

IN THE MATTER OF AN ARBITRATION UNDER THE 1965 CONVENTION ON THE SETTLEMENT OF
INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES

AND

PURSUANT TO THE 1994 ENERGY CHARTER TREATY

BETWEEN

**HYDRO ENERGY 1 S.À R.L.
HYDROXANA SWEDEN AB**

Claimants

AND

THE KINGDOM OF SPAIN

Respondent

Request for Arbitration

5 OCTOBER 2015

THREE CROWNS

CUATRECASAS, GONÇALVES PEREIRA

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- 1 Claimants (defined in Section I.A below) submit this Request for Arbitration (the *Request*) against Respondent, the Kingdom of Spain (*Spain*), in accordance with:
 - a Article 26(4)(a)(i) of the Energy Charter Treaty (the *ECT*);¹
 - b Article 36 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the *ICSID Convention*); and
 - c Rule 1 of the ICSID Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (the *Institution Rules*).
- 2 Claimants respectfully request that the Secretary-General of the International Centre for Settlement of Investment Disputes (*ICSID*, or the *Centre*) register the Request at her earliest convenience.
- 3 Claimants commence this arbitration to seek relief for the unlawful evisceration of their investments in the hydropower generation sector in Spain.
- 4 In summary, Spain put in place a specific legal and economic framework that guaranteed renewable plants (including Claimants' hydropower installations) a fixed minimum feed-in remuneration for the whole of their electricity output and their entire operational life. This framework was designed to secure long-term, stable and predictable revenue streams necessary for investors to justify and recoup the high upfront capital investments required to acquire or build renewable projects, and for lenders to finance such projects.
- 5 However, once Spain had successfully induced Claimants to invest significant sums of capital in the Spanish hydropower generation sector, it simply reneged on its commitments. Through a series of arbitrary and disproportionate legislative and regulatory measures since 2012, Spain wholesale dismantled the legal and economic framework that it had previously advertised and guaranteed to Claimants so as to induce their investments. Spain's measures are in breach of its obligations under the ECT and international law. Those breaches entitle Claimants to compensation of the very substantial losses caused.
- 6 This Request is structured as follows:
 - a **Section I** sets out the particulars of the Parties.
 - b **Section II** briefly describes the factual background to the dispute, including a summary of the unlawful measures by Spain.

¹ Energy Charter Treaty (signed 17 December 1994, entered into force 16 April 1998), **Exhibit C-1**.

- c **Section III** identifies the jurisdictional bases under the ECT and the ICSID Convention upon which Claimants are bringing these arbitration proceedings.
- d **Section IV** identifies the provisions of the ECT that have been breached by Spain's measures.
- e **Section V** contains Claimants' procedural proposals in relation to the constitution of the Arbitral Tribunal, the place of proceedings and venue for any hearings, and the language of the arbitration.
- f **Section VI** sets out the relief sought by Claimants.

I THE PARTIES

A CLAIMANTS

- 7 Claimants are companies established under the laws of Luxembourg and Sweden.
- 8 First Claimant, Hydro Energy 1 S.à r.l. (**Hydro Energy**), is a private limited company (*société à responsabilité limitée*) incorporated under the laws of Luxembourg, with its registered address at 7A, rue Robert Stümper L-2557 Luxembourg.²
- 9 Second Claimant, Hydroxana Sweden AB (**Hydroxana**), is a private limited company (*Aktiebolag*) incorporated under the laws of Sweden, with its registered address at Drottninggatan 95 A, SE-113 60 Stockholm, Sweden.³ Hydro Energy holds 93% of the shareholding interests in Hydroxana.⁴
- 10 Each of the two claimants referred to above will hereinafter be referred to collectively as **Claimants**.
- 11 As discussed in Section II.B below, Claimants hold equity and debt interests in various Spanish companies that own and operate 33 hydropower generation plants in Spain with a total installed production capacity of 106.788 megawatt (**MW**).

² See Extract from Luxembourg *Registre de Commerce et des Sociétés* in respect of Hydro Energy, **Exhibit C-2** (evidencing that Hydro Energy is a company incorporated in Luxembourg).

³ See Certificate of Registration of Hydroxana from Swedish Companies Registration Office, **Exhibit C-3** (evidencing that Hydroxana is a company incorporated in Sweden).

⁴ Plenum Partners, S.L., a company incorporated in Spain, holds the remaining 7% shareholding interests in Hydroxana.

- 12 Claimants have taken all necessary internal actions to authorise this Request.⁵
- 13 Claimants are represented in these arbitration proceedings by Three Crowns LLP and Cuatrecasas, Gonçalves Pereira.⁶
- 14 All communications to Claimants relating to this arbitration should be addressed to:

Mr Gaëtan Verhoosel
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Ms Maribel Rodríguez Vargas
Mr Antonio Delgado Camprubí
Mr José Ángel Rueda García
Mr Borja Álvarez Sanz
Mr Pedro Álvarez Chicote

⁵ See Resolutions of the Claimants' Boards of Directors, dated 8 and 17 September 2015, authorising this Request, **Exhibits C-4** and **C-5**.

⁶ See Power of attorneys for each of the Claimants designating Messrs Gaëtan Verhoosel (of Three Crowns LLP) and Pedro Claros (of Cuatrecasas, Gonçalves Pereira) as Claimants' attorneys for the purposes of this arbitration proceeding, **Exhibits C-6** and **C-7**.

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B RESPONDENT

15 Respondent Spain is a sovereign State, and, as discussed in Section III below, a “Contracting Party” to the ECT and a “Contracting State” to the ICSID Convention.

16 Spain will act for the purposes of this arbitration by the authority designated by it. Claimants are serving courtesy copies of this Request on:

His Excellency Mariano Rajoy Brey
The President of the Government of Spain
President Complejo de la Moncloa
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Spain

II FACTUAL BACKGROUND TO THE DISPUTE

- 17 The present dispute arises in relation to Claimants' investments in the hydropower generation sector in Spain.
- 18 Hydroelectric power is generated from the kinetic energy of a mass of flowing or falling water stream. It is a proven and predictable renewable energy source, with high conversion efficiency.
- 19 Spain has longstanding experience with hydropower generation. Some of the first administrative concessions for hydropower generation were issued at the end of the 19th century.
- 20 One of the main features of hydropower generation in Spain is the private use of water, which is considered by law to be a public property and referred to as a so-called "public hydraulic domain". Under Spanish law, this private use of water requires hydropower generators to obtain from the State water concessions and administrative and operating authorizations.
- 21 In the 1980s and 1990s, Spain introduced new regulations to promote renewable power generation. During the following decade, Spain introduced a series of laws and regulations to liberalize the electricity sector, and established for the renewable energy sector (including hydropower) an economic regime where remuneration is based on a so-called "feed-in system". It did so with the specific purpose of attracting private investments. Claimants provide below a brief overview of this regulatory framework and the feed-in remuneration regime.

A THE FRAMEWORK ESTABLISHED BY SPAIN TO ATTRACT INVESTMENT IN RENEWABLE ENERGIES, INCLUDING HYDROPOWER GENERATION

1 Act 54/1997 of 27 November 1997

- 22 In 1997, the Spanish electricity sector started the liberalization process with the enactment of Act 54/1997 of 27 November 1997 (*1997 Electricity Act*).⁷
- 23 The 1997 Electricity Act provided the framework for four different electricity-related activities: generation, transmission, distribution and supply. In particular, pursuant to the 1997 Electricity Act:
- a the generation segment was liberalized to permit electricity producers to compete in the market and to receive a market price for their output;
 - b the transmission and distribution networks were opened to allow third party access but the Government retained the power to set tariffs for accessing those networks; and

⁷ The 1997 Electricity Act was published in the Spanish Official Gazette on 28 November 1997.

- c in the supply segment, the consumers were gradually granted the freedom to choose the supplier from whom they bought electricity but the Government retained the power to set end-users prices of electricity for non-eligible consumers.
- 24 In relation to electricity generation, the 1997 Electricity Act distinguished between two separate regimes: the ordinary regime (the *Ordinary Regime*) and the special regime (the *Special Regime*).
- 25 Conventional generation facilities (mainly those using non-renewable sources such as coal) were subject to the Ordinary Regime and required to sell their electricity output into a wholesale electricity market at market price.
- 26 By contrast, qualifying electricity generators using renewable sources of energy as primary energy, and with an installed capacity of less than 50 MW, became subject to the Special Regime.⁸ The Special Regime generators were entitled to receive the market price of electricity *plus* a supplementary premium (the amount of which was to be fixed in statutory terms by governmental regulations).⁹
- 27 The 1997 Electricity Act also allocated regulatory competencies amongst Spain's Central Government and its Autonomous Communities. With competencies over the entire Spanish territory, the two prominent regulators are the Ministry of Industry, Energy and Tourism (the *Ministry*), and the national energy sector supervisory body, the National Energy Commission (*CNE* or *CNMC*).¹⁰

2 Royal Decree 2818/1998 of 23 December 1998

- 28 Spain's concerted efforts to promote renewable power generation escalated after Spain's signature on 23 April 1998 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, which required its contracting parties to reduce their greenhouse gas emissions and set binding emission targets to achieve that requirement.
- 29 On 23 December 1998, Spain enacted Royal Decree 2818/1998 (**RD 2818**),¹¹ with a view to developing the Special Regime under the 1997 Electricity Act and reducing the use of greenhouse gases.
- 30 RD 2818 classified the qualifying Special Regime renewable generators into various categories and groups according to, *inter alia*, the generation technologies used. In particular, RD 2818 classified all hydropower

⁸ 1997 Electricity Act, Article 27.

⁹ 1997 Electricity Act, Article 30(4).

¹⁰ Further to certain regulatory changes made in 2013, CNE is now known as the National Commission on Markets and Competition, or by its Spanish acronym, CNMC.

¹¹ RD 2818 came into force on 1 January 1999.

generation installations into category “b”, which was further divided into two groups:

- a group “b.4”, comprising hydropower installations whose installed capacity was not higher than 10 MW (also known as “small-hydro” plants¹²); and
- b group “b.5”, comprising hydropower installations whose installed capacity was higher than 10 MW but less than 50 MW.

31 Pursuant to RD 2818, Special Regime generators who had been duly registered in a register called “*Registro Administrativo de Instalaciones de Producción en Régimen Especial*” (**RAIPRE**) were entitled to a remuneration (in pesetas¹³ per kilowatt-hour (*kWh*)) comprised of the market price¹⁴ plus a premium, the amount of which was set out in RD 2818.¹⁵ In relation to hydropower producers, group b.4 installations were entitled to a premium of 5.45 pesetas/kWh,¹⁶ while the premium for group b.5 installations was calculated by applying a specific formula to the premium payable to group b.4 based on the relevant facility’s installed capacity.¹⁷

32 However, the premiums set out in RD 2818 were subject to revision, every four years, based on the evolution of the price of electricity on the market, the participation of Special Regime facilities in coverage of demand, and their impact on the technical management of the electricity system.¹⁸ This lack of predictability and stability regarding the applicable premiums made investment under the RD 2818 regime less attractive for private investors.

¹² Although there is no international consensus on classification of hydropower plants by reference to their installed capacity, in Europe a hydropower plant with an installed capacity of up to 10 MW is usually referred to as a “small-hydro” plant. See Extract from European Commission’s webpage on hydropower, **Exhibit C-8**.

¹³ The peseta was the currency of Spain until 2002.

¹⁴ Article 24(1) of RD 2818 referred to this market price as the “electricity pool average final hourly price”, which was defined as “the average price that must be paid each hour by the purchasers of power to purchase in the pool which is then settled by the market operator”. For the purposes of RD 2818, this price was “the price that is published provisionally for power purchasers by the market operator before the fifth working day in the following month considered for billing”.

¹⁵ RD 2818, Article 23.

¹⁶ RD 2818, Article 28(1). Pursuant to Article 28.3 of RD 2818, facilities in group b.4 could also choose to not apply the premiums, but to apply a total price in all the hours of 11.20 pesetas/kWh.

¹⁷ The remuneration for group b.5 was calculated applying the following formula: $b(50-P)/40$, where “b” was the premium corresponding to facilities in group b.4, and “P” was the capacity of the facility expressed in MW. See RD 2818, Article 28(1).

¹⁸ RD 2818, Article 32.

