

INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES

FERNANDO PAIZ ANDRADE AND ANABELLA SCHLOESSER DE LEÓN DE PAIZ

Claimants

v.

REPUBLIC OF HONDURAS

Respondent

ICSID Case No. ARB/23/43

CLAIMANTS' MEMORIAL ON THE MERITS

20 September 2024

WHITE & CASE
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***Fernando Paiz Andrade and Anabella Schloesser de León de Paiz v.
Republic of Honduras***

CLAIMANTS' MEMORIAL ON THE MERITS

1. Mr. Fernando Paiz Andrade (“**Mr. Paiz**”) and Ms. Anabella Schloesser de León de Paiz (“**Ms. Schloesser de Paiz**”) (together, the “**Paizes**,” the “**Investors**,” or “**Claimants**”), nationals of Guatemala, acting on their own behalf and on behalf of Pacific Solar Energy, S.A. de C.V. (“**Pacific Solar**” or the “**Enterprise**”), a Honduran company that the Investors own and control in accordance with Article 10.16.1(b) of the Central America - Dominican Republic - United States Free Trade Agreement (“**CAFTA-DR**” or the “**Treaty**”),¹ hereby submit its Memorial on the Merits (“**Memorial**”) against the Republic of Honduras (“**Honduras**,” “**Respondent**,” or the “**State**”) pursuant to the Treaty, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “**ICSID Convention**”), the ICSID Rules of Procedure for Arbitration Proceedings (“**ICSID Arbitration Rules**”), and Procedural Order No. 1, dated 22 July 2024.

I. INTRODUCTION

2. This investment dispute arises from Honduras’s breach of critical, specific commitments that it made to the Paizes and Pacific Solar, after benefitting from their investments in the Nacaome I Plant, a photovoltaic plant in Nacaome Valley, Honduras (the “**Plant**”).

3. Built in response to Honduras’s legislative incentives to renewable generators,² and contractual commitments to Pacific Solar in particular, the Plant has been generating clean energy for Honduras for almost a decade. It has done so through a power purchase agreement (the “**PPA**”) between Pacific Solar and an institution of the State, the National Company of Electric Energy (*Empresa Nacional de Energía Eléctrica*) (“**ENEE**”),³ and the sole purchaser of electricity in the

¹ Central America – Dominican Republic – United States Free Trade Agreement (signed on 5 Aug. 2004) (Preamble and Chapters One, Two, Three and Ten) (“**CAFTA-DR**” or the “**Treaty**”), dated 1 April 2006 (**CL-1**).

² Law Promoting the Generation of Electricity with Renewable Resources (Decree No. 70-2007 dated 29 June 2007), published in the Official Gazette dated 2 Oct. 2007 (the “**2007 Renewables Law**”) (**Exh. C-4**) ; Law Promoting the Generation of Electricity with Renewable Resources (Decree No. 138-2013 dated 31 July 2013) (the “**2013 Renewables Law**”), published in the Official Gazette dated 1 Aug. 2013 (**Exh. C-5**).

³ See Law Creating Empresa Nacional de Energía Eléctrica (Decree 48-1957 dated 20 Feb. 1957), published in the Official Gazette dated 27 Feb 1957 (**Exh. C-6**), Arts. 1, 7; see also General Law of the Public Administration

country; a State Guarantee with the Attorney General's Office and the Secretariat of Finance (the "**State Guarantee**"), guaranteeing the State is jointly and severally liable for ENEE's obligations under the PPA; and an Operations Agreement with Secretary of Energy, Renewable Resources, Environment and Mines ("**SERNA**") (the "**Operations Agreement**"), undertaking to support Pacific Solar's access to legislative incentives (collectively, the "**Agreements**"). Under the Agreements, the State granted Pacific Solar key rights, including a specific set price for twenty years for the energy the Plant produces, safety valves if ENEE's payments are delayed, and a commitment to modify the PPA only through agreement between the Parties.

4. Honduras is violating its commitments to Pacific Solar under the legal and contractual framework described above, in violation of the Treaty. Starting in May 2022, mere months after the inauguration of new President Xiomara Castro, who had announced drastic policy changes, Honduras implemented a law (the "**2022 New Energy Law**") that imposed a new agenda on Honduras's electricity system, and affected Claimants and their investments in concrete and direct ways.⁴ First, under the 2022 New Energy Law, ENEE must "renegotiate" the PPA, or else the Government may expropriate the Plant. Second, after enacting the New Energy Law, the State engaged in conduct that substantially harmed Claimants and Pacific Solar. The State has been pushing for nothing other than terms that eliminate Pacific Solar's key rights; weaponizing the State's significant and outstanding debt to Pacific Solar, forcing Pacific Solar to be in a precarious financial situation and seek to restructure its project finance loans in an attempt to salvage the project; and engaging in a public smear campaign against generators, like Pacific Solar.

5. Two years after the New Energy Law was enacted, at present, the Government is retaining and leveraging approximately [REDACTED] in compensation—Pacific Solar's only source of revenue as ENEE is the sole purchaser of energy in the country. The Government is also maintaining Pacific Solar in a state of uncertainty with respect to its key rights under the Agreements, under threat of expropriation, without having provided nor offered any compensation for the threatened acquisition of the Plant.

(Decree No. 146-86 dated 27 Oct. 1986), published in the Official Gazette dated 29 Nov. 1986 (the "**General Law of Public Administration**") (Exh. C-61), Arts. 2, 3, 11, 47, 51, 53.

⁴ Special Law to Guarantee the Service of Electric Energy as a Public Good of National Security and an Economic and Social Human Right (Decree No. 46-2022 dated 16 May 2022), published in the Official Gazette dated 16 May 2022 (the "**2022 New Energy Law**") (Exh. C-10), Art. 5.

6. Honduras's conduct violates its Treaty obligations to Claimants and Pacific Solar, and Honduras must be ordered to pay almost US\$ 120 million (as of 30 June 2024) to wipe away the consequences of its breaches.

* * *

7. Honduras opened its power sector to private investment in 1994, but still struggled to meet its demand for electricity, which was predominantly sourced through fossil fuel-run power plants. To attract investment in power generation specifically from renewable energy sources, Honduras implemented legislation in 2007 to incentivize investors and promote the development of renewable energy projects ("**2007 Renewables Law**"). Yet the regime under 2007 Renewables Law did not attract the investments Honduras needed to develop its renewable energy power generation sector. The resulting investment remained predominantly in thermal generation, leaving Honduras still dependent on fossil-fuel sourced plants and on one State-owned hydroelectric plant. Recognizing this dependence and facing the need to promptly increase the power supply in the country, Honduras adopted an initiative, supported by multilaterals, to increase the share of renewable energy in the electricity matrix to 80%.

8. At that time, electricity from renewable energy sources, and particularly solar photovoltaic ("**PV**") sources was significantly more expensive than thermal generation, which relies on costly fossil fuels. As such, renewable energy investments required a substantial amount of upfront capital. Investors, therefore, needed to have a long-term view of the remuneration that the plant would receive over a long period of time.

9. In 2013, to achieve its objective to swiftly increase installed capacity to meet demand, and to encourage that the generation comes from renewable energy sources, Honduras developed a legal framework guaranteeing stable and predictable revenue streams for renewable energy generators, and PV plants in particular. Honduras decided to put in place a legal framework to encourage investments and entice investors to commit the necessary resources to capital-intensive renewable energy projects with high upfront costs.

10. Accordingly, in 2013 Honduras provided specific incentives that built upon those contained in the 2007 Renewables Law to further encourage investment in renewable energy, and in PV in particular ("**2013 Renewables Law**" or, together with the 2007 Renewables Law, the "**Renewables Laws**"). The 2013 Renewables Law encouraged "the development of energy

generation projects with renewable resources,”⁵ and sought to reduce its reliance “on fossil fuel imports, which are subject to uncontrollable volatility,” and “harm the country’s finances.”⁶ Key incentives included set prices for PV projects, a 10% payment over the energy price for the first 15 years, a commitment to purchase and dispatch all energy generated under PPAs, and substantial tax benefits. These incentives were crucial to “diminish barriers of entry and risks to the investment,” and to foster a “competitive environment for solar.”⁷ Honduras enacted the incentives as “guarantees to the investor, providing this legal security, all with the objective of attracting, promoting and protecting national and foreign investment in Honduras.”⁸ Importantly, the 2013 Renewables Law required that ENEE execute PPAs to purchase electricity and capacity from renewable energy generators.⁹

11. Honduras did not shy away from promoting its 2013 legislation to tell the world that it created a stable, predictable, and economically enticing environment for investments. For instance, Honduras hosted a conference with investors from around the globe for the purpose of attracting investment under the Renewables Laws.¹⁰ After all, as the 2013 Renewables Law itself explicitly provided, it sought to incentivize “the interest of financial development and international cooperation institutions,” from “countries to which the cooperation is directed,” explicitly referring to “the Export-Import Bank of the United States (Ex-Im Bank), the International Financial

⁵ 2013 Renewables Law (**Exh. C-5**), at A.3, Sixth Recital (“[I]t is essential to develop renewable energy generation projects of all sizes and using all types of renewable resources; to achieve this, it is necessary to simplify and regulate certain provisions of the Law on the Promotion of Electricity Generation from Renewable Energy Resources, enacted via Decree No. 70-2007, dated May 31, 2007, published in the Official Gazette on 2 October 2007.”)

⁶ 2013 Renewables Law (**Exh. C-5**), at A.2, First Recital (“Whereas: It is the Government’s responsibility to promote technological diversification and transform the power generation matrix to include a predominant share of renewable energy, thereby significantly reducing fossil fuel imports, which are subject to unpredictable price volatility that contributes to a gradual deterioration of the country’s finances.”).

⁷ 2013 Renewables Law (**Exh. C-5**), at A.2, Fifth Recital.

⁸ 2013 Renewables Law (**Exh. C-5**), at A.3, Eighth Recital (“[T]he National Congress approved the Law on the Promotion and Protection of Investments, whose purpose is to provide all necessary facilities and guarantees to investors, offering them legal certainty, all for the purpose of attracting, promoting, and protecting domestic and foreign investment within the territory of Honduras.”).

⁹ 2013 Renewables Law (**Exh. C-5**), Art. 2 (“Private or mixed-ownership enterprises that generate renewable electric energy using national renewable resources in a sustainable manner shall be subject to the provisions of this Law and may sell the energy and ancillary electrical services they produce under the following options: . . . (2) Sell their energy production and capacity, on their own initiative, to the National Company of Electric Energy (ENEE), for which purpose the latter shall be required to enter into a Capacity and Associated Electric Power Purchase Agreement and purchase such energy and capacity.”), *cf.* 2007 Renewables Law (**Exh. C-4**), Art. 3.

¹⁰ *Very busy Energy Expo Starts*, LA PRENSA dated 4 June 2014 (**Exh. C-81**); *Honduras Energy Expo Begins*, LA PRENSA dated 3 June 2014 (**Exh. C-82**).

Corporation (IFC) of the World Bank Group, the European Development Finance Institutions (EDFI), among which are the K[f]W of Germany, the FMO of Netherlands, FINNFUND of Finland and the OeEB of Austria, among others.”¹¹ Leading international lenders and generators were among those that invested in Honduras as a result. These include Pacific Solar’s own lenders,¹² the German Investment and Development Corporation (“**DEG**”), which is part of the KfW Group,¹³ and the Dutch Entrepreneurial Development Bank (“**FMO**”),¹⁴ two well-known and respected public development banks.

12. One of the generators that signed the PPA with ENEE in reliance on the guarantees and commitments contained in the 2013 Renewables Law, and memorialized in the PPA, was Pacific Solar, a company wholly owned and controlled by the Paizes. The Attorney General’s Office and the Secretariat of Finance also entered into the State Guarantee with Pacific Solar, in which Honduras expressly undertook to be jointly and severally liable for ENEE’s obligations under the PPA. In addition, Pacific Solar also executed the Operations Agreement with SERNA, an entity that sits on ENEE’s board, and at the time included what is now the Ministry of Energy, which undertook to ensure Pacific Solar would benefit from the incentives. Further to the incentives and stability that the Government provided to Pacific Solar, the Paizes acquired Pacific Solar. The PPA granted Pacific Solar:

- **Stable remuneration to Pacific Solar**, composed out of (i) a fixed base price for energy of US\$ 114.14, that were complemented by an annual CPI adjustment and an additional 10% incentive over the base price;¹⁵ (ii) established capacity payments;¹⁶ and (iii) curtailment payments.¹⁷
- **Protections from ENEE’s non-payment.** The PPA contained several mechanisms to protect Pacific Solar from ENEE’s lack of payment, which was critical given that under the PPA, Pacific Solar shall sell all the energy it produces to ENEE, which in turn has the obligation to buy all the electricity that Pacific Solar generates. These include: (i) accrual of interest if ENEE fails to pay within 45 days upon receipt of the invoice,¹⁸ (ii) right to sell energy to third parties if ENEE does not

¹¹ 2013 Renewables Law (**Exh. C-5**), A.3, Tenth Recital.

¹² FMO, Pacific Solar Energy S.A. de C.V. Project Page (**Exh. C-71**) (last accessed on 13 Sept. 2024).

¹³ KfW DEG, About Us Page (**Exh. C-48**) (last accessed on 24 Aug. 2023).

¹⁴ FMO, About FMO, available at <https://www.fmo.nl/profile> (**Exh. C-54**).

¹⁵ Contract No. 002-2014, Power Purchase Agreement between Empresa Nacional de Energía Eléctrica and Pacific Solar Energy, S.A. de C.V. dated 16 January 2014 (the “**PPA**”) (**Exh. C-1**), § 1(G); § 2, Cls. 4.2, 9.2.

¹⁶ PPA (**Exh. C-1**), § 1(G); § 2, Cl. 9.2.

¹⁷ PPA (**Exh. C-1**), § 2, Cl. 9.5.1.

¹⁸ PPA (**Exh. C-1**), § 2, Cl. 9.6.3, 1.1 (Definitions), No. 68.

pay for four months,¹⁹ and (iii) the State Guarantee.²⁰ As Mr. Paiz explains, “I found it very valuable that the Government had signed a government guarantee certifying that it would back the obligations of ENEE in case of default under the PPA . . . The State Guarantee made this investment a no-brainer to me. I understood that this investment would be safe because the Government was confirming its commitments with its State Guarantee and that Honduran officials were generally supportive of private business and foreign investment.”²¹

- **Pacific Solar’s right deliver energy into the Honduran grid and be compensated.** ENEE undertook to grant Pacific Solar priority of dispatch,²² to purchase all the electricity produced by the Plant, and to make agreed capacity payments.²³

13. Claimants and Pacific Solar incurred significant costs, associated with the development of PV plants, to identify suitable land for the Plant, acquire financing and requisite permits, purchase requisite material, and secure sufficient labor to construct the Plant and associated substation and interconnection lines and to connect the Plant to the grid.

14. Pacific Solar’s efforts resulted in the development of a state-of-the-art PV plant in Honduras with an anticipated useful life of 25 years or more. The Plant entered into commercial operation in two phases, bringing online 25 MW in 2016 and an additional 25 MW in 2018, for a total of 50 MW of generating capacity,²⁴ and has been generating energy to thousands of Honduran consumers since 2016. The Plant assisted Honduras to achieve its goals, as recognized by ENEE’s director at the time, but the Plant also generated hundreds of jobs, supporting the communities of Nacaome Valley, and has produced clean energy to cover the energy demand of tens of thousands of Honduras families.

15. Unfortunately, Honduras upended stability when it enacted the 2022 New Energy Law in May 2022, mandating the renegotiation of the PPAs under threat of expropriation. The 2022 New Energy Law mandated the “termination” of Honduras’s contractual relationship with generators, including Pacific Solar, and the “State acquisition” of the generator’s assets if the

¹⁹ PPA (Exh. C-1), § 2, Cl. 2.5.

²⁰ PPA (Exh. C-1), § 2, Cl. 9.7; Annex X. *See also* State Guarantee (Exh. C-2).

²¹ Paiz WS ¶ 13.

²² PPA (Exh. C-1), § 2, Cls. 2.4, 6.1.

²³ PPA (Exh. C-1), § 2, Cls. 2.3, 9.1.

generator did not agree to the “renegotiated” terms imposed by the State for the generator’s PPA. The relevant provision in the 2022 New Energy Law states in its entirety:

Article 5.- CONTRACTS OF ELECTRICAL ENERGY GENERATED FROM WATER, SOLAR AND WIND TECHNOLOGIES. The National Company of Electric Energy (ENEE) **is authorized to**, through the Board of Directors and Management, based on national legislation and contractual clauses, **set under its prerogatives and powers** and, for reasons of public interest, **the renegotiation of the contracts and prices at which the State, through the National Company of Electric Energy (ENEE), acquires the service of energy** by water, solar and wind taking into account the prices of the Central American, Caribbean and Latin America regions. **If negotiation is not possible, it is authorized to set the termination of the contractual relationship and the acquisition by the State, subject to the payment of a *justiprecio*.**²⁵

16. In addition to the threat of expropriation, the State codified additional tools to intimidate generators in the context of negotiations, including threats of criminal prosecution.²⁶ Minister Erick Tejada—the Minister of Energy and General Manager of ENEE under President Castro—used inflammatory rhetoric against private generators and underscored that the New Energy Law constituted a departure from the policies of prior administrations.²⁷

17. After enacting the New Energy Law, the State engaged in conduct that substantially harmed Claimants and Pacific Solar, by pushing for nothing other than terms that eliminate Pacific Solar’s key rights; weaponizing the State’s significant and outstanding debt to Pacific Solar, forcing Pacific Solar to attempt to restructure its project finance loans and save the project; and engaging in a public campaign against generators.

²⁵ New Energy Law (Exh. C-10), Art. 5.

²⁶ New Energy Law (Exh. C-10), Art. 15 (“During the renegotiation process, the generators must ensure the whole and uninterrupted provision of the sale of energy to the National Company of Electrical Energy (ENEE), **otherwise the provisions of the Criminal Code and other special laws shall apply**”) *See also General Manager of ENEE to thermal generators: ‘We are not going to negotiate with a gun to our head,’* LA TRIBUNA dated 28 Apr. 2022 (Exh. C-199) (explaining that when a thermal plant warned ENEE that it may have to cease its generation of energy because ENEE’s lack of payment presented problems in their purchase of bunker, which it needed to fuel the plant, Minister Tejada characterized this as the plant trying to renegotiate its contract with a gun to the Government’s head.).

²⁷ Honduran Congress, Debate Regarding 2022 New Energy Law (Exh. C-76).

18. Mere hours after the 2022 New Energy Law's approval, and before it had even entered into force, the Government summoned the private generators, including Pacific Solar, to the Presidential Palace and handed each generator the Government's one-pager "offer" under the 2022 New Energy Law. In it, the Government revealed its intent to alter the key compensation rights that Pacific Solar is entitled to under the Agreements.



DESCRIPCIÓN	Contrato 002-2014
	OFERTA PRESENTADA
1. Precio Base de la Energía PBE	0.0805 US\$/KWh
2. Precio por potencia	Se elimina cargo por potencia
3. Incentivo	Se elimina el incentivo especial y el incentivo del 10%
4. Mecanismos de indexación	Se conservan de acuerdo con cláusulas contractuales, aplicados sobre el nuevo precio por energía

19. Pacific Solar and the Government have had a few communications and meetings since, but the Government has been intransigent and dismissive. The Government's actions, omissions, and attitude is putting Pacific Solar under duress and preventing it from paying its untenable debt, cornering it into contemplating the turnover of its assets to the Government.

20. The State's codification of the threat of "*justiprecio*" has been an ever-present sword ever since. This was by design. During the Congressional debate to enact the 2022 New Energy Law, Minister Tejada confessed that the concept of "*justiprecio*" was in fact a tool to be used by the State to put pressure on the generators to "renegotiate" and tilt the balance in favor of the State.²⁸ Indeed, when the solar generators asked Minister Tejada to clarify the State's intent behind this provision, he stated that the articles that refer to expropriation are "legal alternative[s] that the Government wants to reserve for itself to concretize the renegotiation of the contracts."²⁹

21. In that context, in light of the precarious situation in which the Government has put it in, Pacific Solar has engaged in conversations with ENEE officials regarding its takeover of the Plant.³⁰ While "the Government rejected the possibility of acquiring the whole Plant," it "offered to pay US\$ 80 million for a 51% interest in the Plant if [Pacific Solar] continued to be the owner of the remaining 49% of the Plant and remained responsible for the operation and maintenance of

²⁸ Honduran Congress, Debate Regarding 2022 New Energy Law (**Exh. C-76**), at 4:32:21-4:38:45.

²⁹ AHPEE, Minutes of the Solar Generators Attending Meeting with the Government dated May 2022 (**Exh. C-57**), at 2.

³⁰ See, e.g., [REDACTED]; See also Letter from Pacific Solar to Minister Tejada (Ministry of Energy and ENEE) dated 4 July 2022 (**Exh. C-68**); Letter from Pacific Solar to ENEE dated 21 June 2022 (**Exh. C-65**).

the Plant.”³¹ The “unprecedented and untenable levels” of ENEE’s debt to Pacific Solar, along with the unpredictability and insufficiency of ENEE’s sporadic payments, cornered Pacific Solar into advancing this discussion with ENEE.³² Yet, even for generators, like Pacific Solar, who are open to discussing these terms, the Government has been inconsistent and unclear with respect to the process and the price.³³

22. Indeed, to date, the Government owes Pacific Solar more than a year’s worth of outstanding receivables—a debt that continues to grow—notwithstanding sporadic and incomplete payments by ENEE, which are Pacific Solar’s only source of revenue as ENEE is the sole purchaser of energy in the country. Aware that the debt to Pacific Solar is untenable, the Government is conditioning its payments on Pacific Solar’s agreement to the contract term modifications set by the State, expressing that ENEE would pay “the outstanding debt with [Pacific Solar] within a sixty (60) to ninety (90) business days, **from** the execution of the Memorandum of Understanding [with ENEE].”³⁴ In other words, Honduras is withholding the payments of existing obligations to Pacific Solar—at present a debt of approximately [REDACTED] and Pacific Solar’s only source of revenue as ENEE is the sole purchaser of energy in the country—until Pacific Solar enters into an “agreement” that gives up its existing rights under the Agreements.³⁵

23. Given the price sensitivities renewable energy projects confront, this significant non-payment is particularly devastating. The Agreements provide shock absorbers when Pacific Solar faces non-payment, and at much lower thresholds of non-payment than those the State is inflicting on Pacific Solar. In particular, a **four-month delay** is sufficient to allow Pacific Solar to sell energy to third parties, for example,³⁶ and permits Pacific Solar to terminate the PPA.³⁷

³⁴ Letter from ENEE to Pacific Solar, No. ENEE GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**), at 2, ¶ 8; [REDACTED]

³⁵ See, e.g., Letter from ENEE to PSE No. ENEE GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**), at 2 (contemplating full payment of the outstanding debt only after the execution of a MoU with the State, something to which nine other generators had acquiesced to); [REDACTED] (conditioning payment of the US\$ 80 million for the possible acquisition of 51% of the Plant on Pacific Solar signing an amendment to PPA).

³⁶ PPA (**Exh. C-1**), § 2, Cl. 2.5.

³⁷ PPA (**Exh. C-1**), § 2, Cl. 4.6(c) (“**THE SELLER . . . may terminate this contract early . . . in the event that the BUYER maintains a balance in arrears of its payment obligations for more than four (4) months.**”)

Here, the State's non-payment is significantly above those thresholds; at present, Honduras owes Pacific Solar the equivalent of 15 invoices.

24. In the meantime, the Government pursued a smear campaign against the generators. It demonized the generators who did not "agree" to the terms outlined in the Government's 12 May 2022 "offers," relegating them to "**enemies of the nation**."³⁸ Aggravating the dispute, the Government has introduced legislation to repeal tax incentives, denounced the ICSID Convention, and attacked the investors and investments that have submitted claims against the State.

25. Now two years after the enactment of the New Energy Law, Honduras owes Pacific Solar millions of dollars for energy it has delivered, forcing Pacific Solar to try to restructure its project finance loans so the Project can continue, thereby harming its investments in Honduras. Indeed, Honduras's measures individually and collectively, constitute a breach of Honduras's international obligations to the Paizes, as Investors of another Contracting Party under the Treaty.³⁹ In particular, Honduras has violated:

- **Article 10.7 of the Treaty**, by unlawfully expropriating the Paizes' investments in Pacific Solar, as Honduras's measures have substantially deprived the Paizes, without prompt, adequate and effective compensation, of its interests or benefits arising from its commitment of capital in Honduras based on Pacific Solar's rights under the Agreements.
- **Article 10.5 of the Treaty**, by failing to afford the Paizes' investments (Pacific Solar) a fair and equitable treatment ("**FET**"), (i) frustrating the Paizes' legitimate expectations under the 2013 Renewables Law and the Agreements and failing to provide a stable and predictable legal and contractual framework for the Paizes' investments; (ii) engaging in arbitrary and unreasonable conduct towards Pacific Solar, with no rational policy goal behind it; (iii) adopting and inconsistent behavior and failing to act transparently towards Pacific Solar; and (iv) generally, adopting a series of measures that had a disproportionate impact on the Paizes's investments.
- **Article 10.4 of the Treaty**, by failing to observe its obligations towards Pacific Solar under the Agreements. Invoking the most-favored-nation ("**MFN**") clause the Treaty, the Paizes rely on the umbrella clauses in the Honduras-Germany and Honduras-Switzerland BITs, which require Honduras to observe all of its obligations towards the Paizes's investment (Pacific Solar) under the Agreements. Honduras's violations of its commitments under the Agreements are egregious and numerous. Therefore, Honduras's conduct, in breach of its commitments towards

³⁸ ENEE, "*Not all generators are enemies of the nation*," X (FORMERLY TWITTER) dated 27 June 2022 (**Exh. C-219**) ("Not all generators are enemies of the nation, this week we will be announcing some of the generators that are willing to lower the costs of their contracts[.]").

³⁹ Treaty (**CL-1**), Chapter 10.

Pacific Solar, violate the umbrella clauses that the Paizes invoke through the MFN clause in the Treaty.

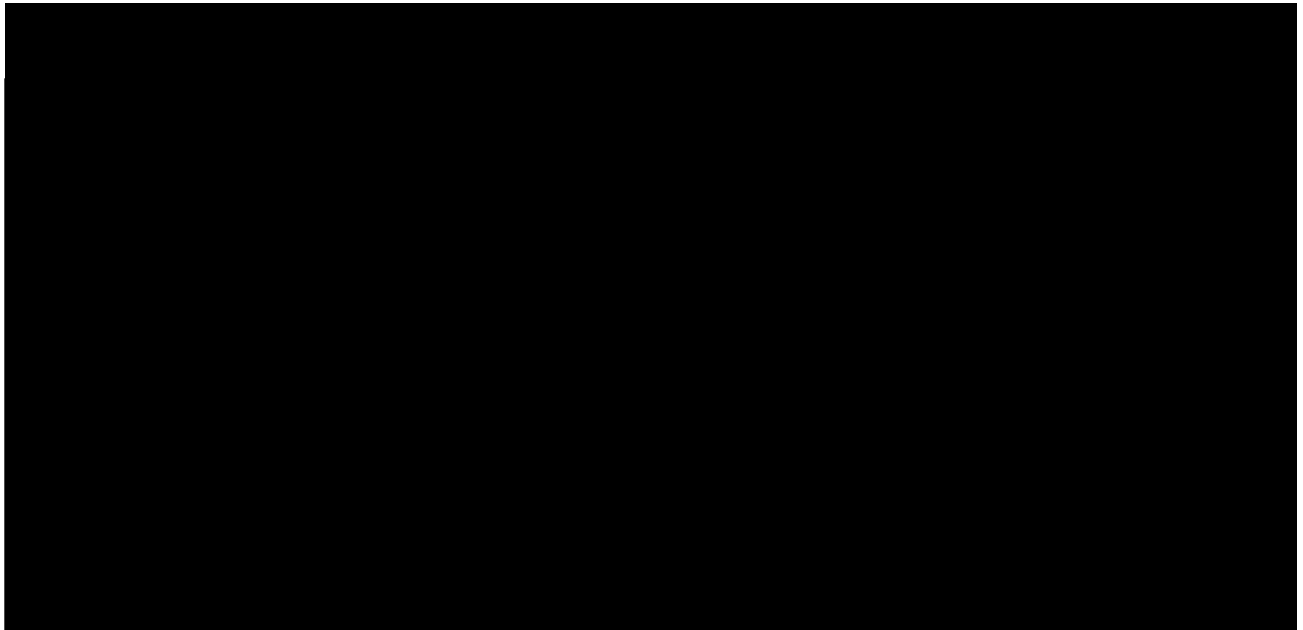
- **Article 10.16 of the Treaty**, by failing to abide by the Agreements. The PPA, the State Guarantee, and the Operations Agreement all constitute investment agreements, as defined in Article 10.28 of the Treaty. Honduras has fallen short of fulfilling these Agreements and thus should be found liable for its violation of Honduran law pursuant to Article 10.16 of the Treaty.

26. Honduras is obliged to wipe out the consequences of its unlawful measures and put Claimants in the position they would have been in if the unlawful measures had not been adopted. In particular, Honduras's egregious actions have severely undermined the value of Claimants' investment, fundamentally destroying the basis of Claimants' investment decision. Honduras has substantially deprived the Paizes and Pacific Solar from the benefits they expected from the Plant without an adequate compensation. In the meantime, Honduras has continued to benefit from the energy and capacity supplied by Pacific Solar, as well as the substantial capital invested by the Claimants, which was made in reliance on Honduras's specific commitments.

27. In accordance with the principle of full reparation and the Treaty, the Paizes—acting on its own behalf and on behalf of Pacific Solar—seeks an award that fully compensates Pacific Solar for its historical damages and loss of fair market value (“**FMV**”).

28. Compass Lexecon, as an independent expert, has confirmed that the losses suffered by Pacific Solar total [REDACTED] as of 30 June 2024.⁴⁰ Compass Lexecon has adopted 30 April 2022 as the valuation date (“**Valuation Date**”). That is, when the Government breached the Treaty by, among others, implementing policies that render the Agreements ineffective; weaponizing the compensation owed to Pacific Solar; and mandating the “renegotiations” of the PPA under the threat of expropriation.

⁴⁰ Quantum Report by Mr. Miguel A. Nakhle dated 19 Aug. 2024 (“**Compass Lexecon**”). Compass Lexecon calculated damages as of the Valuation Date (30 April 2022, that is, the month immediately before the enactment of the New Energy Law) and then applied pre-Award interest as of 30 June 2024, a proxy for the date of the Award.



29. As reflected in the above chart, these total losses are composed of the sum of Pacific Solar's historical and FMV losses (minus Pacific Solar's actual cash flows between the Valuation Date and 30 June 2024); specifically:

Historical losses: [REDACTED], which correspond to the actual past due principal and unpaid interest resulting from Honduras's insufficient payments for energy and capacity supplied by Pacific Solar, as well as uncompensated curtailments of energy as of the Valuation Date.

