the sale of OEPV. The Tribunal invited Claimants to comment on Respondent's requests by 27 February 2020.

230. On 25 February 2020, Claimants disclosed the document requested by Respondent in its 25 February letter and requested that Respondent's request for information concerning Claimants' negotiations for the sale of OEPV be denied.
231. By letter of 2 March 2020 transmitted by the Secretary of the Tribunal, the Tribunal, *inter alia*, granted Claimants leave to introduce an additional claim reduction by 4 March 2020. The Tribunal also denied Respondent's 25 February request for information concerning Claimants' negotiations for the sale of OEPV.
232. By letter of 4 March 2020, Respondent wrote to the Tribunal requesting confirmation that pursuant to PO 38, "Claimants must inform the Tribunal of any contracts for the sale of OEPV concluded with E.ON, not only the transfer of and payment for OEPV." On that same day, the Tribunal invited Claimants to comment on Respondent's letter by 9 March 2020.
233. Later on 4 March 2020, Claimants filed their Third Offset Implementation in the form of an Expert Report of Mr. Brent Kaczmarek, together with Annexes A and B, Appendix X (updated), and Exhibit IAV-038.
234. By email of 6 March 2020, Respondent wrote to the Tribunal concerning the fact that Claimants' offset implementations had been performed on Claimants' claim with a valuation date of 14 March 2011, which Respondent alleged ignores the "valuation date set under Tribunal Question 8 in [Claimants'] Offset Implementations." On that same day, the Tribunal invited Claimants to comment on Respondent's email by 10 March 2020.
235. By letter of 9 March 2020, Claimants responded to Respondent's 4 March letter regarding the sale of OEPV concluded with E.ON (now PreussenElektra).

236. By email of 10 March 2020, Claimants responded to Respondent's 6 March email regarding the valuation date.
237. By letter of 12 March 2020 transmitted by the Secretary of the Tribunal, the Tribunal confirmed Respondent's understanding of PO 38 set forth in its 4 March letter, namely that Claimants should "disclose when an agreement to sell the OEPV has been concluded, even if the actual transfers (and any corresponding offset to Claimants' damages claim) remain hypothetical or scheduled for the future."
238. On 17 March 2020, the Tribunal wrote to the Parties to inquire about making contingencies for holding the June 2020 potential hearing by video conference in light of the global pandemic. Each Party responded by letter of 23 March 2020, with Claimants in favour of such arrangements and Respondent stating its objection.
239. By letter of 27 March 2020, Respondent wrote to the Tribunal regarding Judge Brower's Concurring and Dissenting Opinion in the case *The PV Investors v. Kingdom of Spain* (PCA Case No. 2012-14) ("***The PV Investors Opinion***") and posed a series of questions to Judge Brower.
240. By letter of 30 March 2020 transmitted by the Secretary of the Tribunal, the Tribunal informed the Parties that the June 2020 potential hearing would be held by video conference.
241. Also on 30 March 2020, the Secretary of Tribunal transmitted to the Parties a message from Judge Brower responding to Respondent's 27 March letter regarding *The PV Investors Opinion*.
242. By letter of 3 April 2020, Respondent wrote again to the Tribunal regarding *The PV Investors Opinion* and reiterated its questions of 27 March, this time posing them to the entire Tribunal. On 5 April 2020, the Tribunal invited Claimants to comment on Respondent's letter by 8 April 2020.
243. By letter of 7 April 2020, Respondent wrote to the Tribunal requesting an extension of the deadline for its rejoinder on Tribunal Question 8 and for the postponement of the June 2020

potential hearing. Later that day, the Tribunal invited Claimants to comment on Respondent's letter by 10 April 2020.