3 The 2001 EU Renewable Energy Directive

- 33 In 2001, the EU issued Directive 2001/77/EC on the Promotion of Electricity Produced from Renewable Energy Sources in the Internal Electricity Market (the **2001 EU Renewable Energy Directive**).¹⁹ This Directive obliged all EU Member States (including Spain) to “take appropriate steps to encourage greater consumption of electricity produced from renewable energy sources” in order to “meet Kyoto targets more quickly”.²⁰ To achieve this goal, the 2001 EU Renewable Energy Directive required all Member States to set national targets for the future consumption of electricity produced from renewable sources, and to report regularly to the EU on their progress in meeting those targets.²¹ Spain’s specific indicative target was to draw at least 29.4% of its electricity from renewable sources by 2010.²²
- 34 The 2001 EU Renewable Energy Directive also required Spain to enact appropriate laws by 27 October 2003 to implement that Directive.²³ Importantly, it required Spain to not simply create a renewable energy framework capable of reaching its electricity production goals, but also to ensure that its framework was “objective, transparent and non-discriminatory and [took] fully into account the particularities of the various renewable energy source technologies”.²⁴
- 35 In order to meet its renewable energy consumption targets under the 2001 EU Renewable Energy Directive, and fuelled by its desire to make the country a global leader in so-called “green” energy generation, Spain made further efforts to create a hospitable environment for foreign investments in its renewable (including hydropower generation) sector.

4 Royal Decree 436/2004 of 12 March 2004

- 36 Given RD 2818’s failure to attract the desired level of investment, Spain realised that it needed to revise its legal and economic framework to provide sufficient, stable and predictable economic incentives to attract private investments into renewable projects. To achieve this end, Spain enacted RD 436/2004 of 12 March 2004 (**RD 436**), which fostered the

¹⁹ Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market, OJ L 283, 27.10.2001.

²⁰ *Ibid.*, Article 3(1) and Recital 1.

²¹ *Ibid.*, Article 3.

²² *Ibid.*, Article 3(2) and Annex.

²³ *Ibid.*, Article 9.

²⁴ *Ibid.*, Article 6(1).

Special Regime legal framework applicable to renewable power generation.²⁵

- 37 The new economic regime under RD 436 provided renewable energy generators with an option to choose between two alternative remuneration schemes:
- a selling electricity output (or surplus) to electricity distributors for a single flat rate for all scheduling periods (and expressed in euro cents per kWh) in the form of a “regulated tariff”, commonly known as a “Feed-in Tariff” or “FiT”;²⁶ or
 - b selling electricity output (or surplus) directly in the free market, in the forward market or through a bilateral contract (or through a combination of all of them), at market (or pool) price supplemented by an incentive for market participation and a premium (both expressed in euro cents per kWh), commonly known as “Feed-in Premium” or “FiP”.²⁷
- 38 Operators could choose between the above two options – “regulated tariff” or the “pool price plus incentive and premium” – as was most suitable to them, on an annual basis.²⁸
- 39 Such arrangements were not unique to Spain, with other EU Member States also adopting Feed-in Tariffs or Feed-in Premium schemes as they too sought to implement the 2001 EU Renewable Energy Directive.
- 40 The amounts of the regulated tariff, premium, and incentive for market participation were all calculated as a fixed percentage of the average or

²⁵ RD 436 recognised expressly the “unique legal and economic features” of the Special Regime facilities, and acknowledged that its intention was to “continue down the path first taken by Royal Decree 2818” but with the “added advantage” of providing Special Regime generators with a “lasting economic regime ... based on an objective, transparent methodology to calculate the remuneration”. *See* RD 436, Preamble and Article 1.

²⁶ RD 436, Article 22(1)(a).

²⁷ RD 436, Article 22(1)(b).

²⁸ RD 436, Article 22(3). Pursuant to the transitory provisions of RD 436, existing Special Regime installations that were previously under RD 2818 could choose to: (a) benefit from the economic regime established in RD 436 from the date when RD 436 entered into force (i.e., 28 March 2004); or (b) continue to be subject to RD 2818’s remuneration regime until 31 December 2006, and migrate to the RD 436 regime automatically from 1 January 2007 (*see* RD 436, Second Transitory Provision). This transitional period was finally extended, by means of Royal Decree 1634/2006 of 29 December (**RD 1634**), until 31 May 2007 (the day before the entry into force of RD 661) (*see* RD 1634, Additional Provision Twenty Six).

Claimants’ hydropower installations (as described in Section II.B below) in the Xana Portfolio chose option (a) (i.e., benefit from RD 436 and its “pool price plus incentive and premium” option from 28 March 2004), while hydropower installations in the Ondina Portfolio chose option (b) (i.e., continue to be subject to RD 2818’s remuneration regime until 31 May 2007, and migrating to the RD 436 regime automatically from 1 June 2007).

reference electricity tariff (*tarifa eléctrica media o de referencia*, or **TMR**),²⁹ which the Spanish Government set every year based on the relationship between the estimation of costs required to remunerate the activities of electricity supply and the estimation of the final consumers' electricity demand.³⁰

- 41 RD 436 maintained RD 2818's classification of hydropower installations into category "b", and further into group "b.4" (i.e., hydropower installations whose installed capacity was no more than 10 MW) and group "b.5" (i.e., hydropower installations whose installed capacity was higher than 10 MW but less than 50 MW),³¹ and provided for the following tariffs, premiums and incentives, calculated as percentages of the TMR, for the entire operation lifespan of such installations³²:

| Category | Group | Term | Energy sale option | | | |
|----------|--|-----------------------------------|--|---|-----------|-----|
| | | | Regulated tariff (as percentage of annual TMR ³³ and in cent €/kWh) | Pool price plus premium and incentive (as percentage of annual TMR and in cent €/kWh) | | |
| | | | | Premium | Incentive | |
| b | b.4 | First 25 years from commissioning | 90% | 40% | 10% | |
| | | Thereafter | 80% | 40% | 10% | |
| | b.5 installations with an installed capacity of more than 10 MW but no more than 25 MW | First 15 years from commissioning | 90% | 40% | 10% | |
| | | Thereafter | 80% | 40% | 10% | |
| | b.5 installations with an installed capacity of more than 25 | Entire operational lifetime | | 80% | 30% | 10% |
| | | | | | | |

²⁹ RD 436, Articles 23-25.

³⁰ The TMR was regulated under Royal Decree 1432 of 27 December 2002 (**RD 1432**).

³¹ RD 436, Article 2.

³² RD 436, Article 36.

³³ By way of indication, the TMR for the year 2004, as defined in Article 2 of RD 1432, was c€7.2072/ kWh (*see* RD 436, Additional Provision Six).

| | | | | | |
|--|---------------------------|--|--|--|--|
| | MW but no more than 50 MW | | | | |
|--|---------------------------|--|--|--|--|

- 42 Article 40(1) of RD 436 contemplated revisions to the regulated tariff, premiums and incentives stipulated therein, every four years starting from 2006, based on the costs associated with each of the renewable technologies, their degree of participation in the Special Regime in demand coverage and their impact on the technical and economic management of the system.
- 43 However, in contrast to RD 2818, Article 40(3) of RD 436 explicitly provided that any such revisions “shall not have a backdated effect on any previous tariffs and premiums” and shall not affect existing installations that had commenced operations prior to 1 January of the second year following the year in which revision was carried out. For instance, if a revision was conducted in 2006, it would not affect installations that had commenced operations prior to January 2008.
- 44 Thus, in recognition of the need for stability and certainty of long-term revenue streams to encourage large-scale foreign investments in, and project financing of, renewable installations, Spain expressly guaranteed that any future downward revisions to the RD 436 feed-in remuneration regime would not affect existing renewable installations. The RD 436 regime was in that sense a substantial improvement when compared with the remuneration regime under RD 2818.

5 Plan for the Promotion of Renewable Energies in Spain 2005-2010

- 45 However, Spain became unsatisfied with RD 436’s progress in drawing investment to the Spanish renewable industry and soon began to examine enhanced methods for reaching its renewable energy goals. The seeds of that enhanced framework were sown with the recommendations provided in the Plan for the Promotion of Renewable Energies in Spain 2005-2010 (the *Renewable Plan 2005-2010*).
- 46 The Renewable Plan 2005-2010 was prepared in August 2005 by the *Instituto para la Diversificación y Ahorro de la Energía (IDAE)*, an advisory governmental body that reports to the Ministry. The stated aim of the Renewable Plan 2005-2010 was to provide recommendations that would assist in further increasing investment in renewable energy in Spain as RD 436 had not fostered the expected increase in installed renewable capacity.
- 47 In relation to hydropower generation, the Renewable Plan 2005-2010 explained that “[h]ydroelectricity is one of Spain’s main sources of electricity” and that, “[g]iven the level of resources available, it has a long

history in Spain, and as a result the sector is mature and consolidated”.³⁴ It noted, however, that small-scale (i.e., less than 10 MW) hydropower generation was “advancing more slowly than might be expected”,³⁵ and recommended the further development of the hydropower sector.

- 48 In particular, it recommended installation of additional generation capacity of: (a) 450 MW of small-hydro capacity, to reach a total of 2,199 MW of installed capacity by 2010; and (b) 360 MW of other hydropower capacity (between 10 to 50 MW), to reach a total of 3,257 MW of installed capacity by 2010.³⁶ Having noted that “the system of premiums – supplemented during the sector’s take-off by investment subsidies – ha[d] shown itself to be extremely effective at promoting the growth of certain areas, such as micro-hydropower”,³⁷ the Renewable Plan 2005-2010 recommended that one of the “main measures” needed to achieve the hydropower generation targets was to maintain the tariff support under the Special Regime over the period 2005-2010 in accordance with the 1997 Electricity Act and RD 436.³⁸

6 RD 661/2007 of 25 May 2007

- 49 On 25 May 2007, Spain implemented the recommendations of the Renewable Plan 2005-2010 by introducing Royal Decree 661/2007 (**RD 661**). RD 661 came into force on 1 June 2007, and established a more attractive economic incentive regime specifically designed to encourage investments in renewable (including hydropower) sector. The key features of this regime are discussed below.

a Fixed minimum feed-in remuneration for entire electricity output

- 50 RD 661 implemented a remuneration regime analogous to RD 436, pursuant to which a qualifying Special Regime generator could choose between selling its electricity output at either: (a) a fixed regulated tariff (in euro cents per kWh) at the same rate for all scheduling periods (i.e., a Feed-in Tariff option);³⁹ or (b) the pool price *plus* a fixed premium

³⁴ See IDAE’s and Ministry’s Summary of the Renewable Energy Plan 2005-2010, **Exhibit C-9**, p.20.

³⁵ *Ibid.*, p.21.

³⁶ See *ibid.*, p.21 (explaining that these targets were set taking into account the following factors: (a) “[t]he existence of technically and environmentally feasible unexploited hydroelectric power potential in Spain”; (b) “[f]avourable regulations regarding the economic system for hydroelectric power, permitting an increase in confidence and interest among developers, so as to achieve greater development of hydroelectric power”; (c) “[a] mature industry”; and (d) “[t]he existence of Spanish technology and manufacturing capacity”).

³⁷ *Ibid.*, p.48.

³⁸ *Ibid.*, p.42.

³⁹ RD 661, Article 24(1)(a). Pursuant to Article 26 of RD 661, hydropower installations in groups b.4 and b.5 that elected to sell their electricity pursuant to the regulated tariff option could also choose, for a period no less than one year, a variable tariff regime of

payment (in euro cents per kWh) over and above the pool price (i.e., a Feed-in Premium option).⁴⁰ Again, the generators could choose between these two options – the “regulated tariff” or the “pool price plus premium” – as was best suited to them, on an annual basis.⁴¹

- 51 However, unlike RD 436, the regulated tariff and premium under RD 661 were not calculated by reference to annual TMR values (which, as noted in paragraph 40 above, were subject to change on a yearly basis). Instead, RD 661 directly established the amounts of the regulated tariffs and the premiums applicable to various renewable technologies, and provided for their update on a yearly basis to reflect inflation increases.⁴²
- 52 Further, in relation to the “pool price plus premium” option, RD 661 introduced for certain category “b” installations (including hydropower installations) a cap and floor mechanism, by establishing upper and lower limit values for the sum of the hourly market price plus a “reference” premium, so that the actual premium for each hour could be limited by reference to those values. Pursuant to this mechanism, when the hourly pool prices were excessively low, installations were guaranteed a minimum level of remuneration (the lower limit or “floor”), thereby further reassuring renewable energy producers. However, when the pool prices reached, or exceeded, the defined upper limit or “cap”, the actual hourly premium payable was zero (thereby imposing no extra burden on the electricity system).⁴³
- 53 The regulated tariff, reference premium, and upper and lower limits for the sum of the hourly pool price and the reference premium for hydropower installations, as provided in Article 36 of RD 661, are set out in the table below.

| Category ⁴⁴ | Group | Term | Energy sale option | | | |
|------------------------|-------|------|--------------------------------------|---|--------------|--------------|
| | | | <i>Regulated tariff (cent €/kWh)</i> | <i>Pool price plus premium (cent €/kWh)</i> | | |
| | | | | <i>Reference</i> | <i>Upper</i> | <i>Lower</i> |

two periods as follows: (a) for winter, peak: 11-21 hours and off-peak: 21-24 hours and 0-11 hours; and (b) for summer, peak: 12-22 hours, and off-peak: 22-24 hours and 0-12 hours.