FMV losses: [REDACTED], which correspond to Pacific Solar's FMV as of the Valuation Date because of Honduras's measures.⁴²

30. Compass Lexecon values the FMV of the Paizes' investments as of the Valuation Date using a discounted-cash flow ("DCF") analysis in the absence of the Measures, which is widely used to value renewable generation assets. Among other steps detailed herein, such analysis involves looking forward from the Valuation Date and projecting Pacific Solar's expected revenues and expenses, year by year, until the end of the Plant's useful life and applying a discount that reflects the time value of money and risks associated with operating a PV plant in Honduras.⁴³

⁴¹ Compass Lexecon, Table 1.

⁴² Both amounts include pre-Award interest as of 30 June 2024.

⁴³ Compass Lexecon, ¶¶ 8, 55, 56, 117. As detailed herein, Compass Lexecon's DCF analysis does not include an estimate of the value of the Plant in the actual scenario. As Compass Lexecon explains, this is because the *justiprecio* that Honduras would pay Pacific Solar for the threatened acquisition of the Plant, as provided for in the New Energy Law, has not yet been determined in spite of Pacific Solar's insistence (*see* [REDACTED]). This is consistent with the Paizes' position that the significant uncertainty created by Honduras's conduct has substantially deprived Pacific Solar's value. Once Honduras acquires Pacific Solar's generation assets, any price paid for those

31. Honduras's acts and omissions, conducted either directly or through organs of the State, including ENEE, violate the Treaty and have substantially injured the Paizes and Pacific Solar. In support of this position, the Paizes submit the following witness declarations and expert report:

- *Witness Statement of Mr. Fernando Paiz*, investor and Director of Pacific Solar, who describes his investment and Honduras's commitments to it, the construction and operation of the Plant, and the impact of Honduras's failure to compensate and imposed "renegotiation" has had on his investment.
- *Witness Statement of* [REDACTED], who testifies on Mr. Paiz's interest and decision to invest in Pacific Solar, the construction and operations of the Plant, and Honduras's abrupt change of treatment towards Pacific Solar since Xiomara Castro took office as President of the country.
- *Expert Report by Miguel A. Nakhle*, Executive Vice President at Compass Lexecon and economist, concluding that US\$ 119.9 million in outstanding compensation as of 30 June 2024 is properly supported by the relevant documentation.

32. Based on the foregoing, as of 30 June 2024, Honduras must pay US\$ 119.9 million plus post-Award interest and refrain from aggravating the dispute.

II. FACTUAL BACKGROUND

33. Honduras has historically grappled with challenges in meeting the country's demand for power in the electricity sector. To address these challenges, and to further its goal of diversifying its electricity matrix, the State reformed its electricity regulatory framework in 2007 to encourage investment in renewable energy, and again, in 2013 to specifically attract investments in the development of photovoltaic, or solar, energy. In that context, Honduras awarded a series of agreements to Pacific Solar guaranteeing the long-term purchase of renewable energy at a specific price and under specific terms.

34. The Government specifically anticipated that investors in renewable power generation needed incentives and specific commitments and would rely on them if Honduras was to achieve results. Honduras's recognition is enshrined in the 2013 Renewables Law, recognizing

assets should be deducted from Pacific Solar's damages (expressed as of the date of the acquisition). Compass Lexecon, however, deducts from the total damages the cash flows that Pacific Solar has generated since May 2022 (namely, the payments it received from Honduras net of the operating costs of the Plant).

that to “achieve greater progress . . . in the development and application of renewable resource generation technologies” investors would require “appropriate regulatory frameworks such as promotion of instruments and incentives” to foster the investment it sought.⁴⁴ These guarantees by Honduras were strategically tailored “due to the operational characteristics of [PV] generation technology,” which made it “necessary to establish appropriate conditions to encourage and grant participation to this type of technology within the electric power generation matrix, reducing barriers to entry and risk to the investment process.”⁴⁵ Moreover, the 2013 Renewables Law mandated ENEE, an institution of the State, to execute PPAs with generators, which provide the incentives with respect to each generator.

35. The commitments did not stop there. Deploying a belts-and-suspenders approach to ensure the market would respond, the Attorney General’s Office and the Secretary of Finance guaranteed ENEE’s obligations under the PPA in specific agreements with generators, well aware that “for a generator to commit” under the PPA, “the State [must] provide assurance that ENEE would fulfil its obligations under the PPA.”⁴⁶ Premised on those commitments, the Paizes and Pacific Solar invested in Honduras and built a state-of-the-art PV plant, helping Honduras achieve its goals.

A. HONDURAS SOUGHT TO SWIFTLY INCREASE POWER SUPPLY INDUCING INVESTMENT IN RENEWABLE GENERATION

36. To address a rising demand for electricity along with a global trend to increase the use of renewable energy, Honduras, which had opened its power sector to private investment in 1994,⁴⁷ and enacted the Law on Promotion of Electricity Generation with Renewable Resources

⁴⁴ 2013 Renewables Law (**Exh. C-5**), at A.2, Fourth Recital (“Whereas: In order to achieve greater progress and expansion in the development and application of generation technologies based on renewable resources, it is necessary to have more suitable regulatory frameworks as promotion and incentive instruments, with precise and well-defined elements for different non-conventional technologies, such as solar-photovoltaic and solar-thermal generation projects, wind, various forms of bioenergy, geothermal and marine energy (tidal and wave energy).”)

⁴⁵ 2013 Renewables Law (**Exh. C-5**), at A.2, Fifth Recital (“[T]here is currently interest from investors in the development of solar power systems with medium- and large-scale capacity; however, due to the operational characteristics of this generation technology, it is necessary to establish suitable conditions to encourage and integrate these technologies into the Power Generation mix, including reducing entry barriers and the risk for the investment process”).

⁴⁶ State Guarantee (**Exh. C-2**) ; PPA (**Exh. C-1**), at 86, Annex X, Third Recital (“For its part, the Office of the Attorney General of the Republic states that as a condition for the Generator to commit to the PPA, it has required that the State provide security to comply with the obligations of ENEE and/or its successors under the PPA[.]”).

⁴⁷ See Framework Law of the Electricity Subsector (Decree No. 158-94 dated 15 November 1994), published in the Official Gazette dated 26 November 1994 (the “**Electricity Law of 1994**”) (**Exh. C-56**).

(*Ley de Promoción a la Generación de Energía Eléctrica con Recursos Renovables*) (Decree 70-2007) (“**2007 Renewables Law**”) on 2 October 2007. The 2007 Renewables Law promoted the development of renewable energy projects, particularly hydroelectric, wind, and geothermal plants,⁴⁸ with public and private investments.⁴⁹ To encourage investments, the 2007 Renewables Law (i) granted investors several economic incentives; (ii) mandated that ENEE, as the sole offtaker and sole purchaser, execute Power Purchase Agreements (“**PPAs**”) with private generators and dispatch and receive electricity that generators produced from renewable sources; and (iii) authorized the Central Government to back ENEE’s obligations thereunder.⁵⁰

37. Despite the incentives to increase investments in renewable energy sources, the influx of new investments that Honduras received at the time remained largely in fossil fuels sources, and as such, the composition of the electricity matrix remained dominated by thermal energy. By 2010, three years after the implementation of the 2007 Renewables Law, Honduras’s power generation remained largely dependent on fossil fuel-based thermal plants and on a single State-owned hydroelectric power plant, built in 1985, responsible for generating a significant portion of the country’s energy.⁵¹ The share of renewable-sourced energy in Honduras’s total installed capacity, private- and State-generated, was 38%, and predominantly hydro-sourced power, and of that percentage, privately-owned renewable plants represented only 7% of the total electricity generation in Honduras.⁵² Therefore, Honduras required additional investment in renewable-sourced electricity to achieve the purposes set out under the 2007 Renewables Law.

38. Honduras is an oil and gas-importing country and thus, its energy matrix is sensitive to fluctuations in fuel prices.⁵³ In 2010, Honduras’s expenditures on imported fossil fuels

⁴⁸ 2007 Renewables Law (**Exh. C-4**), Arts. 2-4. *See also* Honduras National Energy Efficiency Monitoring Report dated 2018 (**Exh. C-58**), at 17-18.

⁴⁹ 2007 Renewables Law (**Exh. C-4**). *See also* Honduras National Energy Efficiency Monitoring Report dated 2018 (**Exh. C-58**), at 17-18.

⁵⁰ 2007 Renewables Law (**Exh. C-4**), Arts. 2-4. *See also* Climate Investment Fund, *Investment Plan for Honduras*, Program on Scaling-up Renewable Energy in Low-Income Countries (SREP) dated 26 Oct. 2011 (**Exh. C-60**) ¶ 9.

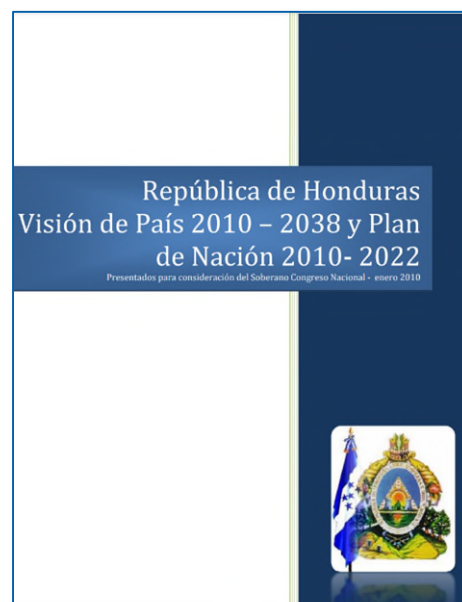
⁵¹ Climate Investment Fund, *Investment Plan for Honduras*, Program on Scaling-up Renewable Energy in Low-Income Countries (SREP) dated 26 Oct. 2011 (**Exh. C-60**), at 20-21, Figure 3.

⁵² *See* Climate Investment Fund, *Investment Plan for Honduras*, Program on Scaling-up Renewable Energy in Low-Income Countries (SREP) dated 26 Oct. 2011 (**Exh. C-60**), Figure 3, Table 6, Table 7, ¶ 46.

⁵³ *See* OEC World, *Refined Petroleum in Honduras* (**Exh. C-62**) (Ranking Honduras 82nd in the world for imports in 2022 with \$2.19 billion); *see also* OEC World, *Petroleum Gas in Honduras* (**Exh. C-63**) (Ranking Honduras 80th in the world for imports in 2022 with \$345 million).

represented nearly 11% of the country's GDP.⁵⁴ Because of this dependence and Honduras's resulting exposure to fluctuating fossil fuels prices, Honduras resolved to further foster investments in renewable projects. In January 2010, the Government enacted its National Plan and Country Vision (Decree 286-2009) for 2010-2038 (*República de Honduras Visión de País 2010 – 2038 y Plan de Nación 2010 – 2022*) ("**National Plan**"),⁵⁵ which was binding on the State until 2022.⁵⁶ The National Plan described 20 priority goals and observations for Honduras, including the following:

- "[I]ncrease the share of participation of renewable energy in the national electrical power matrix to 80%" by 2034.⁵⁷
- By 2022, service "60% of the energy demand . . . with renewable energy sources;"⁵⁸
- By 2034, "be the leading Central American country in terms of sustainable use of natural resources[.]"⁵⁹
- "[O]ver the next 12 years the Honduran system requires investments greater than US\$ 1.5 billion in generation, mainly hydroelectric and other renewable sources, to meet the growth in demand. Additionally, investments in the order of US\$ 250 million will be required to expand the transmission system during the same period."⁶⁰



39. As part of National Plan's initiative, in 2011, Honduras developed the "Scaling up Renewable Energy Program Investment Plan" ("**SREP Investment Plan**").⁶¹ With support and

⁵⁴ Adam Dolezal et al., *The Way Forward for Renewable Energy in Central America* dated June 2013 (**Exh. C-64**), at 37.

⁵⁵ National Plan (**Exh. C-66**) ; Law for the Establishment of a Country Vision and the Adoption of a National Plan for Honduras, Decree No. 286-2009 dated 2 Feb. 2010 (**Exh. C-67**), Preamble.

⁵⁶ Law for the Establishment of a Country Vision and the Adoption of a National Plan for Honduras, Decree No. 286-2009 dated 2 Feb. 2010 (**Exh. C-67**), Art. 2.

⁵⁷ National Plan (**Exh. C-66**), at 26 ("Goal 3.3: Increase the participation rate of renewable energy in the country's electricity generation matrix to 80%"), 113 ("By the year 2034, . . . [i]nvestments in energy will transform the generation matrix by making renewable energy the majority (80%)"), 147.

⁵⁸ National Plan (**Exh. C-66**), at 101; *see also id.*, at 112.

⁵⁹ National Plan (**Exh. C-66**), at 101; *see also id.*, at 110-112.

⁶⁰ National Plan (**Exh. C-66**), at 105.

⁶¹ Climate Investment Fund, *Investment Plan for Honduras*, Program on Scaling-up Renewable Energy in Low-Income Countries (SREP) dated 26 Oct. 2011 (**Exh. C-60**).

input from the International Finance Corporation (“**IFC**”), the World Bank, and the Inter-American Development Bank (“**IDB**”), the SREP Investment Plan sought to reduce the percentage of energy generated by fossil fuels.⁶² It also identified the “strong will of the Government of Honduras” to achieve the goals set out in the 2010 National Plan.⁶³ A critical element of that Plan involved developing and implementing “policies, laws, regulations, rules, standards, and incentive schemes aimed at improving the integration of renewable energy in the energy sector[.]”⁶⁴

40. However, by 2013, the percentage of solar-sourced energy in Honduras’s electricity matrix remained low, as was the case in other Central American countries,⁶⁵ and despite the incentives offered under the 2007 Renewables Law, Honduras was still seeking additional private investments. The lack of solar energy in the electricity matrix represented an opportunity cost for Honduras by not taking advantage of the country’s immense solar resources.⁶⁶ Other Central American countries were also lagging behind in the deployment of solar energy.⁶⁷

41. Honduras also faced the challenge of meeting an increasing electricity demand. In particular, before 2013, the lack of electricity supply resulted in multiple blackouts, affecting the Honduran economy.⁶⁸ By the end of 2012, industry experts warned that there would be more severe blackouts in the system due to a lower level of expected rainfall, which would have a significant effect given Honduras’s reliance on hydropower at the time.⁶⁹ Indeed, Honduras’s geographical region makes it susceptible to severe and recurring droughts, which increases the vulnerability of its hydroelectric sector and makes access to alternative renewable sources more

⁶² Climate Investment Fund, *Investment Plan for Honduras*, Program on Scaling-up Renewable Energy in Low-Income Countries (SREP) dated 26 Oct. 2011 (**Exh. C-60**) ¶ 1 (noting that the investment plan was “prepared under the leadership of Government of Honduras[.]”).

⁶³ Climate Investment Fund, *Investment Plan for Honduras*, Program on Scaling-up Renewable Energy in Low-Income Countries (SREP) dated 26 Oct. 2011 (**Exh. C-60**) ¶¶ 4-5.

⁶⁴ Climate Investment Fund, *Investment Plan for Honduras*, Program on Scaling-up Renewable Energy in Low-Income Countries (SREP) dated Oct. 2011 (**Exh. C-60**) ¶ 23.

⁶⁵ Adam Dolezal et al., *The Way Forward for Renewable Energy in Central America* dated June 2013 (**Exh. C-64**), at 21, 27-28.

⁶⁶ NREL, National Solar Radiation Database (**Exh. C-70**) (last accessed 1 Aug. 2024).

⁶⁷ Adam Dolezal et al., *The Way Forward for Renewable Energy in Central America* dated June 2013 (**Exh. C-64**), at 11, 21.

⁶⁸ *Blackouts leave significant losses*, LA PRENSA dated 6 July 2012 (**Exh. C-74**).

⁶⁹ *They announce blackouts in 2013 in Honduras*, EL HERALDO dated 15 Dec. 2012 (**Exh. C-75**).

critical. To meet increasing demand in the medium and long term, ENEE's planning manager confirmed that diversifying the electricity matrix with solar energy was part of the solution.⁷⁰

42. To that end, in 2013, Honduras enacted Decree 138-2013 ("**2013 Renewables Law**") as a reform to the 2007 Renewables Law. The 2013 Renewables Law encouraged "the development of energy generation projects with renewable resources" by "simplify[ing] and develop[ing] certain provisions of the Law on Promotion of Electric Power Generation with Renewable Resources in Decree No. 70-2007."⁷¹ Through the incentives provided in the 2013 Renewables Law, the Government sought to reduce its reliance "on fossil fuel imports, which subject to uncontrollable volatility," and "harm the country's finances."⁷² The 2013 Renewables Law provided that "to a achieve greater and broader progress" in renewable power generation, "it is necessary to have legal frameworks that are more adequate, such as instruments of promotion and incentives," that are "tailored to each technology."⁷³ It confirmed that Honduras would grant "guarantees to the investor, **providing this legal security, all with the objective of attracting, promoting and protecting national and foreign investment in Honduras.**"⁷⁴ The Preamble also provided that the Government had an interest in "establish[ing] adequate conditions to incentivize participation in **solar technology** for the electricity matrix;" "diminish[ing] barriers to

⁷⁰ *Honduras will generate solar energy from March 2015*, AMÉRICA ECONOMÍA dated 14 Aug. 2014 (**Exh. C-77**).

⁷¹ 2013 Renewables Law (**Exh. C-5**), at A.3, Sixth Recital ("It is essential to develop renewable energy generation projects of all sizes and using all types of renewable resources; to achieve this, it is necessary to simplify and regulate certain provisions of the Law on the Promotion of Electricity Generation from Renewable Energy Resources, enacted via Decree No. 70-2007, dated May 31, 2007, published in the Official Gazette on 2 October 2007.")

⁷² 2013 Renewables Law (**Exh. C-5**), at A.2, First Recital ("Whereas: it is the Government's responsibility to promote technological diversification and transform the Power Generation mix to include a predominant share of renewable energy, thereby significantly reducing fossil fuel imports, which are subject to unpredictable price volatility that contributes to a gradual deterioration of Honduras' finances.").

⁷³ 2013 Renewables Law (**Exh. C-5**), at A.2, Fourth Recital ("Whereas: in order to achieve greater progress and expansion in the development and application of generation technologies based on renewable resources, it is necessary to have more suitable regulatory frameworks as promotion and incentive instruments, with precise and well-defined elements for different non-conventional technologies, such as solar-photovoltaic and solar-thermal generation projects, wind, various forms of bioenergy, geothermal and marine energy (tidal and wave energy)[.]").

⁷⁴ 2013 Renewables Law (**Exh. C-5**), at A.3, Eighth Recital ("[T]he National Congress approved the Law on the Promotion and Protection of Investments, an act intended to provide all necessary facilities and guarantees to investors, offering them legal certainty, all for the purpose of attracting, promoting, and protecting domestic and foreign investment within the territory of Honduras."). *See also id.*, at A.2, Art. 13 ("To guarantee the promotion and protection of investments in this sector of strategic importance to the national economy and legal certainty for investors, at no time may these tax rates exceed ten percent (10%).").

entry and risks to the investment process;" and fostering a "competitive environment for solar" energy.⁷⁵

43. Importantly, Article 2 of the 2013 Renewables Law **required that ENEE execute PPAs to purchase electricity and capacity from renewable energy generators.**⁷⁶ The incentives Honduras guaranteed to investors in the 2013 Renewables Law, building upon the 2007 Renewables Law, later memorialized in PPAs and included, among others, the following incentives (collectively, the "**Renewables Incentives**"):

- **Set Base Prices:** specific energy and capacity base prices for PV projects,⁷⁷ which could include an additional US\$ 0.03/MWh if the new PV plants come into operation (i) within two years of the entry into force of the 2013 Renewables Law (*i.e.*, prior to 1 August 2015), and (ii) form part of the first 300 MW of PV power (the "**PV Incentive**").⁷⁸
- **10% Incentive:** a 10% payment over the Energy Base Price for the initial 15 years of operation of a plant;⁷⁹
- **Commitment to Pay for and Dispatch All Energy Made Available under the Applicable PPA:** a commitment to dispatch and pay for the energy and capacity delivered by a PV plant, under PPAs.⁸⁰
- **Tax Benefits:** As a "measure of state policy geared towards preserving, conserving, and improving the environment" of those that "develop and operate" renewable energy projects, a robust tax benefit regime, which included a VAT exemption for the life of the project, an income tax exemption for the first 10 years of operations of the operation of the plant, and financial and tax benefits for goods acquired for the project.⁸¹

⁷⁵ 2013 Renewables Law (**Exh. C-5**), at A.2, Fifth Recital.

⁷⁶ 2013 Renewables Law (**Exh. C-5**), Art. 2 ("Private or mixed-ownership enterprises that generate renewable electricity using domestic renewable resources in a sustainable manner shall be subject to the provisions of this Law and may sell the energy and ancillary electrical services they produce under the following options: . . . (2) Sell their energy production and capacity, on their own initiative, to the National Company of Electrical Energy (ENEE), for which purpose the latter shall be required to enter into a Capacity and Associated Electric Power Purchase Agreement and purchase such energy and capacity"), *cf.* 2007 Renewables Law (**Exh. C-4**), Art. 3.

⁷⁷ 2013 Renewables Law (**Exh. C-5**), at A.6, Art. 2 (amending Article 3(2)(b) of the 2007 Renewables Law).

⁷⁸ 2013 Renewables Law (**Exh. C-5**), at A.10, Art. 6.

⁷⁹ 2013 Renewables Law (**Exh. C-5**), at A.6, Art. 2 (amending Article 3(2)(a) and 3(2)(c) of the 2007 Renewables Law). A similar economic incentive was granted under the 2007 Renewables Law. *See* 2007 Renewables Law (**Exh. C-4**), Art. 3.

⁸⁰ *See* 2007 Renewables Law (**Exh. C-4**), at A.9, Art. 9.

⁸¹ 2013 Renewables Law (**Exh. C-5**), Art. 2.

- **Guarantee by the State:** Maintaining the provision under the 2007 Renewables law, the State executed a guarantee confirming it is jointly and severally liable to Pacific Solar for ENEE's obligations under the PPA.⁸²

44. Honduras further advanced its pro-market, pro-renewables agenda in May 2014 when Honduras enacted the General Law of the Electric Industry (*Ley General de la Industria Eléctrica*) (Decree 404-2013) ("**2014 Electric Power Industry Law**").⁸³ This law provides that "the [PPAs] that ENEE has at the time this Law comes into force with private generating companies will continue without change until the expiration of their term."⁸⁴ The 2014 Electric Power Industry Law also (i) created the Electrical Energy Regulatory Commission (*Comisión Reguladora de Energía Eléctrica*) ("**CREE**") to regulate the electricity sector, with whom Pacific Solar must register to be a generator;⁸⁵ (ii) regulated how the environmental licenses for projects were issued;⁸⁶ (iii) created the System Operator (*Operador del Sistema*) ("**ODS**"), the entity responsible for dispatching energy;⁸⁷ and (iv) promised to respect the Renewables Incentives.⁸⁸

45. Consistent with the goal of encouraging private investment, in June 2014, Honduras's Secretary of Energy, Renewable Resources, Environment and Mines ("**SERNA**") hosted an energy conference called Expo Energía with more than 100 participating businesses for the purpose of attracting foreign investment in renewable energy.⁸⁹ The director of the conference predicted that investment in renewable energy would exceed US\$ 800 million in 2014⁹⁰ (or

⁸² State Guarantee (**Exh. C-2**) Arts. 2, 4. *See also* 2007 Renewables Law (**Exh. C-4**), Art. 4 ("Renewable energy generation projects that enter into a power purchase agreement with ENEE shall be entitled to enter into a support agreement for the fulfillment of the power purchase agreement with the Office of the Attorney General of the Republic of Honduras."); 2013 Renewables Law (**Exh. C-5**), Art. 11.

⁸³ General Law of the Electric Industry (Decree No. 404-2013 dated 11 Apr. 2014) (the "**2014 Electric Power Industry Law**"), published in the Official Gazette dated 20 May 2014 (**Exh. C-8**), Preamble, Arts. 4, 5, 29.

⁸⁴ 2014 Electric Power Industry Law (**Exh. C-8**), Art. 28(B) ("The Power Purchasing Agreements that the the National Company of Electric Energy (ENEE) has at the time this Law comes into force with private generating companies will continue without change until the expiration of their term.").

⁸⁵ 2014 Electric Power Industry Law dated 20 May 2014 (**Exh. C-8**), Art. 3, 5. *See also* Electric Energy Regulatory Commission, Public Registry of Documents (**Exh. C-217**) (last accessed 19 Aug. 2024); Electric Energy Regulatory Commission, Public Registry of Documents, Pacific Solar Energy's Registration as Generator No. G-S60 dated 6 Sept. 2018 (**Exh. C-168**).

⁸⁶ 2014 Electric Power Industry Law dated 20 May 2014 (**Exh. C-8**), Art. 5.

⁸⁷ 2014 Electric Power Industry Law dated 20 May 2014 (**Exh. C-8**), Art. 9.

⁸⁸ 2014 Electric Power Industry Law dated 20 May 2014 (**Exh. C-8**), Art. 11.

⁸⁹ *Very busy Energy Expo starts*, LA PRENSA dated 4 June 2014 (**Exh. C-81**); *Honduras Energy Expo Begins*, LA PRENSA dated 3 June 2014 (**Exh. C-82**).

⁹⁰ *Investment in renewable energy will exceed 800 million dollars in 2014*, PROCESO DIGITAL dated 5 June 2014 (**Exh. C-83**).

roughly 4% of the country's 2014 GDP)⁹¹ and Honduras expected the Expo Energía event to result directly in US\$ 45 million in investments in solar and wind.⁹²

46. Additionally, the Government recognized that it needed to address the closing gap between the electricity demand in the country and the available supply. Older thermal plants were being decommissioned in accordance with the State's green policies. For example, three thermal plants producing 150 MW were scheduled to stop injecting electricity to the grid in 2014, and two additional plants producing a total of 440 MW were scheduled to be decommissioned in 2018.⁹³ Thus, Honduras faced a situation in which it was already struggling to meet electricity demand and ~600 MW of capacity was being phased out. In those circumstances, a slight increase in demand or drop in supply would require importing electricity from abroad or result in electricity blackouts. This is precisely what happened in mid-2014, when the ENEE announced daily blackouts.⁹⁴ To address the problem, Honduras sought to diversify its electricity matrix, particularly with solar technology, as ENEE's officials repeatedly noted.⁹⁵

47. As mentioned above, the 2013 Renewables Law required ENEE to execute PPAs with electricity generators that use renewable resources as their energy source.⁹⁶ Accordingly, here, in addition to the State's commitments under the 2013 Renewables Law, the State further cemented the incentive regime through a contractual framework with each generator, which included a guarantee by the State.

⁹¹ World Bank, *GDP (current US\$) – Honduras* (**Exh. C-86**) (showing Honduras's GDP in 2014 to be US\$ 19.76 billion).

⁹² *Honduras captures US\$45mn in renewable energy investment*, BN AMERICAS dated 10 June 2014 (**Exh. C-84**).

⁹³ Regional Planning Working Group (GTPIR), *Regional Indicative Plan for Generation Expansion Period 2012-2027* dated Oct. 2012 (**Exh. C-87**), at 35 (Figure 5-7).

⁹⁴ *ENEE formalizes energy rationing in Honduras*, LA PRENSA dated 5 Aug. 2014 (**Exh. C-88**).

⁹⁵ *Honduras will generate solar energy from March 2015*, AMÉRICAECONOMÍA dated 14 Aug. 2016 (**Exh. C-77**) (citing Mr. Gerardo Salgado, planning manager at ENEE, who considered that "solar energy is another option to meet the demand in the mid and long term").

⁹⁶ 2013 Renewables Law (**Exh. C-5**), Art. 2 ("Private or mixed-ownership enterprises that generate renewable electricity using domestic renewable resources in a sustainable manner shall be subject to the provisions of this Law and may sell the energy and ancillary electrical services they produce under the following options: . . . (2) Sell their energy production and capacity, on their own initiative, to National Electric Power Company (ENEE), for which purpose the latter shall be required to enter into a Capacity and Associated Electric Power Purchase Agreement and purchase such energy and capacity.")

48. In January 2014, ENEE signed over 20 solar PPAs with private investors, corresponding to an anticipated capacity of around 600 MW,⁹⁷ to fill in the gap resulting from the capacity that Honduras was phasing out and to address the anticipated demand. As the next section explains, soon thereafter Pacific Solar and the Government executed the PPA, State Guarantee, and Operating Agreement for the Plant.

B. THE PAIZES INVESTED IN HONDURAS'S SOLAR ENERGY SECTOR BASED ON COMMITMENTS MADE IN THE PPA AND THE STATE GUARANTEE THAT WERE EXECUTED BETWEEN PACIFIC SOLAR AND THE GOVERNMENT

49. To pursue the opportunities in renewables that emerged after the enactment of the 2013 Renewables Law, Pacific Solar was incorporated on September 10, 2013.⁹⁸ [REDACTED]

[REDACTED]

50. [REDACTED] after Pacific Solar entered into the long-term Agreements, which confirmed Pacific Solar's entitlement to the Renewables Incentives, as described next.

51. One of the 20 contracts ENEE signed with private investors in January 2014 and the Congress later approved is the one with Pacific Solar, at issue in this Arbitration. Consistent with the 2013 Renewables Law, Pacific Solar entered into three agreements with the Government: (i) the PPA with ENEE, (ii) a State Guarantee with the Attorney General's Office and the Secretariat of Finance, and (iii) and the Operations Agreement with SERNA, as described below.

⁹⁷ *Honduras walks towards investment and the growth of solar photovoltaic energy*, SUELOSOLAR dated 16 Dec. 2014 (**Exh. C-89**) ("In mid-2014, the National Electric Power Company (ENEE) approved 23 photovoltaic solar energy contracts, with an installed capacity of 609.2 megawatts."). *See also* 2013 Renewables Law (**Exh. C-5**), Art. 11 (requiring ENEE to send to the Honduran National Congress the State Guarantee Agreements for the fulfillment of the power purchase agreements with ENEE, along with those power purchase agreements).

⁹⁸ Public Deed No. 1713328, Act of Incorporation of Pacific Solar dated 10 Sep. 2013. (**Exh. C-72**).

[REDACTED]

52. Pursuant to the PPA, the State Guarantee, and the Renewables Law, Honduras undertook to (i) purchase all the power and energy the Plant produces; and (ii) pay Pacific Solar for the energy and capacity provided to the system, and for all amounts due related to the Renewable Incentives, interests, and energy generation curtailments.¹⁰¹

53. In turn, Pacific Solar undertook to build, operate, and maintain a PV plant and to sell the energy that the Plant produced to ENEE or to third parties under certain conditions.¹⁰² Moreover, under the Operations Agreement, Pacific Solar undertook to operate the Plant while the State of Honduras authorized Pacific Solar to carry out the generation of electricity through the Plant.¹⁰³ Not only did the Government execute the Agreements with Pacific Solar—agreements that were nearly identical to those of other solar generators—but Honduras's Congress also approved the PPA,¹⁰⁴ the Operations Agreement,¹⁰⁵ and the State Guarantee,¹⁰⁶ and published them in the National Gazette.

