

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

NiQuan Energy LLC and NiQuan Energy Trinidad Limited

v.

Trinidad and Tobago

(ICSID Case No. ARB/24/17)

PROCEDURAL ORDER NO. 4

Requests for Document Production

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

Secretary of the Tribunal
Mr. Oladimeji Ojo

Assistant to the Tribunal
Dr. Magnus Jesko Langer

9 January 2026

I. PROCEDURAL BACKGROUND

1. Pursuant to Section 17 of Procedural Order No. 1 (“PO1”) and the procedural calendar, the Parties submitted on 14 November 2025 simultaneous requests to produce documents in the form of a Stern Schedule. The Claimants’ Stern Schedule is divided into 29 categories of documents and the Respondent’s Stern Schedule into 30 categories of documents.
2. On 28 November 2025, the Parties submitted their respective objections to the document production requests.
3. On 12 December 2025, each Party provided the Tribunal with its Stern Schedule containing the objections raised by the opposing Party and its replies regarding the remaining document requests.
4. On 16 December 2025, the Parties uploaded all previous versions of their Stern Schedules, along with their respective exhibits, to the Box folder for this proceeding, and notified the Tribunal.
5. This Order addresses the Parties’ respective document production requests, starting with a determination of the applicable standards and followed by the Tribunal’s decisions on the requests, the reasons for those decisions being incorporated into the Stern Schedules, which are annexed to and made an integral part of this Order (Annex A for the Claimants’ requests and Annex B for the Respondent’s requests).

II. APPLICABLE STANDARDS

6. This arbitration is governed by (i) the ICSID Convention, (ii) the 2022 ICSID Arbitration Rules (the “Arbitration Rules”), and (iii) the procedural rules set out in PO1.
7. Within this framework, the Parties have ample freedom to determine the applicable rules governing the taking of evidence. For instance, pursuant to paragraph 17.1 of PO1, the Parties agreed that the Tribunal shall be guided but not bound by the 2020 IBA Rules on the Taking of Evidence in International Arbitration (the “IBA Rules”).
8. In addition, Section 17 of PO1 contains the following rules on document production:
 - 17.2. Within the time limit set in **Annex B**, each Party may request from the other Party the production of documents or categories of documents within the other Party’s possession, custody or control,

in the form of a Stern Schedule as attached in **Annex C** hereto, both in Word and .pdf format. The Parties shall send such requests to the Secretary of the Tribunal, who will circulate the Parties' requests to the Parties once both Stern Schedules have been received.

17.3. Each request for production shall:

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

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

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

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

17.7. On or around the date set forth in **Annex B**, the Tribunal will, exercising its discretion, rule upon the production of the documents or categories of documents, having regard to the requirements of §17.3, the legitimate interests of the Parties and all the relevant circumstances, including applicable privileges. If a request does not meet the requirements of §17.3, in particular if it is insufficiently specific, the Tribunal will in principle not narrow down the scope of the request on its own initiative but will retain its discretion to do so.

9. Where the Parties have not agreed on the applicable procedure, the Tribunal enjoys an equally ample freedom to establish the applicable procedure. Article 43 of the ICSID Convention and Rule 36(3) of the Arbitration Rules grant the Tribunal the power to order the Parties to produce documents in the following terms:

“Except as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings, (a) call upon the parties to produce documents or other evidence [...]”.

And:

“The Tribunal may call upon a party to produce documents or other evidence if it deems it necessary at any stage of the proceeding”.

10. Rule 37 of the Arbitration Rules further provides that:

“In deciding a dispute arising out of a party’s objection to the other party’s request for production of documents, the Tribunal shall consider all relevant circumstances, including:

- (a) the scope and timeliness of the request;
- (b) the relevance and materiality of the documents requested;
- (c) the burden of production; and
- (d) the basis of the objection”.