244. By email of 8 April 2020, Claimants submitted their comments on Respondent's 3 April letter regarding *The PV Investors* Opinion.
245. Later on 8 April 2020, by letter transmitted by the Secretary of the Tribunal, the Tribunal addressed *The PV Investors* Opinion, noting that the Opinion, together with the underlying award in that case, had only been made public in March 2020. As such, the Tribunal granted the Parties leave to submit simultaneous comments on *The PV Investors v. Spain* matter by 15 April 2020 and reply comments by 22 April 2020.
246. By email of 9 April 2020, Respondent wrote to the Tribunal to request that the deadlines for the Parties' comments on *The PV Investors v. Spain* be extended. Later that day, the Tribunal invited Claimants to comment on Respondent's letter by 10 April 2020.
247. Further to the Tribunal's instructions, by letter of 10 April 2020, Claimants (i) commented on Respondent's 7 April letter, opposing the postponement of the June 2020 potential hearing; and (ii) commented on Respondent's 9 April letter, opposing the extension of the deadlines for comments on *The PV Investors v. Spain*.
248. By letter of 13 April 2020 transmitted by the Secretary of the Tribunal, the Tribunal informed the Parties that the deadline for comments on *The PV Investors v. Spain* would be 29 April 2020 and reply comments would be due by 6 May 2020. The Tribunal also clarified that it did not make any further amendments to the procedural calendar and the dates reserved for a potential hearing would be maintained.

#### **M. THE SECOND DISQUALIFICATION PROPOSAL**

249. On 16 April 2020, Respondent submitted to the ICSID Secretary-General a second request for the disqualification of the entire Tribunal pursuant to Article 57 of the ICSID Convention and ICSID Arbitration Rule 9, together with supporting documentation ("**Second Disqualification Proposal**"). In the Proposal, Respondent, *inter alia*, requested that the ICSID Secretariat again refer to the PCA for a recommendation.

250. By email of 17 April 2020, Claimants wrote to the ICSID Secretary-General objecting to Respondent's request. Respondent responded by email of that same date.
251. Later on 17 April 2020, the ICSID Secretary-General informed the Parties that pursuant to ICSID Arbitration Rule 9(6), the proceeding was suspended pending the Chairman of the ICSID Administrative Council's decision on the Second Disqualification Proposal. Her letter took note of the Parties' correspondence of earlier that date and set forth a procedural calendar for the Parties' submissions on the Proposal and the Tribunal Members' explanations. The ICSID Secretary-General also confirmed that the Chairman would again seek a recommendation from the PCA Secretary-General.
252. In accordance with the procedural calendar, on 24 April 2020, Claimants submitted a letter containing their response to the Second Disqualification Proposal.
253. On 1 May 2020, the ICSID Secretariat transmitted the Tribunal Members' explanations to the Parties.
254. By email of 8 May 2020, Claimants stated that they had no further comments on the Second Disqualification Proposal.
255. Also on 8 May 2020, Respondent submitted a letter containing its further observations on the Disqualification Proposal, together with supporting documentation.
256. The ICSID Secretariat wrote to the PCA Secretary-General inquiring whether he would be willing and available to make a recommendation on the Disqualification Proposal to the Chairman of the ICSID Administrative Council. Confirmation from the PCA Secretary-General was received by letter of 11 May 2020.
257. Later on 11 May 2020, the ICSID Secretariat transmitted to the PCA Secretary-General the Parties' submissions and Tribunal Members' explanations concerning the Disqualification Proposal.
258. Following exchanges between the Parties, the ICSID Secretary-General invited the Parties to file any final comments on the Second Disqualification Proposal by 19 May 2020; each Party subsequently did so.