1. The Government Granted Specific Rights to Pacific Solar Under the PPA

54. The 2013 Renewables Law mandated that ENEE enter into PPAs with renewable energy generators to purchase all the energy and capacity that they produce.¹⁰⁷ Accordingly, ENEE and Pacific Solar entered into the PPA, which is designed as a take-or-pay, which means that ENEE, as the purchaser (in this case, the sole offtaker), undertakes to “purchase all the capacity and energy that the Plant generates,” produces and delivers.¹⁰⁸ Further to the Renewables

¹⁰¹ See PPA (**Exh. C-1**), § 1(G); § 2, Cls. 2.3, 9.1; 2007 Renewables Law (**Exh. C-4**), Art. 9 2013 Renewables Law (**Exh. C-5**), Art. 2; State Guarantee (**Exh. C-2**).

¹⁰² PPA (**Exh. C-1**), § 2, Cls. 2.2, 2.3, 2.5.

¹⁰³ Operations Contract between Pacific Solar and the Honduras's Ministry of Energy, Natural Resources, Environment and Mines (Decree No. 109-2015 dated 26 Oct. 2015) published in the Official Gazette on 27 Nov. 2015 (the “**Operations Agreement**”) (**Exh. C-3**), § 1.4.4.

¹⁰⁴ Decree No. 376-2013 dated 10 May 2014 (**Exh. C-95**).

¹⁰⁵ Operations Agreement (**Exh. C-3**).

¹⁰⁶ State Guarantee (**Exh. C-2**).

¹⁰⁷ 2013 Renewables Law (**Exh. C-5**), Art. 2 (amending Art. 3(2) of the 2007 Renewables Law, confirming that ENEE has the obligation to purchase the energy produced by private renewable energy generators).

¹⁰⁸ PPA (**Exh. C-1**), § 2, Cls. 2.1 (“As stipulated in this Agreement, the BUYER shall purchase all the capacity and energy that the Plant generates that is delivered, measured and invoiced by the SELLER”), 2.3 (“THE BUYER agrees to purchase and pay the SELLER for all energy and power billed in accordance with the prices, terms and conditions set forth in this Contract. The Parties acknowledge that the SELLER's obligation under this Contract shall be to deliver energy and capacity to the SIN at the Point of Delivery.”), 9.1 (“the BUYER shall purchase all the capacity and energy that the Plant generates and invoiced by the SELLER, beginning on the date on which the plant

Laws' mandate, ENEE assured Pacific Solar that it would receive stable, predictable, and steady compensation for a 20-year term starting from the commencement of operations,¹⁰⁹ through the following commitments under the PPA relating to compensation:

- **Specific Base Price.** The base price is US\$ 114.14/MWh.¹¹⁰ The US\$ 114.14 base price stems from the short-terminal cost in force when the PPA was signed,¹¹¹ as established by the 2013 Renewables Law.¹¹² Per the PPA, the price would have been US\$ 154.45 if the Plant had qualified for the PV Incentive.
- **Additional 10% Incentive.** The PPA includes an additional ten percent (10%) on the price (*i.e.*, 10% of US\$ 114.14/MWh, or 10% of US\$ 154.45/MWh if the Plant qualified for the PV Incentive), consistent with the Renewables Laws.¹¹³ Pacific Solar is "entitled to receive [this benefit] during the first 15 years . . . of the commercial operation of the plant."¹¹⁴
- **Adjustments per CPI.** ENEE also undertook, as provided for in the 2013 Renewables Law,¹¹⁵ to adjust the Base Price at the end of each year based on U.S. CPI inflation rates (up to a maximum increase of 1.5% per year) during the first ten years of the Plant's commercial operation.¹¹⁶ After ten years, the Energy Base Price will reset to its original level at the time the PPA was executed, and will adjust at a rate equal to the lower of the US CPI inflation rate or 1.5% per year.¹¹⁷ The additional 10% incentive is not subject to adjustment per CPI.

is able to deliver energy at the Point of Delivery, and ending once the term stipulated in Clause 4.3 Duration of the Contract has been fulfilled.”).

¹⁰⁹ PPA (**Exh. C-1**), § 1(B). Pursuant to the terms of the PPA, the duration of the PPA is twenty years starting from the Final Commercial Operation Start Date.

¹¹⁰ PPA (**Exh. C-1**), §. 1(G)(ii), §. 2, Cl. 4.2. These prices are consistent with the marginal cost published in the Official Gazette in January 2014, Acuerdo No. 0231-2014 (**Exh. C-97**), at A.6.

¹¹¹ PPA (**Exh. C-1**), § 1(G)(ii), § 2, Cl. 4.2 ; Acuerdo No. 0231-2014 (**Exh. C-97**), at A.6.

¹¹² 2013 Renewables Law (**Exh. C-5**), Art. 2 (amending Art. 3.2(b) of the 2007 Renewables Law) (“The Base Price used for energy payment purposes shall be the value of the Short-Term Marginal Cost of energy in effect at the time of execution of the power purchase agreement.”).

¹¹³ See PPA (**Exh. C-1**), Cl. 9.2; 2013 Renewables Law (**Exh. C-5**), Art. 2 (amending Arts. 3.2(a) and 3(2)(c). of the 2007 Renewables Law).

¹¹⁴ PPA (**Exh. C-1**), § 2, Cl. 9.2 (referring to it as “IRE” or “Incentive for Renewable Generators,” and clarifying that it corresponds to the additional 10% adjustment over the Base Price contemplated in Article 2 of the 2013 Renewables Law, which in turn amended a very similar provision contained in Arts. 3(2)(a) and 3(2)(c) of the 2007 Renewables Law). See 2013 Renewables Law (**Exh. C-5**), Art. 2 (amending Art. 3.2(a). of the 2007 Renewables Law). See also 2007 Renewables Law (**Exh. C-4**), Arts. 3(2)(a), 3(2)(c).

¹¹⁵ 2013 Renewables Law (**Exh. C-5**), Art. 2 (amending Art. 3.2(c) of the 2007 Renewables Law).

¹¹⁶ PPA (**Exh. C-1**), § 2, Cl. 9.2.

¹¹⁷ PPA (**Exh. C-1**), § 2, Cl. 9.2.

- **Capacity Payments.** Consistent with the Renewables Laws,¹¹⁸ the PPA provides for capacity payments. The price for capacity is US\$ 8.92 kW-month, stemming from the short-term marginal costs of capacity in place in 2014.¹¹⁹
- **Curtailment Payments.** Moreover, ENEE undertook to compensate Pacific Solar if it cannot dispatch energy for more than six hours in a month.¹²⁰ If the Government curtails the Plant's production for any reason, the Government is obligated to notify Pacific Solar in writing of the event that occurred and the justification for the resulting curtailment under the PPA.¹²¹

55. Under the PPA, Honduras further committed to apply the tax incentives provided for in the 2007 and 2013 Renewables Laws to Pacific Solar,¹²² which the 2013 Renewables Law deemed "necessary" to attract investments in renewable energy.¹²³ These incentives include, *inter alia*, a VAT exemption for the life of the project,¹²⁴ a corporate income tax exemption for the first ten years of operation of the Plant,¹²⁵ and a complete tax exemption for all financial service provided for the construction of operation of the projects.¹²⁶

56. The PPA also provided safety valves to protect Pacific Solar in the case of non-payment by ENEE, including the following:

¹¹⁸ 2013 Renewables Law (**Exh. C-5**), Art. 2 (amending Art. 3.2(a) of the 2007 Renewables Law).

¹¹⁹ PPA (**Exh. C-1**), § 1(G), § 2, Cl. 9.2.

¹²⁰ PPA (**Exh. C-1**), § 2, Cl. 9.5.1. Specifically, Article 9.5.1 of the PPA provides that "if due to failures in the SIN not attributable to the SELLER, the supply of energy is restricted for more than six (6) accumulated hours in a Month, the SELLER shall be compensated with an amount for the energy that the SELLER was unable to deliver due to these causes during that Month, having had the possibility of generating, for a time exceeding the six (6) indicated hours[.]" ("If due to failures in the SIN not attributable to the SELLER, the supply of energy is restricted for more than six (6) accumulated hours in a Month, the SELLER shall be compensated with an amount for the energy that the SELLER was unable to deliver due to these causes during that Month, having had the possibility of generating, for a time exceeding the six (6) indicated hours."). Moreover, Compensation is dependent on the number of hours and the duration of interruption.

¹²¹ PPA (**Exh. C-1**), Annex IV, 1 ("For unforeseen disconnections, the action taken will be communicated to them as soon as possible, and subsequently ratified, in writing within a period not to exceed eight (8) Administrative Business Days and preferably via fax or email. The BUYER shall award the SELLER an indemnity in accordance with the provisions of clause 9.5.1 of the Contract.").

¹²² PPA (**Exh. C-1**), § 2, Cl. 14.1 ("THE SELLER shall benefit from the tax incentives in force pursuant to Decrees No. 70-2007 and its reform contained in Decree No. 138-2013.").

¹²³ 2013 Renewables Law (**Exh. C-5**), A.3, Tenth Recital ("Whereas: it is necessary to establish the exceptional treatment applicable to the assets, financing, and accrued interest of development or international cooperation financial institutions from friendly countries—whether public- or state-owned—that finance renewable energy generation projects with the aim of promoting sustainable socio-economic development in the countries receiving their cooperation[.]")

¹²⁴ 2013 Renewables Law (**Exh. C-5**), Art. 1 (amending Article 2(1) of the 2007 Renewables Law).

¹²⁵ 2013 Renewables Law (**Exh. C-5**), Art. 1 (amending Article 2(3) of the 2007 Renewables Law).

¹²⁶ 2013 Renewables Law (**Exh. C-5**), Art. 1 (amending Article 2(5) of the 2007 Renewables Law).

- **Protections Against Payment Delays.** Honduras agreed to pay Pacific Solar interest over the invoices that it failed to pay within 45 days of their receipt.¹²⁷ The interest rate corresponds to the prior month's average interest rate, as defined in the PPA.¹²⁸
- **Right to Sell Energy to Third Parties.** The PPA also provides that, in the event ENEE does not fully pay the amount in Pacific Solar's invoices for four consecutive months, Pacific Solar has the right to commit or supply to a third party any amount of energy the Plant produces upon written notice to ENEE of Pacific Solar's intention to do so, and upon the Operating Committee's approval of the invoicing procedure.¹²⁹ This provision did not exempt ENEE from its obligation to purchase all power from Pacific Solar,¹³⁰ and was in line with the provisions of the 2007 Renewables Law.¹³¹
- **Honduras's Endorsement of ENEE's obligations under the PPA (State Guarantee).** Article 9.7 of the PPA entitled Pacific Solar to request the Honduran State enter into a guarantee agreement to be liable for ENEE's obligations under the PPA, the State Guarantee.¹³² This right was also contemplated by the 2007 Renewables Law.¹³³ Indeed, the text of the State Guarantee was included as an annex to the PPA.¹³⁴ This provision was introduced to provide Pacific Solar further assurances that Honduras would abide by the terms of the PPA,¹³⁵ and, as the Office of the General Attorney acknowledged, it was a *conditio sine qua non* for Pacific

¹²⁷ PPA (Exh. C-1), § 2, Cl. 9.6.3.

¹²⁸ PPA (Exh. C-1), § 2, Cl. 1.1, No. 68.

¹²⁹ PPA (Exh. C-1), § 2, Cls. 2.5 ("In the event that for four consecutive months the BUYER does not pay in full the charges invoiced by the SELLER, the BUYER hereby authorizes the SELLER to have from that moment on the right to commit or supply to third parties any amount of energy produced by the Plant. Such right shall be exercised by the SELLER merely by notifying, by written communication, to the BUYER of its intention to exercise the same."), 21.

¹³⁰ PPA (Exh. C-1), § 2, Cl. 2.5 ("The exercise of this right does not exempt the BUYER from its obligation to buy the energy and capacity that the SELLER bills to it.").

¹³¹ 2007 Renewables Law (Exh. C-4), Art. 3(1) (confirming that private renewable energy generation companies are entitled to sell their production to third parties other than ENEE), 8 (amending Art. 17 of the 1994 Electricity Law) ("Producers of energy from renewable resources who wish to sell their energy produced to distribution companies or to large consumers as defined in the [1994 Electricity Law], through private contracts, may use the SIN as a means of interconnection for the delivery of this energy.").

¹³² PPA (Exh. C-1), § 2, Cls. 9.7 ("In order to further ensure full payment of all amounts due to SELLER in conformity with this Contract, the BUYER will collaborate with SELLER so that the latter and the Attorney General of the Republic together with the Secretary of Finance sign a Guarantee Agreement for the Fulfillment of the Contract.").

¹³³ 2007 Renewables Law (Exh. C-4), Art. 4 ("Renewable energy generation projects that enter into a Power Purchase Agreement with ENEE shall be entitled to enter into a support agreement for the fulfillment of the Power Purchase Agreement with the Office of the Attorney General of the Republic of Honduras.").

¹³⁴ PPA (Exh. C-1), Annex X.

¹³⁵ PPA (Exh. C-1), § 2, Cls. 9.7 ("In order to further ensure full payment of all amounts due to SELLER in conformity with this Contract, the BUYER will collaborate with SELLER so that the latter and the Attorney General of the Republic together with the Secretary of Finance sign a Guarantee Agreement for the Fulfillment of the Contract.").

Solar to enter into the PPA.¹³⁶ The next section describes the State Guarantee in further detail.

57. As it relates to Pacific Solar's ability to deliver energy in Honduras's electricity system, ENEE also committed to the following:

- **Compulsory Dispatch of All Energy and Compensation for Curtailments.** The PPA, consistent with the Renewables Laws,¹³⁷ requires ENEE to dispatch all energy the renewable energy plants generated through its dispatch center and to deliver that energy to the interconnection point.¹³⁸ The compulsory dispatch was subject to three narrow exceptions related to emergency situations,¹³⁹ which mirrored the language of the 2007 Renewables Law.¹⁴⁰ Moreover, if "energy supplied is restricted for more than six (6) cumulated hours per month," Pacific Solar must be compensated, in accordance with the provisions set forth in the PPA, as explained above.¹⁴¹

58. Relating to the operations and governance management, the PPA also established an Operating Committee (*Comité Operativo*) ("**PPA Operating Committee**"), which is responsible for, among other things, (i) managing the PPA and (ii) monitoring the process for the

¹³⁶ PPA (**Exh. C-1**), Annex X, Third Recital ("For its part, the Office of the Attorney General of the Republic states that as a condition for the Generator to commit to the PPA, it has required that the State provide security to comply with the obligations of ENEE and/or its successors under the PPA[.]").

¹³⁷ 2007 Renewables Law (**Exh. C-4**), Art. 9 ("The National Electric Power Company (ENEE), through its dispatch center, will compulsorily dispatch and receive all the energy produced by generation projects using national renewable resources and delivered to the agreed interconnection or delivery point during the entire duration of its electricity supply contracts, giving it priority over any other type of generation of power purchase[.]").

¹³⁸ See PPA (**Exh. C-1**), Cls. 2.4, 6.1, 9.1; 2007 Renewables Law (**Exh. C-4**), Art. 9 ; 2013 Renewables Law (**Exh. C-5**), Art. 2. Pursuant to Clause 2.4 of the PPA, ENEE agreed that, through the National Dispatch Center, it "will obligatorily dispatch all the energy that the Seller generates and delivers at the point of delivery, during the entire term of this Contract." See PPA (**Exh. C-1**), § 2, Cls. 2.4 ("THE BUYER through the CND, will obligatorily dispatch all the energy that the Seller generates and delivers at the point of delivery, during the entire term of this Contract."), 6.1 ("The SELLER shall control and operate the plant in accordance with the instructions of the CND, subject to the fact that the plant will be dispatched by the BUYER, the CND or another entity in accordance with current legislation. The entity in charge of Dispatch obligatorily will dispatch all the Associated Energy that the SELLER produces and delivers at the point of delivery as indicated in Clause 2.4 Commitment of Dispatch of Energy.").

¹³⁹ PPA (**Exh. C-1**), § 2, Cl. 2.4. ("a) where the reservoirs of state-owned hydroelectric power plants are spilling and the Seller's taking of production requires a reduction in the production of those plants with a consequent increase in the volumes spilled; b) when failures in the Seller's plant are causing disturbances in the SIN; and c) when the plant is disconnected from the SIN in emergency situations or during the restoration of service after a failure as long as the CND has not instructed it to reconnect to the network and this condition is technically justified.").

¹⁴⁰ 2007 Renewables Law (**Exh. C-4**), Art. 9 ("Compulsory dispatch shall be subject to the following exceptions: 1) where the reservoirs of state-owned hydroelectric power plants are spilling and the generator's taking of production requires a reduction in the production of those plants with a consequent increase in the volumes spilled; 2) when failures in the Seller's plant are causing disturbances in the SIN; and, 3) when the plant is disconnected from the SIN in emergency situations or during the restoration of service after a failure as long as the CND has not instructed it to reconnect to the network and this condition is technically justified.").

¹⁴¹ PPA (**Exh. C-1**), § 2, Cl. 9.5.1.

construction of interconnection works and for the startup and operation of the Plant.¹⁴² It is comprised of four members: two members that each Pacific Solar and ENEE designate.¹⁴³ Additionally, the National Dispatch Center (“CND”) designates its own delegate to represent CND’s interests before the PPA Operating Committee.¹⁴⁴ Further, the PPA provides that it “may be modified only by written agreement between the Parties.”¹⁴⁵

2. The State Guaranteed in Writing that It Is Jointly and Severally Liable for ENEE’s Payment Obligations Under the PPA

59. Under the State Guarantee,¹⁴⁶ the Central Government expressly confirmed it is jointly and severally liable to Pacific Solar for ENEE’s obligations under the PPA. The State’s specific commitments to Pacific Solar guaranteed long-term stability to the investment.

60. As the State Guarantee expressly provides, Honduras’s Attorney General’s Office, which “holds the legal representation of the State of Honduras,” and the Secretary of Finance of Honduras, who has “the express power for the subscription of the guarantee,” acting on behalf of the Republic, entered into a State Guarantee with Pacific Solar confirming the Republic is jointly liable for ENEE’s obligations under the PPA,¹⁴⁷ and “to establish and formalize in writing their respective rights and obligations[.]”¹⁴⁸

¹⁴² PPA (**Exh. C-1**), § 2, Cl. 3.2 (“The Parties agree to the establishment of an Operational Committee within twenty-eight (28) days from the signing of this Agreement, such committee shall be composed of four (4) members, of whom each Party shall appoint and accredit two (2) members (‘representatives of the Operational Committee’). The Operational Committee shall be responsible, among other things, for administering this Contract, for monitoring the process that allows the construction of the interconnection works and the process that allows the plant to be put into operation, as well as for ensuring the proper operation of the plant, reliable and secure throughout the term of this Agreement.”).

¹⁴³ PPA (**Exh. C-1**), § 2, Cl. 3.2.

¹⁴⁴ PPA (**Exh. C-1**), Annex VIII.

¹⁴⁵ PPA (**Exh. C-1**), § 2, Cl. 18.1.

¹⁴⁶ Pursuant to the 2007 Renewables Law, renewable energy generators who signed a PPA with ENEE were granted the right to request a State Guarantee from Honduras to ensure that the obligations under the PPA would be fulfilled. *See* 2007 Renewables Law (**Exh. C-4**), Art. 4 (“Renewable energy generation projects that enter into a Power Purchase Agreement with ENEE shall be entitled to enter into a support agreement for the fulfillment of the Power Purchase Agreement with the Office of the Attorney General of the Republic of Honduras.”).

¹⁴⁷ State Guarantee (**Exh. C-2**), Art. 4 ; PPA (**Exh. C-1**), Annex X (“The present Support Agreement for the fulfillment of the Supply Contract 002-2014 ‘The Support Agreement’ and the Solidarity Guarantee of the State of Honduras, ‘The Solidarity Guarantee,’ both together ‘The Agreement,’ is to be signed between the Attorney General of the Republic . . . as an entity that legally represents the State of Honduras, . . . with express power to sign such agreements, as established in article 4 of Legislative Decree 70-2007[.]”).

¹⁴⁸ State Guarantee (**Exh. C-2**) Fourth Whereas Clause ; PPA (**Exh. C-1**), Annex X, Fourth Recital (“In this sense, the Generator and the State wish to establish and formalize in writing their respective rights and obligations with respect to the transactions contemplated in the Support Agreement.”).

61. The State Guarantee—"a valid, obligatory and enforceable legal obligation of the State"¹⁴⁹—was "a condition for [Pacific Solar] to commit itself to the PPA."¹⁵⁰ The Attorney General's Office stated that for the generator to commit to its obligations under the PPA, "the State [was to] reassure that ENEE would fulfil its obligations."¹⁵¹ It also provided that "the Secretary of Finance, on behalf of the State of Honduras, in consideration of the PPA . . . and to provide certainty as to the fulfillment of ENEE's . . . obligations, irrevocably and unconditionally, [is] **JOINTLY LIABLE** with ENEE and undertakes to duly and punctually observe and comply with the **payment obligations of ENEE contained and derived from the PPA and/or its non-compliance.**"¹⁵² Moreover, the "**payment obligation of the State . . . shall originate and may be demanded with the sole failure of payment by ENEE to the Generator on the due dates on which payment is due according to the PPA** or as established by a competent Court."¹⁵³ Additionally, under the State Guarantee, in the event that ENEE failed to comply with the PPA due to bankruptcy or other suspension of payments, "the State also unconditionally guarantee[d] compliance with the PPA."¹⁵⁴

3. Honduras Undertook to Support Pacific Solar's Access to the Incentives Regime Through the Operations Agreement

62. Shortly after Pacific Solar and ENEE executed the PPA, Honduras – through SERNA, which sits on ENEE's Board¹⁵⁵ and at the time included what is now the Ministry of

¹⁴⁹ State Guarantee (**Exh. C-2**), Art. 1.1.2. ; PPA (**Exh. C-1**), Annex X, Art. 1.1.2 ("That this Agreement constitutes a valid, obligatory, and enforceable legal obligation of the State[.]") ; Decree No. 376-2013 dated 10 May 2014 (**Exh. C-96**), at 481, Annex X, Art. 1.1.2.

¹⁵⁰ State Guarantee (**Exh. C-2**) Third Whereas Clause ; PPA (**Exh. C-1**), Annex X, Third Recital ("For its part, the Office of the Attorney General of the Republic states that as a condition for the Generator to commit to the PPA, it has required that the State provide security to comply with the obligations of ENEE and/or its successors under the PPA[.]").

¹⁵¹ State Guarantee (**Exh. C-2**) Third Whereas Clause ; PPA (**Exh. C-1**), Annex X, Third Recital.

¹⁵² State Guarantee (**Exh. C-2**) Art. 2 ; PPA (**Exh. C-1**), Annex X, Art. 4.2 ("The Secretary of State in the Finance Office, representing the State of Honduras and in consideration of the PPA signed between the Generator and the ENEE by this means and to provide certainty as to the fulfillment of the obligations under the responsibility of the ENEE and/or its successors, irrevocably and unconditionally, it constitutes a SOLIDARITY GUARANTEE of the ENEE and undertakes to duly and promptly comply with and comply with the payment obligations of the ENEE contained and derived from the PPA and/or its non-compliance.").

¹⁵³ State Guarantee (**Exh. C-2**) Art. 2 ; PPA (**Exh. C-1**), Annex X, Art. 4.2 ("The payment obligation of the State hereunder shall be joint and several with respect to the obligations of ENEE and/or its Successors[.]").

¹⁵⁴ State Guarantee (**Exh. C-2**) Art. 4.4.2. ; PPA (**Exh. C-1**), Annex X, Art. 4.3 ("The State also unconditionally guarantees compliance with the PPA in any case in which the ENEE and/or its successors are declared to be in dissolution, liquidation, bankruptcy or suspension of payments.").

¹⁵⁵ See Decree No. 48-1957 dated 27 Feb. 1957, published in the Official Gazette dated 30 May 1957 (**Exh. C-6**), Art. 7 (noting that ENEE's Board of Directors shall be composed of the following officers: a) The Secretary of

Energy – and Pacific Solar executed the Operations Agreement.¹⁵⁶ The Operations Agreement governs the operations of the Plant and confirms that Pacific Solar is entitled to the “incentives and benefits” that Honduras had enacted in its legal framework, including “Decree 70-2007 ([the 2007 Renewables Law] and its reforms [the 2013 Renewables Law],” which “promote the use of renewable natural resources in a sustainable manner to generate electricity.”¹⁵⁷ Moreover, SERNA undertook to “provide the necessary assistance” to Pacific Solar to “obtain the exemptions and support contained in the referenced decrees.”¹⁵⁸ The Operations Agreement further provided that Pacific Solar must deliver to the CND all available power generation capacity of the Plant, and the CND must receive and dispatch all generated electricity at the delivery point agreed to in the PPA.¹⁵⁹ It also affirmed that Pacific Solar has the ability to sell energy to third parties.¹⁶⁰ In October 2015, Honduras’s Congress approved the Operations Agreement and subsequently published it in the National Gazette.¹⁶¹

4. Leading Generators and Financial Institutions Similarly Relied on Honduras’s Commitments to Invest

63. The Paizes and Pacific Solar were not alone in relying in Honduras’s legal framework and specific undertakings acquired through the Agreements. Other actors, such as financial institutions, international organizations, and other private investors relied on the same commitments.

64. The objective of the Renewables Laws, and particularly the incentives provided under the 2013 Renewables Law, was to incentivize investment in renewable energy. The 2013 Renewables Law itself explicitly sought to incentivize “the interest of financial development and international cooperation institutions,” that “finance power generation projects with renewable resources and whose purpose is to promote the sustainable socio-economic development of the

State in the Offices of Communications, Public Works, and Transportation; b) The Secretary of State in the Office of Natural Resources; c) The Secretary of State in the Offices of Finance and Public Credit; The Executive Secretary of the Higher Council for Economic Planning; d) The President of the Central Bank of Honduras; and, e) A representative of the Honduran Council of Private Enterprise (COHEP).).

¹⁵⁶ Operations Agreement (**Exh. C-3**).

¹⁵⁷ Operations Agreement (**Exh. C-3**), § 1.4.7.

¹⁵⁸ Operations Agreement (**Exh. C-C-3**), § 1.4.7.

¹⁵⁹ Operations Agreement (**Exh. C-3**), § 1.4.4.

¹⁶⁰ Operations Agreement (**Exh. C-3**), § 1.4.5.

¹⁶¹ Operations Agreement (**Exh. C-3**).

countries to which the cooperation is directed,” explicitly referring to “the Export-Import Bank of the United States (Ex-Im Bank), the International Financial Corporation (IFC) of the World Bank Group, the European Development Finance Institutions (EDFI), among the which are the K[f]W of Germany, the FMO of Netherlands, FINNFUND of Finland and the OeEB of Austria, among others.”¹⁶² Indeed, according to the United Nations Economic Commission for Latin America and the Caribbean, the 2013 Renewables Law “gave a major boost to solar photovoltaic energy”¹⁶³ and as the press reported, “[the 2013 Renewables Law] allowed 12 companies to install 12 solar plants in Choluteca and Valle in less than 24 months.”¹⁶⁴ From 2015 to 2017, over sixteen different PV projects started running their operations in Honduras, spread across strategic points of the country to ensure the proper distribution of energy to the most economically depressed areas of Honduras.¹⁶⁵

65. Investors, including some coming from countries such as Spain and the United States, made investments ranging from US\$ 35,000,000 to more than US\$ 170,000,000 to build facilities with an installed capacity of 450.9 MW, consequently increasing the energy generating in Honduras.¹⁶⁶

66. For example, in 2014, Scatec Solar and Norfund—a Norwegian entity whose purpose is to provide equity capital to assist in developing sustainable business and industry in developing countries—invested in the construction of the Agua Fria solar power plant in Honduras.¹⁶⁷ In 2015, Scatec Solar and Norfund invested in the Los Prados Project in Honduras,

¹⁶² 2013 Renewables Law (**Exh. C-5**), A.3, Tenth Recital.

¹⁶³ Honduras National Energy Efficiency Monitoring Report 2018 (**Exh. C-58**), at 20.

¹⁶⁴ *ENEE's arrears with solar plants is 2,500 million lempiras*, EL HERALDO dated 29 July 2018 (**Exh. C-137**) (“He added that Decree 138-2013 allowed the country, in less than 24 months, to have 12 companies install 12 solar plants in Choluteca and Valle with a capacity of 455.2 megawatts.”).

¹⁶⁵ *See Solar energy in the sector attracts more investments*, EL HERALDO dated 28 Nov. 2017 (**Exh. C-139**) (“All solar plants are built in the departments of Choluteca and Valle, two of the most economically depressed departments in Honduras.”).

¹⁶⁶ *See Database Earth, Solar Power Plants in Honduras (Exh. C-140)* (last accessed 5 Aug. 2024) (stating that Honduras currently has 15 solar power plants with a total installed capacity of 604.5 MW and indicating that at least 6 of the plants were commissioned in 2015); *The Spanish Solar Forum II will address the challenges of photovoltaic energy*, INDUSTRIA AMBIENTE dated 6 Oct. 2015 (**Exh. C-184**); *SunEdison, IFC, OFID, and CABEI Agree on a \$146 Million Financing to Develop 81.7 MW of Solar Energy in Honduras*, IFC dated 15 Dec. 2014 (**Exh. C-185**); *Oikocredit invests 11 million dollars in a solar power plant in Honduras*, OIKOCREDIT dated 10 March 2016 (**Exh. C-211**).