⁴⁰ RD 661, Article 24(1)(b).

⁴¹ RD 661, Article 24(4). Further, similar to RD 436, in order to obtain the legal entitlement to receive all of RD 661’s economic incentives, a qualifying renewable installation had to register in the Special Regime, by way of registration in the RAIPRE through the relevant Autonomous Community where the installation was located.

⁴² See *infra* paras. 58-60 and RD 661, Article 44(1).

⁴³ See RD 661, Preamble (explaining the cap and floor mechanism).

⁴⁴ In relation to hydropower installations, RD 661, consistently with RD 2818 and RD 436, continued to classify them into category “b”, further sub-divided into group “b.4” (i.e., no more than 10 MW) and group “b.5” (i.e., higher than 10 MW but less than 50 MW). See RD 661, Article 2(1).

| | | | | <i>Premium</i> | <i>Limit</i> | <i>Limit</i> | |
|---|-----|----------------|---|----------------|--------------|--------------|------|
| b | b.4 | First 25 years | 7.8 | 2.5044 | 8.52 | 6.52 | |
| | | Thereafter | 7.02 | 1.3444 | | | |
| | b.5 | First 25 years | 6.60 + 1.20 x [(50 - P) / 40], where P is the power of the facility | 2.1044 | 1.3444 | 8.0 | 6.12 |
| | | Thereafter | 5.94 + 1.080 x [(50 - P) / 40], where P is the power of the facility. | | | | |

54 As is evident from the table above, the Special Regime producers (including Claimants' hydropower installations) were entitled under RD 661 to obtain the feed-in remuneration – the “regulated tariff” or the “pool price plus premium” – for all of their electricity output (measured in kWh), without any limit on production. This incentivised generators to optimize plant operation to maximize output.

b Fixed minimum feed-in remuneration for entire operational life

55 Further, as is evident from the “Term” column in the table above, RD 661 granted hydropower installations the right to receive the feed-in remuneration for their entire operational life. Each installation was entitled to receive the feed-in remuneration – either in the form of a “regulated tariff” or the “pool price plus premium” – at a particular rate during its first 25 years of operation, after which the feed-in remuneration would continue for the lifetime of the installation, but at a lower rate.⁴⁵

⁴⁵ Pursuant to the Transitory Provision One of RD 661, Special Regime installations previously subject to the remuneration scheme set out in RD 436 and that entered into commercial operations before 1 January 2008 (such as Claimants' installations) were granted the right to choose between: (i) benefiting from the feed-in remuneration regime set forth in RD 661 from the date RD 661 entered into force (i.e., 1 June 2007); or (ii) being, subject to certain conditions and in some cases during a transitional period, under the prior regime of RD 436.

Under choice (ii) above, there were two further options: (a) if the RD 436 option chosen was “regulated tariff”, then the regulated tariff regime of RD 436 was to apply for the remainder of the installation's lifetime; or (b) if the installation chose the 436 “market price plus premium and incentive” option, the economic regime for that option under RD 436 was to be applied until 31 December 2012, after which (i.e., from 1 January 2013) the feed-in remuneration scheme under RD 661 (with a right to choose annually between the “regulated tariff” and the “pool price plus premium” options) was to apply.

Most of Claimants' hydropower installations (as described in Section II.B below) chose option (b) under the RD 436 regime (save two installations in the Xana Portfolio which

- 56 The appeal of RD 661 to potential private investors (such as Claimants) was also bolstered by the fact that its economic regime was not subject to any adverse future changes with respect to duly registered, existing renewable installations. Article 44(3) of RD 661 contemplated a review of the tariffs, premiums and lower and upper limits set out therein every four years, starting from 2010, to determine whether those incentives still reflected a particular technology's costs, market participation and a reasonable return for the investor. However, it also made it very clear that any revisions stemming from these reviews would *not* apply to existing installations. Article 44(3) stated that:

The revisions to the regulated tariff and the upper and lower limits indicated in this paragraph *shall not affect* facilities for which the deed of commissioning shall have been granted prior to 1 January of the second year following the year in which the revision shall have been performed (emphasis added).

- 57 In other words, a revision conducted in 2010 could not affect installations that had obtained a deed of commissioning prior to January 2012.⁴⁶ Through this provision, Spain made a regulatory compact with investors by offering certainty in relation to feed-in remuneration in exchange for investment. Once that investment was made, any downward changes to the remuneration regime would not affect existing investments.

c Inflation adjustment of feed-in remuneration

- 58 In order to further incentivise investments and to mitigate the effects of inflation, RD 661 also provided for an inflation adjustment mechanism pursuant to which the values of the regulated tariff, premium, and lower and upper limits provided for in RD 661 (and as set out in the table above) were to be updated on a yearly basis to reflect increases in the Spanish consumer price index (*CPI*).⁴⁷ For the installations in category “b” (including hydropower installations in groups b.4 and b.5), this was to be done by reference to the increase in the CPI, less 25 basis points up to 31 December 2012 and 50 basis points thereafter.⁴⁸

chose to benefit from the feed-in remuneration regime set forth in RD 661 from the date RD 661 entered into force). Those installations that chose option (b) were thus remunerated under the “pool price plus premium and incentive” of RD 436 until 31 December 2012, and, from 1 January 2013, were expected to start receiving the feed-in remuneration regime of RD 661 (i.e., either “pool price plus premium” or the “regulated tariff”). However, the changes introduced by Spain since December 2012 (as discussed below) prevented Claimants from attaining the remuneration established in RD 661.

⁴⁶ As noted in Section II.B below, each of the hydropower plants in which Claimants made investments had been commissioned and was in full operation when Claimants invested in them.

⁴⁷ RD 661, Article 44(1).

⁴⁸ RD 661, Article 44(1) and Additional Provision One.

- 59 In short, RD 661 bestowed upon duly-registered Special Regime installations (including Claimants' hydropower installations) an economic right to:
- a sell all of their electricity output;
 - b at two specific feed-in remuneration options – either a regulated tariff or a premium on top of the market price, at installations' choice;
 - c for amounts pre-established by law but revised yearly for inflation;
 - d for their entire operational lifetime;
 - e free from any future downward reviews or alterations to the specified feed-in remuneration rates or term.
- 60 This framework provided renewable energy producers with long-term, predictable and “bankable” revenue streams, and, as Spain had hoped, was successful in generating significant investments from across the globe into Spain's renewable energy sector. Indeed, absent this framework, Claimants would not have made the investments at issue in this arbitration.

B IN RELIANCE ON SPAIN'S COMMITMENTS, CLAIMANTS INVESTED IN THE HYDROPOWER GENERATION SECTOR IN SPAIN

- 61 In reliance upon the legal and economic framework described above, Claimants made significant investments in the hydropower (mainly small-hydro⁴⁹) generation sector in Spain, by acquiring equity and debt interests in various Spanish entities that own hydropower installations in different locations in Spain.
- 62 Claimants' investments in the hydropower sector in Spain consists of two portfolios:
- a a portfolio of 14 hydropower plants with a total installed capacity of approximately 53.675 MW (the *Xana Portfolio*); and
 - b a portfolio of 19 hydropower plants with a total installed capacity of approximately 53.113 MW (the *Ondina Portfolio*).
- 63 Each of these two portfolios is discussed briefly below, and Annex 1 to the Request provides further details regarding the hydropower installations in both portfolios in the form of a table.

⁴⁹ Only 2 of the 33 hydropower plants in which Claimants hold investments have an installed capacity between 10 to 50 MW. The remaining 31 are small-hydro plants, with an installed capacity of less than 10 MW: *see* Annex 1 to the Request.

1 Xana Portfolio

- 64 On 13 May 2011, Claimants (through Rinlantium S.L., a direct wholly-owned Spanish subsidiary of Second Claimant) acquired 100% shareholding interest in Hidro Energía Xana S.L.U. (**Hidro Xana**), a company incorporated in Spain.
- 65 Hidro Xana owns a total of 14 hydropower plants, with a total installed capacity of approximately 53.675 MW, in the Spanish Autonomous Communities of Galicia, Extremadura, Castilla y León, and Castilla La Mancha. 13 out of these 14 plants are small-hydro plants (with an installed capacity of less than 10 MW), while the remaining one has an installed capacity of 17.474 MW.⁵⁰
- 66 Each of the hydropower plants in the Xana Portfolio had been commissioned, and was in full operation when Claimants invested in them. Each of those plants also met the criteria necessary to qualify for the RD 661 economic regime, and was certified as such by the relevant Spanish authorities (including through registration in the RAIPRE).⁵¹

2 Ondina Portfolio

- 67 On 29 December 2011, Claimants (through Hydro Energía Ondina S.L.U. (**Hydro Ondina**), their indirect wholly-owned Spanish subsidiary):
- a acquired 29.25% shareholding interest in Hidrodata S.A. (**Hidrodata**), a company incorporated in Spain;
 - b acquired a mezzanine loan in Hidrodata; and
 - c entered into specifically negotiated put and call option agreements with the remaining two shareholders of Hidrodata, pursuant to which Hydro Ondina became obliged to acquire the remaining 70.75% share capital in Hidrodata upon the exercise of the put/call options.
- 68 On 30 December 2012, Hydro Ondina acquired a further 45.77% shareholding interest in Hidrodata pursuant to the exercise of a put option by one of Hidrodata's shareholders. On the same day, as part of an intra-group transaction, Hydro Ondina sold 3% of its shareholding interest to its indirect parent company, Hydroxana.
- 69 On 20 May 2015, Hydro Ondina agreed to acquire, upon fulfilment of certain conditions precedent (which have not been fulfilled as of the date

⁵⁰ See Annex 1 to the Request.

⁵¹ See Certificate of the Ministry of Industry, Energy and Tourism of 27 November 2012, **Exhibit C-10** (showing the identification/registration number within RAIPRE of each of the plants in the Xana portfolio).

of this Request),⁵² the remaining 24.99% of the outstanding shares in Hidrodata, pursuant to the exercise of a put option by the other Hidrodata shareholder.

70 Accordingly, as of the date of this Request, Hydroxana holds 3% shareholding interest in Hidrodata directly and 97% indirectly⁵³ (through its indirect wholly-owned subsidiary, Hydro Ondina). Pursuant to successive shareholders agreements in Hidrodata (concluded as a result of the put and call option agreements entered into on 29 December 2011), Hydro Ondina has been in control of Hidrodata since December 2011.

71 Hidrodata owns a total of 19 hydropower plants, with a total installed capacity of approximately 53.113 MW, in the Spanish Autonomous Communities of Catalonia (where the majority of plants are located) and Aragon. 18 out of these 19 plants are small-hydro plants (with an installed capacity of less than 10 MW), while the remaining one has an installed capacity of 13.5 MW.⁵⁴

72 Each of the hydropower plants in the Ondina Portfolio had been commissioned, and was in full operation when Claimants invested in them. Each of those plants also met the criteria necessary to qualify for the RD 661 economic regime, and was certified as such by the relevant Spanish authorities (including through registration in the RAIPRE).⁵⁵

73 Claimants made the above investments in the Xana and Ondina Portfolios in reliance on, and pursuant to, the legal and economic regime for hydropower installations in Spain described above, and in particular:

- a the right for Special Regime renewable installations to choose, on an annual basis and as was best suited to them, an incentivised feed-in remuneration that was, by design, higher than average pool prices;
- b the Special Regime installations' right to receive the feed-in remuneration for the sale of full net amount of their electricity output and for their whole operational life;
- c the right to receive a stable and predictable revenue stream, based on Spain's express guarantees contained in RD 436 and RD 661 that any subsequent revisions to their respective feed-in remuneration regimes

⁵² At present, Hidrodata is involved in a legal cause of dissolution pursuant to the Spanish companies law. In this regard, there are ongoing negotiations with the lenders to remedy such cause and to reactivate the company.

⁵³ As noted above, the acquisition of 24.99% shareholding interest remains subject to the satisfaction of a condition precedent as of the date of this Request.

⁵⁴ See Annex 1 to the Request.

⁵⁵ See Letter dated 28 January 2013 (received by Hidrodata on 13 February 2013) from the General Deputy Director of Electric Energy (Ministry of Industry, Energy and Tourism), **Exhibit C-11** (showing the identification/registration number within RAIPRE of each of the plants in the Ondina portfolio).

would not affect existing installations that had met the relevant criteria and obtained registration in the Special Regime; and

- d the right to an annual update of the applicable regulated tariff and premium (and the corresponding upper and lower limits) under RD 661 to take account of consumer price inflation.