259. By email of 12 June 2020, Respondent wrote to the ICSID Secretariat informing that it had earlier that day obtained a copy of the Decision on Annulment issued in *Eiser Infrastructure Limited and Energia Solar Luxembourg S.à r.l. v. Kingdom of Spain* (ICSID Case No. ARB/13/36) on 11 June 2020 (the “**Eiser Decision**”). Respondent therefore requested that: (i) Claimants be provided with a copy of the *Eiser* Decision; (ii) both Parties receive leave for simultaneous comments on the Decision; and (iii) the PCA Secretary-General not render his recommendation before having received a chance to review the *Eiser* Decision and the Parties’ comments. Later on 12 June 2020, the ICSID Secretariat invited Claimants to comment on Respondent’s email and confirmed that it would notify the PCA Secretary-General that his recommendation should not be issued for the time being.
260. By email of 15 June 2020, Claimants responded to Respondent’s 12 June email.
261. On 16 June 2020, the ICSID Secretariat invited the Parties to provide simultaneous comments on the *Eiser* Decision by 22 June 2020; the Parties subsequently did so.
262. On 6 July 2020, the PCA Secretary-General transmitted to ICSID his Recommendation Pursuant to the Request by ICSID dated 8 May 2020 on Respondent’s Proposal to Disqualify all Members of the Arbitral Tribunal dated 16 April 2020 (the “**Second PCA Recommendation**”).
263. On 8 July 2020, the Chairman of the ICSID Administrative Council issued his Decision on the Proposal to Disqualify the Members of the Tribunal (the “**Second Disqualification Decision**”), which was transmitted to the Parties together with the Second PCA Recommendation. The Second Disqualification Decision rejected Respondent’s Second Disqualification Proposal.
264. By letter of 8 July 2020, the Secretary of the Tribunal informed the Parties that the proceeding had resumed as of that date, in accordance with ICSID Arbitration Rule 9(6).

**N. FURTHER PROCEDURE RELATING TO DAMAGES**

265. By email of 8 July 2020, Respondent wrote to the Tribunal requesting confirmation of the upcoming deadlines. Upon invitation from the Tribunal, Claimants commented on the procedural calendar by email of 9 July 2020.
266. By letter of 9 July 2020 transmitted by the Secretary of the Tribunal, the Tribunal informed the Parties of the following deadlines in the procedural calendar: Respondent's rejoinder on Tribunal Question 8 by 14 July 2020; request for an oral hearing by 21 July 2020; simultaneous comments on *The PV Investors v. Spain* by 21 July 2020; and simultaneous reply comments on *The PV Investors v. Spain* by 28 July 2020. The Tribunal also inquired as to the Parties' availability for a possible hearing in October or November 2020. By emails of 17 July 2020, the Parties confirmed their availability for a possible hearing.
267. Pursuant to the procedural calendar, on 14 July 2020, Respondent filed its rejoinder on Tribunal Question 8 ("**Respondent's Rejoinder on Tribunal Question 8**"), with the following supporting documents: Exhibits R-304 through R-326; Legal Authorities RL-175 through RL-223; Expert Report of Dr. Robin Cohen with Exhibits RC-169 through RC-220; Expert Report of Ms. Laura Hardin with Exhibits LH-227 through LH-240; Expert Report of Dr.-Ing. Eberhard Grauf with Exhibits GRAUF-80 through GRAUF-102; Expert Report of Dipl.-Ing. Michael Sailer with Exhibits SA-070 through SA-083; and Expert Report of Dr. Oskar Grözinger with Exhibits GRO-063 through GRO-074.
268. By letter of 20 July 2020, Respondent wrote to the Tribunal regarding certain errata identified in its Rejoinder on Tribunal Question 8 and requested leave to file corrected versions. Upon invitation from the Tribunal, Claimants commented on the request by email of 23 July 2020 stating that they had no objection. Respondent filed its corrections on 31 July 2020.
269. On 21 July 2020, each Party submitted its comments on *The PV Investors v. Spain*; with its comments, Respondent filed Legal Authorities RL-224 through RL-248.
270. Also by letter of 21 July 2020, Respondent notified the Tribunal of its request for an oral hearing and made proposals concerning the length and format. Upon invitation from the

Tribunal, Claimants commented on Respondent's hearing proposals by letter of 24 July 2020.

