

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

**Fotowatio Renewable Ventures S.L.U., FRV Solar Holdings III, S.L.U. and
FRV Solar Holdings VI, S.L.U.**

v.

United Mexican States

(ICSID Case No. ARB/24/5)

PROCEDURAL ORDER NO. 5

DECISION ON PRIVILEGE CLAIMS

Members of the Tribunal

Sir Christopher Greenwood, GBE, CMG, KC, President of the Tribunal
Mr. Henri C. Alvarez, KC, Arbitrator
Prof. Mónica Pinto, Arbitrator

Secretary of the Tribunal
Ms. Gabriela González Giráldez

23 December 2025

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I. INTRODUCTION

1. In accordance with Procedural Order No. 4, on 4 November 2025, the Parties exchanged their claims to withhold production of specified documents on grounds of legal professional privilege, political and institutional sensitivity and confidentiality of third-party information.
2. On 14 November 2025, each Party submitted to the Tribunal its observations on the other Party's claims to withhold documents.
3. In addition, the Claimants, in their letter of 14 November 2025 and Annex A thereto, complained that the Respondent had failed to properly comply with the Tribunal's Order for production of documents in Procedural Order No. 4, Schedule A.
4. The Tribunal sets out its decisions with regard to the Respondent's claims of political and institutional sensitivity and confidentiality of third-party information in Schedule A to this Order.
5. The Tribunal sets out its decisions with regard to the Claimants' claims of privilege in Schedule B to this Order.
6. The Tribunal addresses the Claimants' complaints regarding the allegedly incomplete document production on the part of the Respondent below.

II. ALLEGED INCOMPLETE DOCUMENT PRODUCTION BY THE RESPONDENT

A. CLAIMANTS' REQUEST NO. 1

7. In relation to Claimants' Request No. 1, the Tribunal directed (in Procedural Order No. 4, Schedule A) that the Respondent should produce "documents created by, for and/or exchanged with CENACE, the Secretary of Energy, the regulator CRE (CNE) or CFE Transmission (CFE) between 1 February 2021 and 1 March 2023 regarding CENACE's decision to curtail dispatch from the Potosí plant and any solar power plants in the testing phase with a capacity equal to or greater than 25MW".
8. The Claimants complain that the Respondent has not submitted any documents relating to the curtailment of any solar power plants with a capacity equal to or greater than 25MW other than Potosí. Nor has the Respondent stated that no such documents exist.

9. The Tribunal requires the Respondent immediately to comply with the Tribunal’s Decision on Request No. 1 by disclosing any documents relating to the curtailment of other plants covered by the Decision or, if no such documents exist, stating that that is the case.
10. The Respondent is directed to produce the documents listed in paragraph 17(a) of the Claimants’ letter of 14 November 2025 or explain why it is not possible for it to do so.
11. In addition, Mexico is directed immediately to produce to the Claimants the [REDACTED] files related to the documents listed in paragraph 17(b) of the Claimants’ letter of 14 November 2025 or explain why it is not possible for it to do so.
12. Finally, Mexico is directed to disclose the full email thread referred to in paragraph 17(e) of the Claimants’ letter of 14 November 2025.

B. CLAIMANTS’ REQUEST NO. 2

13. In relation to Claimants’ Request No. 2, the Tribunal directed (in Procedural Order No. 4, Schedule A) that the Respondent should produce “documents prepared by or for and/or exchanged with CENACE, the Secretary of Energy, the regulator CRE (CNE) or CFE Transmission (CFE) which fall within the description in the request”, excluding documents already in the public domain.
14. According to the Claimants, the Respondent has stated that there are no internal documents pertaining to the “design” of the requirement for certain plants to update their COD date in order to receive a COD Declaration from CENACE.
15. The Tribunal’s Order was not, however, confined to the “design” of the requirement. The Respondent is therefore directed to produce any other documents covered by the Request or to confirm that no such documents exist.
16. The Claimants also maintain that Document 2.3 produced by Mexico “shows CENACE sharing with its engineers FRV Potosí’s application for COD Declaration, asking for action/response” but that no reply was disclosed. The Respondent is directed to produce any reply from the engineers or to confirm that no such document exists.

C. CLAIMANTS’ REQUEST NO. 3

17. The Claimants complain that the Respondent produced the letter confirming the validity of the [REDACTED] interconnection but not that relating to [REDACTED]. The Respondent is directed to produce the letter relating to [REDACTED] or to confirm that no such letter exists.

D. CLAIMANTS' REQUEST NO. 4

18. The Respondent is directed to reply to the complaints at paragraphs 22-25 of the Claimants' letter of 14 November 2025, either producing the documents sought or showing why it cannot do so.
19. In relation to Document 4.3, the Respondent is directed to produce the letters and documents sought or to explain why it cannot do so.

E. CLAIMANTS' REQUEST NO. 5(A)

20. The Respondent is directed to produce the documents referred to in paragraph 27 of the Claimants' letter of 14 November 2025 or explain why it cannot do so.

F. CLAIMANTS' REQUEST NO. 5(B)

21. The Claimants' complaint regarding the Respondent's disclosure of material in relation to this Request is that the Respondent has failed to produce the base cases or outputs or any explanation of how its algorithms were constructed, thus making it impossible for the Claimants to verify the information provided. The Tribunal considers this complaint important since the Request related to studies referred to by the Respondent's expert. It therefore directs the Respondent to produce the documents, data and information specified in paragraphs 28 to 29 of the Claimants' letter of 14 November 2025.

III. ORDER

22. For the reasons set out in Schedule A, the Respondent is directed to produce those documents for which its claims to political and institutional sensitivity and confidentiality were not upheld.
23. For the reasons set out in Schedule B, the Claimants are directed to produce those documents for which their claims to privilege have not been upheld and to review all the documents for which a claim of privilege has been upheld to ascertain whether they contain information falling outside the scope of privilege and which can be severed from the privileged material and to produce any such information.
24. For the reasons set out in paragraphs 7 to 21 of this Order, the Respondent is directed to take the steps identified in those paragraphs.

*Fotowatio Renewable Ventures S.L.U., FRV Solar Holdings III, S.L.U., and
FRV Solar Holdings VI, S.L.U. v. United Mexican States*

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25. The Parties are required to comply with the above paragraphs **by no later than 9 January 2026.**

On behalf of the Tribunal,

[Signed]

Sir Christopher Greenwood, GBE, CMG, KC
President of the Tribunal
23 December 2025