74 It was well understood by *both Spain and Claimants* that Spain’s feed-in remuneration regime was designed to attract substantial foreign investments in exchange for the promise of a long-term, stable and predictable revenue stream that would allow for both the service of project finance debt and a return on the capital invested. As Spain acknowledged in its National Renewable Energy Action Plan 2011-2020 dated 30 June 2010:

- a its then-existing remuneration framework for renewable energies under RD 661 was “stable, predictable, flexible, controllable and secure for developers and the electricity system”;⁵⁶
- b the “[e]lectrical energy production under the special procedure [was] founded on three basic principles, namely legal certainty, feasibility and regulatory stability”;⁵⁷ and
- c “[a]ny present or future economic remuneration system to support the generation of electricity from renewable sources will be based on the aforementioned principles”.⁵⁸

75 Furthermore, in making their investments, and as part of their thorough market research and due diligence into Spain’s regulatory framework and the hydropower generation sector, Claimants took into account the particular features of the Spanish small-hydro assets⁵⁹ which made them the best regulatory risk-weighted and most bankable renewable asset class in Spain.

76 The fact that lenders, who conducted their own due diligence, were willing to provide significant non-recourse project financing for hydropower projects based on the strength, stability and predictability of revenue streams from Spain’s feed-in remuneration regime also bolstered Claimants’ expectations.

77 Claimants’ legitimate expectations were further enhanced by the fact that IDAE – an advisory governmental body that reports to the Ministry – was

⁵⁶ See Spain’s National Renewable Energy Action Plan 2011-2020 dated 30 June 2010, **Exhibit C-12**, p.49.

⁵⁷ *Ibid.*, p.118.

⁵⁸ *Ibid.*

⁵⁹ For example, the feed-in remuneration for hydropower sector contributed only an insignificant amount towards the extra costs of the Special Regime.

at the time looking to expand its portfolio of assets in the Spanish small-hydro sector. Similarly, major utilities and foreign infrastructure funds had demonstrated acquisitiveness in the hydro sector for a number of years and, at the relevant time, were willing to compete (and, in fact, competed) with Claimants in auctions for assets in the Spanish small-hydro sector (including certain other hydropower portfolios which Claimants did not eventually acquire).

- 78 For all the above reasons, Claimants had a legitimate and reasonable expectation that Spain would respect its commitments, as enshrined in its laws, and that the feed-in remuneration regime would apply to Claimants' hydropower installations, at the guaranteed level and for the entirety of their production and lifetime, regardless of any future adverse changes to that remuneration regime (as any changes would only apply to new installations). Were it not for Spain's express legislative guarantees and representations, Claimants would not have made the investments at issue in this arbitration.

C SPAIN'S UNLAWFUL CONDUCT

- 79 Unfortunately, far from providing the stable, predictable and transparent environment that Spain had promised, once Claimants had made significant investments in the hydropower installations, Spain reneged on its commitments and subjected Claimants to a "rollercoaster ride" of constant and drastic changes by: (a) first modifying the RD 661 economic regime significantly in several different stages and applying those changes retroactively to Claimants' investments in 2012 and 2013; and (b) ultimately wiping out the RD 661 economic regime in its entirety in July 2013. In short, Spain is guilty of the classic "bait and switch".

- 80 Spain's measures are arbitrary and disproportionate; they have frustrated Claimants' legitimate and investment-backed expectations; and they have deprived Claimants of the benefits and enjoyment of their investments.

- 81 Each of Spain's internationally wrongful measures is discussed in turn below.

1 Spain's radical alteration of the legal and economic regime in 2012 and early 2013, and its application to Claimants' existing installations

a Act 15/2012 of 27 December 2012

- 82 On 27 December 2012, Spain passed Act 15/2012 (*Act 15/2012*),⁶⁰ which entered into force on 1 January 2013 and introduced, *inter alia*, the following drastic changes affecting the RD 661 economic regime to the detriment of Claimants' hydropower installations:

⁶⁰ Act 15/2012 was published in the Spanish Official Gazette on 28 December 2012.

i The 7% tariff cut

- 83 Pursuant to Act 15/2012, Spain imposed a 7% charge on all *revenues* obtained by all electricity generators from the total amount of electricity generated and fed into the Spanish electricity grid during a calendar year.
- 84 While Spain sought to label this 7% charge as a so-called “tax”, it was, in essence, nothing more than a disguised, retroactive tariff cut to the RD 661 feed-in remuneration regime for renewable installations. In particular, the 7% charge had (and continues to have) a disproportionate impact on renewable energy generators (including those in which Claimants have made investments), as compared to conventional generators, due to the structure of the remuneration regime.

ii Hydraulic royalty

- 85 Act 15/2012 inserted a new provision, Article 112 *bis*, in the Royal Legislative-Decree 1/2001 of 20 July (also known as the “Spanish Water Act”), imposing, again under the mischaracterization of “tax”, a new royalty on hydropower concessionaires for using inland public hydraulic domain to produce electricity. The rate applicable to hydropower facilities with an installed capacity equal to or less than 50 MW (which includes all hydropower installations in which Claimants hold investments) was 2.2% of the economic value of all hydroelectricity produced using the public hydraulic domain in each annual period.
- 86 Royal Decree 198/2015 of 23 March 2015 (**RD 198/2015**) recently developed Article 112 *bis* of the Spanish Water Act and limited the scope of application of the hydraulic royalty to plants located in an inter-community river basin. Annex 2 to this Request lists Claimants’ hydropower plants which have been affected by the hydraulic royalty.
- 87 The 7% charge on *revenues* and the hydraulic royalty are not *bona fide* levies, and entail a discriminatory and back-door tariff cut to the RD 661 economic incentives regime.
- 88 Spain, in breach of its previous guarantees, applied the above measures retroactively to existing, duly-registered Special Regime hydropower installations with pre-existing concessions (including Claimants’ hydropower installations).
- 89 Further arbitrary and drastic changes to the Special Regime followed shortly.

b Royal Decree-Law 2/2013 of 1 February 2013 (RD-L 2/2013)

90 Just a month after passing Act 15/2012, Spain enacted Royal Decree-Law 2/2013, of February 1 (**RD-L 2/2013**),⁶¹ which, despite entering into force the following day (i.e., on 2 February 2013), produced legal effects from 1 January 2013. RD-L 2/2013 stripped away some of the core elements of the feed-in remuneration regime established by RD 661 to which Claimants’ hydropower installations were entitled, introducing, among others, the following substantial changes:

i Elimination of the premium under the “pool price plus premium” option

91 As noted above, RD 661 afforded the owner of a Special Regime installation a choice between selling its net electricity output at either a “regulated tariff” or “pool price plus premium”. RD-L 2/2013 effectively abolished this choice.

92 *First*, it effectively eliminated the premium by ascribing a “new value” of “zero” per kWh to the applicable premiums under RD 661. RD-L 2/2013 consequently removed the incentive for installations to choose the “pool price plus premium” option (which had historically been higher, and was expected to continue to be higher in the future, than the regulated tariff option), and left them with no option other than to sell at the lower regulated tariff.

93 *Second*, any renewable energy producers that, after the entry into force of RD-L 2/2013, opted to sell their electricity under the “pool price” option – now without premium – were not entitled to subsequently choose to sell their electricity output at the “regulated tariff” during the remainder of their operational life.

94 *Third*, RD-L 2/2013 mandated that those Special Regime generators who, as at 2 February 2013, were selling their electricity output on the market pursuant to the “pool price plus premium” option would automatically be subject to the regulated tariff option from 1 January 2013. However, the owners of those installations could, by express notification to the Spanish authorities before 15 February 2013, choose to continue to sell on the market, in which case they would not receive the premium but also would no longer be entitled to subsequently opt into the regulated tariff option. Given that the regulated tariff was, by design, higher than the pool price, this effectively forced the Special Regime generators to stick to the regulated tariff option.

95 The right of election between regulated tariff and “pool price plus premium” enshrined in RD 661 was thus practically abolished.

⁶¹ RD-L 2/2013 was published in the Spanish Official Gazette on 2 February 2013.

ii *Replacement of the inflation update index*

- 96 As noted in paragraph 58 above, RD 661 provided that the regulated tariff and premium (and upper and lower limits) payable to the Special Regime installations would be updated annually by reference to the CPI, in order to take account of inflation.
- 97 However, with effect from 1 January 2013, RD-L 2/2013 replaced the CPI used for making those annual updates with a so-called, *ad hoc* “CPI at constant tax rates and excluding unprocessed foods and energy products”.⁶² The effect of this amendment was that any annual updates to the feed-in remuneration would no longer reflect any variations in the tax rates or inflation in relation to the prices of unprocessed foods and (as paradoxical as it may seem) energy products. This change seriously decreased the update rate⁶³ and, accordingly, decreased the remuneration of all renewable facilities subject to the Special Regime.
- 98 By applying RD-L 2/2013 in an arbitrary and retroactive manner to Claimants’ installations, Spain further deprived Claimants of the benefits of the RD 661 economic regime, upon which they had legitimately relied at the time of investing in the Spanish hydropower generation sector.
- 99 Act 15/2012 and RD-L 2/2013, which by themselves caused a substantial reduction in revenues obtained by Claimants’ hydropower installations, only foreshadowed a subsequent decisive blow, which Spain dealt by completely overhauling the legal and economic framework for renewable installations in July 2013.

2 Spain’s dramatic redesign since July 2013 of the legal and economic regime for hydropower installations and establishment of the New Regime

- 100 On 12 July 2013, Spain announced a new set of legislative and regulatory measures – the third package of drastic changes in fewer than seven months, after those of December 2012 and February 2013 – that completely repudiated the already substantially-altered feed-in remuneration scheme under RD 661, and introduced a radically different and detrimental new regime for both *existing* and future renewable energy installations that was no longer based on energy production (the **New Regime**). Spain implemented this New Regime through an opaque avalanche of interwoven measures, including, *inter alia*:
- a Royal Decree-Law 9/2013, of 12 July (**RD-L 9/2013**),⁶⁴ which entered into force on 14 July 2013 and fully abrogated the legal and economic

⁶² RD-L 2/2013, Article 1.

⁶³ Notably, in 2013, the changes introduced by RD-L 2/2013 resulted in an update rate close to zero.

⁶⁴ RD-L 9/2013 was published in the Spanish Official Gazette on 13 July 2013.

regime applicable to the existing renewable plants (by repealing RD 661);

- b Act 24/2013, of 26 December, on the Electric Power Sector (**2013 Electricity Act**), which entered into force on 28 December 2013 and almost entirely repealed the 1997 Electricity Act;⁶⁵
- c Royal Decree 413/2014, of 6 June, regulating the activity of power production from renewable sources of energy, cogeneration and waste (**RD 413**),⁶⁶ which entered into force on 11 June 2014;
- d Ministerial Order IET/1045/2014, of 16 June, approving the remuneration parameters for standard installations applicable to certain facilities that produce power from renewable sources of energy, cogeneration and waste (**Order 1045**),⁶⁷ which entered into force on 21 June 2014;
- e Ministerial Order IET/1168/2014, of 3 July, that determines the date of automatic registration of certain facilities on the specific remuneration regime register regulated in Title V of RD 413 (**Order 1168**);⁶⁸ and
- f Ministerial Order IET/1344/2015, of 2 July (**Order 1344**), which modified Order 1045 in order to reduce the period of regulatory useful life of certain hydropower facilities and entered into force on 8 July 2015.⁶⁹

101 The New Regime is arbitrary, and represents a drastic departure from the previously guaranteed legal and economic regime on which Claimants' investments were based.

102 As explained above, under the RD 661 feed-in remuneration regime applicable at the time of Claimants' investments, the Special Regime generators had a right to choose between selling their electricity at a regulated tariff or under the "pool price plus premium" option. However, as discussed in Section II(C)(I)(b) above, RD-L 2/2013 took this choice

⁶⁵ Published in the Spanish Official Gazette on 27 December 2013, the 2013 Electricity Act almost entirely repealed the 1997 Electricity Act, and just a few provisions of the latter on transitional arrangements for the financial stability of the electricity system remained in force (in a substantially amended form). The 2013 Electricity Act, in addition to incorporating the measures under RD-L 9/2013, introduced further harmful measures, including: (a) removal of the distinction between the Ordinary Regime and the Special Regime; (b) placing conventional and renewable energy generators on an equal footing, depriving renewable energy installations of the unconditional right of priority of dispatch that existed under the previous regime; and (c) creating an obligation for all renewable installations to finance any accrued tariff deficit.

⁶⁶ RD 413/2014 was published in the Spanish Official Gazette on 10 June 2014.

⁶⁷ Order IET/1045/2014 was published in the Spanish Official Gazette on 20 June 2014.

⁶⁸ Order IET/1168/2014 was published in the Spanish Official Gazette on 7 July 2014.

⁶⁹ Order IET/1344/2015 was published in the Spanish Official Gazette on 7 July 2015.

away by effectively eliminating the “pool price plus premium” option. Under the New Regime introduced by RD-L 9/2013, Spain also eliminated the Special Regime generators’ entitlement to the regulated tariff.