271. On 29 July 2020, each Party submitted its reply comments on *The PV Investors v. Spain*; with their reply comments, Claimants filed Legal Authority CL-260.
272. By email of 4 August 2020, Claimants wrote to the Tribunal informing that: (i) they might file a motion regarding alleged new evidence and assertions made in Respondent's Rejoinder on Tribunal Question 8; and (ii) their expert Mr. William Bohlke would no longer be able to participate in the proceeding due to medical reasons.
273. Upon invitation from the Tribunal, each Party made further comments on the format of the hearing by way of Respondent's letter of 7 August 2020 and Claimants' letter of 12 August 2020.
274. By letter of 14 August 2020 transmitted by the Secretary of the Tribunal, the Tribunal confirmed that a hearing on Tribunal Question 8 would take place in November 2020 by video conference. The Tribunal also stated that should it have any questions arising from the Parties' written submissions on Tribunal Questions 1-7, it would inform the Parties at least two weeks in advance of the hearing.
275. Also on 14 August 2020, Claimants filed with the Tribunal an application requesting that: (i) certain parts of Respondent's Rejoinder on Tribunal Question 8 be stricken from the record; (ii) Claimants' experts be allowed to respond to new arguments during direct examination at the hearing; and (iii) Respondent be ordered to produce certain documents ("**Claimants' Second Application to Strike**"). Later that date, the Tribunal invited Respondent to comment on Claimants' Second Application to Strike by 21 August 2020.
276. On 17 August 2020, Claimants informed the Tribunal by email that their expert Mr. William Bohlke would not be able to appear for examination at the hearing due to medical reasons. Later that date, the Tribunal invited Respondent's comments by 20 August 2020. On 20 August 2020, Respondent indicated that it had no comments on the medical certificate at this stage, and reserved its right to request to comment if further information became available. In a message to the Parties of 24 August 2020, the Tribunal

took note that Claimant's communication in relation to Mr Bohlke did not give rise to any comments.

277. By letter of 21 August 2020, Respondent commented on Claimants' Second Application to Strike and requested that it be denied.
278. On 4 September 2020, the Tribunal issued Procedural Order No. 43 ("**PO 43**") dismissing Claimants' Second Application to Strike.
279. By email of 18 September 2020, Claimants wrote to the Tribunal requesting leave to submit into the record the recently published award issued in *Eskosol S.p.A. in liquidazione v. Italian Republic* (ICSID Case No. ARB/15/50) (the "**Eskosol Award**"). Upon invitation from the Tribunal, Respondent consented to Claimants' request by email of 23 September 2020, on the condition that both Parties be allowed to file simultaneous comments on the Award.
280. By letter of 25 September 2020 transmitted by the Secretary of the Tribunal, the Tribunal granted Claimants' request to introduce the *Eskosol* Award into the record and invited the Parties' comments thereon by 9 October 2020.
281. By email of 6 October 2020, Claimants informed the Tribunal that Krümmel oHG had signed an agreement for the sale of 3 TWh of OEPV and requested leave to introduce an additional claim reduction (the "**Fourth Offset Implementation**"). On that same day, the Tribunal invited Respondent to comment on Claimants' email by 19 October 2020.
282. On 9 October 2020, each Party filed its comments on the *Eskosol* Award; with their comments, Claimants filed Legal Authority CL-261 (a copy of the Award).
283. By letter of 19 October 2020, Respondent confirmed that it did not object to Claimants filing the Fourth Offset Implementation, subject to certain conditions. On that same date, by letter transmitted by the Secretary of the Tribunal, the Tribunal granted Claimants leave to file the Fourth Offset Implementation, subject to the conditions given by Respondent.