¹⁶⁷ *Scatec Solar secures project financing for USD 125 million investment in the 60 MW Agua Fria solar plant in Honduras*, SCATEC dated 29 Dec. 2014 (**Exh. C-90**); *see also* Norfund Renewable Energy, Annual Report 2023, (**Exh. C-98**), pp. 5, 7.

which has a 20-year PPA with ENEE and a State Guarantee.¹⁶⁸ Similarly, X-Elio, a Spanish renewable energy company, invested in the Marcovia Solar PV Plant in Honduras, which was commissioned and began selling energy to ENEE under a PPA in 2015.¹⁶⁹

67. In 2015, Gauss Energía, an independent Mexican energy developer, launched the Aura Solar II Project in Honduras “backed by the government of Honduras as a joint obligor of the national off-taker ENEE” and supported by project financing.¹⁷⁰ The IFC invested in the Aura Solar II Project, stating that the Project “successfully secured a 20-year Power Purchase Agreement (‘PPA’) with [ENEE]” and that the PPA “is part of a wider effort by ENEE and the Government of Honduras to diversify the country’s electricity supply and improve reliability of the power grid.”¹⁷¹

68. Similarly, in 2016, the IFC invested in the Valle Solar Project that Compañía Hondureña de Energía Solar, S.A. de C.V. (COHESSA) developed, also emphasizing the 20-year PPA and the Government’s wider effort to diversify the electricity supply.¹⁷²

69. Moreover, in 2014, the IFC financed US\$ 146 million for a series of solar PV projects.¹⁷³ The same year, the IFC, along with the Central American Bank for Economic Integration and the OPEC Fund for International Development, provided project financing to SunEdison Inc., a US solar technology manufacturer and provider of energy services, to develop three solar plants “under a 20-year power purchase agreement with state electricity company E[NEE]” which the “government of Honduras approved[.]”¹⁷⁴

70. Additionally, Honduras also sought loans from international financial institutions to support the implementation of its commitments and policies in the energy sector.¹⁷⁵ As part of the Renewables Laws, the World Bank partnered with the Honduran Government to improve

¹⁶⁸ *Scatec Solar secures a 53 MW solar project in Honduras*, SCATEC dated 28 Oct. 2015 (**Exh. C-141**) ; *see also* Norfund Renewable Energy, Annual Report 2023, (**Exh. C-98**), pp. 5, 7.

¹⁶⁹ *Power plant profile: Marcovia Solar PV Park, Honduras*, POWER TECHNOLOGY, last updated 21 July 2024 (**Exh. C-99**).

¹⁷⁰ Gauss Energía, *Aura Solar* (**Exh. C-142**) (last accessed 5 Aug. 2024).

¹⁷¹ IFC, *Energía Cinco Estrellas, S.A. de C.V.* (**Exh. C-143**) (last accessed 5 Aug. 2024).

¹⁷² IFC, *Valle Solar PV* (**Exh. C-144**) (last accessed 5 Aug. 2024).

¹⁷³ Revised SREP Investment Plan for Honduras dated Mar. 2017 (**Exh. C-145**) at 11.

¹⁷⁴ *Sun Edison secures US \$146mn Honduras solar financing*, BNAMERICAS dated 15 Dec. 2014 (**Exh. C-146**) (last accessed 18 Aug. 2024).

¹⁷⁵ *See, e.g.*, Loan Proposal for Project Programmatic Support for Structural Reform, HO-L1118, Propuesta de Préstamo dated 30 Nov. 2015 (**Exh. C-147**).

ENEE's institutional framework. The IFC, which is part of the World Bank Group, created a Solar Photovoltaic Financing Honduras Utility-Scale Solar PV Program to "enable the development of the solar PV sector in Honduras through supporting several first-mover private sector investments in utility-scale grid-connected solar PV plants" and to "establish the bankability of solar PV Power Purchaser Agreements (PPA) under the new regulatory framework—thereby supporting the regulatory reform[.]”¹⁷⁶ As part of this program, the IFC requested up to US\$ 20 million for private sector investment,¹⁷⁷ which the World Bank approved.¹⁷⁸

71. Numerous external financial institutions, including the World Bank and Inter-American Development Bank (“**IDB**”), and other third-party observers widely recognized that the 2013 Renewables Law was successful in incentivizing investments in renewable, and particularly solar energy. These endorsements underscore the effectiveness of the State's legal framework in fostering significant increases in private investment and validate the positive impact that these policies had on the country's energy infrastructure and economic growth.

72. The IDB validated that the Renewables Laws led to the financial recovery of the electricity sector in Honduras, among other benefits, stating in 2018 that it “strengthened Honduras's capacity to actively participate in the MER [regional electricity market], . . . [and] reduc[ed] generation costs[.]”¹⁷⁹ In 2020. The IDB also continued to report on the success of the Renewables Laws and resulting investments.¹⁸⁰

¹⁷⁶ IFC CTF Approval Request (**Exh. C-149**), at 2.

¹⁷⁷ IFC CTF Approval Request (**Exh. C-149**), at 2.

¹⁷⁸ Revised SREP Investment Plan for Honduras dated Mar. 2017 (**Exh. C-145**) at 11.

¹⁷⁹ IDB, *Electric Energy Transmission Program in Honduras* dated 5 Sept. 2018 (**Exh. C-151**) (“The reform also contributed to the sector's financial recovery; enhanced private participation in energy distribution, reducing losses, which was one of the sector's main challenges; raised Honduras ability to become actively involved in the MER, increasing energy purchases from 1.4% in 2013 to 3.7% in 2017, which has in turn cut generation costs; and helped launch international public tenders to purchase energy and thermal power.”).

¹⁸⁰ IDB Invest, *Solar energy: The revolution spurring development in Honduras* dated 14 Aug. 2020 (**Exh. C-152**) (“Following the reforms, led by the government with the advisory services of the Inter-American Development Bank (IDB), there was an upsurge in renewable energy until the energy matrix was completely reversed compared to 2012. . . . Behind this innovation there are three combined components that have resulted in a successful formula: i) the impetus of government that created favorable conditions for investment; ii) the decisions made by entrepreneurial companies; and iii) the IDB's ability to evaluate and finance the projects. The initial investments in photovoltaic development in Honduras involved a shared risk for IDB Invest and its clients. . . . Nonetheless, what made the difference is the technical capabilities of the Bank for evaluating and support for this type of investments.”).

C. PACIFIC SOLAR BUILT AND BROUGHT ONLINE A PV PLANT, AFFORDING NUMEROUS BENEFITS TO HONDURAS FOR YEARS

73. Pacific Solar undertook the construction of the Plant in two phases between 2016 and 2018.¹⁸¹ In 2016, it brought online 25 MW and in 2018, an additional 25 MW, for a total of 50 MW of generating capacity.¹⁸² Pacific Solar not only built the Plant itself, but also a substation on-site that serves the Plant and a neighboring PV plant (the “**Substation**”) and interconnection lines to integrate its facilities into the Regional Transmission Network (*la Red de Transmisión Regional*) (“**RTR**”) and the National Interconnected System (*Sistema Interconectado Nacional*) (“**SIN**”).¹⁸³

74. In **Phase I**, which began in March 2015, Pacific Solar built its share of the Substation and constructed the first half of the Plant’s infrastructure, with the capacity to generate 25 MW.¹⁸⁴ Phase I was completed in 2016 and the Plant reached partial commercial operation, as ENEE certified.¹⁸⁵ ENEE itself did not hesitate to define the successful incorporation of Phase I of the Plant into the country’s generation as one of its “achievements” during that year.¹⁸⁶ As [REDACTED] explains, “[t]he operations during the first year ran smoothly and [Pacific Solar] decided to complete the second half of the Plant.”¹⁸⁷



¹⁸¹ Pacific Solar’s PPA Operating Committee, Resolution No. 02/2014 dated 8 Dec. 2014 (**Exh. C-53**), at 1. *See also* Amendment between SERNA and Pacific Solar to the Operations Agreement (Decree No. 34,491 dated 2 Nov. 2017 and published in the Official Gazette on 17 Nov. 2017) (**Exh. C-80**), Cl. 1.

[REDACTED]
[REDACTED]
[REDACTED]

¹⁸⁵ Pacific Solar’s PPA Operating Committee, Resolution No. 04/2016 dated 16 Nov. 2016 (**Exh. C-15**), at 4 (attaching as an annex ENEE’s Certificate of the Start Date for Partial Commercial Operation dated 18 Nov. 2016 and certifying the Plant’s compliance with Clauses No. 4.2 and 10.1 of the PPA).

¹⁸⁶ ENEE Achievement Report through Nov. 2016 dated Dec. 2016 (**Exh. C-35**), at 5.

[REDACTED]

75. Pacific Solar completed the second half of the project on 28 December 2018. **Phase II** consisted of the construction of transmission lines to the Substation and the completion of the second half of the Plant's infrastructure, to double the Plant's generation capacity up to 50 MW.¹⁸⁸ When Phase II was completed, ENEE confirmed that the Plant achieved final commercial operation,¹⁸⁹ which triggered the twenty year term of the contract in which "[ENEE] shall purchase all the capacity and energy that the Plant generates."¹⁹⁰ To connect to the RTR and SIN, Pacific Solar requested permission from the Regional Electricity Interconnection Commission (*Comisión Regional de Interconexión Eléctrica*) ("**CRIE**") – the regulating entity for the Central American electric market – at each phase of the Project.¹⁹¹ After Pacific Solar requested approval from CRIE to connect Phase I of Plant to the RTR,¹⁹² the CRIE concluded that Pacific Solar complied with the Regional Electricity Market Regulations and approved Pacific Solar's RTR connection request, verifying that the substation facilities met certain technical and quality, reliability, and

■ [REDACTED]; ENEE, Certificate of the Start Date for Final Commercial Operation dated 8 Jan. 2019 (Exh. C-16), at 2 (“At the request of PACIFIC SOLAR ENERGY, S.A. de C.V., Project Nacaome I, the National Dispatch Center has issued a notice authorizing Final Commercial Operation to commence on December 28, 2018.”)

¹⁹⁰ PPA (**Exh. C-1**), § 1(B), § 2, Cl. 2.1.

¹⁹¹ Regional Electricity Interconnection Commission, Resolution No. CRIE-49-2016 dated 4 Aug. 2016 (**Exh. C-91**) (approving Pacific Solar’s Application to Connect to the RTR for Phase I of the Project); Regional Electricity Interconnection Commission, Resolution No. CRIE-16-2017 dated 4 May 2017 (**Exh. C-100**) (approving Pacific Solar’s Application to Connect to the RTR for Phase II of the Project).

192 2016-08-04 CRIE Resolution, p. 1.

performance requirements.¹⁹³ In May 2017, the CRIE also approved Phase II to complete the Plant's total 50 MWac of installed capacity.¹⁹⁴

76. The Paizes' investments promptly delivered results to Honduras: a PV plant which has consistently produced clean energy for the Honduran people since 2016.¹⁹⁵ In conformity with its PPA obligations, Pacific Solar dispatched and delivered energy and capacity available in its entirety to ENEE—and still continues to do so.¹⁹⁶ As the Government declared, Pacific Solar has decisively contributed to Honduras's "goal of reversing its energy matrix, to reduce the dependence on petroleum products, improve its balance of payments and foreign exchange outflows."¹⁹⁷



¹⁹³ 2016-08-04 CRIE Resolution, p. 6.

¹⁹⁴ 2017-05-04 CRIE Resolution for Phase II approval.

¹⁹⁵ The Plant became operational in 2016. Commercial Operating Certificate for Pacific Solar's First Phase dated 18 Nov. 2016 (**Exh. C-15**). See also *Honduras Reverses Its Energy Matrix*, DIARIO EL HERALDO dated 21 Feb. 2017 (**Exh. C-31**).

¹⁹⁶ Paiz WS ¶ 18 ("The Plant has been energizing the public roads, and homes and businesses of the Honduran people since entering partial commercial operation in 2016."); [REDACTED] ("[I]n 2016, the Plant reached partial commercial operation and began to generate electricity. Since then, the Plant has provided Honduras with clean energy, created dozens of jobs, and contributed to the local communities where it is located.").

¹⁹⁷ Amendment between SERNA and Pacific Solar to the Operations Agreement (Decree No. 34,491 dated 2 Nov. 2017 and published in the Official Gazette on 17 Nov. 2017) dated 2 Nov. 2017 (**Exh. C-80**), Fourth Whereas Clause.

77. Notably, the Plant together with other PV facilities that were built in response to Honduras's legal and contractual incentives contributed to a major change in the composition of Honduras's energy matrix, increasing its percentage of renewable energy from 30% in 2010 to 52.5% in 2018.¹⁹⁸ By the end of 2018, this switch reduced Honduras's CO₂ emissions by 2.4 million tons.¹⁹⁹

78. In addition to driving economic development in the southern region of Honduras, the Plant increased Honduran employment rates and aided local communities. During construction, the Plant generated hundreds of jobs.²⁰⁰ The Plant has also been involved in community support initiatives, in line with Mr. Paiz's values.²⁰¹ Since starting operations, Pacific Solar has provided infrastructure support to a local healthcare center, by conducting geological surveys to identify water deposits or constructing roads to facilitate access to the area.²⁰² Further, Pacific Solar maintains and preserves the local flora and fauna in the region.²⁰³ Pacific Solar's continuous efforts to support the local communities have been recognized through the "Transforming Lives" ("*Transformando Vidas*") Award.²⁰⁴

¹⁹⁸ *Honduras Reverses Its Energy Matrix*, EL HERALDO dated 21 Feb. 2017 (**Exh. C-31**).

¹⁹⁹ *Honduras Reverses Its Energy Matrix*, EL HERALDO dated 21 Feb. 2017 (**Exh. C-31**).

²⁰⁰ *Project tests successfully concluded in "Nacaome I" solar park in its second phase*, LA TRIBUNA dated 12 Dec. 2018 (**Exh. C-55**), at 2; Pacific Solar Energy Sustainability Report 2019 dated 21 Jan. 2020 (**Exh. C-102**), at 39 (a total of 307 employees).

²⁰¹ AHER, *Social Environmental Newsletter. 1st Quarter 2023* dated 31 May 2023 (**Exh. C-103**), at 3-4; AHER, *Social Environmental Newsletter. 2nd Quarter 2023* dated 25 Aug. 2023 (**Exh. C-104**), at 33-37; AHER, *Social Environmental Newsletter. 3rd Quarter 2023* dated 1 Dec. 2023 (**Exh. C-106**), at 5-6; AHER, *Social Environmental Newsletter. 4th Quarter 2023* dated 6 Feb. 2024 (**Exh. C-108**), at 3; AHER, *Pacific Solar Energy Solar Park's Social Commitment Works for the Benefit of Students, the Educational Community and the Parents of the Institute Marco Aurelio Soto*, VIDEO dated 29 June 2021 (**Exh. C-109**); AHER, *Pacific Solar Energy Donates Solar Tables for Canteen at Pedro Nufio School* dated 27 Feb. 2024 (**Exh. C-115**); Pacific Solar Energy Sustainability Report 2019 dated 21 Jan. 2020 (**Exh. C-102**), at 32, 35; Pacific Solar Video Presentation (**Exh. C-117**), at 1:30, 1:51, 2:07, 2:58, 3:01-3:08.

²⁰² AHER, *Social Environmental Newsletter. 1st Quarter 2023* dated 31 May 2023 (**Exh. C-103**), at 3-4; AHER, *Social Environmental Newsletter. 2nd Quarter 2023* dated 25 Aug. 2023 (**Exh. C-104**), at 33, 36; AHER, *Social Environmental Newsletter. 3rd Quarter 2023* dated 1 Dec. 2023 (**Exh. C-106**), at 7; Pacific Solar Video Presentation (**Exh. C-117**), at 1:28, 1:54.

²⁰³ Pacific Solar Energy Sustainability Report 2019 dated 21 Jan. 2020 (**Exh. C-102**), at 24-26.

²⁰⁴ *If life gives you lemons...*, EL PAÍS, 21 May 2024 (**Exh. C-120**); AHER, AHER's Best Member of 2023 First Quarter Award Ceremony dated 2023 (**Exh. C-121**).

D. GOVERNMENT INCENTIVES PLAYED A KEY ROLE IN FOSTERING INVESTMENT IN RENEWABLE ENERGY AND A LED TO A SUCCESSFUL REFORM

79. The Renewables Incentives that the Government granted under its legal framework and the PPAs were essential not only to the Paizes and Pacific Solar's investments, but also led other foreign investors and financial institutions, who were similarly drawn to the benefits that Honduras's 2013 Renewables Law promised, to invest. It therefore achieved one of its goals of increasing investment in renewable energy, and particularly solar energy.

80. Because of the capital-intensive nature of PV plants,²⁰⁵ PV developers typically raise substantial amounts of long-tenured debt, or "project finance," to fund their investments.²⁰⁶ The project finance model requires that lenders be confident that the renewable installation will be financially viable in the long term such that borrowers will generate a steady stream of revenue to repay the debt incurred. As such, PV projects required "long-term bankable contracts" backed by a stable regulatory framework and public support.²⁰⁷ In turn, investors in a solar project will only be interested if confident that, over and above servicing project debts, the PV energy installation will generate a return on the capital invested. The Renewable Incentives played a key role in enabling this kind of project finance.²⁰⁸

81. Following Honduras's Renewables Laws, and in particular the 2013 Renewables Law, Honduras achieved its stated goals of increasing private investment in renewable energy in Honduras. In 2015 alone, Honduras added more than 300 MW of PV energy in the country, making solar "the fastest growing power source in the nation."²⁰⁹

²⁰⁵ In comparison to other conventional power generation technologies, renewable technologies at the time were more expensive on a cost-per-unit-of-energy-generated basis and required high upfront capital investment, making the initial investment the largest part of investment costs. Once installed, a renewable energy plant requires relatively low costs to generate incremental electricity. See Inter-American Development Bank, *Rethinking Our Energy Future. A White Paper on Renewable Energy for the 3GFLAC Regional Forum* dated June 2013 (**Exh. C-131**), at 17.

²⁰⁶ See, e.g., Inter-American Development Bank, *Rethinking Our Energy Future. A White Paper on Renewable Energy for the 3GFLAC Regional Forum* dated June 2013 (**Exh. C-131**), at 17.

²⁰⁷ Inter-American Development Bank, *Rethinking Our Energy Future. A White Paper on Renewable Energy for the 3GFLAC Regional Forum* dated 2013, (**Exh. C-131**), at 17.

²⁰⁸ Honduras itself was aware of the financing institutions need for incentives and assurances to invest in the country's green transition. See 2013 Renewables Law (**Exh. C-5**), A.3, Tenth Recital (acknowledging that renewable renewable energy projects are made possible thanks to financing institutions such as DEG or FMO).

²⁰⁹ 389 MW of solar comes online in Honduras in 2015 to date, PV MAGAZINE dated 19 Nov. 2015 (**Exh. C-134**).

82. The Renewables Laws' success was not only confirmed by independent sources. Following the influx of investments and the increase in solar energy contributions in the electricity matrix, the Honduran Government also publicly emphasized the success of its Renewables Laws.

83. In a 2015 presentation, the then-director of ENEE emphasized that the Renewables Incentives provided for under the Renewables Laws promoted renewable energy generation, including the use of "long-term power purchase agreements of more than 15 years to ensure financial profitability for investors."²¹⁰ The presentation also highlighted that three Spanish companies made important investments in Honduras: Gestamp, SunEdison, and Ecoener.²¹¹

84. In 2020, the Honduran Secretary of Energy recognized that "[a]s a result of the reform of [the 2013 Renewables Law] to the [2007 Renewables Law], there has been an increase in production in [PV] energy, [noting how the] law was vital in strengthening incentives that promote the participation of renewable energy in the country."²¹² Further, in 2017, the Director of ENEE at the time stated that the increase in clean power generation allowed the production of renewable energy to exceed thermal energy production.²¹³

85. The Government's and independent third-party's reports of the Renewables Law's success assumed that the Government would uphold the promises it made when attracting private investment in renewable energy.

E. UNTIL MID-2022, THE GOVERNMENT ACKNOWLEDGED THAT PACIFIC SOLAR WAS ENTITLED TO COMPENSATION PURSUANT TO THE AGREEMENTS

86. After the Plant entered partial commercial operation in 2016 and final commercial operation in 2018, ENEE paid Pacific Solar for the energy it delivered and capacity it made

²¹⁰ Republic of Honduras, Spanish Solar Forum II Presentation, "RETOS de Honduras en Energía Fotovoltaica" dated Nov. 2015 (**Exh. C-118**), at 13 ("*Incentive laws to promote RE investment for power generation purposes. Long-term energy purchase agreements, more than 15 years to guarantee financial profitability for investors.*").

²¹¹ Republic of Honduras, Spanish Solar Forum II Presentation, "RETOS de Honduras en Energía Fotovoltaica" dated Nov. 2015 (**Exh. C-118**), at 20.

²¹² Secretary of State in the Energy Office – Government of Honduras, *Energy Balance – 2018. Energy and Climate Change: Towards a more resilient energy system* dated 5 May 2020 (**Exh. C-154**), at 24 (bajo el título "Fotovoltaico": "Therefore, as a result of the reform of Decree No. 138-2013 of the Law on the Promotion of Electrical Energy with Renewable Resources, a growth in the production of this type of energy has been identified. It is essential to highlight this law as vital in order to strengthen the incentives that promote the role of renewable energy in the country.").

²¹³ *The generation of thermal energy is surpassed by renewable energy in Honduras*, LATAM ENERGY dated 2 May 2017 (**Exh. C-155**) ("In recent years the generation of clean energy has received a boost that has permitted investment in the energy matrix of the country, according to Leonardo Deras manager of Generation ENEE, renewable energy production currently exceeds thermal energy production.").

available to the electricity grid.²¹⁴ As quantum expert Mr. Miguel Nakhle from Compass Lexecon observes: “since reaching Final COD in December 2018, Pacific Solar recorded steady invoices revenues of approximately [REDACTED] a year.”²¹⁵ Pacific Solar sends monthly invoices to ENEE the amounts and categories of outstanding compensation. As [REDACTED] explains, after the Plant reached partial commercial operation “ENEE began to pay [Pacific Solar and] [t]he operations during the first year ran smoothly[,]”, giving Pacific Solar confidence in completing Phase II.”²¹⁶

87. Prior to 2022, ENEE’s payments to Pacific Solar were at times delayed or incomplete, as [REDACTED] explains.²¹⁷ When that occurred, however, the Government reiterated its commitment to pay.

88. For instance, in 2020, an internal ENEE legal opinion relating to certain technical aspects of generator invoices confirmed its obligation to abide by the terms of the PPA, including ENEE’s obligation to pay for the invoices issued for electricity generation and capacity.²¹⁸ ENEE stressed that the lack of payment of invoices to generators after having committed to pay would breach ENEE’s obligations to act in good faith and honor its commitments (*pact sunt servanda*).²¹⁹ Further, ENEE concluded that it: “cannot refuse to honor the energy supply contracts it has entered into, especially when it receives and markets the electricity sold to it by the generators, which constitutes an act that leads the generators to assume that they will be paid in accordance with what was agreed.”²²⁰

89. Moreover, when Honduras sought to address issues in the electricity sector between 2018 and 2021, Honduras reconfirmed its payment obligations to Pacific Solar. In October 2018, the Government announced an “Agreement to Reform the Honduran Electrical Sector” (“**October 2018 Agreement**”) between Government officials and private sector representatives.²²¹ In that

[REDACTED]
²¹⁵ Compass Lexecon, ¶ 38.

[REDACTED]
 [REDACTED]

²¹⁸ ENEE, Legal Opinion No. D.L. 106-6-2020 dated 30 Jun. 2020 (**Exh. C-126**), at 5.

²¹⁹ ENEE, Legal Opinion No. D.L. 106-6-2020 dated 30 Jun. 2020 (**Exh. C-126**), at 2, 4, 6, 8.

²²⁰ ENEE, Legal Opinion No. D.L. 106-6-2020 dated 30 Jun. 2020 (**Exh. C-126**), at 2, 4, 6, 8.

²²¹ Republic of Honduras, Agreement for the Reform of the Honduran Electrical Sector (“**October 2018 Agreement**”) dated 10 Oct. 2018 (**Exh. C-175**).

context and among other issues,²²² the Government committed to honor its existing obligations to generators:

“The Government of the Republic reiterates that it will act under the legal framework . . . guaranteeing legal certainty so that the **commitments** assumed by the [S]tate with national and foreign investors **are not affected and can be fulfilled.**”²²³

90. ENEE also initiated bilateral discussions with the energy generators regarding the adjustment of certain terms in the PPAs.²²⁴ Although no understanding regarding the adjustment of terms was reached between ENEE and Pacific Solar,²²⁵ these were consensual discussions between the parties.²²⁶

91. A few months later, ENEE “made significant catch-up payments to [Pacific Solar],” thus “preventing the situation from escalating further” and confirming Pacific Solar’s belief that the Government would continue to honor its obligations.²²⁷ As Mr. Paiz explains: “[a]round th[is] time, I explored the sale of my equity interest in Pacific Solar. Our conversations with a potential buyer were well advanced, and we had a deal in principle. That deal fell through once the situation described in the following section occurred.”²²⁸

F. WHILE BENEFITTING FROM THE PAIZES AND PACIFIC SOLAR’S INVESTMENTS, HONDURAS HAS VIOLATED ITS OBLIGATIONS TOWARDS THEM

92. The Paizes and Pacific Solar invested nearly US\$ 118 million in the Plant relying on Honduras’s commitments to compensate Pacific Solar for generating clean energy.²²⁹ For

²²² See generally October 2018 Agreement (**Exh. C-175**).

²²³ October 2018 Agreement (**Exh. C-175**) ¶ 2 (“The Government of the Republic reiterates that it will act under the legal framework, guaranteeing legal certainty so that the commitments assumed by the country with national and foreign investors are not affected and can be fulfilled.”). See also *Cohep demands respecting Agreement for the Reform of the Electrical Sector*, LA TRIBUNA dated 15 Jan. 2020 (**Exh. C-176**).

²²⁴ International Monetary Fund, Staff Report for the 2019 Article IV Consultation and Request for a Stand-by Arrangement and an Arrangement under the Standby Credit Facility (**Exh. C-105**), at 21 (“**In strict adherence to Honduras’s legal framework**, the authorities will seek . . . savings in the cost of energy purchases through **bilateral discussions with the energy generators**”) (emphasis added); Secretary of Finance’s Press Communication, “*Finance Minister Affirms that Agreement with IMF Will Allow It to Access Concessional Lending*” dated July 2019 (**Exh. C-110**), at 1.

■ [REDACTED]
 ■ [REDACTED]
 ■ [REDACTED]

²²⁸ Paiz WS ¶ 22.

²²⁹ Compass Lexecon ¶ 6.

almost eight years, Honduras has benefited—and continues to benefit—from the energy that the Plant produces and delivers to ENEE in accordance with the Agreements.

93. Honduras, on the other hand, implemented the New Energy Law in May 2022, mandating the renegotiation of the PPAs under threat of expropriation. The 2022 New Energy Law mandated the “termination” of Honduras’s contractual relationship with generators, including Pacific Solar’s, and “State acquisition” of the generator’s assets if the generator did not agree to the “renegotiated” terms imposed by the State for the generator’s PPA. In fact, the 2022 New Energy Law went so far as to threaten generators with criminal prosecution if during the “renegotiations” process they did not continue to supply energy to ENEE. As further detailed below, the Government’s conduct demonstrates that it did not intend to engage in good-faith negotiations with the generators. Rather, the Government has chosen to cripple the agreements and framework that granted the generators’ rights, failing to provide any safeguards or alternatives to ease the impact on their investments.

94. Indeed, to date, the Government owes Pacific Solar more than a year’s worth of outstanding receivables—a debt that continues to grow—notwithstanding sporadic and incomplete payments by ENEE. Aware that the debt to Pacific Solar is untenable, the Government is conditioning its payments on Pacific Solar’s agreement to the contract term modifications set by the State.²³⁰ The “unprecedented and untenable levels” of ENEE’s debt to Pacific Solar, along with the unpredictability and insufficiency of ENEE’s sporadic payments, have cornered Pacific Solar with respect to its lenders and to seek to restructure its project finance loans in an attempt to salvage the project.²³¹ To date, the Government has left Pacific Solar in a state of uncertainty and has failed to provide any insight into the standing of Pacific Solar’s viability and the Paizes’ investment. As such, Honduras’s Treaty breaches are causing millions of dollars in damages to the Paizes and its Enterprise and continue to threaten Pacific Solar’s viability.

²³⁰ See, e.g., Letter from ENEE to Pacific Solar, No. ENEE GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**), at 2, ¶ 8; [REDACTED]

²³¹ [REDACTED]; Paiz WS ¶ 27.

1. Honduras's New Administration Enacted the 2022 New Energy Law Harming Pacific Solar and Other Renewable Energy Generators

95. During her campaign in 2021, Honduran President Xiomara Castro advocated for policies that stood in sharp contrast to Honduras's prior efforts to promote private investment in the country, particularly with respect to the renewable energy sector. In her political platform titled "Government Plan to Relaunch Honduras" ("**Government Plan**"), President Castro demonized the participation of private companies in the energy sector that occurred under the administrations of her political rivals. In particular, she noted how "in [the] mad race to privatize everything, and to turn everything into a business, the [current] policy, entrusted to pirates, has been irresponsible."²³² She defamed State policies designed to promote foreign investment, such as "Honduras is Open for Business," accusing the program of "calling into question the sovereignty of the people."²³³ Further, she characterized the participation of private companies in the energy sector as "revealing the [current policy's] perverse intention to . . . bankrupt the ENEE, both as a producer [and] buyer of energy."²³⁴ In turn, she proclaimed that "the current policy requir[ed], at the very least: the renegotiation, and cancellation, prior to the payment, of the leonine contracts of [the] genera[tors]."²³⁵

96. At her inauguration ceremony in January 2022, President Castro promised that electricity would be free of charge to certain sectors of the population, even though that "decision will result in increased costs for [ENEE]."²³⁶

97. Upon taking office, President Castro acted swiftly on her campaign representations. Within the first few days of her administration, she sent to the Honduran Congress a bill

²³² Presidential Candidate Xiomara Castro, *Government Plan to Relaunch Honduras 2022-2026* dated 5 Sept. 2021 (**Exh. C-33**), at 37.

²³³ President Xiomara Castro's Inaugural 2022 Presidential Speech dated 22 Jan. 2022 (**Exh. C-34**), at 4.

²³⁴ Presidential Candidate Xiomara Castro, *Government Plan to Relaunch Honduras 2022-2026* dated 5 Sept. 2021 (**Exh. C-33**), at 37.

²³⁵ Presidential Candidate Xiomara Castro, *Government Plan to Relaunch Honduras 2022-2026* dated 5 Sept. 2021 (**Exh. C-33**), at 38.

²³⁶ President Xiomara Castro's Inaugural 2022 Presidential Speech dated 22 Jan. 2022 (**Exh. C-34**), at 6. *See also Analysis: Northern businesses and industries sustain energy subsidy*, EL HERALDO dated 3 May 2024 (**Exh. C-186**) (noting that the current Manager of Distribution of ENEE acknowledges that "in years past, the electrical subsidy was solely the responsibility of the government, but ENEE never received any of the corresponding payments for them"). *See also* SEFIN, Institutional Report for 2021 (**Exh. C-187**), at 42-44 (providing a list of all the State's subsidies since 1995 and the costs incurred by ENEE when the Government granted certain subsidies).

implementing an immediate reform to the 2014 Electric Power Industry Law, which proposed gifting electricity to the 1.3 million Hondurans who used less than 150 kWh per month, as promised in her inauguration speech.²³⁷ Because the Government has failed to fund ENEE for Government subsidies in the past, the reform would likely exacerbate ENEE's deficit.