- 103 The only option now available to renewable energy generators, such as Claimants’ hydropower installations, is to sell their entire electricity output at market prices, with the uncertain possibility⁷⁰ of receiving from the State an additional specific remuneration (the *Specific Remuneration*) which may include one, both (or neither) of the following elements:
- a a “remuneration to investment”, per MW of installed capacity, seeking, in theory, to cover the hypothetical investment costs of a “standard installation” that cannot be met by market prices; and
 - b a “remuneration to operation”, per megawatt hour (*MWh*) of electricity produced, seeking to cover the hypothetical operating costs of a “standard installation” that cannot be met by market prices.
- 104 The key features of the Specific Remuneration are discussed further below, but, as a preliminary matter, it is pertinent to note that neither RD-L 9/2013 (which entered into force on 14 July 2013), nor the 2013 Electricity Act (which entered into force on 28 December 2013), defined what the precise economic regime would be going forward, or the amount of Specific Remuneration.
- 105 It was only in June 2014 – 11 months after Spain introduced the New Regime – that it began passing the necessary implementing regulation to define the economic regime that would thenceforth apply to renewable energy installations. In essence, during a 11-month transitory period, renewable generators (such as Claimants’ hydropower installations) were left to operate completely in the dark without knowing, for example, how much they would be paid or how much they should produce to optimize associated costs.
- 106 Further, the remuneration parameters for standard installations ultimately laid down under Order 1045, despite their entry into force on 21 June 2014, applied retroactively from the entry into force of RD-L 9/2013 on 14 July 2013. Thus, for the period of 11 months from 14 July 2013 until 21 June 2014, Claimants’ hydropower installations operated under a transitory economic regime as provided for in the former regulatory framework. However, any feed-in remuneration under the former framework paid during the transitory period was on account of the New Regime, i.e., was to be discounted from any Specific Remuneration payable under the New Regime once parameters for calculation of such Specific Remuneration

⁷⁰ Under the New Regime, the Specific Remuneration is casted as an *exceptional* figure that the Government *may* grant, where appropriate, on the basis of its unilateral assessment of whether renewable facilities are unable to participate in the market in equal conditions with respect to conventional producers.

were defined at some later date (as was done only in June 2014). Thus, as of 14 July 2013, the rules to which the renewable plants were subject did not exist. The plants were instead subject to a virtual regime, devoid of the necessary and expected transparency, predictability and legal certainty.

107 Indeed, to date, Spain has not offered any guidelines whatsoever on many key aspects of the New Regime.⁷¹

a Remuneration under the New Regime

108 While the sudden and drastic change in Spain's policy with regard to the hydropower generation sector and its repeated changes to the regulatory framework were arbitrary and capricious, the New Regime itself is arbitrary and has had a disproportionate impact on Claimants' investments in the Spanish hydropower sector.

109 *First*, in an arbitrary departure from the RD 661 economic regime under which Claimants' hydropower installations were entitled to feed-in remuneration for their entire operational lifetimes, the New Regime limits payment of the Specific Remuneration to a maximum period of 25 years of operation (the *25-year Limitation*). Thereafter, no Specific Remuneration is granted to Claimants' installations. This limitation itself caused serious harm to Claimants' installations, whose operational lifetimes extended much beyond 25 years.

110 However, in a further demonstration of regulatory chaos to which Claimants' installations were subjected by Spain, in July 2015 – and just one year after the enactment of Order 1045 – Spain re-amended its New Regime and modified the day from which the 25-year Limitation was to be calculated for hydropower installations that had started operations prior to 1994.

a Under the original wording of Order 1045 (which was in effect from June 2014 to July 2015), the 25-year Limitation was to be calculated from the year 1994, thereby extending until 2019 the regulatory useful life of hydropower installations that had started operations prior to 1994.

b However, in July 2015, Spain passed Order 1344 (as an amendment to Order 1045) under which the 25-year Limitation is to be calculated

⁷¹ In order to prepare the parameters applicable to the New Regime, the Government instructed two international consultancy companies, Roland Berger and Boston Consulting Group. However, it appears that, in defining the New Regime's economic parameters, the Government ultimately relied on its own calculations and analysis (with the assistance of IDAE) rather than on the consultancy firms it had retained, without providing any reasons for doing so. In any case, the rationale underlying the economic parameters upon which the New Regime is based remains unclear, aggravating the lack of transparency and uncertainty that the New Regime represents.

from the year of commissioning of the installation.⁷² This 25-year period has either already expired or will come to an end shortly for most of Claimants' hydropower installations, thus depriving such installations from the Specific Remuneration even earlier than expected.

- 111 Thus, since June 2014, the 25-year Limitation of the Specific Remuneration under the New Regime has disproportionately affected the Claimants' hydropower installations, whose actual operational lives (and corresponding water concessions) extend much beyond 25 years. With regard to pre-1994 installations (which include most of Claimants' hydropower installations), Order 1344 has further aggravated the dispute, evidencing the regulatory limbo under which hydropower producers are obliged to operate in Spain as well as the tremendous uncertainties linked with the New Regime.
- 112 *Second*, the manner in which the Specific Remuneration is to be calculated also represents a complete and arbitrary departure from the economic regime that was in force at the time the Claimants made their investments.
- 113 The feed-in remuneration regimes under both RD 436 and RD 661 were based on kWh of electricity produced by each plant and other project-specific variables (thus creating an incentive to build efficient facilities and maximize electricity output). By contrast, the Specific Remuneration is only *partly* based on production.
- 114 Further, the remuneration parameters under the New Regime do not reflect the specific circumstances (such as particular investment costs and operational costs) of actual renewable facilities currently operating in Spain, but are based on several "standard" (hypothetical) categories of installations unilaterally defined by Spain.⁷³ These "standard" installation values grossly underestimate the actual costs incurred by actual renewable installations, and appear to have been set by Spain only to permanently reduce the remuneration previously guaranteed to renewable installations.⁷⁴

⁷² See Order 1344, Final Provision One, which modified with effect from 21 June 2014 Annex I, section 6 of Order 1045.

⁷³ Under the New Regime, each actual renewable installation is assigned to a "standard" category, depending on its broad characteristics (such as technology, installed power and date of commissioning). For each such "standard" category, Order 1045 then defines the initial remuneration parameters that result in the values for "remuneration to investment" and "remuneration to operation", which together constitute the Specific Remuneration.

⁷⁴ The Specific Remuneration does not take into account the costs incurred or investments made as a consequence of any laws or regulations of a local nature, such as regional or municipal taxes, administrative licences or authorisations. Had these costs (which are necessarily incurred when building and operating a plant at a given location) been properly considered, the Specific Remuneration would have been higher.

- 115 *Third*, even if a renewable installation qualifies for the Specific Remuneration (which is uncertain), there are also caps under the New Regime to ensure that the installation’s Specific Remuneration does not go beyond what the Government considers to be a “reasonable return”, which, in essence, is not at all a return on investment.
- 116 Under the New Regime, the “reasonable return” cap for existing installations is defined as the average return of Spain’s 10-year bond in the secondary market in the 10 years prior to the entry into force of RD-L 9/2013 plus a differential. For the present Regulatory Period, Order 1045 fixes the reasonable return for existing installations at only 7.398%.
- 117 Moreover, the “reasonable return” can be modified at the end of each Regulatory Period (see paragraph 119 below). The renewable installations’ returns are, therefore, completely exposed to the vagaries of the Spanish sovereign debt market and the Government’s own whim.
- 118 This is yet another significant departure from the RD 661 economic regime under which reasonable return operated as a floor rather than as a cap (i.e., that regime guaranteed, at the very minimum, a reasonable return). Not only does the New Regime make it unlikely for generators to obtain returns, if any, beyond what the Government considers “reasonable”, what is a “reasonable” return can also change over time (and be decreased).
- 119 *Fourth*, the New Regime has significantly increased the regulatory risk and uncertainty for Claimants’ investments. Under the New Regime, the Government retains a wide margin of discretion to modify the economic regime during the operating life of the installations and with respect to existing installations. In particular:
- a the New Regime provides for regulatory periods of six years each (the **Regulatory Period**) at the end of which the Government can change any of the remuneration parameters (save two⁷⁵), as well as the value upon which the so-called “reasonable return” would be based over the rest of the regulatory life of the standard installation; and
 - b each Regulatory Period is divided into two periods of three years (each a **Regulatory Semi-Period**), at the end of which the Government can also change the remuneration parameters based on market price fluctuations in the electricity market during the previous Regulatory Semi-Period and the forecasted operating hours.
- 120 Moreover, the New Regime provides no indication as to the criteria the Government will follow in approving the economic regime for renewable energy installations after each Regulatory Period.

⁷⁵ The only two parameters that cannot be reviewed (at the end of any of the abovementioned Regulatory Periods) are the regulatory useful life and the standard value of the initial investment of the “standard” installations.

- 121 Consequently, for each standard category (including categories to which Claimants' hydropower installations have been assigned), Order 1045 has defined the initial remuneration parameters to determine the values of "remuneration to investment" and "remuneration to operation" only for the first Regulatory Semi-Period (2014-2016) and for some part of 2013 (i.e., from 14 July 2013, when RD-L 9/2013 entered into force, to 31 December 2013). Annexes 3 and 4 to this Request include two tables summarizing the status of the Specific Remuneration for Claimants' hydropower installations for the most part of year 2013 (Annex 3) and for the 2014-2016 period (Annex 4) under Order 1045 (as amended).
- 122 In other words, the New Regime puts a definitive end to stability. The Specific Remuneration under the New Regime is not only subject to governmental discretion, but the Government has also arrogated to itself the right to modify the parameters to calculate such remuneration on regular intervals, even in respect to existing installations.
- 123 This increased regulatory risk and uncertainty represent, once again, a significant departure from the stability commitments provided under RD 661.
- 124 *Fifth*, notwithstanding the fact that the feed-in remuneration for hydropower sector contributed only an insignificant amount towards the extra costs of the Special Regime, Spain forced hydropower generators (such as Claimants' installations) to bear a disproportionately high amount of the costs-savings effected by the New Regime, instead of considering more just, alternative policy solutions. In fact, Spain's own national energy sector supervisory body, CNMC, recognized the disproportionate impact of the New Regime on the hydropower sector, noting that hydropower installations suffered losses of up to 90% of regulated payments to which they were entitled under the RD 661 regime.⁷⁶
- 125 *Sixth*, the New Regime did not supersede, and continues to maintain, the harmful measures introduced previously under Act 15/2012, namely: (a) the annual 7% charge, which continues to apply to Claimants' hydropower installations under the New Regime; and (b) the new 2.2% hydraulic royalty for the use of inland public hydraulic domain, which is maintained in the Spanish Water Act for hydropower installations.⁷⁷ This has further exacerbated the damages suffered by Claimants' hydropower installations.

⁷⁶ See CNMC Report, "*Informe sobre la Propuesta Orden por la que se aprueban los parámetros retributivos de las instalaciones tipo*", 3 April 2014, **Exhibit C-13**, p.15.

⁷⁷ Due to the above-discussed drastic changes and the establishment of an entirely new remuneration system for renewable power plants, the retroactive measures implemented under RD-L 2/2013 were applicable only from 1 January to 14 July 2013 (when RD-L 9/2013 came into force), after which date they were effectively superseded by the New Regime.

- 126 *Finally*, specifically in relation to Claimants’ hydropower installations, Spain misclassified those installations, which had a detrimental impact on their entitlement to the Specific Remuneration under the New Regime.
- 127 Initially, Article 1 of RD 413 classified small-hydro plants as either being “built exclusively for hydroelectric purposes” (subcategory b.4.1) or “built on existing premises or devoted to purposes other than hydroelectric” (subcategory b.4.2). It further stated that, if it were not possible to classify a specific small-hydro plant under subcategories b.4.1 or b.4.2, then subcategory b.4.2 would apply by default. Unsurprisingly, Order 1045 establishes lower remuneration for b.4.2 plants than for b.4.1 plants.
- 128 Claimants’ small-hydro plants were built for hydroelectric purposes, and should therefore have been classified as b.4.1 plants. However, they were wrongly classified by Spain as b.4.2 plants, and thereby deemed to receive even lower remuneration. In fact, as indicated in Annexes 3 and 4 to this Request, due to their initial misclassification under Order 1045,⁷⁸ Claimants’ small-hydro installations (wrongly classified as b.4.2 plants) were projected to receive the Specific Remuneration value of “0” for the most part of year 2013⁷⁹ and for the 2014-2016 period.⁸⁰
- 129 In short, under the New Regime, complete revenue stability under the RD 661 feed-in remuneration regime on the basis of which Claimants invested in Spain has been dismantled and replaced with complete revenue instability and unpredictability. Where there was certainty and stability for foreign investors (such as Claimants) and project finance lenders, doubt and ambiguity have become the order of the day.
- 130 This drastic shift in the regulatory environment is exactly what Spain had expressly guaranteed in RD 436 and RD 661 not to do vis-à-vis existing, duly commissioned installations. In fact, Claimants would not have made the investments in the Spanish hydropower sector had the rights that Spain first curtailed by implementing Act 15/2012 and RD-L 2/2013, and eventually stripped under the New Regime, not been part of the Special Regime applicable at the time of Claimants’ investments.
- 131 Spain’s measures have caused (and will continue to cause) serious and substantial harm to Claimants. In particular, Spain’s measures have dramatically impaired the value that Claimants derived from their investments, through a drastic impact on, *inter alia*:

⁷⁸ Hidro Xana and Hidrodata have initiated administrative proceedings seeking the reclassification of their small-hydro plants within the b.4.1 category. While reclassification has been granted in relation to some of the small-hydro plants, decision on some other plants is still pending.