11. Moreover, for the purposes of this Order, the following provisions of the IBA Rules are relevant:

- (i) Article 3.3:

“A Request to Produce shall contain:

- (a) (i) a description of each requested Document sufficient to identify it, or

(ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner;

- (b) a statement as to how the Documents requested are relevant to the case and material to its outcome; and
- (c) (i) a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Documents, and
 - (ii) a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party”.
- (ii) Article 3.4:

“Within the time ordered by the Arbitral Tribunal, the Party to whom the Request to Produce is addressed shall produce to the other Parties and, if the Arbitral Tribunal so orders, to it, all the Documents requested in its possession, custody or control as to which it makes no objection”.
- (iii) Article 3.5:

“If the Party to whom the Request to Produce is addressed has an objection to some or all of the Documents requested, it shall state the objection in writing to the Arbitral Tribunal and the other Parties within the time ordered by the Arbitral Tribunal. The reasons for such objection shall be any of those set forth in Articles 9.2 or 9.3, or a failure to satisfy any of the requirements of Article 3.3. If so directed by the Arbitral Tribunal, and within the time so ordered, the requesting party may respond to the objection”.
- (iv) Article 3.7:

“Either Party may, within the time ordered by the Arbitral Tribunal, request the Arbitral Tribunal to rule on the objection. The Arbitral Tribunal shall then, in timely fashion, consider the Request to Produce, the objection and any response thereto. The Arbitral Tribunal may order the Party to whom such Request is addressed to produce any requested Document in its possession, custody or control as to which the Arbitral Tribunal determines that (i) the issues that the requesting Party wishes to prove are relevant to the case and material to its outcome; (ii) none of the reasons for objection set forth in Articles 9.2 and 9.3 applies; and (iii) the requirements of Article 3.3 have been satisfied. Any such Document shall be produced to the other Parties and, if the Arbitral Tribunal so orders, to it”.

(v) Article 9.2:

“The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection, in whole or in part, for any of the following reasons:

- (a) lack of sufficient relevance to the case or materiality to its outcome;
- (b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable [...];
- (c) unreasonable burden to produce the requested evidence;
- (d) loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;
- (e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;
- (f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling; or
- (g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling”.

(vi) Article 9.3:

“The Arbitral Tribunal may, at the request of a Party or on its own motion, exclude evidence obtained illegally”.

12. Accordingly, the Tribunal will apply the following standards when deciding on the document production requests:

- Specificity: The request must identify each document or category of documents with precision.
- Relevance: The request must establish the relevance of each document or category of documents to prove allegations made in the submissions. For purposes of this Order, the term “relevance” encompasses both relevance to the dispute and materiality to its outcome. At this stage of the proceedings, the Tribunal is only in a position to assess the *prima facie* relevance of the

documents requested, having regard to the factual allegations made so far. This *prima facie* assessment does not preclude a different assessment at a later point of the arbitration with the benefit of a more developed record.

- Possession, custody or control: The request must show that it is more likely than not that the requested documents exist, that they are not within the possession, custody or control of the requesting Party, and that they are within the possession, custody or control of the other Party.
- Balance of interests: Where appropriate, the Tribunal will balance the legitimate interests of the requesting Party with those of the requested Party, considering all relevant circumstances, including any legal privileges applicable to certain types of communications, the need to safeguard confidentiality, and the proportionality between the convenience of revealing potentially relevant facts and the burden imposed on the requested Party.

III. ORDER

13. For the reasons set forth in the Stern Schedule regarding the Claimants' document production requests attached as Annex A and made an integral part of this Order, the Tribunal:
 - (i) Takes note that no decision is required in respect of Requests No. 4-5 and that no decision is required in part in respect of Request No. 14.
 - (ii) Partially grants the Claimant's Requests Nos. 3, 6-9, 11, 15, 17-20, 23-25 and 27, as specified in the Stern Schedule.
 - (iii) Grants the Claimant's Requests Nos. 12, 21-22, 26 and 29, as specified in the Stern Schedule.
 - (iv) Denies the other requests.
 - (v) Orders the Respondent to produce the documents responsive to the Requests granted above by **13 February 2026**.
14. For the reasons set forth in the Stern Schedule regarding the Respondent's document production requests attached as Annex B and made an integral part of this Order, the

Tribunal:

- (i) Takes note that no decision is required in respect of Requests Nos. 3-4, 13, 15 and 30, and that no decision is required in part in respect of Request No. 26.
- (ii) Partially grants the Respondent's Request Nos. 16-18 and 26, as specified in the Stern Schedule.
- (iii) Grants the Respondent's Requests Nos. 1-2, 5-10, 14, 19-24 and 29, as specified in the Stern Schedule.
- (iv) Denies the other requests.
- (v) Orders the Claimant to produce the documents responsive to the Requests granted above by **13 February 2026**.

On behalf of the Tribunal,

[Signature]

Dr. Laurent Lévy
President of the Tribunal
Date: 9 January 2026