98. Within weeks of the President Xiomara Castro taking office, President Castro's administration also approved the 2022 New Energy Law on 12 May 2022, after hindering the payment of Pacific Solar's past due compensation. The 2022 New Energy Law placed front and center the State's intent to (i) repudiate its compensation and other key obligations towards Pacific Solar; and (ii) expropriate the Plant if the PPA's "renegotiation" was not to the State's satisfaction. Within hours of the 2022 New Energy Law's approval, at a meeting with multiple generators with PPAs, Government officials handed Pacific Solar a one-page "offer," which threatened Pacific Solar's rights under the Agreements. That Honduras handed Pacific Solar an "offer," mere hours after the 2022 New Energy Law was approved, makes plain that the term "renegotiation" is nothing more than the unilateral imposition of lower energy prices and elimination of incentives in the PPA—conditions being imposed upon Pacific Solar under the threat of forced acquisition by the State.

(a) The Executive Proposed a Bill to Impose a "Renegotiation" of the PPA, and the National Congress Hastily Approved It

99. In April 2022, within weeks of taking office, President Castro submitted a Draft Legislative Decree to the Honduran Congress that crystalized the new administration's agenda. Titled the "Special Law to Guarantee the Service of Electric Energy as a Public Good of National Security and an Economic and Social Human Right" (*Ley Especial para Garantizar el Servicio de la Energía Eléctrica como un Bien Público de Seguridad Nacional y un Derecho Humano de Naturaleza Económica y Social*) (the "**New Energy Bill**"), the New Energy Bill was the precursor to the 2022 New Energy Law. It sought to legislate the State pressure to modify the PPAs to the detriment of investors.²³⁸

²³⁷ See Legislative Decree No. 2-2022 dated 9 Feb. 2022, published in the Official Gazette dated 11 Feb. 2022 (**Exh. C-182**), Sixth Recital; *Xiomara Castro will send the decree to reform the Electric Industry Law to the National Congress*, EL HERALDO dated 31 Jan. 2022 (**Exh. C-183**).

²³⁸ New Energy Bill (**Exh. C-22**), Preamble, at 3; Statement of Motives, at 1, 3 ("We express our commitment to . . . review contracts and concessions that harm the interests of the Honduran people, especially the economic ones . . . **implementing measures such as the immediate renegotiation of contracts for generation.**").

100. Within weeks of the new administration taking office, Minister Erick Tejada began setting the stage for the New Energy Bill's proposal. In March 2022, he, along with ENEE's Board of Directors, on which Government officials such as the Secretary of Finance and the Minister of Natural Resources sat,²³⁹ requested a "report of every single contract for the generation of electrical energy."²⁴⁰

101. A month later, President Castro introduced the New Energy Bill to the Honduran Congress, which was prefaced by a Statement of Motives.

102. The New Energy Bill's Statement of Motives conveyed the Government's animosity towards the generators. In it, the Government stated that it was seeking the renegotiation of the generators' contracts because they "harm the interests, particularly the economic interests, of the Honduran people."²⁴¹ Specifically, it used the generators as a scapegoat, blaming ENEE's "bankruptcy and insolvency" solely on the debt owed to the generators.²⁴² However, as the Government acknowledged, the cost of energy was being heavily impacted by increases in the price of fuels and the sector's technical and non-technical losses²⁴³—technical losses being those "that arise from the operation of the transmission system" and nontechnical losses those "that originate from theft, illegal connections, and fraud" in the electrical system²⁴⁴—which the Government was failing to curve.²⁴⁵ Indeed, nontechnical losses reportedly continue to reach

²³⁹ In March 2022, ENEE's Board of Directors was composed of, among others: Lucky Halach Medina Estrada (Secretary of State in the Office of Natural Resources and Environment and President of ENEE's Board of Directors), Mauricio Ramos (Secretary of State in the Office of Infrastructure and Public Services), Rixi Ramona Moncada Godoy (Secretary of State in the Office of Finance), and Gustavo Solórzano, (representative of the Honduran Council of Private Enterprise). See *ENEE's Directors have not held meetings this year*, EL HERALDO dated 10 Aug. 2023 (**Exh. C-111**). See also Decree No. 48-1957 dated 27 Feb. 1957 (**Exh. C-6**), Art. 7 (noting that ENEE's Board of Directors shall be composed of the following officers: "a) The Secretary of State in the Offices of Communications, Public Works, and Transportation; b) The Secretary of State in the Office of Natural Resources; c) The Secretary of State in the Offices of Finance and Public Credit; The Executive Secretary of the Higher Council for Economic Planning; d) The President of the Central Bank of Honduras; and, e) A representative of the Honduran Council of Private Enterprise (COHEP).").

²⁴⁰ ENEE, Board Minutes No. JD-01-2022 dated 11 Mar. 2022 (**Exh. C-197**), at 2.

²⁴¹ New Energy Bill (**Exh. C-22**), Statement of Motives, at 1.

²⁴² New Energy Bill (**Exh. C-22**), Statement of Motives, at 1.

²⁴³ New Energy Bill (**Exh. C-22**), Statement of Motives, at 2; SEFIN, Institutional Report for 2021 (**Exh. C-187**), at 39 (citing the increase in the price of fuels as producing a negative effect on the finances of ENEE for resulting in a higher operational cost for ENEE); SEFIN, Institutional Report for 2018 (**Exh. C-198**), at 32 (citing the same).

²⁴⁴ SEFIN, Institutional Report for 2018 (**Exh. C-198**), at 39.

²⁴⁵ The percentage of technical and nontechnical losses in the country's electrical sector has remained above 30% since 2018. The Government reported an increase of 0.2% in such losses, totaling 31.9% for 2021, and cited it as the "principal reason for [ENEE's] elevated deficit and resulting financial fragility"). See SEFIN, Institutional Report for 2021 (**Exh. C-187**), at 39; SEFIN, Institutional Report for 2018 (**Exh. C-198**), at 32. See also Revised

approximately 36%, as the Government itself admits.²⁴⁶ As [REDACTED] explains, “the primary issue for ENEE is its technical and non-technical losses” and “[a]s such, lowering the price under the PPA would not result in lower costs of electricity.”²⁴⁷

103. Further, the Government recognized the debt owed to the generators and that it was failing to pay them:

ENE’s main debt in arrears is to the thermal and renewable energy generators, exceeding [an estimated US\$ 563 million] to which the interests calculated on that amount, are added, while paradoxically the State grants tax benefits of more than [US\$ 96.6 million] in the last 6 years to these companies.²⁴⁸

104. The Government also proclaimed that it would subject the generators to “comprehensive audits to fully identify those responsible for the current disaster and looting present in ENEE[,] and the destruction of the [electricity] subsector.”²⁴⁹

105. At the same time that the New Energy Bill was introduced, media outlets were reporting that the Government was “renegotiating contracts[,] and even nationalizing plants . . . that [the Government deemed] had already generated enough profits for the investors.”²⁵⁰

SREP Investment Plan for Honduras dated Mar. 2017 (**Exh. C-145**) at 27 (noting that the “reduc[tion of] distribution losses . . . will allow ENEE to balance its books in 2018 helping the sector achieve financial sustainability[.]”).

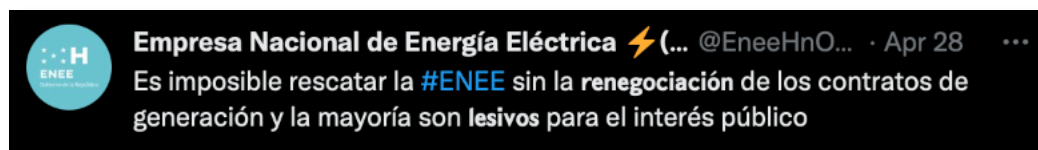
²⁴⁶ Minister Tejada, “*Nontechnical Losses since September 2023*,” X (FORMERLY TWITTER) dated 10 Sept. 2024 (**Exhs. C-128-129**) (publishing video in which Minister Tejada recognizes that ENEE’s losses were at 36.88% in 2023); Minister Tejada, “*Interview with Secretary of Finance to Provide Update on Energy Reform*,” X (FORMERLY TWITTER) dated 23 Aug. 2024 (**Exhs. C-162-163**) (publishing video in which the Minister of Finance recognizes that ENEE’s losses are approximately at 36%). See also *ENE’s losses have not fallen since September 2023, despite what Erick Tejada says* EL HERALDO dated 19 Jan. 2024 (**Exh. C-237**) (showing that the technical and nontechnical losses experienced by Honduras’s electrical sector have continued to increase since President Castro took office in 2022, with the highest peak estimated at about 39%); Asociación para una Sociedad más Justa (ASJ), “*State of the Union – The Electrical Subsector: The Worst Crisis of Blackouts in the Last Three Decades*” dated 2024 (**Exh. C-169**), at 24 (“In 2023, the losses increased instead of decreased.”); AHER, Report of Meeting between AHER’s Board of Directors and General Manager of ENEE Department dated 13 Oct. 2023 (**Exh. C-171**), at 3 (“Losses in distribution are at [REDACTED] and if we add transmission losses, they become [REDACTED]”).

²⁴⁸ New Energy Bill (**Exh. C-22**), Statement of Motives, at 2-3.

²⁴⁹ New Energy Bill (**Exh. C-22**), Statement of Motives, at 3.

²⁵⁰ *General Manager of ENEE to thermal generators: ‘We are not going to negotiate with a gun to our head,’* LA TRIBUNA dated 28 Apr. 2022 (**Exh. C-199**).

106. The Government, through its official social media platforms, which it uses to make announcements to the public, also began to attack the generators, describing their contracts as “injurious to the public interest.”²⁵¹



107. Between the New Energy Bill's introduction and the Honduran Congress's approval of the 2022 New Energy Law, the Government invited the solar generators to one meeting at the Presidential Palace to discuss the “renegotiation” process.²⁵² Publicly, Minister Tejada characterized this meeting as the start of a “renegotiation” process, even though the 2022 New Energy Law had not yet been approved or entered into force,²⁵³ illustrating the Government's



²⁵¹ ENEE, “It’s Impossible to Rescue ENEE Without Renegotiations,” X (FORMERLY TWITTER) dated 28 Apr. 2022 (Exh. C-200).

²⁵² The Government hosted three separate meetings at the Presidential Palace – one for the solar generators, one for the hydro and wind generators, and one for the thermal generators – to discuss the “renegotiations” process. All meetings had a nearly identical agenda. See Press Secretary of Honduras, “First Roundtable Discussion Regarding the Renegotiation of Energy Contracts,” X (FORMERLY TWITTER) dated 2 May 2022 (Exh. C-202); ENEE, “Start of Historic Energy Contract Renegotiations,” X (FORMERLY TWITTER) dated 2 May 2022 (Exh. C-203); ENEE, “Continuing Contract Renegotiation Meetings with Hydro and Wind Generators,” X (FORMERLY TWITTER) dated 3 May 2022 (Exh. C-204); ENEE, “On Third Day of Renegotiations, Government Meets with Thermal Generators,” X (FORMERLY TWITTER) dated 4 May 2022 (Exh. C-205). The Government’s meeting with the solar generators took place on 2 May 2022. In attendance were the generators, including Pacific Solar, as well as various Cabinet members, such as the Secretary of SEFIN, Ministry of Economic Development, and Revenue Administration Service, Secretary of Energy, Renewable Resources, Environment and Mines, Ministry of Investment, and Minister Tejada in his capacity as the President of ENEE’s Board of Directors, Secretary of Energy, and General Manager of ENEE. AHPEE, Minutes of the Solar Generators Attending Meeting with the Government dated May 2022 (Exh. C-57), at 1.

²⁵³ These negotiations meetings at the Presidential Palace took place from 2 May 2022 to 4 May 2022, more than a week before the New Energy Law was approved. See *Government and generators start dialogue over energy prices*, PROCESO DIGITAL dated 3 May 2022 (Exh. C-201). The Government’s meeting on 2 May 2022 was with the solar generators, the one on 3 May 2022 with the hydro and wind generators, and the one on 4 May 2022 with the thermal generators. See Press Secretary of Honduras, “Call for Negotiations with Solar Generators” X (FORMERLY TWITTER) dated 2 May 2022 (Exh. C-202); ENEE, “Start of Historic Negotiations,” X (FORMERLY TWITTER) dated 2 May 2022 (Exh. C-203); ENEE, “Call for Negotiations with Hydros and Wind Generators,” X (FORMERLY TWITTER) dated 3 May 2022 (Exh. C-204); ENEE, “Call for Negotiations with Thermal Generators,” X (FORMERLY TWITTER) dated 4 May 2022 (Exh. C-205).

lack of transparency and process regarding the 2022 New Energy Law.

108. During this meeting, the solar generators asked the Government to clarify its messaging regarding the “nationalization” and “expropriation” of their plants. The Government did not provide the solar generators with a straightforward response. It stated that “it did not want to nationalize or expropriate anything.”²⁵⁴ Yet, when asked why the 2022 New Energy Bill included articles that authorized the Government to do the same, **the Government declared that the articles that refer to expropriation are “legal alternative[s] that the Government wants to reserve for itself to concretize the renegotiation of the contracts.”**²⁵⁵

109. The generators also reminded the Government of the financial strain that its actions were causing to their projects, and the threat that such strain was placing on their projects' viability. The generators asked for payment of their outstanding compensation because the situation had become untenable.²⁵⁶ To that, the Government responded it would withhold compensation until generators renegotiated their contracts:

[While we] have available the lines of financing to obtain the funds [needed for payment] . . . **payment to the generators will be effectuated simultaneously with the renegotiations of the contracts.**²⁵⁷

TWITTER) dated 4 May 2022 (**Exh. C-205**). The New Energy Law did not enter into force until 16 May 2022. New Energy Law (**Exh. C-10**), Art. 21.

²⁵⁴ AHPEE, Minutes of the Solar Generators Attending Meeting with the Government dated May 2022 (**Exh. C-57**), at 2.

²⁵⁵ AHPEE, Minutes of the Solar Generators Attending Meeting with the Government dated May 2022 (**Exh. C-57**), at 2.

²⁵⁶ AHPEE, Minutes of the Solar Generators Attending Meeting with the Government dated May 2022 (**Exh. C-57**), at 2.

²⁵⁷ AHPEE, Minutes of the Solar Generators Attending Meeting with the Government dated May 2022 (**Exh. C-57**), at 2.

110. As contemporaneous statements on social media confirm, before the meetings discussing the “renegotiation” process had ended, the Government boasted that it “had already set the parameters and prices under which the renegotiations [with the private generators] would take place,”²⁵⁸ despite knowing that the most important concern to the generators was “the settlement of the debt” owed to them.²⁵⁹



111. Indeed, the Government made clear that it was seeking prices that would be “fair” for Honduras.²⁶⁰

112. The Honduran Congress approved the 2022 New Energy Law in the early morning hours of 12 May 2022.²⁶¹ Such approval occurred disregarding the input of the Honduran Association of Renewable Energy (*Asociación Hondureña de Energía Renovable*) (“**AHER**”) and the Honduran Association of Electric Power Producers (*Asociación Hondureña de Productores de Energía Eléctrica*) (“**AHPEE**”) who expressed their concern for threatened nationalization or expropriation contained in the New Energy Bill²⁶²—input the Government had pretended to solicit but clearly disregarded. On the

²⁵⁸ ENEE, “We Set the Parameters of the Renegotiations,” X (FORMERLY TWITTER) dated 3 May 2022 (**Exh. C-206**).

²⁵⁹ ENEE, “The Important Issues in the Renegotiations,” X (FORMERLY TWITTER) dated 3 May 2022 (**Exh. C-207**) (“For us, as a Government, the issue of prices is important, and for them (the generators), it is the issue of the settlement of the debt [owed to them] . . .”).

²⁶⁰ ENEE, “Payment to the generators is assured, as long as it is a fair price,” X (FORMERLY TWITTER) dated 22 Aug. 2022 (**Exh. C-228**).

²⁶¹ Honduras’s Congress, “New Energy Law Approved in its Totality,” X (FORMERLY TWITTER) dated 12 May 2022 (**Exh. C-208**) (showing the tweet’s time stamp as “2:57 A.M. 12 May 2022”); *Through the Special Energy Law they promise to restructure ENEE and provide electricity to the entire population*, CONTRACORRIENTE dated 2 June 2022 (**Exh. C-209**), at 1-2.

²⁶² AHPEE, Minutes of the Solar Generators Attending Meeting with the Government dated May 2022 (**Exh. C-57**), at 2.

floor of the Honduran Congress, Minister Tejada, in his role as Secretary of Energy and General Manager of ENEE, incited the law's approval by framing it as an offensive by the State against the generators. Specifically, he declared:

This Law puts forth elements that had never been proposed before because there was no political will to do so after 12 years of living under the terrible cover of dictatorship. **It has never been proposed, as it is currently being proposed from this Government, the renegotiation of contracts that will lower the conditions of certain contracts of generation that are harmful to the public interest.**²⁶³

113. Minister Tejada added:

This Law that you are about to debate today and, I hope, to also reform, tries to combat the asymmetries originating in the electricity subsector, a subsector where we have generating companies that have very high internal rates of return, with multimillion-dollar profits, and who have enjoyed being extremely profitable businesses, some for the last three decades, and others, for more than 10, 15 and 20 years.

[Given the above,] **we only have two paths forward:** we continue to follow the privatization model where a market crisis is handled by market forces, or **we . . . rescue ENEE as part of our national patrimony.** . . .²⁶⁴

114. And Minister Tejada concluded:

Today, with the approval of this law, **the old regime, the terrible night that we lived, the dictatorship, starts to die**, and the new begins to be born, it will be ENEE, the new ENEE, the ENEE of Xiomara, the spearhead for us to reform this country.²⁶⁵

115. The 2022 New Energy Law was approved the same day that it went up for debate.²⁶⁶ Following approval, foreign diplomats immediately expressed concern over the effect that such

²⁶³ Honduran Congress, Debate Regarding 2022 New Energy Law dated 11 May 2022 (**Exh. C-76**), at 2:08:15-2:08:53. *See also The scenario of legal certainty for renewable generators in Honduras worsens*, ENERGÍA ESTRATÉGICA dated 12 May 2022 (**Exh. C-210**).

²⁶⁴ Honduran Congress, Debate Regarding 2022 New Energy Law dated 11 May 2022 (**Exh. C-76**), at 2:03:34-2:05:57.

²⁶⁵ Honduran Congress, Debate Regarding 2022 New Energy Law dated 11 May 2022 (**Exh. C-76**), at 2:13:37-2:14:09.

²⁶⁶ *The scenario of legal certainty for renewable generators in Honduras worsens*, ENERGÍA ESTRATÉGICA dated 12 May 2022 (**Exh. C-210**), at 3 (noting that the vote for the New Energy Law's approval was not scheduled to take place on 12 May 2022, but since "the ruling party requested to make a decision at the time, without extending the debate . . . the reform project [was approved] outside due process").

approval could have on foreign investment.²⁶⁷ Similarly, the renewable energy sector expressed concern at the threat of “nationalization, confiscation of assets, and expropriation,” affecting in particular the “renegotiations table in which 27 contracts with generators are at play.”²⁶⁸

(b) The 2022 New Energy Law Entered into Force and the State Engaged in Arbitrary Conduct that Harmed the Paizes and Pacific Solar, Withholding [REDACTED] Payments, Forcing Pacific Solar to Attempt to Save the Project

116. As enacted, the 2022 New Energy Law is nearly identical to its draft version, the New Energy Bill.²⁶⁹ Squarely at the core of this dispute, the first chapter introduced provisions that, among other prerogatives, zeroed in on ENEE’s PPAs with private generators. Effectively, the 2022 New Energy Law crystalized the State’s desire to tear up existing PPAs, such as Pacific Solar’s. Weaponizing the State’s authority, the State’s actions violate the PPA’s requirement that it “may be modified only by written agreement between the Parties.”²⁷⁰ Moreover, after enacting the 2022 New Energy Law, the State engaged in conduct that substantially harmed the Paizes and Pacific Solar, by (i) pushing for nothing other than terms that eliminate Pacific Solar’s key rights; (ii) weaponizing the State’s significant and outstanding debt to Pacific Solar, forcing Pacific Solar into a precarious situation with its lenders and to restructure its project finance loans in an attempt to salvage the project; and (iii) engaging in a public smear campaign against generators, as explained below.

117. Fundamentally, the 2022 New Energy Law displayed the Government’s threat to expropriate the generators’ plants if “renegotiation” of the PPA’s energy price is not to the State’s satisfaction. The provision states in its entirety:

Article 5.- CONTRACTS OF ELECTRICAL ENERGY GENERATED FROM WATER, SOLAR AND WIND TECHNOLOGIES. The National Company of Electric Energy (ENEE)

²⁶⁷ See *Through the Special Energy Law they promise to restructure ENEE and provide electricity to the entire population* CONTRACORRIENTE dated 2 June 2022 (**Exh. C-209**), at 6 (noting that the U.S. ambassador to Honduras expressed via Twitter that the New Energy Law caused “concern over ‘the effect that [the law] could have on foreign investment and the independence of the [sector’s] regulatory agency’”); *Reform to the Energy Law of Honduras generates controversy between a US diplomat and the foreign minister*, VOZ DE AMÉRICA dated 5 May 2022 (**Exh. C-230**).

²⁶⁸ *The scenario of legal certainty for renewable generators in Honduras worsens*, ENERGÍA ESTRATÉGICA dated 12 May 2022 (**Exh. C-210**), at 1.

²⁶⁹ See generally New Energy Bill (**Exh. C-22**).

²⁷⁰ PPA (**Exh. C-1**), 18.1.

is authorized to, through the Board of Directors and Management, based on national legislation and contractual clauses, set under its prerogatives and powers and, for reasons of public interest, the renegotiation of the contracts and prices at which the State, through the National Company of Electric Energy (ENEE), acquires the service of energy by water, solar and wind taking into account the prices of the Central American, Caribbean and Latin America regions. If negotiation is not possible, it is authorized to set the termination of the contractual relationship and the acquisition by the State, subject to the payment of a *justiprecio*.²⁷¹

118. In other words, under the framework of the 2022 New Energy Law, the State is authorized to unilaterally terminate agreements, such as the PPA, and “acqui[re]”—presumably, the generators’ assets, such as the Plant—if it deems that a “renegotiation” is not possible with a generator. The Government, through ENEE, sets the parameters under which this “renegotiation” is to take place, and at no point does the 2022 New Energy Law suggest that the new agreements should be executed by mutual agreement.²⁷² Quite the opposite. The Government through its “prerogatives and powers, and for reasons of public interest” will “renegotiate” the “prices at which the State . . . acquires the service of energy.”²⁷³

119. In fact, during the congressional debate to approve the 2022 New Energy Law, Congressional representatives expressed concern over the fact that the term “*justiprecio*” was not defined in the 2022 New Energy Law, and emphasized how such ambiguity “creates a nebula . . . over those who have already invested.”²⁷⁴ Minister Tejada confessed that the concept of

²⁷¹ New Energy Law (**Exh. C-10**), Art. 5. *See also id.*, Art. 6 (providing the only reference point in the 2022 New Energy Law to the potential meaning of “*justiprecio*”: “Article 6.- AUTHORIZATION FOR THE ACQUISITION OF POWER GENERATION PLANTS WITH A RIGHT OF FIRST REFUSAL CLAUSE IN THEIR CONTRACTS. The National Electric Power Company (ENEE) is hereby authorized so that, based on the liquidation and right of first refusal clauses contained in the power purchase agreements approved by the State, and considering its prerogatives and powers, for reasons of public interest, to acquire the plants by setting a *justiprecio*, for reasons of national security, through government bonds and in accordance with the provisions of the Constitution of the Republic.”).

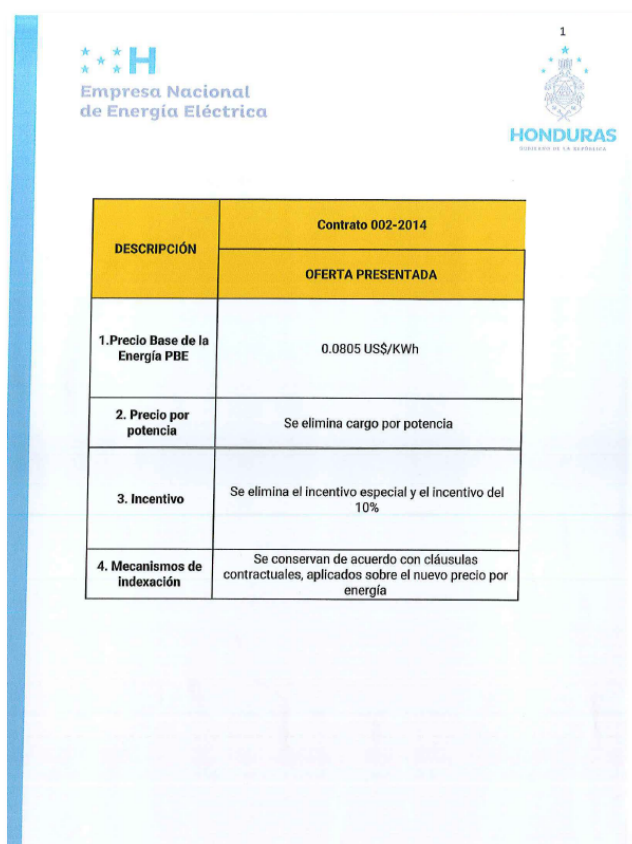
²⁷² *See generally* New Energy Law (**Exh. C-10**), Arts. 4-7, 15.

²⁷³ New Energy Law (**Exh. C-10**), Art. 5.

²⁷⁴ Honduran Congress, Debate Regarding 2022 New Energy Law dated 11 May 2022 (**Exh. C-76**), at 4:35:08-4:38:45 (“If here, it is not determined who is going to define the *justiprecio*, it creates a nebula over those who have already invested or those who want to invest . . . The more competition there is, the better. If [the *justiprecio*] is not clear, it is likely that we scare away those who have already invested . . . and surely we will scare away those who want to invest, and that can lead us to a crisis because the issue of energy generation is definitely not easy, and it is likely that the State as such, after having spent so many years where private enterprises have generated energy, will not have the conditions in the short-term [to handle energy generation] . . . **we need that legal clarity**”).

“justiprecio” as contemplated by the 2022 New Energy Law was in fact a tool to be used by the State to put pressure on the generators to “renegotiate” and tilt the balance in favor of the State.²⁷⁵

120. Mere hours after the 2022 New Energy Law’s approval, and before it had entered into force, the Government summoned the private generators to the Presidential Palace for a second “renegotiation” meeting. This time, the meeting’s purpose was to hand each generator the Government’s “offer” under the 2022 New Energy Law. At the meeting with the solar generators, the Secretary of Finance and Minister Tejada were present as Cabinet representatives.²⁷⁶ Government officials handed Pacific Solar a one-page “offer”—identical to the ones given to the other several generators in attendance with existing PPAs—which threatened key rights and sought to lower compensation owed to Pacific Solar under the PPA.²⁷⁷



DESCRIPCIÓN	Contrato 002-2014
	OFERTA PRESENTADA
1. Precio Base de la Energía PBE	0.0805 US\$/KWh
2. Precio por potencia	Se elimina cargo por potencia
3. Incentivo	Se elimina el incentivo especial y el incentivo del 10%
4. Mecanismos de Indexación	Se conservan de acuerdo con cláusulas contractuales, aplicados sobre el nuevo precio por energía

²⁷⁵ Honduran Congress, Debate Regarding 2022 New Energy Law dated 11 May 2022 (**Exh. C-76**), at 4:32:21-4:38:45.

■ ■ ■; Government’s “Renegotiation” Offer dated 12 May 2022 (**Exh. C-23**); *see also* Letter from ENEE to Pacific Solar, Official Letter ENEE-GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**).

121. Specifically, the Government's "offer" revealed its intent to alter the following compensation rights that Pacific Solar is entitled to under the Agreements, and the assumptions under which the Paizes and Pacific Solar invested in Honduras:

- **Base Price for Energy Delivered:** The "offer" lowers the energy base price at which ENEE purchases the energy that the Plant delivers at the Delivery Point by almost half.²⁷⁸
- **Capacity Payments:** The "offer" eliminates capacity payments, which compensate Pacific Solar for the Plant's ability to provide a predetermined amount of energy generation.²⁷⁹
- **Payment of Renewables Incentives:** The "offer" eliminates the payment of certain Renewables Incentives to which Pacific Solar is entitled to.²⁸⁰
- **Indexation of the Energy Base Price in Accordance with U.S. Inflation Rates:** Although the "offer" conserved this right under the PPA, a lower Energy Base Price would inherently result in a lower indexation value for payment.²⁸¹

122. As [REDACTED] explains, "the terms that the Government put in its 12 May 2022 proposal simply would not work for [Pacific Solar]. Even assuming ENEE would abide by those terms in the future, the revenues would be so low that they would be insufficient for PSE to meet its obligations with its Lenders, let alone allow to distribute dividends or handle required capital expenditures."²⁸²

123. That Honduras handed the generators, including Pacific Solar, an "offer," mere hours after Congress approved the 2022 New Energy Law and four days before the 2022 New Energy Law entered into force,²⁸³ confirms the State's intention to impose its sovereign powers as leverage. As [REDACTED] explains, "the Government did not explain to either of us the criteria behind its proposal of 12 May,"²⁸⁴ and "[a]ny potential progress towards finding a solution was consistently set back by the Government's disorganization, attacks, or silence."²⁸⁵ Indeed, such

²⁷⁸ See *supra* § II.B; Government's "Renegotiation" Offer dated 12 May 2022 (**Exh. C-23**), at No. 1.

²⁷⁹ See *supra* § II.B; Government's "Renegotiation" Offer dated 12 May 2022 (**Exh. C-23**), at No. 2.

²⁸⁰ See *supra* § II.B; Government's "Renegotiation" Offer dated 12 May 2022 (**Exh. C-23**), at No. 3.

²⁸¹ See *supra* § II.B; Government's "Renegotiation" Offer dated 12 May 2022 (**Exh. C-23**), at No. 4.

²⁸² [REDACTED]. See also Letter from Pacific Solar to ENEE dated 21 June 2022 (**Exh. C-65**) ("We do not think a reduction in the duration of the Contract is feasible, as stated in proposal . . . that was given to us on 12 May 2022.").

²⁸³ The New Energy Law became effective on 16 May 2022. New Energy Law (**Exh. C-10**), Art. 21.

■ [REDACTED]
 ■ [REDACTED]

conduct makes plain that the term “renegotiation” means the unilateral imposition of lower energy prices and elimination of incentives for the duration of the State’s agreements—conditions that are being imposed under the threat of acquisition by the State. Such lack of transparency has created a climate of uncertainty for the generators.