⁷⁹ See Annex 3 to the Request.

⁸⁰ See Annex 4 to the Request.

- a the liquidity of Claimants' investments, with little scope of any short- or mid-term recovery (or realization) of the value of the investments;
- b the ability of the Spanish companies in which Claimants hold investments to service their loan obligations under their project financing debt arrangements; and
- c the returns and distributions which Claimants would have obtained under the RD 661 regulatory and economic regime.

III JURISDICTION

132 In the sub-sections below, Claimants set forth the jurisdictional bases for their claims under the ECT and the ICSID Convention.

A JURISDICTION UNDER THE ECT

133 Article 26 of the ECT sets forth the rules governing resolution of “[d]isputes between a Contracting Party and an Investor of another Contracting Party relating to an Investment of the latter in the Area of the former”. Article 26(2) of the ECT provides that:

If such disputes cannot be settled according to the provisions of paragraph (1) [i.e., amicably] within a period of three months from the date on which either party to the dispute requested amicable settlement, the Investor party to the dispute may choose to submit it for resolution ...

(c) in accordance with the [provisions of Article 26 relating to international arbitration].

134 Each of the requirements in Article 26 of the ECT for the submission of a dispute to international arbitration has been satisfied in the present case. They are considered in turn below.

1 Spain is a “Contracting Party” to the ECT

135 A “Contracting Party” to the ECT is a State which has consented to be bound by the ECT and for which the ECT is in force.⁸¹ Spain signed the ECT on 17 December 1994, and ratified it on 11 December 1997.⁸² The ECT entered into force with respect to Spain on 16 April 1998. Spain is therefore a “Contracting Party” to the ECT.

⁸¹ ECT, Article 1(2).

⁸² See also Instrument of ratification of the ECT published in the Spanish Official Gazette on 17 March 1998, **Exhibit C-14**.

2 Each of the Claimants is an “Investor of another Contracting Party”

136 Pursuant to Article 1(7)(a)(ii) of the ECT, “Investor” (with respect to a Contracting Party) is defined to include “a company or other organization organized in accordance with the law applicable in that Contracting Party”.

137 As noted above, Claimants in this arbitration are companies incorporated under the laws of Luxembourg (Hydro Energy) and Sweden (Hydroxana). Each of Luxembourg and Sweden is a “Contracting Party” to the ECT.⁸³ Accordingly, each of the Claimants is an “Investor of another Contracting Party” for the purposes of Article 26 of the ECT.

3 The dispute relates to an “Investment” in the “Area” of Spain

138 Article 1(6) of the ECT defines an “Investment” broadly as follows:

‘Investment’ means every kind of asset, owned or controlled directly or indirectly by an Investor and includes:

- (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;
- (b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise;
- (c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;
- (d) Intellectual Property;
- (e) Returns;
- (f) any right conferred by law or contract or by virtue of any licences and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector.

139 Article 1(6) of the ECT also specifies that, to enjoy protection under the ECT, an investment must be “associated with an Economic Activity in the Energy Sector”. Article 1(5) of the ECT defines “Economic Activity in the Energy Sector” as “an economic activity concerning the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sale of Energy Materials and

⁸³ Luxembourg signed the ECT on 17 December 1994 and ratified it on 7 February 1997. Sweden signed the ECT on 17 December 1994 and ratified it on 13 November 1997. The ECT entered into force with respect to each of Luxembourg and Sweden on 16 April 1998.

Products ...”. Article 1(4) of the ECT defines “Energy Materials and Products” as the items included in Annex EM of the ECT, which include electrical energy.⁸⁴

140 As discussed above, Claimants have made substantial investments in the hydropower generation sector in Spain, which include, without limitation, Claimants’ shareholding and debt interests in the various Spanish companies that own and operate the hydropower generation installations, as well as interests in those installations (Article 1(6)(b)); claims to money (Article 1(6)(c); Returns (Article 1(6)(e));⁸⁵ and rights conferred by law (including those conferred by RD 661) (Article 1(6)(f)). Claimants’ investments thus fall within the ECT’s broad definition of “Investment”.

141 As the Spanish companies in which Claimants hold equity and debt interests own and operate electricity generation facilities in Spain, Claimants’ investments are clearly associated with “an Economic Activity in the Energy Sector” within the meaning of Articles 1(4) and 1(5) of the ECT.⁸⁶

4 The Parties have consented to the arbitration of this dispute under the ECT

142 Pursuant to Article 26(3) of the ECT, Spain has given its “unconditional consent to the submission of a dispute to international arbitration”. Claimants have accepted Spain’s standing offer to qualifying foreign investors to settle disputes through international arbitration by filing this Request, which also constitutes Claimants’ written consent to submit their disputes with Spain to the jurisdiction of the Centre pursuant to Article 26(4) of the ECT.

143 For the purposes of Article 26(3)(b)(i) of the ECT, Claimants note that none of them has previously submitted this dispute to the courts or administrative tribunals of Spain, or in accordance with any applicable, previously agreed dispute settlement procedure, as envisaged in Article 26(2)(a) or (b) of the ECT.

⁸⁴ ECT, Annex EM, Item 27.16.

⁸⁵ See ECT, Article 1(9) (defining “Returns” to mean “the amounts derived from or associated with an Investment, irrespective of the form in which they are paid, including profits, dividends, interest, capital gains, royalty payments, management, technical assistance or other fees and payments in kind”).

⁸⁶ Article 1(6) of the ECT further provides that qualifying investments are “all investments, whether existing at or made after the later of the date of entry into force of this Treaty for the Contracting Party of the Investor making the investment and that for the Contracting Party in the Area of which the investment is made (hereinafter referred to as the ‘Effective Date’) provided that the Treaty shall only apply to matters affecting such investments after the Effective Date”. The “Effective Date”, based upon the entry into force of the ECT for Spain, Luxembourg and Sweden is 16 April 1998. In the present case, Claimants made all their investments in Spain well after this Effective Date.

144 Moreover, as explained in Section IV below, the present dispute relates to breaches of Articles 10 and 13 (Part III) of the ECT, and therefore meets the requirement of Article 26(1) of the ECT that the dispute concern “an alleged breach of an obligation of [a Contracting Party] under Part III”.

5 Claimants’ good faith efforts to resolve the dispute amicably

145 Before exercising their rights to pursue remedies through international arbitration by serving this Request, pursuant to Article 26(1) of the ECT, Claimants made numerous requests for negotiations to Spain in an attempt to reach an amicable settlement of the dispute, all to no avail.

- a By their letter dated 23 December 2013, Claimants formally notified Spain of the dispute under the ECT, and requested negotiations pursuant to Article 26(1) of the ECT with a view to resolving the dispute amicably.⁸⁷
- b On 26 December 2014, Claimants wrote to the Government of Spain again, reiterating their request for a meeting with an appropriate duly authorised representative of the Government to determine whether there was any scope for reaching an amicable settlement.⁸⁸

146 However, as at the date of this Request, Spain has failed even to acknowledge Claimants’ notifications, let alone enter into negotiations for an amicable settlement with them. Instead, as discussed above, since Claimants’ notification of 23 December 2013, Spain adopted new measures which further aggravated the dispute and the harm inflicted on Claimants. In such circumstances, Claimants have no reasonable alternative but to refer this dispute to international arbitration.

B JURISDICTION UNDER THE ICSID CONVENTION

147 The jurisdiction of the Centre is governed by Article 25(1) of the ICSID Convention, which provides as follows:

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

⁸⁷ See Letter from Claimants (and their associated companies) to President Mariano Rajoy Brey, dated 23 December 2013, **Exhibit C-15**.

⁸⁸ See Letter from Claimants (and their associated companies) to President Mariano Rajoy Brey, dated 26 December 2014, **Exhibit C-16**.

148 These requirements for the existence of the Centre’s jurisdiction are satisfied in the present case. Claimants submit to the jurisdiction of the Centre a legal dispute arising out of their investments in the hydropower generation sector in Spain, which they and Spain have consented in writing to submit to the Centre. Each element necessary to establish the jurisdiction of the Centre is addressed in turn below.

1 The legal dispute

149 The dispute described in this Request is a legal dispute, as it relates to: (a) Spain’s breaches of its obligations under the ECT and international law with respect to Claimants and their investments in the territory of Spain; and (b) Spain’s international responsibility for such breaches.

2 The dispute arises directly out of an investment

150 Claimants’ investments in Spain constitute an “investment” for the purposes of both the ECT and the ICSID Convention.

151 As discussed above, it is clear from the terms of Article 1(6) of the ECT that Claimants’ investments constitute an “Investment” protected by the ECT.

152 In the light of the Contracting Parties’ agreement on the meaning of the term “Investment” set out in Article 1(6) of the ECT, and the offer to submit disputes arising out of such investments to ICSID set out in Article 26 of the ECT, it is clear that Claimants’ assets and interests which fall within the meaning of “Investment” in Article 1(6) of the ECT also amount to an “investment” as that term is used in Article 25(1) of the ICSID Convention.

3 The dispute is between a Contracting State and nationals of another Contracting State

a Each of the Claimants is a “national of another Contracting State”

153 The jurisdiction of the Centre extends to claims brought by investors that are nationals of another Contracting State. The ICSID Convention itself does not specify any particular test to determine the nationality of a juridical person. The ICSID Convention can therefore accommodate the freedom of States to legislate which entities may be their nationals and to agree upon these criteria. The standard test to determine the nationality of a juridical person applied in international law and in ICSID case law is the place of incorporation.

154 Claimants are companies incorporated under the laws of Luxembourg and Sweden, each of which is a Contracting State to the ICSID Convention.⁸⁹ Therefore, each of the Claimants is a “national of another Contracting State” for the purposes of Article 25 of the ICSID Convention.

b Spain is a “Contracting State”

155 Spain signed the ICSID Convention on 21 March 1994, and deposited its instrument of ratification on 18 August 1994. The ICSID Convention entered into force for Spain on 17 September 1994. Spain is therefore a “Contracting State” for the purposes of Article 25 of the ICSID Convention.

4 Written consent of the Parties to submit the dispute to the Centre

156 The ECT was signed by each of Spain, Luxembourg and Sweden on 17 December 1994, and entered into force between those parties on 16 April 1998. The ECT remains in force today between Spain and each of Luxembourg and Sweden.

157 Pursuant to Article 26(5)(a)(i) of the ECT, Spain’s consent given in Article 26(3) of the ECT, together with Claimants’ written consent given in this Request pursuant to paragraph 26(4) of the ECT, expressly satisfy the requirement for written consent of the parties to a dispute for purposes of Article 25 of the ICSID Convention.

IV SPAIN HAS BREACHED ITS OBLIGATIONS UNDER THE ENERGY CHARTER TREATY

158 Since May 2011, Claimants invested considerable sums of money into the Spanish hydropower sector, based, *inter alia*, on the expectation that, following these substantial investments, their hydropower installations would generate regular and sustainable income that would allow them not only to service any associated project finance debt, but also to generate a return on their investments.

159 However, contrary to those expectations, and without any regard to the obligations owed to Claimants under the ECT, Spain has – through the acts and omissions of the organs, agencies and entities under its direction and control – taken various wrongful measures which have caused substantial losses to Claimants.

⁸⁹ Luxembourg signed the ICSID Convention on 28 September 1965, deposited its instrument of ratification on 30 July 1970 and the ICSID Convention entered into force for Luxembourg on 29 August 1970. Sweden signed the ICSID Convention on 25 September 1965, deposited its instrument of ratification on 29 December 1966 and the ICSID Convention entered into force for Sweden on 28 January 1967.