284. On 21 October 2020, Claimants filed the Fourth Offset Implementation, in the form of an Expert Report of Mr. Brent Kaczmarek, together with Annexes A and B, Appendix X (updated), and Exhibits IAV-039 and IAV-040.
285. On 7 November 2020, the Tribunal issued Procedural Order No. 44 (“**PO 44**”) concerning the organization of the upcoming hearing.
286. On 9 November 2020, the Tribunal held a pre-hearing organizational meeting with the Parties by video conference. By letter of later that date transmitted by the Secretary of the Tribunal, the Tribunal informed the Parties that it did not have questions arising from the Parties’ written submissions on Tribunal Questions 1-7 that needed to be addressed during the upcoming hearing.
287. By email of 12 November 2020, Claimants informed the Tribunal that the German Constitutional Court had that day published a new decision concerning the 16<sup>th</sup> Amendment and sought leave to introduce the decision into the record, together with the accompanying press release. On that same day, the Tribunal invited Respondent to comment on Claimants’ email by 16 November 2020.
288. By email of 13 November 2020, Claimants informed the Tribunal that anticipated proceeds from the sale of salvaged parts were received on 11 November 2020 and requested leave to introduce an additional claim reduction (the “**Fifth Offset Implementation**”). On 14 November 2020, the Tribunal invited Respondent to comment on Claimants’ email by 16 November 2020.
289. Further to the Tribunal’s instructions, by email of 16 November 2020, Respondent provided its comments on: (i) Claimants’ 12 November request concerning the new decision on the 16<sup>th</sup> Amendment, wherein it agreed to the request provided that the Parties be allowed to submit two rounds of observations thereon; and (ii) Claimants’ 13 November request to file a Fifth Offset Implementation, wherein it confirmed that it did not object to the request, subject to certain conditions. Upon invitation from the Tribunal, Claimants commented on this correspondence by email of 17 November 2020.

290. By letter of 19 November 2020 transmitted by the Secretary of the Tribunal, the Tribunal directed: (i) Claimants to file the Fifth Offset Implementation on that same date, with Respondent permitted to make observations thereon during the hearing; and (ii) Claimants to file the German Constitutional Court’s new decision concerning the 16<sup>th</sup> Amendment, with accompanying press release, by 20 November 2020, with each Party permitted to make observations thereon during the hearing and the Tribunal to subsequently decide whether the decision should be addressed in further written submissions.
291. Further to the Tribunal’s instructions, on 19 November 2020, Claimants filed the Fifth Offset Implementation.
292. Also on 19 November 2020, the Tribunal issued Procedural Order No. 45 (“**PO 45**”) concerning the recording and transparency of the hearing.
293. Further to the Tribunal’s instructions, on 20 November 2020, Claimants filed Exhibits C-269a and C-269b (the new decision on the 16<sup>th</sup> Amendment, with English translation) and Exhibits C-270a and C-270b (the accompanying press release, with English translation).

**O. THE SECOND HEARING**

294. A hearing on Tribunal Question 8 was held from 21 to 27 November 2020 by video conference (the “**Second Hearing**”).
295. The following individuals attended the Second Hearing:

Members of the Tribunal

Prof. Albert Jan van den Berg  
The Hon. Charles N. Brower  
Prof. Vaughan Lowe

Assistant to the Tribunal

Ms. Emily Hay

Secretary of the Tribunal

Ms. Jara Mínguez Almeida

## For Claimants

### *Counsel*

- Prof. Dr. Kaj Hobér, 3 Verulam Buildings
- Mr. Jakob Ragnwaldh, Mannheimer Swartling Advokatbyrå AB
- Mr. Fredrik Andersson, Mannheimer Swartling Advokatbyrå AB
- Mr. Alexander Foerster, Mannheimer Swartling Advokatbyrå AB
- Mr. Robin Rylander, Mannheimer Swartling Advokatbyrå AB
- Mr. Jacob Rosell Svensson, Mannheimer Swartling Advokatbyrå AB
- Mr. Malcolm Robach, Mannheimer Swartling Advokatbyrå AB
- Mr. Mattias Arnesson, Mannheimer Swartling Advokatbyrå AB
- Dr. Richard Happ, Luther Rechtsanwaltsgesellschaft mbH
- Mr. Tim Rauschning, Luther Rechtsanwaltsgesellschaft mbH
- Mr. Georg Scherpf, Luther Rechtsanwaltsgesellschaft mbH
- Mr. Sebastian Wuschka, Luther Rechtsanwaltsgesellschaft mbH
- Ms. Luca Thoenes, Luther Rechtsanwaltsgesellschaft mbH
- Mr. Ralf Lewandowski, Luther Rechtsanwaltsgesellschaft mbH
- Mr. Lasse Langfeldt, Luther Rechtsanwaltsgesellschaft mbH
- Dr. Ulrich Karpenstein, Redeker Sellner Dahs
- Dr. Roya Sangi, Redeker Sellner Dahs