124. To add further pressure on the generators, the Government established a 60-day deadline from the publication of the 2022 New Energy Law to finalize its “renegotiation,” and gave itself the prerogative to terminate the contract and acquire the generator’s plant if “renegotiation” was not complete by that deadline.²⁸⁶

125. Moreover, the 2022 New Energy Law codified the State’s intention to repudiate its compensation and other key obligations towards generators like Pacific Solar. It instructed ENEE to **settle the historical debt owed to the generators only “for up to one year,”** in contrast to its prior commitments, and **only once the PPA is “renegotiated” or “terminated.”**²⁸⁷

126. The Government went so far as to threaten the generators with criminal prosecution if, at any point during the “renegotiations” process, the generators could not deliver energy to ENEE. The provision in the 2022 New Energy Law states, in relevant part:

During the renegotiation process, the generators must ensure the whole and uninterrupted provision of the sale of energy to the National Company of Electric Energy (ENEE), **otherwise the provisions of the Criminal Code and other special laws shall apply.**²⁸⁸

127. As Minister Tejada stated during the debate to approve the 2022 New Energy Law: “We do not want to sit at the renegotiation table, as we are already doing, with a gun to the head,

²⁸⁶ See New Energy Law (**Exh. C-10**), Art. 5 (“If negotiation is not possible, it is authorized to set the termination of the contractual relationship and the acquisition by the State”), Art. 15 (“A period of (60) calendar days from the publication of this Law shall be allowed for the renegotiation of power purchase agreements”).

²⁸⁷ New Energy Law (**Exh. C-10**), Art. 16 (“**Article 16.- PAYMENT OF AMOUNT IN ARREARS.** The Government of the Republic is hereby authorized, **once the renegotiation or contractual relationship has been concluded** with the generators with whom it has delays of **up to one (1) year**, to proceed to reconcile arrears and to define feasible terms for payment through the National or International Financial System, starting with small and medium-sized generators.”).

²⁸⁸ New Energy Law (**Exh. C-10**), Art. 15. See also *General Manager of ENEE to thermal generators: ‘We are not going to negotiate with a gun to our head,’* LA TRIBUNA dated 28 Apr. 2022 (**Exh. C-199**) (explaining that when a thermal plant warned ENEE that it may have to cease its generation of energy because ENEE’s lack of payment presented problems in their purchase of bunker, which it needed to fuel the plant, Minister Tejada characterized this as the plant trying to renegotiate its contract with a gun to the Government’s head.).

so that the [generators] can threaten us.”²⁸⁹ He added: “That is the spirit of Article[] . . . 5,” the State’s right to expropriate if “renegotiation” is not possible with a generator in order to tilt the balance in favor of the State.²⁹⁰

128. Notwithstanding the Government’s agenda, Pacific Solar expressed its willingness to engage in open dialogue with Honduras under the new framework established by the 2022 New Energy Law. However, as the Government’s subsequent conduct demonstrates, the Government’s “renegotiation” has been nothing more than an infringement on the generators’ rights, as further explained below.

129. Honduras’s conduct following the enactment of the 2022 New Energy Law demonstrates that the Government did not intend to engage in good-faith negotiations with the generators regarding their PPAs. The Government is instead crippling the agreements and framework that granted the generators’ rights, such as Pacific Solar’s, and is providing no safeguards or alternatives to help ease the impact on the generators’ investments. For instance, it was withholding a significant amount of compensation from Pacific Solar at the time of the 2022 New Energy Law’s enactment, a debt that has continued to grow considerably since then. Indeed, at present Pacific Solar is owed an approximate [REDACTED] for outstanding receivables.²⁹¹ Such “unprecedented and untenable levels” of ENEE’s debt to Pacific Solar, along with the unpredictability and insufficiency of ENEE’s sporadic payments, have forced Pacific Solar to seek to restructure its project finance loans and let the project continue.²⁹²

130. In the months that followed the enactment of the 2022 New Energy Law, Pacific Solar participated in discussions with the Government in an effort to seek negotiated solutions while confronting the 2022 New Energy Law and the 12 May 2022 “Offer.” The Government’s conduct in furtherance of the New Energy Law has been exacerbated by additional measures, such as curtailing the Plant’s dispatch and seeking to repeal tax incentives, as will be explained further below.

²⁸⁹ Honduran Congress, Debate Regarding 2022 New Energy Law dated 11 May 2022 (**Exh. C-76**), at 4:36:45-4:38:54.

²⁹⁰ Honduran Congress, Debate Regarding 2022 New Energy Law dated 11 May 2022 (**Exh. C-76**), at 4:36:45-4:38:54.

²⁹¹ Compass Lexecon ¶ 44, 48.

[REDACTED]

131. For example, shortly after the 2022 New Energy Law entered into force, Pacific Solar attended a meeting with ENEE to discuss Pacific Solar's options.²⁹³ On that same day, although Pacific Solar had not yet submitted a counterproposal, the Government announced that it had completed the third round of "renegotiations" on 2 June 2022.²⁹⁴ Contemporaneously, while the Government continued to publicly recognize that it had an outstanding debt to the generators, it boasted about its intent to refashion the generators' rights and impose significant haircuts on the existing debt.²⁹⁵

132. Conscious that the Government's deadline for finalizing "renegotiations" according to the New Energy Law was to lapse on 15 July 2022, Pacific Solar presented a counterproposal to the Government's "offer" of 12 May 2022.²⁹⁶ Given the threat that Government's conduct under the 2022 New Energy Law presented to Pacific Solar's viability, such as the nonpayment of its debt and curtailments on the Plant's energy, Pacific Solar found itself "forced" into a position where it needed to "propose a sale price for Pacific Solar's assets."²⁹⁷ In the meeting that followed thereafter to discuss the "sale price," Pacific Solar again explained that it could not contemplate the price reduction proposed in the Government's 12 May 2022 "offer." "ENEE's debt to Pacific Solar[, which had] reached and remained at unprecedented and untenable amounts" and the Government's high level of curtailments, which further "compound[ed] the harm to [Pacific Solar]" made it impossible for Pacific Solar to contemplate other options that were not handing the Government the keys to its assets.²⁹⁸ Pacific Solar agreed to send the Government two proposals: one that contemplates the turning over of its assets and another where it reduced the compensation that it is duly entitled to under the Agreements.²⁹⁹

133. As outlined in the 2022 New Energy Law, the lapse of Government's deadline for finalizing "renegotiations" would have enable the Government to expropriate the Plant. That the

²⁹⁴ ENEE, "*Completing the third round of renegotiations*," X (FORMERLY TWITTER) dated 2 June 2022 (Exh. C-212).

²⁹⁵ ENEE, "*Completing the third round of renegotiations*," FACEBOOK dated 2 June 2022 (Exh. C-213).

²⁹⁶ See Letter from Pacific Solar to ENEE dated 21 June 2022 (Exh. C-65).

²⁹⁷ Letter from Pacific Solar to ENEE dated 21 June 2022 (Exh. C-65) ("**[O]ur project continues to face significant challenges due to the lack of payment and curtailments, among other reasons attributable to the Government of Honduras.**").

²⁹⁸ Minutes of the Meeting between Pacific Solar and ENEE dated 28 June 2022 (Exh. C-194).

Government chose not to respond to Pacific Solar until after this deadline, even though Pacific Solar immediately responded to the Government's June request,³⁰⁰ muddled Pacific Solar's viability and the standing of the Paizes' investment.³⁰¹

134. Rather than responding to Pacific Solar on 15 July 2022—the Government-imposed deadline to finalize the “renegotiation”—the Government published a report on social media in which it purported to summarize the “renegotiation” process with the generators (“**Government’s Report on the 2022 New Energy Law**”).³⁰² In this report, the Government (i) blanketly rejected the solar power generators’ counterproposals to its 12 May 2022 one-page “offers;” and (ii) made baseless allegations with respect to the commitments it made under its various PPAs.

135. In rejecting the solar generators’ counterproposals at a stroke,³⁰³ the Government maintained its stance that it wanted to lower the energy base price to one that was still significantly lower than the ones established under the PPAs.³⁰⁴ In its report, the Government proclaimed that these counterproposals were “unacceptable” because the generators had “enough profit margins to be able to lower their prices and continue generating profits,” and should therefore accede to the

³⁰⁰ Letter from PSE Pacific Solar to Minister Tejada (Ministry of Energy and ENEE) dated 4 July 2022 (**Exh. C-68**) (noting that Pacific Solar’s proposal was valid until 15 July 2022, the Government’s deadline for finalizing “renegotiations” according to the 2022 New Energy Law).

³⁰¹ See New Energy Law (**Exh. C-10**), Art. 5 (“**If negotiation is not possible, it is authorized to set the termination of the contractual relationship and the acquisition by the State, subject to the payment of a justiprecio.**”); *id.*, Art. 15 (“A period of (60) calendar days from the publication of this Law shall be allowed for the renegotiation of power purchase agreements”).

³⁰² Government of Honduras, Report Outlining the Government’s Plan for Reforming the Electricity Sector Under the New Energy Law dated 15 July 2022 (**Exh. C-11**).

³⁰³ See Government of Honduras, Report Outlining the Government’s Plan for Reforming the Electricity Sector Under the New Energy Law dated 15 July 2022 (**Exh. C-11**), at 2-3 (describing the counterproposals of all solar generators as proposing a reduced energy price of 14.5 to 13.82 [US\$] per kWh and “ENEE’s proposal [as] reducing [the energy base price] from 15.65 cents per kWh, which is the current average price, to 11 cents per kWh”); *see also* AHER, Report of Meeting between AHER’s Board of Directors and ENEE’s General Manager, Minister Tejada dated 14 July 2022 (**Exh. C-188**), at 3 (“[T]he Government is considering the idea of elaborating an identical solution for all solar plants.”).

³⁰⁴ Government of Honduras, Report Outlining the Government’s Plan for Reforming the Electricity Sector Under the New Energy Law dated 15 July 2022 (**Exh. C-11**), at 2-3 (proposing the reduction of base price of energy for all generators, regardless of the generator’s energy source, to 0.11 US\$/kWh.).

much lower prices set by the State.³⁰⁵ It, again, conditioned the payment of the debts owed to the generators on the “renegotiation” of their PPAs.³⁰⁶

136. A few days after the publication of the Government’s Report on the 2022 New Energy Law, the Government announced that it had concluded the first phase of the “renegotiation” process.³⁰⁷ **Yet, by this date, the Government had not provided any legal, technical, or economic grounds for rejecting Pacific Solar’s counterproposal, or for imposing a lower base price for energy.**³⁰⁸ The Government concluded the Government’s Report on the New Energy Law by announcing the establishment of the National Audit Commission that the New Energy Law mandated.³⁰⁹ It declared that the new entity would have “60 days to carry out comprehensive audits” of all generators, noting that this tool would enable the Government to “strengthen its proposal” to the generators.³¹⁰

137. The Government subsequently doubled down on its resolve to unilaterally change Pacific Solar’s rights under the PPA, without acknowledging the proposed “sale price” put forth by Pacific Solar as requested by the Government.³¹¹ It demanded that Pacific Solar “**renounce**”

³⁰⁵ Government of Honduras, Report Outlining the Government’s Plan for Reforming the Electricity Sector Under the New Energy Law dated 15 July 2022 (**Exh. C-11**) at 6. ENEE, “*The contracts that are targets of the State have enough profit margins*,” X (FORMERLY TWITTER) dated 18 July 2022 (**Exh. C-223**). In the Government’s Report on the 2022 New Energy Law, the Government also expressed that extending the contract periods and tax benefits of the PPAs—terms that some generators had proposed in exchange for lowering their energy base price—was out of the question, as, in the State’s view, that did not provide enough cost savings.

³⁰⁶ Government of Honduras, Report Outlining the Government’s Plan for Reforming the Electricity Sector Under the New Energy Law dated 15 July 2022 (**Exh. C-11**) at 7 (“**The State does not deny the debt and interest owed [to the generators,] and is willing to make payment arrangements in the short- and long-term under new conditions regarding interests, [arrangements that] will be completed once an equilibrium is reached between the income and expenses of ENEE.**”). See also ENEE, “*The State will pay once the ENEE’s revenues and costs are balanced*,” X (FORMERLY TWITTER) dated 18 July 2022 (**Exh. C-160**).

³⁰⁷ ENEE, “*The first phase of renegotiations is concluded*,” X (FORMERLY TWITTER) dated 19 July 2022 (**Exh. C-224**).

■ See also Government of Honduras, Report Outlining the Government’s Plan for Reforming the Electricity Sector Under the New Energy Law dated 15 July 2022 (**Exh. C-11**) at 2-3.

³⁰⁹ Government of Honduras, Report Outlining the Government’s Plan for Reforming the Electricity Sector Under the New Energy Law dated 15 July 2022 (**Exh. C-11**), at 6. See also ENEE, “*The State creates the National Audit Commission*,” X (FORMERLY TWITTER) dated 20 July 2022 (**Exh. C-112**).

³¹⁰ Government of Honduras, Report Outlining the Government’s Plan for Reforming the Electricity Sector Under the New Energy Law dated 15 July 2022 (**Exh. C-11**), at 6. See also ENEE, “*The State creates the National Audit Commission*,” X (FORMERLY TWITTER) dated 20 July 2022 (**Exh. C-112**).

³¹¹ See Letter from the Government to Pacific Solar, No. ENEE-GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**), at 2; Letter from PSE Pacific Solar to Minister Tejada (Ministry of Energy and ENEE) dated 4 July 2022 (**Exh. C-68**) (outlining Pacific Solar’s two counterproposals to the Government: one that contemplates the sale of its assets and another where it reduced the compensation that it is duly entitled to under the Agreements).

payments for “the incentive of 10%,” and “capacity.”³¹² It also restated its demand to lower the base price for energy to “0.11\$/kWh.”³¹³ The Government again conditioned the payments owed to Pacific Solar on accepting the contract terms set by it,³¹⁴ while underscoring that “nine (9) [other] energy generators of [PV] technology” had already accepted the same.³¹⁵ Ultimately, in framing its demands, the Government reminded Pacific Solar of its power to terminate the PPA and take over the Plant if an agreement cannot be reached between them.³¹⁶

138. In that context, in light of the precarious situation in which the Government put Pacific Solar in, Pacific Solar engaged in conversations with officials regarding the Government’s takeover of the Plant.³¹⁷ While “the Government rejected the possibility of acquiring the whole Plant,” it “offered to pay up to US\$ 80 million for a 51% interest in the Plant if [Pacific Solar] continued to be the owner of the remaining 49% of the Plant and remained responsible for the operation and maintenance of the Plant.”³¹⁸ Similar to its conditions regarding duly owed payments,³¹⁹ the Government hinged such payment on Pacific Solar signing an amendment to

³¹² Letter from the Government to Pacific Solar, No. ENEE-GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**), at 2.

³¹³ Letter from the Government to Pacific Solar, No. ENEE-GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**), at 2.

³¹⁴ Letter from the Government to Pacific Solar, No. ENEE-GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**), at 2. *See also* AHER, Report of Meeting between COHEP’s Energy Committee and ENEE’s General Manager, Minister Tejada dated 7 Sept. 2022 (**Exh. C-189**), at 4 (noting that Minister Tejada affirmed to the Honduran Council of Private Enterprises (*Consejo Hondureño de la Empresa Privada*) (“COHEP”), of which generators like Pacific Solar are members, that **“no plant would be paid until the 28 plants have renegotiated [their contracts and that] these were the conditions for financing”** payments); AHPEE, Minutes of the Solar Generators Attending Meeting with the Government dated May 2022 (**Exh. C-57**), at 2.

³¹⁵ Letter from the Government to Pacific Solar, No. ENEE-GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**), at 2. *See also* ENEE, “*This Government is Interested in Collaborating with Private Companies that are Decent*,” X (FORMERLY TWITTER) dated 3 Oct. 2022 (**Exh. C-234**) (announcing that the signing of new agreements with the private generators is “a historic victory for the nation,” characterizing the same as “taking a momentous step to show that the country can work hand in hand” with the private sector, and declaring that **“this government is interested in continuing to collaborate with [these] decent generators”**).

³¹⁶ Letter from the Government to Pacific Solar, No. ENEE-GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**), at 1 (citing Article 5 of the 2022 New Energy Law, which provides the State with the power to terminate the power purchase agreements and acquire the generators’ plants in case no agreement can be reached between the Government and the generators).

³¹⁷ *See, e.g.*, [REDACTED] *see also* Letter from PSE Pacific Solar to Minister Tejada (Ministry of Energy and ENEE) dated 4 July 2022 (**Exh. C-68**); Letter from Pacific Solar to ENEE dated 21 June 2022 (**Exh. C-65**).

³¹⁸ [REDACTED]; Minutes of the Meeting between Pacific Solar, Ministry of Energy and ENEE dated 1 Feb. 2023 (**Exh. C-216**).

³¹⁹ *See, e.g.*, Letter from the Government to Pacific Solar, No. ENEE-GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**), at 2; AHER, Report of Meeting between COHEP’s Energy Committee and ENEE’s General Manager, Minister Tejada dated 7 Sept. 2022 (**Exh. C-189**), at 2-4 (noting that Minister Tejada affirmed to the Honduran Council of Private Enterprises (*Consejo Hondureño de la Empresa Privada*) (“COHEP”), of which generators like Pacific Solar are members, that **“no plant would be paid until the 28 plants have renegotiated [their contracts**

PPA.³²⁰ The “unprecedented and untenable levels” of ENEE’s debt to Pacific Solar, along with the unpredictability and insufficiency of ENEE’s sporadic payments, cornered Pacific Solar into advancing this discussion with ENEE.³²¹

139. In contrast, the Government had refused to engage in these discussions.³²² Instead, the Government has been intransigent and dismissive, arbitrarily moving its self-imposed deadlines to complete the “renegotiation” process, often informing the generators until after the lapse of such deadlines.³²³ The Government’s actions, omissions, and attitude is putting Pacific Solar under duress and preventing it from paying its debt to its lenders.³²⁴

140. Moreover, in purporting that “in no moment would the Government consider the expropriation or nationalization of companies,” Minister Tejada admits that the 2022 New Energy Law authorizes the State to expropriate the plants.³²⁵ The Minister has clarified that the purpose of the “renegotiation” is to determine the “fair price” of a generator’s contract, which, in the context of the 2022 New Energy Law, means a scenario in which the State terminates the PPA and expropriates the plants if an agreement is not reached with the generator.³²⁶ Further, Minister Tejada has not hesitated in reminding generators, like Pacific Solar, of the State’s power to expropriate their plants if they do not “agree” to terms that the State is imposing on their PPAs.³²⁷ Specifically, Minister Tejada has emphasized on national television and radio:

[T]he [G]overnment of the Republic, in these last 15 months, has marked the horizon of the electrical subsector through **the [2022 New Energy**

and that] these were the conditions for financing” payments); AHPEE, Minutes of the Solar Generators Attending Meeting with the Government dated May 2022 (**Exh. C-57**), at 2.

■ [REDACTED] Minutes of the Meeting between Pacific Solar, Ministry of Energy and ENEE dated 1 Feb. 2023 (**Exh. C-216**).

³²¹ ■ [REDACTED] Minutes of the Meeting between Pacific Solar, Ministry of Energy and ENEE dated 1 Feb. 2023 (**Exh. C-216**).

³²³ See e.g., ENEE, “*The first phase of renegotiations is concluded*,” X (FORMERLY TWITTER) dated 19 July 2022 (**Exh. C-224**) (informing the generators that the “first phase” of renegotiations had concluded 4 days after the Government’s deadline to complete the “renegotiation” as outlined in the 2022 New Energy Law).

³²⁵ ENEE, “*Completing the third round of renegotiations*,” FACEBOOK dated 2 June 2022 (**Exh. C-213**) (noting that the New Energy Law authorizes the expropriation and nationalization of the companies).

³²⁶ ENEE, “*Completing the third round of renegotiations*,” FACEBOOK dated 2 June 2022 (**Exh. C-213**).

³²⁷ *Government Warns It Will Intervene and Acquire Power Plants*, PROCESO DIGITAL dated 13 June 2023 (**Exh. C-28**).

Law], which empowers and authorizes us to intervene and acquire the [generators'] plants if necessary.³²⁸

141. Nevertheless, even in the case of Pacific Solar, which was open to discussing the terms of expropriation, the Government has been unyielding with respect to the process and the price.³²⁹

142. To date, the Government has failed to apprise generators, like Pacific Solar, of its intent, if any, to continue engaging in the “renegotiations” of its PPAs, or whether it will move forward with the expropriation of the plants. In an unsystematic and sporadic basis, the Government has provided few updates regarding the “renegotiation,” and when it has, its messaging has been obscure and inconsistent.³³⁰ For example, near the one year anniversary of the start of the “renegotiation” period (*i.e.*, May 2023), media outlets reported that “ENEE ha[d] not provided any further information” to generators since October 2022, when certain generators first entered into Memoranda of Understanding (“**MOUs**”) with ENEE in an attempt to avoid the significant consequences of rejecting the Government’s imposed terms.³³¹ Such lack of information raised doubts as to whether the signed MOUs had even been executed or approved by the Honduran Congress.³³²

143. Indeed, certain generators entered into MOUs, and subsequently into amendments to their PPAs—agreements that are still subject to Congressional approval.³³³ Based on publicly

³²⁸ *Government Warns It Will Intervene and Acquire Power Plants*, PROCESO DIGITAL dated 13 June 2023 (**Exh. C-28**), at 1.

³³⁰ See, e.g., “*ENEE seeks to terminate 115 energy generation contracts in one to two years*,” EL HERALDO dated 1 Aug. 2023 (**Exh. C-181**) (quoting ENEE’s Financial Manager as stating that the Government is “reviewing each contract, conducting financial, technical, and legal analyses, **to be able to rescind them**”). See also AHER, Report of Meeting between COHEP’s Energy Committee and ENEE’s General Manager, Minister Tejada dated 7 Sept. 2022 (**Exh. C-189**), at 2-3 (noting that Minister Tejada “understood” COHEP’s frustration when COHEP informed Minister Tejada that “**the messages being published on twitter were providing context that was out of touch with reality, giving an incorrect message, since it is making it seem like that [payments to] generators are up to date, when the reality is different, giving the impression that 87% of the debt [to the generators] has been paid, when that is not true.**”).

³³¹ “*No progress in renegotiations and addenda to generation contracts*,” EL HERALDO dated 22 Sept. 2023 (**Exh. C-180**).

³³² “*No progress in renegotiations and addenda to generation contracts*,” EL HERALDO dated 22 Sept. 2023 (**Exh. C-180**).

³³³ Press release issued by de Ministry of Energy, “*Fruit of historic renegotiation of energy contracts comes to Congress*” dated 7 May 2024 (**Exh. C-173**); ENEE, Presentation to Honduran Congress regarding the Renegotiation of Contracts for Electrical Energy dated 2024 (**Exh. C-190**); see also Modification No. 1 of PPA No. 003-2014 dated 31 Jan. 2024 (**Exh. C-158**); Modification No. 1 of PPA No. 007-2014, dated 24 Mar. 2023 (**Exh. C-157**); Modification No. 1 of PPA No. 008-2014 dated 24 Mar. 2023 (**Exh. C-156**); Modification No. 1 of PPA No. 015-2014 dated 24

available information only recently—almost two years after the enactment of the 2022 New Energy Law—the amended PPAs cut energy base prices in half and eliminate capacity payments and incentives in the generators' remuneration.³³⁴

144. Moreover, it is uncertain whether Honduras will honor the revised terms in the amended PPAs, as ENEE has reportedly breached its commitments under the MOUs.³³⁵ In addressing the situation of generators like Pacific Solar (*i.e.*, those who have not executed MOUs), the Government acknowledges that it discriminates against them.³³⁶ It has openly boasted that it will prioritize payment of historical debt to the generators that “agree” to lower their compensation rights under the PPAs.³³⁷ In this context, two years after the enactment of the New Energy Law, Honduras owes Pacific Solar millions of dollars for energy it has delivered, forcing Pacific Solar to try to restructure its project finance loans.³³⁸

145. At present, the Government owes Pacific Solar more than a year's worth of outstanding receivables, Pacific Solar's only source of revenue as ENEE is the sole purchaser of energy in the country—a debt that only continues to grow³³⁹ As explained above, while

Mar. 2023 (**Exh. C-153**); Modification No. 1 of PPA No. 018-2014 dated 31 Jan. 2024 (**Exh. C-150**); Modification No. 1 of PPA No. 019-2014 dated 15 Mar. 2023 (**Exh. C-148**); Modification No. 1 of PPA No. 020-2014 dated 31 Jan. 2024 (**Exh. C-138**); Modification No. 1 of PPA No. 023-2014 dated 31 Jan. 2024 (**Exh. C-136**); Modification No. 2 of PPA No. 049-2008 dated 24 Mar. 2023 (**Exh. C-135**); Modification No. 1 of PPA No. 061-2014 dated 14 Feb. 2023 (**Exh. C-133**); Modification No. 2 of PPA No. 054-2012 dated 9 Jan. 2022 (**Exh. C-132**); Modification No. 1 of PPA No. 004-2013 dated 10 Jan. 2023 (**Exh. C-130**); Modification No. 2 of PPA No. 066-2014 dated 10 Jan. 2023 (**Exh. C-127**); Modification No. 3 of PPA No. 013-2008 dated 19 Jan. 2024 (**Exh. C-125**); Modification No. 1 of PPA No. 011-2018 dated 22 Jan. 2024 (**Exh. C-124**); Modification No. 1 of PPA No. 012-2018 dated 22 Jan. 2024 (**Exh. C-123**); Modification No. 1 of PPA No. 013-2018 dated 22 Jan. 2024 (**Exh. C-122**); Modification No. 1 of PPA No. 071-2018 dated 4 Jan. 2023 (**Exh. C-116**); ENEE, Renegotiation of Contracts, Aug. 2024 (**Exh. C-159**).

³³⁴ “What are the 18 renegotiated energy contracts that seek to be modified?,” EL HERALDO dated 27 May 2024 (**Exh. C-172**), at 2-3.

³³⁵ See Asociación para una Sociedad más Justa (ASJ), “State of the Union – The Electrical Subsector: The Worst Crisis of Blackouts in the Last Three Decades” dated 2024 (**Exh. C-X169X**), at 28 (“According to the generators, the plants that have renegotiated [their contracts] are experiencing delays in payments of 6 to 12 invoices.”).

³³⁶ AHPEE, Summary of Meeting with COHEP, AHPEE, AHER and ENEE dated 29 Nov. 2022 (**Exh. C-191**), at 2-3 (noting that Minister Tejada states that “priority for payments will be given to the companies that have entered into a Memorandum of Understanding which contains the agreements with ENEE” despite AHPEE reminding the Minister that **companies “who did not reach an agreement also need payment, since ENEE owes many of them payments that correspond to more than 13 invoices, and for that reason, find themselves in a financial deficit.”**). See also Corporación Multi Inversiones (CMI), Press Release Regarding MOU with Government dated 2022 (**Exh. C-215**).

³³⁷ “ENE’s delays in payments to energy generators provokes a notice of intent under CAFTA,” DINERO HN dated 1 Nov. 2022 (**Exh. C-170**).

■ [REDACTED]

³³⁹ Compass Lexecon ¶ 44.

ENEE's payments to Pacific Solar had been incomplete in the past, the Government's message to the generators was always consistent: Pacific Solar was entitled to payments as set forth in the Agreements.³⁴⁰

146. Under President Castro's administration, however, the Government's actions and rhetoric completely changed. The 2022 New Energy Law sent a clear message that the full payment of existing debt would not be honored.³⁴¹ The Government's outstanding payments to generators, such as Pacific Solar, reached and remain at "unprecedented and untenable" levels, notwithstanding sporadic, partial payments by ENEE.³⁴²

147. Concretely as it relates to Pacific Solar, Honduras is not compensating Pacific Solar for (i) the energy and capacity that the Plant has delivered, and (ii) the Renewables Incentives and interests that it is owed, as promised under the Agreements.³⁴³ Likewise, while it is apparent that the State is acting in contravention to its obligations, as it has arbitrarily curtailed the energy produced by the Plant for reasons not attributable to Pacific Solar, which among other things harms the Plant's equipment, the State has failed to compensate Pacific Solar for those curtailments as required by the Agreements.³⁴⁴

148. In fact, concurrent with the "renegotiation" process, the Government weaponized its existing debt to Pacific Solar, conditioning its payment on the agreement to the contract terms set by the State. Specifically, the Government expressed that **"no plant would be paid until the . . . plants have renegotiated [their contracts—the Government's] conditions for financing" payments.**³⁴⁵ Likewise, the Government communicated to Pacific Solar that it would make "payment of the debt owed to [Pacific Solar] within a period of 60 to 90 calendar days from the

³⁴⁰ See, e.g., [REDACTED] See also, e.g., AHPEE, Minutes of Meeting with ENEE's Auditing Commission dated 20 Aug. 2021 (**Exh. C-161**) (acknowledging payments owed to the solar generators for invoices dated up until May 2021 and detailing the Government's plan for paying off its debts).

³⁴¹ See New Energy Law (**Exh. C-10**), Art. 16 ("**Article 16.- PAYMENT OF AMOUNT IN ARREARS.** The Government of the Republic is hereby authorized, **once the renegotiation or contractual relationship has been concluded** with the generators with whom it has delays of **up to one (1) year**, to proceed to reconcile arrears and to define feasible terms for payment through the National or International Financial System, starting with small and medium-sized generators.").

[REDACTED]

³⁴³ See Compass Lexecon ¶¶ 41-45.

³⁴⁴ Compass Lexecon ¶¶ 46-48.

³⁴⁵ AHER, Report of Meeting between COHEP's Energy Committee and ENEE's General Manager, Minister Tejada dated 7 Sept. 2022 (**Exh. C-189**), at 4. See also ENEE, "Payment to the generators is assured as long as it is a fair price," X (FORMERLY TWITTER) dated 22 Aug. 2022 (**Exh. C-228**).

signing of an MOU,” signifying that Pacific Solar would accept the prices set by the State for generating energy without yet having been paid for outstanding debt.³⁴⁶ At the same time, the Government announced that between January and June 2022, it had paid generators who had PPAs and entered into commercial operation an approximate US\$ 429 million, with only 11% of those payments made to solar generators, like Pacific Solar.³⁴⁷

149. Given the price sensitivities renewable energy projects confront, this significant non-payment is particularly devastating. The Agreements provide shock absorbers when Pacific Solar faces non-payment, and at much lower thresholds of non-payment than those the State is inflicting on Pacific Solar. In particular, a **four-month delay** is sufficient to allow Pacific Solar to sell energy to third parties, for example,³⁴⁸ and permits Pacific Solar to terminate the PPA.³⁴⁹ Here, the State’s non-payment is significantly above those thresholds; at present, Honduras owes Pacific Solar the equivalent of [REDACTED] invoices.