- 160 Each of Spain's measures, individually and collectively, constitutes a breach of Spain's international obligations to Claimants under the ECT. In particular, Spain has breached the obligations set out in Article 10 of the ECT as follows:
- a **Fair and equitable treatment:** Spain has breached Article 10(1) of the ECT by failing to accord at all times to Claimants' investments "fair and equitable treatment", including by, *inter alia*: (i) acting in an arbitrary, non-transparent and disproportionate manner; (ii) violating Claimants' reasonable and legitimate expectations upon which they relied at the time of making their investments; (iii) failing to provide stable, equitable, transparent and predictable regulatory framework for Claimants' investments;
 - b **Impairment by unreasonable or discriminatory measures:** Spain has breached its obligation in Article 10(1) of the ECT not to "impair by unreasonable or discriminatory measures [the] management, maintenance, use enjoyment or disposal" of Claimants' investments.
 - c **Constant protection and security:** Spain has breached Article 10(1) of the ECT by failing to ensure that Claimants' investments were afforded "the most constant protection and security".
 - d **Umbrella clause:** Spain has breached Article 10(1) of the ECT by failing to observe obligations it had entered into with Claimants and/or Claimants' investments in Spain.
 - e **Most-favoured nation and national treatment:** Spain has breached Article 10(7) of the ECT by failing to accord Claimants' investments treatment no less favourable than that which it accords to investments of its own investors, the investors of other Contracting Parties to the ECT and/or the investors of any third State.⁹⁰
- 161 Furthermore, Spain has breached Article 13 of the ECT by unlawfully expropriating Claimants' investments, without any legitimate public purpose, in a discriminatory manner, without due process of law and without the payment of prompt, adequate and effective compensation.

⁹⁰ Article 10(7) of the ECT provides: "Each Contracting Party shall accord to Investments in its Area of Investors of other Contracting Parties, and their related activities including management, maintenance, use, enjoyment or disposal, treatment no less favourable than that which it accords to Investments of its own Investors or of the Investors of any other Contracting Party or any third state and their related activities including management, maintenance, use, enjoyment or disposal, whichever is the most favourable". Claimants accordingly reserve their right, in the course of the arbitral proceedings, to formulate additional claims arising out of the breach by Spain of additional protections offered to foreign investors of any other ECT Contracting Party and/or any third State, which may be imported into the ECT by virtue of Article 10(7).

V CLAIMANTS' PROCEDURAL PROPOSALS

A CONSTITUTION OF THE ARBITRAL TRIBUNAL

162 The Parties have not previously agreed upon the number of arbitrators to constitute the Arbitral Tribunal or the method of their appointment. Accordingly, pursuant to Article 37(2)(b) of the ICSID Convention and Rule 2(1)(a) of the ICSID Rules of Procedure for Arbitration Proceedings (*Arbitration Rules*), Claimants propose that a three-member Arbitral Tribunal be constituted, by using the following method:

- a Claimants collectively and Spain shall each appoint one member of the Arbitral Tribunal within 15 days from the date of the Parties' agreement on the method for the constitution of the Arbitral Tribunal;
- b the Parties shall jointly designate the President of the Arbitral Tribunal within 30 days of the appointment of the last party-appointed arbitrator (or within such other period that may be jointly agreed between the Parties); and
- c failing an appointment by a Party of its respective party-appointed arbitrator, or failing an agreement between the Parties on the person to be appointed as the President of the Arbitral Tribunal within the above time limits, the relevant appointment shall be made by the Chairman of the ICSID Administrative Council.

163 The above should be taken as Claimants' proposal for the purposes of ICSID Arbitration Rule 2(1)(a). If no reply is received from Spain, or if no agreement can be reached within 60 days of the date of registration of this Request, Claimants hereby request in advance that the Secretary-General confirm that the Arbitral Tribunal should be constituted in accordance with the method set out in Article 37(2)(b) of the ICSID Convention.

B PLACE OF THE PROCEEDINGS AND VENUE FOR HEARINGS

164 Pursuant to Article 62 of the ICSID Convention, the arbitration proceedings shall be held at Washington D.C, as the seat of the Centre.

165 Subject to the approval of the Tribunal and ICSID, Claimants are willing to discuss with Spain whether there is a more appropriate alternative venue for the actual conduct of hearings.

C LANGUAGE OF THE ARBITRATION

166 Pursuant to Rule 22 of the ICSID Arbitration Rules, Claimants propose English, an official language of the Centre, as the language of the arbitration.

VI REQUESTS FOR RELIEF

167 Under the ECT and applicable rules of international law, Claimants are entitled to damages sufficient to wipe out all the consequences of Spain's internationally wrongful acts. Claimants' damages will be quantified in due course through the production of documentary and expert evidence.

168 Accordingly, without limitation and fully reserving their right to supplement or otherwise amend the present prayers for relief at appropriate stages of the proceedings, Claimants respectfully request that the Tribunal issue an Award:

- a DECLARING that Spain has breached Articles 10 and 13 of the ECT; and
- b ORDERING that Spain:
 - compensate Claimants in full for all losses suffered as a result of Spain's breaches of the ECT, in an amount and currency to be determined at the appropriate stage in these proceedings;
 - pay, on a full indemnity basis, all of the costs and expenses of these arbitration proceedings, including, without limitation, the fees and expenses: (i) of the members of the Tribunal; (ii) of ICSID; (iii) relating to Claimants' legal representation (including attorney fees and disbursements); and (iv) of any experts or consultants appointed by Claimants or the Tribunal;
 - pay interest on all damages, costs and expenses claimed herein (including on the costs of the arbitration referred to in the subparagraph above), as may be subsequently amended or supplemented, at rates and dates to be determined by the Tribunal, as well as post-award interest, compounded monthly at a rate to be determined by the Tribunal, on the amounts awarded until full payment thereof; and
 - any such other and further relief that the Tribunal may deem appropriate in the circumstances.

169 Claimants reserve their rights to amend, supplement or expand upon the facts, legal claims, arguments and evidence submitted in this Request in the course of the arbitral proceedings.

Respectfully submitted for and on behalf of Claimants by:



Gaëtan Verhoosel
Carmen Martinez Lopez
Manish Aggarwal
Simon Maynard
Maanas Jain
Maria Juliana Muci

THREE CROWNS



Pedro Claros Alegría
Maribel Rodríguez Vargas
José Ángel Rueda
Antonio Delgado Camprubí
Borja Álvarez Sanz
Pedro Álvarez Chicote

CUATRECASAS, GONÇALVES PEREIRA

ANNEX 1 TO THE REQUEST FOR ARBITRATION

| Hydropower Facility | Location | Capacity (kW) | Term of the Concession | Year of commissioning | Reference on RAIPRE | Classification under RD 661/2007 |
|----------------------------|----------------------------|----------------------|-------------------------------|------------------------------|----------------------------|---|
| ONDINA PORTFOLIO | | | | | | |
| Fresser | Queralbs (Cataluña) | 6,455 | January 2061 | 1999 | RE-000113 | b.4 |
| Dayó | Queralbs (Cataluña) | 1,200 | January 2061 | 1988 | RE-000114 | b.4 |
| El Molí | Queralbs (Cataluña) | 1,000 | January 2061 | 1998 | RE-000115 | b.4 |
| Rialp | Queralbs (Cataluña) | 1,200 | January 2061 | 1988 | RE-000116 | b.4 |
| Carbueros | Ribes De Freser (Cataluña) | 1,000 | January 2061 | 1988 | RE-000117 | b.4 |
| Hilados | Ribes De Freser (Cataluña) | 650 | January 2061 | 1988 | RE-000118 | b.4 |
| Bagá | Bagà (Cataluña) | 499 | January 2061 | 1988 | RE-000119 | b.4 |

| | | | | | | |
|-----------------------------|--|-------|---|------|-----------|-----|
| Pendís | Bagà (Cataluña) | 1,240 | June 2032 | 1988 | RE-000120 | b.4 |
| Guardiola | Guardiola De Berguedá (Cataluña) | 560 | January 2061 | 1988 | RE-000121 | b.4 |
| Berga | Berga (Cataluña) | 220 | January 2061 | 1988 | RE-000122 | b.4 |
| Marcetes | Pont De Vilomara (Manresa) (Cataluña) | 1,568 | Concession in two parts. September 2036 for the 796kW January 2061 for the 772kW | 1988 | RE-000123 | b.4 |
| Boades | Castellgalí (Cataluña) | 450 | Concession in three parts. June 2034 for the 43 kW January 2040 for the 254 kW January 2061 for the 192 kW | 1988 | RE-000124 | b.4 |
| Cairat | Esparraguera (Cataluña) | 2,300 | January 2061 | 1988 | RE-000126 | b.4 |
| Sta. Maria de Merola | Colonia L'ametlla De Merola (Puig-Reig) (Cataluña) | 1,126 | January 2061 | 1988 | RE-000094 | b.4 |
| Castillonroy | Castillonroy (Cataluña) | 1,545 | July 2022 | 1945 | RE-000128 | b.4 |
| Ponts | Ponts (Cataluña) | 1,100 | January 2061 | 1988 | RE-000127 | b.4 |

| | | | | | | |
|--|--|--|---------------|-----------------------|------------|-----|
| San Lorenzo | San Llorenç Montgai (Camarasa) (Cataluña) | 8,000 (Ext. 2,000) 10,000 in total | January 2061 | 1988 (Ext. 2000) | RE-000098 | b.4 |
| La Pobla (Grupos 3 y 4) | La Pobla De Segur (Cataluña) | 6,000 (Ext.1,500) 7,500 in total | January 2061 | 1993 (Ext. 2005) | RE-000099 | b.4 |
| Molinos | La Plana Monrós (Cataluña) | 13,500 | January 2061 | 1989 | RE-000401 | b.5 |
| XANA PORTFOLIO | | | | | | |
| Allones | Ponteceso, La Coruña (Galicia) | 520 | January 2020 | 1990 (Ext. 1999) | RE-000224 | b.4 |
| Corcoesto | Cabana, La Coruña (Galicia) | 700 (Ext. 450) 1,150 in total | February 2042 | 1990 (Ext. 1992,2002) | RE-000222 | b.4 |
| Villar del Rey | Villar Del Rey, Cáceres (Extremadura) | 1,638 | December 2021 | 1991 | RE-96F-342 | b.4 |
| Fecha | Santiago y Trazo, La Coruña (Galicia) | 2,200 | July 2017 | 1992 | RE-000223 | b.4 |

| | | | | | | |
|-------------------------|---|-------|---------------|------|-----------|-----|
| Peña Corada | Cistierna, León (Castilla y León) | 5,000 | January 2035 | 1994 | RE-000226 | b.4 |
| La Confianza | Segovia (Castilla y León) | 640 | April 2063 | 1993 | RE-000225 | b.4 |
| Alange | Alange, Badajoz (Extremadura) | 9,140 | February 2025 | 1994 | RE-001201 | b.4 |
| Quebradas | Hellín, Albacete (Castilla la Mancha) | 2,300 | January 2023 | 1992 | RE-001752 | b.4 |
| Tedelche | Hellín, Albacete (Castilla la Mancha) | 2,290 | January 2024 | 1998 | RE-001753 | b.4 |
| Vicarias | Hellín, Albacete (Castilla la Mancha) | 1,498 | January 2024 | 1998 | RE-001754 | b.4 |
| Canal de Almazán | Viana De Duero, Soria (Castilla y León) | 1,576 | January 2031 | 2000 | RE-000555 | b.4 |
| Jerte | Plasencia, Cáceres (Extremadura) | 5,415 | January 2043 | 2002 | RE-003255 | b.4 |
| Ferreras | Boñar, León (Castilla y León) | 2,834 | June 2054 | 2005 | RE-003467 | b.4 |

| | | | | | | |
|--------------|-------------------------------|--------|-----------|------|-------------|-----|
| Porma | Boñar, León (Castilla y León) | 17,474 | June 2054 | 2004 | RE-436-0085 | b.5 |
|--------------|-------------------------------|--------|-----------|------|-------------|-----|

**ANNEX 2 TO THE REQUEST FOR ARBITRATION
CLAIMANTS' HYDROPOWER INSTALLATIONS AFFECTED BY THE HYDRAULIC
ROYALTY**

| Hydropower facility | River Authority |
|----------------------------|------------------------|
| Castillonroy | Ebro |
| Ponts | Ebro |
| San Lorenzo | Ebro |
| La Pobla (3 y 4) | Ebro |
| Molinos | Ebro |
| Villar del Rey | Guadiana |
| Peña Corada | Duero |
| La Confianza | Duero |
| Alange | Guadiana |
| Quebradas | Segura |
| Tedelche | Segura |
| Vicarias | Segura |
| Canal de Almazán | Duero |
| Jerte | Tajo |
| Ferreras | Duero |
| Porma | Duero |