### *Parties*

- Dr. Andreas Metzenthin, Vattenfall GmbH
- Mr. Tim Gansczyk, Vattenfall GmbH
- Mr. Soeren Friese, Vattenfall GmbH

### *Support Staff*

- Ms. Stephanie Rosenberg, Syntax Sprachen GmbH
- Ms. Sandra Noorlander, Syntax Sprachen GmbH
- Mr. Oliver Reck, Luther Rechtsanwaltsgesellschaft mbH
- Mr. Marcus Andréasson, Mannheimer Swartling Advokatbyrå AB
- Mr. Mattias Arnesson, Mannheimer Swartling Advokatbyrå AB

### *Witnesses*

- Dr. Uwe Kleen, (formerly) Vattenfall Europe Nuclear Energy GmbH

### *Experts*

- Dr. Helmut Bläsig, (formerly) Kernkraftwerk Gundremmingen GmbH
- Dr. Jens Neumann, Areva GmbH
- Prof. Bruno Thomauske, Nuclear Safety Engineering GmbH / (formerly) RWTH Aachen University
- Mr. Brent Kaczmarek (with Mr. Kiran Sequeira and Mr. Stuart Dekker), Versant Partners

## For Respondent

### *Counsel*

- Dr. Sabine Konrad, Morgan, Lewis & Bockius, LLP
- Dr. Maximilian Pika, Morgan, Lewis & Bockius, LLP
- Ms. Nika Rassadina, Morgan, Lewis & Bockius, LLP
- Mr. Pierre Trippel, Morgan, Lewis & Bockius, LLP
- Ms. Katrine Tvede, Morgan, Lewis & Bockius, LLP
- Ms. Carla Meza Caballero, Morgan, Lewis & Bockius, LLP

- Ms. Catalina Bizi, Morgan, Lewis & Bockius, LLP

#### *Parties*

- Ms. Annette Tiemann, Federal Ministry for Economic Affairs and Energy
- Mr. Clemens Wackernagel, Federal Ministry for Economic Affairs and Energy
- Dr. Henner Gött, Federal Ministry for Economic Affairs and Energy
- Mr. Thomas Klippstein, Federal Ministry of Justice and Consumer Protection
- Dr. Vera Weißflog, Federal Ministry of Justice and Consumer Protection
- Dr. Anna Lilja, Federal Ministry of Justice and Consumer Protection
- Mr. Philipp Wendel, Federal Foreign Office
- Ms. Iliana Nikolova-Pentcheva, Federal Chancellery
- Mr. Christian Schmidt, Federal Chancellery
- Ms. Anne Dehne, Federal Ministry for Economic Affairs and Energy
- Mr. Jens Pohlmann, Federal Ministry for Economic Affairs and Energy
- Mr. Lars Beyer, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety
- Mr. Anton Hufnagl, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety
- Mr. Cornelius Link, Federal Ministry of Finance
- Mr. Steffen Jenner, Federal Ministry of Finance
- Ms. Sabine Poniatowski-Persé, Federal Ministry of Finance

#### *Support Staff*

- Mr. Damion Watkins, Morgan, Lewis & Bockius, LLP
- Mr. Stephan Jokiel, Federal Ministry for Economic Affairs and Energy
- Mr. Volker Rettinger, Federal Ministry for Economic Affairs and Energy

#### *Experts*

- Dipl.-Ing. Michael Sailer (with Mr. Gerhard Schmidt), Ökoinstitut
- Dr. Eberhard Grauf, SE-Engineering
- Dr. Oskar Grözing
- Dr. Robin Cohen, Charles River Associates
- Mr. Knight Sukthaworn (*not testifying*)
- Ms. Laura Hardin (with Mr. Almir Smajlovic, Mr. Alexander Sottile, and Mr. Matthew Turk), Alvarez & Marsal
- Mr. Christian Gruschwitz (*not testifying*)
- Dipl.-Ing. Klaus-Dieter Bandholz (*not testifying*), ESN Sicherheit und Zertifizierung GmbH