150. The Government itself has acknowledged that it is using the promise of payments to pressure generators to agree to the State’s imposed terms. In multiple interviews, Minister Tejada asseverated that the Government would first pay the generators who enter into an MOU with ENEE—an agreement in which the generator submits to the “renegotiated” terms imposed by State for its PPA.³⁵⁰ Specifically, he recognized the promise of payment as “a pivotal point to unlocking the renegotiations” and made clear that the Government would “pay, above all, those who have renegotiated” their PPAs.³⁵¹ He confessed to the Government having funds to make

³⁴⁶ Letter from the Government to Pacific Solar, No. ENEE-GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**), at 2. [REDACTED]

³⁴⁷ ENEE, Press Release regarding Status of Payments dated 5 Sept. 2022 (**Exh. C-192**). *See also* ENEE’s Auditing Commission, Resolution No. CIENEE-174-2021 dated 24 June 2021 (**Exh. C-193**).

³⁴⁸ PPA (**Exh. C-1**), § 2, Cl. 2.5.

³⁴⁹ PPA (**Exh. C-1**), § 2, Cl. 4.6(c) (“**THE SELLER . . . may terminate this contract early . . . in the event that the BUYER maintains a balance in arrears of its payment obligations for more than four (4) months.**”)

³⁵⁰ *See, e.g.*, Radio Interview with Minister Tejada regarding the Government’s priority for payments, RADIOHN dated 17 Oct. 2022 (**Exh. C-231**), at 1:03-1:24 (quoting Minister Tejada as stating that the Government would “**meet [its] debt with the generators with whom [it] has come to an agreement . . . the Government’s priority**”); Radio Interview with Minister Tejada acknowledging that promise of payments is key to unlocking renegotiations, RADIO CADENAS VOCES dated 28 Nov. 2022 (**Exh. C-232**), at 4:29-4:58 (“We have been clear, it has been a pivotal point to unlocking the renegotiations, that we are going to pay, above all, those who have renegotiated” their PPAs.”). *See also* Corporación Multi Inversiones (CMI), Press Release Regarding MOU with Government dated 2022 (**Exh. C-215**).

³⁵¹ Radio Interview with Minister Tejada acknowledging that promise of payments is key to unlocking renegotiations, RADIO CADENAS VOCES dated 28 Nov. 2022 (**Exh. C-232**), at 4:29-4:58 (“We have been clear, it has been a pivotal point to unlocking the renegotiations, that we are going to pay, above all, those who have renegotiated”

payments to the generators.³⁵² Yet, the Government is only making sporadic and incomplete payments to Pacific Solar, which are Pacific Solar's only source of revenue as ENEE is the sole purchaser of energy in the country, and owes Pacific Solar [REDACTED] outstanding receivables—a debt that only continues to grow.

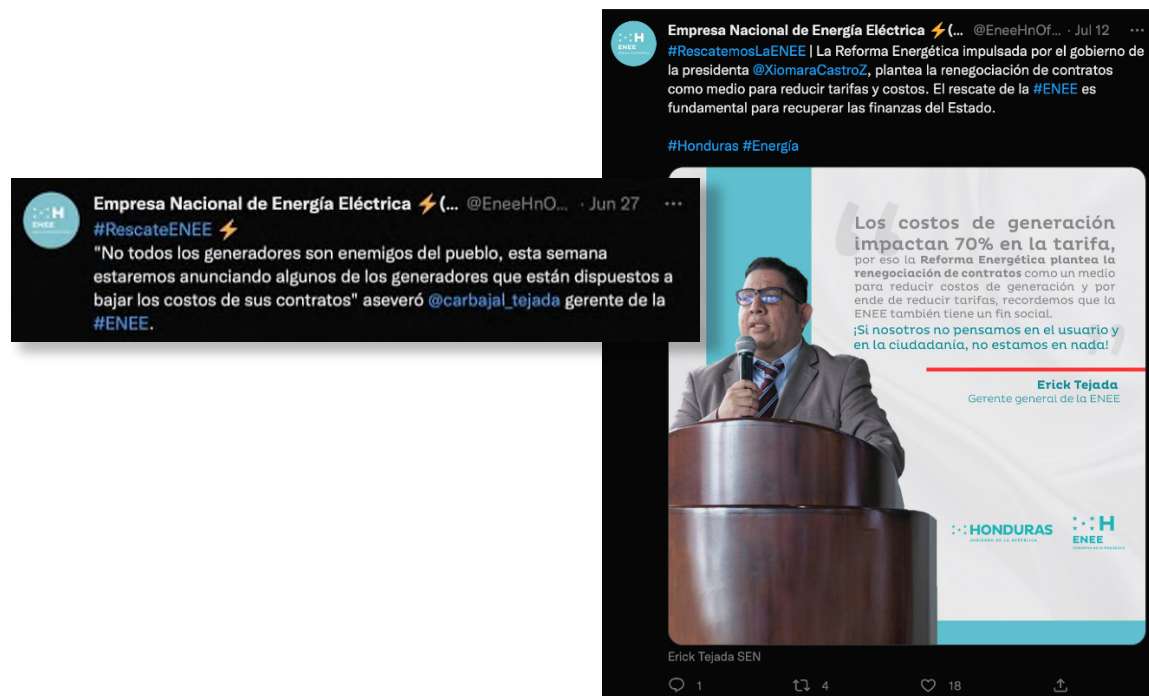
151. In the meantime, the Government has continued its smear campaign against the generators. It demonized the generators who did not “agree” to the terms outlined in the Government's 12 May 2022 “offers,” relegating them to “**enemies of the nation.**”³⁵³ It also underscored that the “renegotiations” were a Presidential mandate, whose aim was to lower the price of energy generation.³⁵⁴

their PPAs.). *See also* Radio Interview with Minister Tejada regarding the Government's priority for payments, RADIOHN dated 17 Oct. 2022 (**Exh. C-231**), at 1:03-1:24 (quoting Minister Tejada as stating that the Government would “**meet [its] debt with the generators with whom [it] has come to an agreement . . . the Government's priority**”). *See also* Corporación Multi Inversiones (CMI), Press Release Regarding MOU with Government dated 2022 (**Exh. C-215**).

³⁵² Radio Interview with Minister Tejada acknowledging that promise of payments is key to unlocking renegotiations, RADIO CADENAS VOCES dated 28 Nov. 2022 (**Exh. C-232**), at 4:29-4:58 (“We already have, we are arranging for, [an estimated US\$ 605 million] to pay the generators, and we hope that it will be before the end of the year, if it is not by the end of the year, it will be at the beginning of next year, that **we will be paying, we are going to give priority, we must say it, to those who have reached an agreement, to those who have reached an agreement with us . . .**”). *See also* AHPEE, Summary of Meeting with COHEP, AHPEE, AHER and ENEE dated 29 Nov. 2022 (**Exh. C-191**), at 2-3 (noting that Minister Tejada states that “priority for payments will be given to the companies that have entered into a Memorandum of Understanding which contains the agreements with ENEE” despite AHPEE reminding the Minister that **companies “who did not reach an agreement also need payment, since ENEE owes many of them payments that correspond to more than [REDACTED] invoices, and for that reason, find themselves in a financial deficit.”**). *See also* Corporación Multi Inversiones (CMI), Press Release Regarding MOU with Government dated 2022 (**Exh. C-215**).

³⁵³ ENEE, “*Not all generators are enemies of the nation,*” X (FORMERLY TWITTER) dated 27 June 2022 (**Exh. C-219**) (“**Not all generators are enemies of the nation, this week, we will be announcing some of the generators that are willing to lower the costs of their contracts.**”).

³⁵⁴ ENEE, “*President Castro's Mandate for Renegotiations,*” X (FORMERLY TWITTER) dated 12 July 2022 (**Exh. C-221**) (“The Energy Reform pushed forth by the government of the President @XiomaraCastroZ proposes the renegotiations of contracts as a means reduce tariffs and costs If we do not think of the consumer and the citizenry, then we are for nothing!”).



152. The Government also publicly denounced generators who were not “accepting” the terms that the State was imposing on their PPAs. In a radio interview, the then-Minister of Economic Development manifested that “there are companies that are not accepting [our] ‘renegotiation’ and do not want to give the State a ‘fair’ and ‘correct’ price for their energy contracts.”³⁵⁵ He further stated “it is urgent that these [generators] accept [our] “renegotiation,” that they lower the[ir] prices, to the right prices, the fair prices,”³⁵⁶ so that the State could lower the debt it owed, which includes that of the generators.³⁵⁷

153. In light of the Government’s conduct, it became even more clear to Pacific Solar that the “renegotiation” process—a sporadic, inconsistent, and non-transparent exercise—was a veil for the Government’s infringement on Pacific Solar’s rights. As Minister Tejada had manifested in a contemporaneous speech, “no country that has pride in having dignity, [and]

³⁵⁵ Radio Interview with the former Minister of Economic Development, RADIO PROGRESO dated 16 Sept. 2022 (Exh. C-233), at 1:23-1:34 (“The problem that we are having is that there are companies that are not accepting the renegotiation and do not want to give the State a fair and correct price for their energy contracts.”).

³⁵⁶ Radio Interview with the former Minister of Economic Development, RADIO PROGRESO dated 16 Sept. 2022 (Exh. C-233), at 2:29-2:47 (“It is urgent that these companies accept the renegotiation, that they lower the prices, to the right prices, to the fair prices . . .”).

³⁵⁷ See Radio Interview with the former Minister of Economic Development, RADIO PROGRESO dated 16 Sept. 2022 (Exh. C-233), at 1:46-2:07.

respects its sovereignty, would give its natural resources, or a strategic sector, to . . . private . . . or foreign capital.”³⁵⁸

154. On media outlets, the Government continued to publicly blame the generators for the state of ENEE's finances, but simultaneously recognized that the origin of ENEE's issues did “not lie in the costs of [energy] generation, but rather in the high level of nonrecoverable losses” relating to energy theft.³⁵⁹ Moreover, the Government continues to emphasize that it will “reclaim” ENEE from the private sector,³⁶⁰ while declaring that Honduras must be “free of [its] crass external and internal debt,” which includes that owed to the generators.³⁶¹

2. The State Has Engaged in Further Arbitrary Conduct, Rendering Pacific Solar's Rights Under the Agreements Ineffective

(a) The Government Curtails the Plant's Energy Dispatch and Refuses to Compensate Pacific Solar as Provided under the PPA

155. After enacting the 2022 New Energy Law, the Government announced that it would subject the generators to additional, harmful measures. For one, Minister Tejada announced that energy generated by renewable energy generators would be curtailed, indicating that the dispatchment of their energy had caused great “economic damage” to the State.³⁶² [REDACTED]

[REDACTED]

[REDACTED]

³⁵⁸ Minister Erick Tejada, “*State of the Union Address Hosted by ASJ Honduras*,” Asociación para una Sociedad más Justa (ASJ) dated July 2022 (**Exh. C-220**), at 33:04-33:25.

³⁵⁹ SEFIN, Institutional Report for 2022 (**Exh. C-236**), at 46-47. *See also* ENEE's losses have not fallen since September 2023, despite what Erick Tejada says EL HERALDO dated 19 Jan. 2024 (**Exh. C-237**) (showing that the technical and nontechnical losses experienced by Honduras's electrical sector have continued to increase since President Castro took office in 2022, with the highest peak estimated at about 39%); Revised SREP Investment Plan for Honduras dated Mar. 2017 (**Exh. C-145**) at 11 (noting that “reduc[tion of] distribution losses . . . will allow ENEE to balance its books . . . helping the sector achieve financial sustainability”); Asociación para una Sociedad más Justa (ASJ), “*State of the Union – The Electrical Subsector: The Worst Crisis of Blackouts in the Last Three Decades*” dated 2024 (**Exh. C-169**), at 24 (“In 2023, the losses increased instead of decreased.”).

³⁶⁰ ENEE, Newsletter #71: ENEE in Action: “*After 2 years in government, ‘We are in the midst of the plan to reclaim ENEE:’ President Xiomara Castro*” dated 29 Jan. 2024 (**Exh. C-179**), at 3.

³⁶¹ Honduras's Revenue Administration Service, “*We should free ourselves of our gross external and internal debt*,” X (FORMERLY TWITTER) dated 2 Mar. 2024 (**Exh. C-177**) (publishing an excerpt of President Xiomara's Castro speech at the Eighth Summit of the Community of Latin American and Caribbean States, in which she proposed that Honduras's “economic financial sovereignty” can be achieved “through the reconversion of debt for environmental investment,” enabling the State to “free [itself] from [its] gross external and internal debt,” and “denounce[es] tax havens and international arbitration centers that violate [the State's] sovereignty”).

³⁶² ENEE Press Release on Curtailments to Renewables dated 8 July 2022 (**Exh. C-222**).

156. Further to that policy, the Government continues to curtail the energy produced by Pacific Solar's Plant.³⁶⁴ Indeed, Pacific Solar's Plant has experienced significant curtailments since President Castro took office, increasing by more than 40% in 2022.³⁶⁵ This is unsurprising, given the 2022 New Energy Law's elimination of ODS and creation of a System Operator in its place—an entity presently wholly controlled by ENEE³⁶⁶—which sought to “return to the State the nucleus for supplying electrical energy,” guaranteeing that “the State be the one to guarantee the supply of electricity.”³⁶⁷

(b) The Government Implements Additional Policies that Harm Generators like Pacific Solar and Aggravate the Dispute

157. Rather than seeking to resolve this dispute and respect generators' rights, Honduras has further aggravated the dispute by revealing its intention to repeal other existing rights belonging to investors. In March 2023, the Government published a draft law called the “Law of Tax Justice” (*Ley de Justicia Tributaria*) (the “**Bill Against Existing Incentives Regimes**”).³⁶⁸ Disguised as a tax reform, the Bill Against Existing Incentives Regimes seeks to take away key rights given to private actors by, among others, aiming to repeal “tax exemptions, exonerations, and incentives” in various laws, including, *inter alia*, the 2007 Renewables Law and its reforms and interpretations, and the 2013 Renewables Law for any investor that “develops and operates

³⁶⁴ Compass Lexecon ¶ 48. *See also* Letter from Pacific Solar to the System Operator dated 12 Oct. 2022 (**Exh. C-195**) (describing how Pacific Solar was willing for a period of 30 days to renounce any claims relating to curtailments given the gravity and frequency of curtailments to the Plant's energy); Letter from Pacific Solar to ENEE dated 21 June 2022 (**Exh. C-65**) (“[O]ur project continues to face significant challenges due to . . . curtailments”).

³⁶⁵ Compass Lexecon, Figure 7. [REDACTED]

³⁶⁶ New Energy Law (**Exh. C-10**), Art. 19: Ch. 4, Art. 9.E.IX. The New Energy Law also eliminated the ability of the private sector to provide input on the operation of the National Electrical System. *See* Electric Power Industry Law (**Exh. C-8**), Art. 9.E.-F. (requesting companies in the electrical sector to inform the ODS of their projections for increases in demand and their plans of expansion with the goal of integrating them into the planification of the expansion of the National Interconnected System and allowing the Electrical Power Regulatory Commission to receive input from market agents regarding the operation model of the electrical system – provisions that the New Energy Law eliminated in its reform of the Electric Power Industry Law).

³⁶⁷ Honduran Congress, Debate Regarding 2022 New Energy Law dated 11 May 2022 (**Exh. C-76**), at 2:09:26-2:11:31.

³⁶⁸ Government of Honduras, “Tax Fairness Law,” Draft Bill published by the Executive on 9 Mar. 2023 (the “**Bill Against Existing Incentives Regime**”) (**Exh. C-32**).

energy projects with national renewable resources” that has a PPA with ENEE.³⁶⁹ It also aims to repeal other pro-investment laws in their entirety, including the Investment Law, as a further affront to private investors.³⁷⁰

158. While the Bill Against Existing Incentives Regimes provides that these repeals are non-retroactive, it still authorizes SEFIN to repeal existing tax exemptions, whenever—at SEFIN’s discretion—there is abuse or misuse of the exemptions.³⁷¹ Its passage would further undermine Pacific Solar’s rights to the package of incentives provided under the Renewables Laws, as reflected in the Agreements.³⁷²

159. The rhetoric behind the Bill Against Existing Incentives Regimes affirms the Government’s disregard for investors. In championing for the draft law’s passage, President Castro has portrayed the Bill Against Existing Incentives Regimes as a weapon to be used, “in her constant fight to relaunch Honduras,” against “a decadent political class that represents the wicked interests of those who do not want to pay taxes.”³⁷³ In using such rhetoric, the Government makes plain that it seeks to evade honoring the tax exemptions, exonerations, and incentives that it had granted to investors years earlier in an effort to spur investment.³⁷⁴

160. Moreover, in an attempt to avoid international liability for its assault on private investment, in February 2024, Honduras denounced the ICSID Convention, sending a clear message to foreign investors: the State is seeking to evade international liability for the arbitrary conducts in which it is engaging.³⁷⁵ Previously, the Government had denounced the “international arbitration centers that violate our sovereignty and impoverish our people,”³⁷⁶ singled out the

³⁶⁹ Bill Against Existing Incentives Regime (**Exh. C-32**), Art. 16.

³⁷⁰ Bill Against Existing Incentives Regime (**Exh. C-32**), Art. 17.

³⁷¹ Bill Against Existing Incentives Regime (**Exh. C-32**), Arts. 14, 20.

³⁷² See PPA (**Exh. C-1**), Cl. 14.1.

³⁷³ Honduras’s Revenue Administration Service, Press Statement No. 007-2024 on the Bill Against Incentives Regime dated 8 Mar. 2024 (**Exh. C-167**).

³⁷⁴ See Bill Against Existing Incentives Regime (**Exh. C-32**), Statement of Motives, at 1 (characterizing the State’s conferment of such rights as “granting a tax holiday to the very rich: to allow large companies to operate under the protection of banks’ secrecy and the cloak of impunity of tax havens, [that] regimes of tax exonerations were expanded on and new ones created . . . and the evasion and avoidance of taxes was legalized by decree through amnesties and regularizations.”).

³⁷⁵ ICSID News Release, “*Honduras Denounces the ICSID Convention*,” dated 29 Feb. 2024 (**Exh. C-166**). See also “*Honduran Government Denounces ICSID Convention and Begins Exit*,” EL HERALDO dated 29 Feb. 2024 (**Exh. C-165**).

³⁷⁶ Honduras’s Revenue Administration Service, “*We should free ourselves of our gross external and internal debt*,” X (FORMERLY TWITTER) dated 2 Mar. 2024 (**Exh. C-177**) (publishing an excerpt of President Xiomara’s Castro

plants that had commenced ICSID arbitration proceedings,³⁷⁷ and held press conference attacking investors that have filed ICSID claims.³⁷⁸ Indeed, the Vice Foreign Minister of the Government clamored that once the denunciation takes effect, parties who wish to conduct business with Honduras will have to do so without the protections that ICSID provides.³⁷⁹

161. As explained above, Honduras has strung the Paizes and Pacific Solar along through a series of non-transparent and arbitrary actions and measures that have rendered key rights in the Agreements ineffective, in breach Honduras's obligation to the Paizes and Pacific Solar under the Treaty, as explained below.

III. THE TRIBUNAL HAS JURISDICTION OVER THE DISPUTE

162. As explained below, all jurisdictional requirements in the Treaty and the ICSID Convention are met in this arbitration. Therefore, the Tribunal has jurisdiction over each of the Paizes's claims.

A. HONDURAS AND THE PAIZES HAVE CONSENTED TO SUBMIT THIS DISPUTE TO ICSID ARBITRATION

163. Honduras has consented to arbitration pursuant to Article 10.17.1 of the Treaty, which provides that "[e]ach Party," including Honduras, "consents to the submission of a claim to

speech at the Eighth Summit of the Community of Latin American and Caribbean States, in which she proposed that Honduras's "economic financial sovereignty" can be achieved "through the reconversion of debt for environmental investment," enabling the State to "free [itself] from [its] gross external and internal debt," and "denounce[es] tax havens and international arbitration centers that violate [the State's] sovereignty").

³⁷⁷ Minister Tejada, *"Renegotiations Allow the State to Extinguish ICSID Proceedings,"* X (FORMERLY TWITTER) dated 22 May 2024 (**Exh. C-93**) ("4 ICSID arbitrations were initiated in the energy sector some time ago, for two of them, the companies entered into renegotiations of contracts and, their addenda [to their PPAs] represent a significant reduction in the price of energy, in addition, there was a suspension of the [ICSID] process, with a promise to discontinue [the process] if the addenda are approved by @Congress_HN . . . **the other . . . ICSID arbitrations that have been initiated are from . . . the photovoltaic company Pacific Solar . . . this means that, the process of renegotiation s of contracts to lower energy prices allows the State to Honduras to extinguish two ICSID arbitrations.**").

³⁷⁸ *"Honduras Accuses ICSID of Illegality in Proceedings in Zede Prospera Case,"* DINEROHN dated 31 May 2023 (**Exh. C-94**) (noting that Honduras's Secretary of Finance describes investor that has brought forth an ICSID as "enemies [that] are going to lose at the national and international level").

³⁷⁹ Noticiero Hoy Mismo, *"Interview with the Vice Foreign Minister of the Government Regarding ICSID Denunciation,"* X (FORMERLY TWITTER) dated 1 Mar. 2022 (**Exh. C-164**), at 2:10-2:37 ("[With the ICSID denunciation,] what we are saying is that once the period stipulated by the denunciation that the State has made has lapsed, Honduras will be out of the system, **and any commercial agreement that the country wants to sign or any other country wants to sign with Honduras, will have to do so without incorporating these [ICSID] clauses.**").

arbitration under this Section in accordance with this Agreement.”³⁸⁰ Also, under Article 10.16.1(b) of the Treaty, Honduras agreed that “claimant, on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly, may submit to arbitration under this Section a claim (i) that the respondent has breached (A) an obligation under Section A, (B) an investment authorization, or (C) an investment agreement; and (ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.”³⁸¹ In turn, these claims were submitted to arbitration, and thus, the Parties have consented to it.³⁸²

B. PURSUANT TO THE TREATY, THE PAIZES HAVE STANDING TO BRING CLAIMS ON THEIR OWN BEHALF AND ON BEHALF OF PACIFIC SOLAR, THEIR ENTERPRISE

164. The Treaty authorizes nationals of one of the contracting States, who have made a protected investment, to bring claims against another contracting State for violations of Chapter Ten of the Treaty. It further authorizes such nationals to bring claims on behalf of an Enterprise that they own or control.

165. Specifically, Article 10.16.1(b) allows a “claimant” to submit claims “on behalf of an enterprise” it “owns or controls directly or indirectly” for violations of obligations under Chapter Ten, Section A of the Treaty and “investment agreements.”³⁸³

166. In turn, the Treaty includes the following relevant definitions:

- “claimant” is “an investor of a Party that is a party to an investment dispute with another Party.”³⁸⁴
- “investor of a Party” includes “a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of another Party”³⁸⁵
- “investment” is “every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include: (a) an enterprise;

³⁸⁰ CAFTA-DR (CL-1), Art. 10.17.1 ; Letter from the Secretary of Industry and Commerce of Honduras to the Secretary General of the Organization of American States declaring the entry into force of CAFTA-DR, dated 31 Mar. 2006 (Exh. C-196) ; Office of the United States Trade Representative, *Statement of USTR Susan C. Schwab Regarding Entry Into Force of the CAFTA-DR for Guatemala* dated 30 June 2006 (Exh. C-214).

³⁸¹ CAFTA-DR (CL-1), Art. 10.16.1(b).

³⁸² CAFTA-DR (CL-1), Art. 10.16.

³⁸³ CAFTA-DR (CL-1), Art. 10.16.1(a), 10.16.1(b).

³⁸⁴ CAFTA-DR (CL-1), Art. 10.28.

³⁸⁵ CAFTA-DR (CL-1), Art. 10.28.

(b) shares, stock, and other forms of equity participation in an enterprise; 10-24 (c) bonds, debentures, other debt instruments, and loans; (d) futures, options, and other derivatives; (e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts; (f) intellectual property rights; (g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and (h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.”³⁸⁶

- “enterprise” is “any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association”³⁸⁷
- “enterprise of a Party” is “an enterprise constituted or organized under the law of a Party.”³⁸⁸

1. The Dispute Is Between Guatemalan Investors, Acting on Their Own Behalf and on Behalf of Their Enterprise, Against the Republic of Honduras

167. Pursuant to the terms of the Treaty, the Paizes qualify as investors who may bring claims Honduras—on their own behalf and on behalf of Pacific Solar—to seek redress for the damages resulting from Honduras’s Treaty violations. [REDACTED]

[REDACTED] The Paizes are therefore, “Investors of a Party,” who also can act on behalf of Pacific, an “enterprise.”

168. Article 10.16.1(b) authorizes claimants, acting “on behalf of an enterprise,” to “submit to arbitration . . . a claim that (i) the respondent has breached an obligation under Section A, (B) an investment authorization, or (C) an investment agreement; and (ii) that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.”³⁹¹

169. [REDACTED].
Therefore, the Paizes have standing to bring claims on behalf of Pacific Solar as well.

³⁸⁶ CAFTA-DR (CL-1), Art. 10.28 (footnotes not included).

³⁸⁷ CAFTA-DR (CL-1), Art. 2.1.

³⁸⁸ CAFTA-DR (CL-1), Art. 10.28.

³⁸⁹ [REDACTED]

³⁹⁰ [REDACTED]

³⁹¹ CAFTA-DR (CL-1), Art. 10.16.1(b).

2. This Dispute Relates to the Paizes's "Investment" in Honduras, which Qualifies for Protection Under the Treaty

170. As previously explained, CAFTA-DR defines protected investments as: (i) assets that an investor owns or controls, directly or indirectly; and (ii) assets that possess the characteristics of an investment, such as the commitment of capital or other resources and the expectation of gain or profit.³⁹²

171. Each of these criteria is satisfied in this case. First, Pacific Solar, the Plant and the Agreements are assets that the Paizes indirectly own and control. Second, the Paizes's assets have the characteristics of an investment, such as substantial capital commitments in Honduras pursuant to the Agreements, with the expectation of gaining profits from the steady cash flows the PPA was designed to generate, further secured by the State Guarantee and the Operations Agreement. Thus, the Paizes's indirect participation in Pacific Solar, the Plant and the Agreements qualifies as an "investment" under the Treaty because it entitles them to benefit from the income or profits of these assets. Additionally, their investments include the capital committed to developing and operating the Plant, as well as meeting the obligations established by the Agreements.

3. This Dispute Also Relates to Pacific Solar's Investment Agreements

172. Article 10.28 of the Treaty defines an "investment agreement" as:

[A] written agreement that takes effect on or after the date of entry into force of this Agreement between a national authority of a Party and a covered investment or an investor of another Party that grants the covered investment or investor rights: (a) with respect to natural resources or other assets that a national authority controls; and (b) upon which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself.³⁹³

173. Under this definition, the following criteria must be met for an agreement to qualify as an "investment agreement:"

³⁹² CAFTA-DR (CL-1), Art. 10.28.

³⁹³ CAFTA-DR (CL-1), Art. 10.28.

- (1) **Written agreement**, meaning “an agreement in writing, executed by both parties, that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 10.22.2[;]”³⁹⁴
- (2) **Date of effect**. The agreement must take effect on or after the date of entry into force of the CAFTA-DR;
- (3) **Parties involved**. The agreement must be between a national authority of a Party and a covered investment or an investor of another Party. Article 10.28 defines “national authority” as “an authority at the central level of government[;]”³⁹⁵
- (4) **Rights granted**: The agreement must grant the covered investment or investor rights with respect to natural resources or other assets that the national authority controls; and
- (5) **Reliance for establishing or acquiring the investment**. The investor must rely on the agreement in establishing or acquiring a covered investment, beyond the agreement itself.

174. The PPA, the State Guarantee, and the Operations Agreement fall squarely within the definition of investment agreement contained in Article 10.28 of the Treaty.

175. **First**, the Agreements are written agreements under Article 10.28. Each of these Agreements create rights and obligations, binding on the parties under Honduran law, as the Agreements expressly confirm.³⁹⁶

176. **Second**, the Agreements took effect after the CAFTA-DR entered into force. As explained, the CAFTA-DR was signed on 5 August 2004 and entered into force in Guatemala on 1 July 2006 and in Honduras on 1 April 2006. The PPA, the State Guarantee, and the Operations Agreement all postdate 1 July 2006.³⁹⁷

³⁹⁴ CAFTA-DR (CL-1), Art. 10.28, n. 12. Article 10.22.2 (Governing Law) provides that “when a claim is submitted under Article 10.16.1(a)(i)(B) or (C), or Article 10.16.1(b)(i)(B) or (C), the tribunal shall apply: (a) the rules of law specified in the pertinent investment agreement or investment authorization, or as the disputing parties may otherwise agree; or (b) if the rules of law have not been specified or otherwise agreed: (i) the law of the respondent, including its rules on the conflict of laws; and (ii) such rules of international law as may be applicable.”

³⁹⁵ CAFTA-DR (CL-1), Art. 10.28, n. 13.

³⁹⁶ PPA (Exh. C-1), § 2, Cl. 18.2 (“This Agreement is binding on the Parties”); State Guarantee (Exh. C-2), Art. 1.2. (“[T]his Agreement constitutes a valid, binding and enforceable legal obligation”); Operations Agreement (Exh. C-3), Art. 10 (“The parties will carry out their duties and obligations contained in this agreement.”).

³⁹⁷ See PPA (Exh. C-1) (dated 16 Jan. 2014); State Guarantee (Exh. C-2) (dated 1 Oct. 2014); Operations Agreement (Exh. C-3) (dated 23 Feb. 2014).

177. **Third**, all the Agreements were executed by a national authority of a Party and the Paizes's covered investment, Pacific Solar.³⁹⁸ The national authorities that are parties to the Agreements include: (i) in the PPA, ENEE, which is controlled by the central level of the Government;³⁹⁹ (ii) in the State Guarantee, the Attorney's General Office, which represents the State pursuant to Art. 228 of the Honduran Constitution, and SEFIN, a ministerial department which is part of the central Government; and (iii) in the Operations Agreement, SERNA, a ministry of the central Government. Each of these entities must be deemed national authorities and thus satisfy the requirement of being a party to the "investment agreement" as defined in Article 10.28.

178. **Fourth**, the Agreements grant Pacific Solar rights with respect to natural resources and assets that Honduras controls. The Agreements grant Pacific Solar rights related to the generation and sale electricity to the State, an activity essentially controlled by the national authorities, from the connection to the grid⁴⁰⁰ to the granting of all the relevant licenses and permits to produce and sale electricity in Honduras.⁴⁰¹

179. **Fifth**, the Agreements were central for the Paizes to invest in Pacific Solar and for Pacific Solar to undertake the construction of a 50 MW PV plant. Therefore, as Claimants and Pacific Solar relied on the Agreements in establishing or acquiring the Plant the requirement of reliance for establishing or acquiring the investment is satisfied.

³⁹⁸ ENEE, which is a party to the PPA, is controlled by the Ministry of Energy; the State Guarantee was directly entered into by the Honduran State through the Attorney's General Office, which represents the State pursuant to Art. 228 of the Honduran Constitution and SEFIN, which is part of the central Government. The Operations Agreement was executed by SERNA, which is also a ministerial department of the central Government. The other party in all cases is Pacific Solar.