ANNEX 3 TO THE REQUEST FOR ARBITRATION

| Hydropower facilities | Capacity (kW) | Standard Category ("IT") originally under Order IET/1045/2014 | 2013 (14 July to 31 December 2013) | | Requested IT (see paragraph 128 of the Request for Arbitration) | Status of the request (as of 5 October 2015) | Final Standard Category under Order IET/1045/2014 ("IT") | 2013 (14 July to 31 December 2013) | |
|-------------------------|---------------|---|---|--|---|--|--|--|---|
| | | | Remuneration to investment (EUR/MW installed) under Order IET/1045/2014 | Remuneration to operation (EUR/MWh produced) under Order IET/1045/2014 | | | | Remuneration to investment (EUR/MW installed) under requested IT | Remuneration to operation (EUR/MWh produced) under requested IT |
| ONDINA PORTFOLIO | | | | | | | | | |
| Fresser | 6,455 | IT-00752 (b.4.2) | 0 | 0 | IT-00700 (b.4.1) | Granted | IT-00700 (b.4.1) | 52,278 | 0 |
| Dayó | 1,200 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 0 |
| El Molí | 1,000 | IT-00725 (b.4.2) | 0 | 0 | IT-00673 (b.4.1) | Granted | IT-00673 (b.4.1) | 96,858 | 0 |
| Rialp | 1,200 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 0 |
| Carburos | 1,000 | IT-00721 (b.4.2) | 0 | 0 | IT-00669 (b.4.1) | Granted | IT-00669 (b.4.1) | 72,353 | 0 |
| Hilados | 650 | IT-00721 (b.4.2) | 0 | 0 | IT-00669 (b.4.1) | Granted | IT-00669 (b.4.1) | 72,353 | 0 |
| Bagá | 499 | IT-00721 (b.4.2) | 0 | 0 | IT-00669 (b.4.1) | Granted | IT-00669 (b.4.1) | 72,353 | 0 |

| | | | | | | | | | |
|---------------------------------|--|---|--------|--------|---------------------------------|--------------------|---------------------------------|-------------|--------|
| Pendís | 1,240 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 0 |
| Guardiola | 560 | IT-00721 (b.4.2) | 0 | 0 | IT-00669 (b.4.1) | Granted | IT-00669 (b.4.1) | 72,353 | 0 |
| Berga | 220 | IT-00721 (b.4.2) | 0 | 0 | IT-00669 (b.4.1) | Granted | IT-00669 (b.4.1) | 72,353 | 0 |
| Marcetes | 1,568 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 0 |
| Boades | 450 | IT-00721 (b.4.2) | 0 | 0 | IT-00669 (b.4.1) | Granted | IT-00669 (b.4.1) | 72,353 | 0 |
| Cairat | 2,300 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 0 |
| Sta. Maria de Merola | 1,126 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 0 |
| Castillonroy | 1,545 | No IT assigned. The 25-year limitation has been exceeded. | - | - | IT-00747 (b.4.1) | Pending | | - | - |
| Ponts | 1,100 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Pending | | - | - |
| San Lorenzo | 8,000 (Ext. 2,000) 10,000 in total | IT-00747 IT-00753 (b.4.2) | 0 0 | 0 0 | IT-00695 IT-00701 (b.4.1) | Granted Granted | IT-00695 IT-00701 (b.4.1) | 0 54,169 | 0 0 |

| | | | | | | | | | |
|--|---|---------------------------------|------------|--------|---------------------------------|--------------------|---------------------------------|------------------|--------|
| La Pobra (Grupos 3 y 4) | 6,000 (Ext. 1,500) 7,500 in total | IT-00747 IT-00758 (b.4.2) | 0 8.309 | 0 0 | IT-00695 IT-00706 (b.4.1) | Granted Granted | IT-00695 IT-00706 (b.4.1) | 0 63,263 | 0 0 |
| Molinos | 13,500 | IT-00799 (b.5) | 0 | 0 | IT-00773 (b.4.1) | Granted | IT-00773 (b.4.1) | 0 | 0 |
| XANA PORTFOLIO | | | | | | | | | |
| Allones | 520 | IT-00721 (b.4.2) | 0 | 0 | IT-00669 (b.4.1) | Granted | IT-00669 (b.4.1) | 72,353 | 0 |
| Corcoesto | 700 (Ext. 450) 1,150 in total | IT-00721 IT-00728 (b.4.2) | 0 4.662 | 0 0 | IT-00669 IT-00676 (b.4.1) | Granted Granted | IT-00669 IT-00676 (b.4.1) | 72,353 91,057 | 0 0 |
| Villar del Rey | 1,638 | IT-00747 IT-00747 (b.4.2) | 0 0 | 0 0 | - - | Not requested | - - | - - | - - |
| Fecha | 2,200 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 0 |
| Peña Corada | 5,000 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 0 |
| La Confianza | 640 | IT-00721 (b.4.2) | 0 | 0 | IT-00669 (b.4.1) | Granted | IT-00669 (b.4.1) | 72,353 | 0 |
| Alange | 9,140 | IT-00747 (b.4.2) | 0 | 0 | - | Not requested | - | - | - |

| | | | | | | | | | |
|-------------------------|--------|---|------------------|------------------|---------------------|--|---------------------|------------------|------------------|
| Quebradas | 2,300 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 0 |
| Tedelche | 2,290 | IT-00751 (b.4.2) | 0 | 0 | IT-00699 (b.4.1) | Granted | IT-00699 (b.4.1) | 48,318 | 0 |
| Vicarias | 1,498 | IT-00751 (b.4.2) | 0 | 0 | IT-00699 (b.4.1) | Granted | IT-00699 (b.4.1) | 48,318 | 0 |
| Canal de Almazán | 1,576 | IT-00753 (b.4.2) | 0 | 0 | - | Not requested | - | - | - |
| Jerte | 5,415 | IT-00755 IT-00755 IT-00755 IT-00755 (b.4.2) | 0 0 0 0 | 0 0 0 0 | - - - - | Not requested | - - - - | - - - - | - - - - |
| Ferreras | 2,834 | IT-00758 (b.4.2) | 8,309 | 0 | - | Not requested but Remuneration for investment has been granted | - | - | - |
| Porma | 17,474 | IT-00809 IT-00809 (b.5) | 0 0 | 0 0 | - - | Not requested | - - | - - | - - |

ANNEX 4 TO THE REQUEST FOR ARBITRATION

| Hydropower Facilities | Capacity (kW) | Standard Category (“IT”) originally under Order IET/1045/2014 | 2014-2016 | | Requested IT (see paragraph 128 of the Request for Arbitration) | Status of the request (as of 5 October 2015) | Final Standard Category under Order IET/1045/2014 (“IT”) | 2014-2016 | |
|-------------------------|---------------|---|---|--|---|--|--|--|---|
| | | | Remuneration to investment (EUR/MW installed) under Order IET/1045/2014 | Remuneration to operation (EUR/MWh produced) under Order IET/1045/2014 | | | | Remuneration to investment (EUR/MW installed) under requested IT | Remuneration to operation (EUR/MWh produced) under requested IT |
| ONDINA PORTFOLIO | | | | | | | | | |
| Fresser | 6,455 | IT-00752 (b.4.2) | 0 | 0 | IT-00700 (b.4.1) | Granted | IT-00700 (b.4.1) | 111,587 | 0 |
| Dayó | 1,200 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 0 |
| El Molí | 1,000 | IT-00725 (b.4.2) | 0 | 0 | IT-00673 (b.4.1) | Granted | IT-00673 (b.4.1) | 206,744 | 0 |
| Rialp | 1,200 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 0 |
| Carbueros | 1,000 | IT-00721 (b.4.2) | 0 | 0 | IT-00669 (b.4.1) | Granted | IT-00669 (b.4.1) | 0 (*) | 0 |
| Hilados | 650 | IT-00721 (b.4.2) | 0 | 0 | IT-00669 (b.4.1) | Granted | IT-00669 (b.4.1) | 0 (*) | 0 |
| Bagá | 499 | IT-00721 (b.4.2) | 0 | 0 | IT-00669 (b.4.1) | Granted | IT-00669 (b.4.1) | 0 (*) | 0 |

| | | | | | | | | | |
|---------------------------------|--------------------------|---|--------|--------|---------------------------------|--------------------|---------------------------------|--------------|--------|
| Pendís | 1,240 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 0 |
| Guardiola | 560 | IT-00721 (b.4.2) | 0 | 0 | IT-00669 (b.4.1) | Granted | IT-00669 (b.4.1) | 0 (*) | 0 |
| Berga | 220 | IT-00721 (b.4.2) | 0 | 0 | IT-00669 (b.4.1) | Granted | IT-00669 (b.4.1) | 0 (*) | 0 |
| Marcetes | 1,568 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 0 |
| Boades | 450 | IT-00721 (b.4.2) | 0 | 0 | IT-00669 (b.4.1) | Granted | IT-00669 (b.4.1) | 0 (*) | 0 |
| Cairat | 2,300 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 0 |
| Sta. Maria de Merola | 1,126 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 0 |
| Castillonroy | 1,545 | No IT assigned. The 25-year limitation has been EXCEEDED | - | - | IT-00747 (b.4.1) | Pending | | 0 | 0 |
| Ponts | 1,100 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Pending | | 0 | 0 |
| San Lorenzo | 8,000 (Ext. 2,000) | IT-00747 IT-00753 (b.4.2) | 0 0 | 0 0 | IT-00695 IT-00701 (b.4.1) | Granted Granted | IT-00695 IT-00701 (b.4.1) | 0 115,623 | 0 0 |

| | | | | | | | | | |
|--------------------------------|--------------------------------------|---------------------------------|-------------|--------|---------------------------------|--------------------|---------------------------------|--------------------|--------|
| | 10,000 in total | | | | | | | | |
| La Pobra (Grupos 3 y 4) | 6,000 (Ext. 1,500) 7,500 in total | IT-00747 IT-00758 (b.4.2) | 0 17.736 | 0 0 | IT-00695 IT-00706 (b.4.1) | Granted Granted | IT-00695 IT-00706 (b.4.1) | 0 135,035 | 0 0 |
| Molinos | 13,500 | IT-00799 (b.5.2) | 0 | 0 | IT-00773 (b.4.1) | Granted | IT-00773 (b.4.1) | 0 | 00 |
| XANA PORTFOLIO | | | | | | | | | |
| Allones | 520 | IT-00721 (b.4.2) | 0 | 0 | IT-00669 (b.4.1) | Granted | IT-00669 (b.4.1) | 154,438 | 0 |
| Corcoesto | 700 (Ext. 450) 1,150 in total | IT-00721 IT-00728 (b.4.2) | 0 9.951 | 0 0 | IT-00669 IT-00676 (b.4.1) | Granted Granted | IT-00669 IT-00676 (b.4.1) | 154,438 194,362 | 0 0 |
| Villar del Rey | 1,638 | IT-00747 IT-00747 (b.4.2) | 0 0 | 0 0 | - - | Not requested | - - | - - | - - |
| Fecha | 2,200 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 00 |
| Peña Corada | 5,000 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 00 |
| La Confianza | 640 | IT-00721 (b.4.2) | 0 | 0 | IT-00669 (b.4.1) | Granted | IT-00669 (b.4.1) | 154,438 | 00 |

| | | | | | | | | | |
|-------------------------|--------|---|------------------|------------------|---------------------|--|---------------------|------------------|------------------|
| Alange | 9,140 | IT-00747 (b.4.2) | 0 | 0 | - | Not requested | - | - | - |
| Quebradas | 2,300 | IT-00747 (b.4.2) | 0 | 0 | IT-00695 (b.4.1) | Granted | IT-00695 (b.4.1) | 0 | 0 |
| Tedelche | 2,290 | IT-00751 (b.4.2) | 0 | 0 | IT-00699 (b.4.1) | Granted | IT-00699 (b.4.1) | 103,134 | 0 |
| Vicarias | 1,498 | IT-00751 (b.4.2) | 0 | 0 | IT-00699 (b.4.1) | Granted | IT-00699 (b.4.1) | 103,134 | 0 |
| Canal de Almazán | 1,576 | IT-00753 (b.4.2) | 0 | 0 | - | Not requested | - | - | - |
| Jerte | 5,415 | IT-00755 IT-00755 IT-00755 IT-00755 (b.4.2) | 0 0 0 0 | 0 0 0 0 | - - - - | Not requested | - - - - | - - - - | - - - - |
| Ferreras | 2,834 | IT-00758 (b.4.2) | 17,736 | 0 | - | Not requested but Remuneration for investment has been granted | - | - | - |
| Porma | 17,474 | IT-00809 IT-00809 (b.5.2) | 0 0 | 0 0 | - - | Not requested | - - | - - | - - |

(*) In the cases of the (i) Carburos; (ii) Hilados; (iii) Bagá; (iv) Guardiola; (v) Berga; and (vi) Boades facilities, although Remuneration to Investment should be granted pursuant to the 2014-2016 parameters included in Order IET/1045/2014 for IT-00695, the remuneration to be received equals zero (0), since the 25-year limitation introduced by Spain has already been exceeded for such facilities.