#### Interpreters

- Mr. Stefan Brechtel, M.A., Independent Interpreter
- Ms. Anna Koch, MATI, Independent Interpreter
- Ms. Olivia Reinshagen-Hernández, Syntax Sprachen GmbH

#### Technical Support

- Mr. Steven Schwartz, FTI Consulting
- Mr. T.J. Loebbaka, FTI Consulting

#### Court Reporters

- Mr. David Kasdan, B&B Reporters

296. In accordance with the Parties' agreement, video of the Hearing was made publicly available on the ICSID website. Following exchanges between the Parties, the Tribunal subsequently ruled on 15 December 2020, that the recordings of the Second Hearing would be removed from the ICSID website 120 days after the end of these proceedings.

**P. PROCEDURE FOLLOWING THE SECOND HEARING**

297. On 5 December 2020, the Tribunal issued Procedural Order No. 46 ("PO 46") ordering, *inter alia*: (i) Respondent to comment on the Fifth Offset Implementation, if necessary, by 11 December 2020; (ii) the Parties to jointly submit transcript corrections, or comments on issues arising from the interpretation on which they disagree, by 15 January 2021; and (iii) the Parties to file post-hearing submissions by 8 April 2021 and, if necessary, reply post-hearing submissions by 23 April 2021; (iv) and the Parties to file cost statements 15 days after the filing of the last post-hearing submission. PO 46 also directed that if a Party intended to file new evidence with its post-hearing submission, it should seek leave from the Tribunal to do so no later than 15 February 2021.
298. Further to the Tribunal's instructions, on 10 December 2020, Respondent filed its comments on the Fifth Offset Implementation.
299. By email of 11 December 2020, Claimants informed the Tribunal that an agreement had been signed for sale of 5 TWh of OEPV by Krümmel oHG for use at the Brokdorf plant in 2021, and they would subsequently seek leave to introduce an additional claim reduction.
300. By email of 18 December 2020, Claimants informed the Tribunal that the proceeds had been received from the sale of 5 TWh of OEPV as contemplated in their 11 December email. In addition, Claimants informed the Tribunal that two further agreements for sale of OEPV by Krümmel oHG had also been signed: 5 TWh for use at the Grohnde plant in 2021 and 5 TWh for use at the Isar 2 plant in 2021. As such, Claimants requested leave from the Tribunal to introduce an additional claim reduction (the "**Sixth Offset Implementation**"). By email of later that date transmitted by the Secretary of the Tribunal, the Tribunal invited Respondent to comment on Claimants' request by 24 December 2020.

301. By later email of 18 December 2020, Claimants wrote to the Tribunal alleging that Respondent's 10 December comments on the Fifth Offset Implementation went beyond the scope directed by the Tribunal and requested that they be allowed to file a brief reply.
302. By email of 23 December 2020 transmitted by the Secretary of the Tribunal, the Tribunal invited Claimants to submit a brief reply on the Fifth Offset Implementation by 30 December 2020, and Respondent to file a brief rejoinder by 6 January 2021.
303. Further to the Tribunal's instructions, by email of 23 December 2020, Respondent provided its comments on Claimants' 18 December request to file a Sixth Offset Implementation, wherein it confirmed that it did not object to the request, subject to certain conditions.
304. By email of 28 December 2020 transmitted by the Secretary of the Tribunal, the Tribunal granted Claimants leave to file the Sixth Offset Implementation by 11 January 2021, with Respondent permitted to make comments thereon within two weeks after its filing.
305. On 31 December 2020, Claimants filed their reply on the Fifth Offset Implementation.
306. On 6 January 2021, Respondent filed its rejoinder on the Fifth Offset Implementation.
307. On 11 January 2021, Claimants filed the Sixth Offset Implementation.
308. By emails of 15 January 2021, the Parties submitted their proposed joint corrections to the Second Hearing transcripts and noted their areas of disagreement. By letter of 19 January 2021 transmitted by the Secretary of the Tribunal, the Tribunal proposed the re-appointment of Ms. Niuscha Bassiri to assist the Tribunal in finalising the corrections to interpretation errors; the Parties subsequently agreed to this proposal. Ms. Bassiri provided an updated declaration of confidentiality and independence to the Parties on 22 January 2021.
309. On 1 February 2021, the Secretary of the Tribunal communicated to the Parties the Tribunal's decision on the disputed corrections to the Second Hearing transcripts.
310. By letter of 15 February 2021, Respondent requested that the Tribunal: (i) renew its Order contained in PO 38, namely that Claimants produce to Respondent the Hamburg Court

Documents, including upcoming submissions; and (ii) grant Respondent leave to submit the produced documents into the record with its post-hearing submission, in accordance with PO 46. Upon invitation from the Tribunal, Claimants commented on Respondent's request by letter of 22 February 2021, wherein they argued that the request should be dismissed.

311. On 4 March 2021, the Tribunal issued Procedural Order No. 47 (“**PO 47**”) ruling on Respondent's 15 February request. In its Order, the Tribunal directed Claimants to produce written submissions (excluding exhibits) filed with the Regional Court of Hamburg in relation to 310 O 411/18 (main proceedings) by 11 March 2021 and granted Respondent leave to submit any of the produced documents into the record together with its post-hearing submission.

**Q. SUSPENSION AND REQUEST FOR DISCONTINUANCE**

312. By emails of 11 March 2021, the Parties informed the Tribunal of their joint request to suspend the proceeding effective immediately and until further notice by either Party. The suspension was subsequently confirmed by the Tribunal on 12 March 2021.
313. By letter of 1 November 2021, Claimants formally requested the discontinuance of the proceeding, pursuant to Rule 44 of the ICSID Arbitration Rules, and attached an extract of a 25 March 2021 agreement concluded by the Parties, together with other nuclear power plant operators (the “**Agreement**”), which reads as follows:

*The Contracting Parties under number 3, 6, 7, 13 and 14 [the Claimants in this arbitration] undertake to request the discontinuance of the proceeding (Arbitration Rule 44) against the Federal Republic of Germany (International Centre for Settlement of Investment Disputes (ICSID) Case No. ARB/12/12) submitted to the ICSID without delay after this Contract takes effect. The suspension of the proceeding pursuant to paragraph 4 shall not prevent this. The Federal Republic of Germany undertakes to agree to the discontinuance and to confirm to the Arbitral Tribunal the cost arrangements made in this Contract. Each party shall bear its own costs of the proceeding. The claimant side and the respondent side will each bear half of the costs of the Arbitral Tribunal, in particular the costs of translators, interpreters, FTI Consulting Inc.,*

*the ICSID Secretariat, the assistant of the President of the Arbitral Tribunal and any of their travel expenses.*

314. By subsequent email of 1 November 2021, Respondent confirmed that it agreed to the discontinuance of the proceeding.

315. Rule 44 of the ICSID Arbitration Rules provides:

*If a party requests the discontinuance of the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall in an order fix a time limit within which the other party may state whether it opposes the discontinuance. If no objection is made in writing within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Tribunal, or if appropriate the Secretary-General, shall in an order take note of the discontinuance of the proceeding. If objection is made, the proceeding shall continue.*

316. By letter of 2 November 2021 transmitted by the Secretary of the Tribunal, the Tribunal took note of the Parties' agreement to discontinue the proceeding.

### **III. ORDER**

317. THEREFORE, considering the above and in accordance with Rule 44 of the ICSID Arbitration Rules, the Tribunal hereby takes note of the discontinuance of the proceeding.

Dated as of 9 November 2021:

[signed]

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The Honourable Charles N. Brower  
Arbitrator

[signed]

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Professor Vaughan Lowe QC  
Arbitrator

[signed]

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Professor Albert Jan van den Berg  
President of the Tribunal