³⁹⁹ Law Creating Empresa Nacional de Energía Eléctrica (Decree 48-1957 dated 20 Feb. 1957), published in the Official Gazette dated 27 Feb 1957 (**Exh. C-6**), Art. 7 (noting that ENEE's management and governance "shall be vested in a Board of Directors," which in turn shall be composed of six officers, five of which are high-rank public servants, including three ministers: a) the Secretary of State in the Offices of Communications, Public Works, and Transportation; b) the Secretary of State in the Office of Natural Resources; c) the Secretary of State in the Offices of Finance and Public Credit; ch) the Executive Secretary of the Higher Council for Economic Planning; and d) the President of the Central Bank of Honduras. Further, under President Castro, the General Manager of ENEE (Erick Tejada) is also simultaneously serving as Minister of Energy. See, e.g., AHER, Report of Meeting between AHER's Board of Directors and ENEE's General Manager, Minister Tejada dated 14 July 2022 (**Exh. C-188**), at 3 (in which Minister Tejada, while serving in his role as General Manager of ENEE, speaks on behalf of the Government he is part of).

⁴⁰⁰ 1994 Electricity Law (Decree No. 158-94 published in the National Gazette on 26 Nov. 1994) dated 15 Nov. 1994 (**Exh. C-56**).

⁴⁰¹ See, e.g., 2014 Electric Power Industry Law (**Exh. C-8**), Art. 5.

4. Both the Paizes and Pacific Solar Waived Their Right to Initiate or Continue Proceedings Regarding Honduras's Breaches to the Treaty and the Investment Agreements

180. Pursuant to the Treaty's waiver requirement, the Paizes and Pacific Solar have waived their right to initiate or continue administrative or judicial proceedings seeking redress with respect to measures alleged to be a breach of the Treaty.⁴⁰² The Paizes's and Pacific Solar's written waivers have been submitted to Honduras together with the Notice of Arbitration.⁴⁰³

C. THE PAIZES HAVE COMPLIED WITH THE TREATY'S NOTICE AND TIMING REQUIREMENTS PRIOR TO SUBMITTING THEIR CLAIMS TO ARBITRATION

181. As established in the Notice of Arbitration, for a claimant to submit a claim to arbitration under the Treaty:

- At least "six months must have elapsed since the events giving rise to the claim;"⁴⁰⁴
- No "more than three years [may] have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant . . . has incurred loss or damage;"⁴⁰⁵
- "[T]he claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation;"⁴⁰⁶ and
- "At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ('notice of intent')." ⁴⁰⁷

182. The Paizes also satisfy these requirements:

- The events underlying the Paizes's claims arose more than six months prior to submitting the claims when Honduras enacted the New Energy Law in May 2022. Simultaneously, Honduras repudiated its obligations under the Agreements, while threatening to expropriate Pacific Solar's assets and press criminal charges if the company failed to continue supplying energy and capacity to the system.

⁴⁰² CAFTA-DR (CL-1), Art. 10.18.2(b).

⁴⁰³ CAFTA-DR (CL-1), Art. 10.18.2(b). Ms. Anabella Schloesser de Paiz's Waiver Pursuant to Article 10.18.2(b)(i) of the Treaty dated 22 Aug. 2023 (Exh. C-38); Mr. Fernando Paiz's Waiver Pursuant to Article 10.18.2(b)(i) of the Treaty dated 22 Aug. 2023 (Exh. C-37); Ms. Anabella Schloesser de Paiz's Waiver Pursuant to Article 10.18.2(b)(i) of the Treaty dated 22 Aug. 2023 (Exh. C-39).

⁴⁰⁴ CAFTA-DR (CL-1), Art. 10.16.3.

⁴⁰⁵ CAFTA-DR (CL-1), Art. 10.18.1.

⁴⁰⁶ CAFTA-DR (CL-1), Art. 10.15.

⁴⁰⁷ CAFTA-DR (CL-1), Art. 10.16.2.

- The events giving rise to the Paizes's claims arose within three years prior to the submission of the Notice of Arbitration. The breach of the Treaty by Honduras crystallized in May 2022, and the Notice of Arbitration was filed in August 2023, just a year and three months after Honduras's breach occurred.
- On several occasions, the Paizes invited Honduras to engage in good-faith negotiations.⁴⁰⁸ But, the Paizes's efforts to resolve the dispute through amicable discussions have been unfruitful.
- More than 90 calendar days had elapsed from the date the Paizes served the Notice of Intent to Honduras and the submission of the Notice of Arbitration.⁴⁰⁹

183. Thus, the Paizes met the aforementioned requirements.

D. THE JURISDICTIONAL REQUIREMENTS UNDER THE ICSID CONVENTION ARE ALSO SATISFIED

184. Article 25 of the ICSID Convention provides that ICSID has jurisdiction over: (i) legal disputes; (ii) arising directly out of an investment; (iii) between an ICSID Contracting State and a national of another Contracting State; and (iv) which the parties have consented in writing to submit to ICSID arbitration.

185. All of these requirements are met in this case:

- A legal dispute is a dispute that “concern[s] the existence or scope of a legal right or obligation, or the nature or extent of the reparation to be made for breach of a legal obligation.”⁴¹⁰ This is a legal dispute – that is, a difference of opinion as to law or fact – as it turns on the violation by Honduras of its obligations towards the Paizes and their investments, as set out in the Treaty, and the applicable rules and principles of international law.
- As established above, the Paizes made substantial investments in Honduras protected under the Treaty, including its ownership of 100% of interest in Pacific Solar and its commitment of capital in Honduras based on, *inter alia*, the Agreements and the 2013 Renewables Law.

⁴⁰⁸ Correspondence regarding the Notice of Intent (**Exh. C-12**).

⁴⁰⁹ See Treaty Letter to Honduras on 24 Mar. 2023 (**Exh. C-12**), while the Notice of Arbitration was filed on 24 Aug. 2023.

⁴¹⁰ *Gas Natural SDG, S.A. v. The Argentine Republic*, ICSID Case No. ARB/03/10, Decision of the Tribunal on Preliminary Questions on Jurisdiction dated 17 June 2005 (**CL-13**) ¶ 20; *see also The Abaclat and Others (formerly Giovanna a Beccara and Others) v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility dated 4 Aug. 2011 (**CL-14**) ¶ 255.

- Honduras and Guatemala were each ICSID contracting states by the date in which the Paizes claim was submitted to arbitration.⁴¹¹ As shown above, the Paizes are nationals from Guatemala.
- Both parties have consented to ICSID arbitration in writing. On 5 August 2004, Honduras and Guatemala signed the Treaty, which entered into force on 1 April 2006 and 1 July 2006, respectively.⁴¹² The Treaty remains in force today between Guatemala and Honduras. Pursuant to Article 10.17.1 of the Treaty, Honduras consented to arbitrate this dispute through ICSID arbitration: Honduras's consent, contained in Article 10.17.1 of the Treaty, together with the Paizes's written consent on their own behalf and on behalf of Pacific Solar through the Notice of Arbitration, in fulfilment of Article 10.16 and the Notice of Arbitration satisfy the requirement for written consent of the parties to a dispute for purposes of Article 25 of the ICSID Convention.

186. Accordingly, the Paizes are exercising their rights to hold Honduras accountable for breaching its obligations under the Treaty.

IV. HONDURAS VIOLATED ITS OBLIGATIONS UNDER THE TREATY

187. Honduras's actions breached its international law obligations under CAFTA-DR to Claimants and their investments in Honduras. As demonstrated below, the measures adopted by Honduras: (i) unlawfully expropriated Claimants' investments, in breach of Article 10.7; (ii) denied Claimants' investments fair and equitable treatment ("**FET**"), in breach of Article 10.5; and (iii) breached its commitments under the Agreements, including the PPA and State Guarantee, in further violation of the Treaty.

188. **First**, as explained in Section II, with the enactment of the 2022 New Energy Law, Honduras has essentially rendered its contractual relationship with Pacific Solar ineffective, as it stood under the Agreements. It is unilaterally imposing the "renegotiation" of the PPA and depriving Pacific Solar of the revenues it is entitled to under the Agreements, all under a threat of expropriation if Pacific Solar does not accept the "renegotiated" terms imposed by the State. The

⁴¹¹ Under Article 25(1) of the ICSID Convention, "Article 25(1) of the Convention provides that 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." See ICSID News Release, "*Honduras Denounces the ICSID Convention*" dated 29 Feb. 2024 (**Exh. C-166**).

⁴¹² Letter from the Secretary of Industry and Commerce of Honduras to the Secretary General of the Organization of American States declaring the entry into force of CAFTA-DR, dated 31 Mar. 2006 (**Exh. C-196**) ; Office of the United States Trade Representative, *Statement of USTR Susan C. Schwab Regarding Entry Into Force of the CAFTA-DR for Guatemala* dated 30 June 2006 (**Exh. C-214**).

Government has made it clear that its purpose is to lower Pacific Solar's revenues during the 14 years remaining under the Agreements and to no longer recognize significant parts of the outstanding receivables that have already accrued, while making Pacific Solar's financial situation untenable, impeding it from even paying principal on its project finance loans, and thus, destroying the value of Claimants' investments in Pacific Solar. Honduras's measures have, therefore, stripped Claimants of the reasonably expected economic benefits of their investments in a clear case of indirect expropriation and in breach of Article 10.7 of the Treaty.

189. **Second**, Honduras has behaved unfairly and inequitably towards Claimants' investments. Through a series of sovereign acts and pursuant to the 2022 New Energy Law, Honduras is essentially rendering the Agreements ineffective, including by no longer recognizing the State's payment obligations relating to the outstanding receivables and withholding compensation from Pacific Solar, its only source of revenue as ENEE is the sole purchaser of energy in the country, all while Pacific Solar's debt continues to mount. Honduras has also unilaterally-imposed a "renegotiation" of the PPA under threats of expropriation or State acquisition of the Plant. While the 2022 New Energy Law anticipates the payment of a "*justiprecio*" for the expropriation,⁴¹³ the Government has provided no transparency as to the appraisal process or the procedure that the State might follow, essentially leaving the State unfettered discretion to take over the Plant if Pacific Solar does not accept Honduras's terms for the "renegotiation" of the PPA. In fact, the Government expressed willingness to pay US\$ 80 million for a 51% stake in Pacific Solar after becoming current on its outstanding payments, but then failed to make an offer or create a process to buy the Plant. As explained in Section B, these measures are arbitrary and unreasonable, lack any rational policy goal, and result from State conduct harming Pacific Solar, having a disproportionate effect on the value of Claimants' investments in Pacific Solar and frustrating Claimants' legitimate expectations, all in breach of the Minimum Standard of Treatment, including the FET standard, under Article 10.5 of the Treaty.

190. **Third**, Honduras's acts and omissions constitute a flagrant breach of the PPA and the State Guarantee. Behaving towards Pacific Solar as if the Agreements did not exist, Honduras is not paying the remuneration to which Pacific Solar is entitled for the energy and capacity that the Plant delivered. Honduras has also curtailed the Plant's energy dispatch without providing

⁴¹³ New Energy Law (Exh. C-10), Art. 5.

proper compensation in breach of the PPA. Invoking the Most-Favored-Nation (“**MFN**”) clause (Article 10.4 of the Treaty), Claimants rely on the umbrella clauses under the Agreement Concerning the Promotion and Reciprocal Protection of Investments between the Swiss Confederation and the Republic of Honduras (“**Switzerland-Honduras BIT**”) and the Agreement Concerning the Promotion and Reciprocal Protection of Capital Investments between the Federal Republic of Germany and the Republic of Honduras (“**Germany-Honduras-BIT**”). As further explained in Section C, Honduras’s commitments under the Agreements squarely fall within the type of obligations or undertakings that the umbrella clauses under these BITs seek to protect.

191. **Fourth**, Claimants’ rights under the Agreements are protected as “Investment Agreements” under Article 10.28 of the Treaty and Article 10.16(1)(b)(i)(C) of the Treaty, conferring upon Claimants a right of action in this arbitration to claim for Honduras’s breaches of the Agreements, including the PPA and the State Guarantee. Honduras’s violations of the PPA are in direct breach of the State Guarantee from the Attorney General’s Office and the Secretariat of Finance, confirming that the State is jointly and severally liable for ENEE’s breach of its obligations under the PPA.

192. **Finally**, Honduras’s conduct is inconsistent with its international commitments on environmental protection. Under the Treaty, Honduras undertook to “protect and preserve the environment,”⁴¹⁴ and to “ensure that its laws and policies provide for and encourage high levels of environmental protection.”⁴¹⁵ By destroying the renewable energy investments it previously incentivized, Honduras is disregarding its international commitments to protect the environment, including under the Treaty. Rather than supporting the investments that foster the energy transition, Honduras is discriminating against renewable generators and favoring fossil fuel producers.

⁴¹⁴ CAFTA-DR (**CL-1**), Preamble (“P[rotect] and preserve the environment and enhance the means for doing so, including through the conservation of natural resources in their respective territories”). (Capitals and bold removed)

⁴¹⁵ CAFTA-DR (**CL-1**), Art. 17.1 (“Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall ensure that its laws and policies provide for and encourage high levels of environmental protection, and shall strive to continue to improve those laws and policies.”).

A. RESPONDENT UNLAWFULLY EXPROPRIATED CLAIMANTS' INVESTMENTS IN BREACH OF ARTICLE 10.7 OF THE TREATY

193. Honduras unlawfully expropriated Claimants' investments by rendering its contractual relationship with Pacific Solar ineffective, as it stood under the Agreements, depriving Claimants of the enjoyment of their investment and rendering their interest share in Pacific Solar worthless. In particular, by unilaterally imposing the "renegotiation" of the PPA and depriving Pacific Solar of the revenues it is entitled to under the Agreements, reaching unprecedented levels that make Pacific unable to even meet its financial commitments under its project finance loans; and by making it clear that its purpose is to lower Pacific Solar's revenues under the PPA and to no longer recognize significant parts of the outstanding receivables that have already accrued, Honduras has rendered Pacific Solar worthless and has destroyed Claimants' investments.

1. The Treaty Prohibits Direct and Indirect Expropriation Without Compensation

194. Honduras unlawfully expropriated Claimants' investments in breach of Article 10.7(1) of the Treaty, which provides, in its relevant part, as follows:

No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except:

- (a) for a public purpose;
- (b) in a non-discriminatory manner;
- (c) on payment of prompt, adequate, and effective compensation in accordance with paragraphs 2 through 4; and
- (d) in accordance with due process of law and Article 10.5.⁴¹⁶

195. Annex 10-C of the Treaty provides further elucidation, by explaining that a direct expropriation occurs "where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure."⁴¹⁷ With regard to an indirect expropriation,

⁴¹⁶ CAFTA-DR (CL-1), Art. 10.7.

⁴¹⁷ CAFTA-DR (CL-1), Annex 10-C: Expropriation ¶ 3.

the Annex confirms that such expropriations have an equivalent effect to a direct expropriation, and provides guidance for determining whether there has been an indirect expropriation:

4. The second situation addressed by Article 10.7.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by case, fact-based inquiry that considers, among other factors:

(i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and

(iii) the character of the government action.

(b) Except in rare circumstances, nondiscriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.⁴¹⁸

196. Article 10.7 of the Treaty protects qualifying investors and their investments from both a direct and indirect expropriation.⁴¹⁹ A direct expropriation involves an actual taking,⁴²⁰ while an indirect expropriation may, as explained in Annex 10-C of the Treaty, be the result of “an action or series of actions by a Party [that] has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.”⁴²¹ This is in line with the approach under customary

⁴¹⁸ CAFTA-DR (CL-1), Annex 10-C.

⁴¹⁹ CAFTA-DR (CL-1), Annex 10-C.

⁴²⁰ *Quiborax S.A. and Non Metallic Minerals S.A. v. Bolivia*, ICSID Case No. ARB/06/2, Award dated 16 Sept. 2015 (CL-76) ¶¶ 27, 228-231 (finding that the local subsidiary claimant’s investment was directly expropriated pursuant to a presidential decree, which required it to transfer its mining concessions to the State. And noting that the fact that the local subsidiary company remained intact—and continued to export minerals that had previously been extracted for three months after the decree was issued—did not change its conclusion because “[w]hat gave value to the investment were the concessions; without them, the investment was lost in its entirety.”).

⁴²¹ CAFTA-DR (CL-1), Annex 10-C, ¶4.

international law that an indirect expropriation may be effectuated via a State's actions or omissions and may involve one or several steps.⁴²² Tribunals have referred to an expropriation that is effected through a series of measures as a "creeping expropriation."⁴²³ Commentators further define such process as one which "notwithstanding that it may be aimed at other entirely legitimate regulatory objectives and does not involve a single instance of an outright taking, nonetheless has the effect, often degree-by-degree, of depriving an owner of fundamental rights of property."⁴²⁴

197. According to Annex 10-C of the Treaty, the determination of whether the investor suffered an expropriation "requires a case-by case, fact-based inquiry that considers, among other factors: (i) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred; (ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and (iii) the character of the government action".⁴²⁵

198. The **first factor** to be considered in the assessment of whether an expropriation occurred (the effect of the measures) has been the most important one for investment treaty

⁴²² See ILC's Articles on the Responsibility: *Responsibility of States for Internationally Wrongful Acts*, OFFICIAL RECORDS OF THE GENERAL ASSEMBLY, UN GAOR, 56th Sess., Supp. No. 10, UN Doc A/56/10 ("ILC ARTICLES ON STATE RESPONSIBILITY") (CL-79), Art. 2 ("There is an internationally wrongful act of a State when conduct consisting of an action or omission (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.") ; *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award dated 13 Sept. 2001 (CL-80) ¶¶ 604-605 (holding that "[t]he expropriation claim is sustained despite the fact that the [respondent] did not expropriate [the investment] by express measures of expropriation . . . it makes no difference whether the deprivation was caused by actions or by inactions").

⁴²³ See, e.g., *Siemens A.G. v. Argentina*, ICSID Case No. ARB/02/8, Award dated 6 Feb. 2007 (CL-66) ¶ 263 (explaining that "[b]y definition, creeping expropriation refers to a process, to steps that eventually have the effect of an expropriation. If the process stops before it reaches that point, then expropriation would not occur. This does not necessarily mean that no adverse effects would have occurred. Obviously, each step must have an adverse effect but by itself may not be significant or considered an illegal act. The last step in a creeping expropriation that tilts the balance is similar to the straw that breaks the camel's back. The preceding straws may not have had a perceptible effect but are part of the process that led to the break").

⁴²⁴ L. Yves Fortier and Stephen L. Drymer, *Indirect Expropriation in the Law of International Investment: I Know It When I See It, or Caveat Investor*, 19(2) ICSID REV. FOREIGN INV. L. J 293, 2004 (CL-81), at 294 ; see also Rudolf Dolzer & Christoph Schreuer, *PRINCIPLES OF INTERNATIONAL INVESTMENT LAW* 125 2 Ed., 98, 2012 (CL-82), at 125 (explaining that "an expropriation may occur 'outright or in stages.' Thus, the term 'creeping expropriation' describes a taking through a series of acts") (internal citations removed).

⁴²⁵ CAFTA-DR (CL-1), Annex 10-C, ¶4(a).

tribunals in determining whether a state expropriated the relevant investments.⁴²⁶ In sum, an expropriation occurs when the investor is substantially deprived, in whole or in significant part, of the use or the reasonably-to-be-expected economic benefit or value of the investment.⁴²⁷ The key criterion is, therefore, whether the investor has been substantially deprived of the economic benefits or use of the investment and the extent to which the investor's rights and expectations have been frustrated.⁴²⁸

199. An investment does not need to be rendered completely worthless to be considered expropriated under international investment law. For example, in *Eureko v. Poland*, the tribunal

⁴²⁶ See, e.g., *National Grid P.L.C. v. Argentina*, UNCITRAL, Award dated 3 Nov. 2008 (CL-83) ¶ 147 (explaining that “whether the party concerned had the intent to expropriate or to nationalize . . . is not a requirement” because “[t]he key words for the Contracting Parties are ‘effect equivalent to’” and [t]he measures’ effect needs to be tantamount to an expropriation or nationalization”); *Casinos Austria Int’l GmbH and Casinos Austria Aktiengesellschaft v. Argentina*, ICSID Case No. ARB/14/32, Decision on Jurisdiction dated 29 June 2018 (CL-84) ¶ 228 (explaining that “indirect expropriations can occur, *inter alia*, when host State measures, which directly affect assets of the company, substantially and permanently deprive the shareholder-investor of her investment in the shareholding in the company and effectively destroy the value of those shares. In such cases, shareholders can bring claims based on (indirect) expropriation of their shareholding in the host State”); *Compañía del Desarrollo de Santa Elena S.A. v. Costa Rica*, ICSID Case No. ARB/96/1, Final Award dated 17 Feb. 2000 (CL-91) ¶ 77 (finding that “[t]here is ample authority for the proposition that a property has been expropriated when the effect of the measures taken by the state has been to deprive the owner of the title, possession or access to the benefit and economic use of his property[.]”); *Crystallex Int’l Corp. v. Venezuela*, ICSID Case No. ARB(AF)/11/2, Award dated 4 Apr. 2016 (CL-92) ¶ 667 (recognizing that an expropriation can impact the “enjoyment or benefit of [an] investment”).

⁴²⁷ See, e.g., *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award dated 13 Sept. 2001 (CL-80) ¶ 604 (“De facto expropriations or indirect expropriations, i.e. measures that do not involve an overt taking but that effectively neutralize the benefit of the property of the foreign owner, are subject to expropriation claims.”); *Metalclad Corp. v. Mexico*, ICSID Case No. ARB(AF)/97/1, Award dated 30 Aug. 2000 (CL-7) ¶ 103 (partially set aside on other grounds) (explaining that an expropriation may include “not only open, deliberate and acknowledged takings of property, such as outright seizure or formal or obligatory transfer of title in favour of the host State, but also covert or incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use or reasonably-to-be-expected economic benefit of property even if not necessarily to the obvious benefit of the host State.”); *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award dated 29 May 2003 (CL-36) ¶¶ 116, 151 (“Therefore, it is understood that the measures adopted by a State, whether regulatory or not, are an indirect *de facto* expropriation if they are irreversible and permanent and if the assets or rights subject to such measure have been affected in such a way that “...any form of exploitation thereof...” has disappeared; i.e. the economic value of the use, enjoyment or disposition of the assets or rights affected by the administrative action or decision have been neutralized or destroyed. Under international law, the owner is also deprived of property where the use or enjoyment of benefits related thereto is exacted or interfered with to a similar extent, even where legal ownership over the assets in question is not affected, and so long as the deprivation is not temporary.”).

⁴²⁸ See *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award dated 29 May 2003 (CL-36) ¶¶ 122, 150 (finding that the revocation of an operating permit for a landfill amounted to indirect expropriation because the investor could no longer operate the landfill profitably, thereby frustrating its legitimate expectations and substantially depriving it of the investment's value). See also *Fireman's Fund Insurance Company v. United Mexican States*, ICSID Case No. ARB(AF)/02/01, Award dated 17 July 2006 (CL-124) ¶ 176(k) (“The investor's reasonable “investment-backed expectations” may be a relevant factor whether (indirect) expropriation has occurred”); *Glamis Gold, Ltd. v. The United States of America*, UNCITRAL, Final Award dated 8 June 2009 (CL-125) ¶ 356.

held that the lost opportunity to acquire additional shares in an investment, as provided for under an agreement, amounted to an expropriation—even where the investor at all times retained possession of its initial shares and continued to receive dividends on those shares.⁴²⁹

200. When a State exercises its sovereign power to, directly or indirectly, deprive an investor of the benefit of its contractual rights, such act may be tantamount to an indirect expropriation. For example:

- ***CME v. Czech Republic***. The tribunal found that an expropriation had occurred when the State “coerced [the] amendment of” a contract that formed the “legal basis” of the claimant’s investment.⁴³⁰ Even though the State “did not expropriate [the investment] by express measures of expropriation, the tribunal sustained the claim because the State’s actions were (i) “designed to force the foreign investor to contractually agree to the elimination of basic rights for the protection of its investment,” and (ii) supported the destruction of “the legal basis for the foreign investor’s business.”⁴³¹ In making this finding, the tribunal underscored how the “openly disclosed intention to harm the foreign investor” and the State’s “institution of administrative proceedings which sprung from the [State’s] own assessment of the events” coerced the claimant to sign “a worthless substitute” of its contract that simply “carri[ed] a similar name.”⁴³²
- ***Inmaris Perestroika v. Ukraine***. The tribunal held that the State’s actions amounted to an expropriation when the State’s actions resulted in the destruction of the value of the investors’ contractual rights.⁴³³ Because the State had “failed to follow any proper legal channels in seeking reformation of the contract,” the State’s “actions constituted a unilateral exercise of sovereign authority.”⁴³⁴ The tribunal

⁴²⁹ *Eureko B.V. v. Poland*, UNCITRAL, Partial Award dated 19 Aug. 2005 (CL-85) ¶¶ 239-243. See also *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentina*, ICSID Case No. ARB/97/3, Award dated 20 Aug. 2007 (CL-86) ¶¶ 7.5.26, 7.5.28-29, 7.5.33-34 (holding that State measures leading to a decline in the rate of recovery on a concession agreement from 90% to 20% “had a devastating effect on the economic viability of the concession,” and rendered its contractual rights “worthless” while the “losses would only continue to mount,” and as such, constituted an expropriation); *Tza Yap Shum v. Republic of Peru*, ICSID Case No. ARB/07/6, Award dated 7 July 2011 (CL-87) ¶¶ 161-162 (finding an expropriation where State measures had reduced the investor’s average earnings from 80 million Peruvian Soles to 3.4 million Soles, which the tribunal found eliminated or substantially frustrated the operative capacity of the company).

⁴³⁰ *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award dated 13 Sept. 2001 (CL-80) ¶¶ 593, 601, 607.

⁴³¹ *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award dated 13 Sept. 2001 (CL-5) ¶¶ 603, 604.

⁴³² *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award dated 13 Sept. 2001 (CL-5) ¶¶ 595, 600.

⁴³³ *Inmaris Perestroika Sailing Maritime Services GmbH and others v. Ukraine*, ICSID Case No. ARB/08/8, Award dated 1 Mar. 2012 (CL-88) ¶ 301.

⁴³⁴ *Inmaris Perestroika Sailing Maritime Services GmbH and others v. Ukraine*, ICSID Case No. ARB/08/8, Award dated 1 Mar. 2012 (CL-88) ¶ 282.

determined that the State's "act deprived [c]laimants of access to and control over [an] essential asset for its investment . . . and thus of [c]laimants' contractual rights to use that asset."⁴³⁵ Accordingly, the State's actions, at a minimum, amounted to an indirect expropriation.⁴³⁶

- ***Metalclad Corp. v. Mexico***. The tribunal found that the State had taken a measure tantamount to an expropriation when it permitted the denial of the investor's "right to operate [its investment], notwithstanding the fact that the project was fully approved and endorsed by the federal government."⁴³⁷ The tribunal determined that the State had "acted outside its authority" because "none of the reasons" for the denial of its right "included a reference to any problems associated with the" investment.⁴³⁸ Thus, the State's "measures, taken together with the representations of the . . . federal government, on which the [investor] relied, and the absence of a timely, orderly or substantive basis for the denial . . . amounted to an indirect expropriation."⁴³⁹

201. Moreover, State measures that render rights ineffective do not necessarily need to destroy the entire investment for them to amount to an expropriation if those rights constitute a fundamental part of the economic structure of the investment. For example, in *Ampal v. Egypt*, the tribunal found that a State's removal of an investment's benefits under local law (there, a tax free status) was an expropriation because it took "away a defined and valuable interest that had been validly conferred according to [domestic] law at the time that the investment was made and that had been guaranteed by the State for a defined period."⁴⁴⁰ In so finding, the tribunal observed "that the inclusion of [an investment] within the tax-free zone system in Egypt was a fundamental part of the economic structure of the investment, which the Respondent knew and accepted from the outset at the highest level of Government, and which it confirmed by the issue of the specific licence to [the investor], conferring tax-free status under the free zones system until 2025."⁴⁴¹

⁴³⁵ *Inmaris Perestroika Sailing Maritime Services GmbH and others v. Ukraine*, ICSID Case No. ARB/08/8, Award dated 1 Mar. 2012 (CL-88) ¶ 300.

⁴³⁶ *Inmaris Perestroika Sailing Maritime Services GmbH and others v. Ukraine*, ICSID Case No. ARB/08/8, Award dated 1 Mar. 2012 (CL-88) ¶ 301.

⁴³⁷ *Metalclad Corp. v. Mexico*, ICSID Case No. ARB(AF)/97/1, Award dated 30 Aug. 2000 (CL-5) ¶¶ 104, 106-107.

⁴³⁸ *Metalclad Corp. v. Mexico*, ICSID Case No. ARB(AF)/97/1, Award dated 30 Aug. 2000 (CL-5) ¶¶ 92, 106-107.

⁴³⁹ *Metalclad Corp. v. Mexico*, ICSID Case No. ARB(AF)/97/1, Award dated 30 Aug. 2000 (CL-5) ¶ 107.

⁴⁴⁰ *Ampal-American Israel Corp. et al. v. Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Losses dated 21 Feb. 2017 (CL-89) ¶ 183.

⁴⁴¹ *Ampal-American Israel Corp. et al. v. Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Losses dated 21 Feb. 2017 (CL-89) ¶ 182.

202. Tribunals have also found that a State's interference with contractual payment obligations, when done through the exercise of sovereign power, can constitute an expropriation. For example:

- *Deutsche Bank v. Sri Lanka*. The tribunal held that the State had expropriated rights to payment under a hedging agreement when the Supreme Court issued an order preventing the State oil company from complying with payment obligations under the agreement, and when the Central Bank sent a letter directing banks not to give effect to the agreement.⁴⁴²
- *Alpha v. Ukraine*. The tribunal held that the State had expropriated rights to payment under a contract for the renovation of a hotel after the State ordered the hotel to stop making payments to the investor.⁴⁴³

203. Both the formal revocation of a contractual right or a State measure that renders a contractual right ineffective can constitute an expropriation when it results in a substantial deprivation of the economic benefits or use of the investments. This was the case in *Vivendi v. Argentina*, where the Government engaged in measures similar to those of Honduras in the present case. The *Vivendi* tribunal found that “the actions taken by the provincial authorities against the concession . . . had a devastating effect on the economic viability of the concession” when “the tariffs were lowered as part of the interim agreement reached during the attempted renegotiations.”⁴⁴⁴ The tribunal thus found that the State's measures “taken cumulatively, rendered the concession valueless and forced [claimants] to incur unsustainable losses,”⁴⁴⁵ radically depriv[ing them] of the economic use and enjoyment of their concessionary rights,”⁴⁴⁶ which amounted to an indirect expropriation. The tribunal reasoned that the claimants “had every right to expect . . . that the State would not mount a wrongful and damaging campaign to force them, on threat of rescission, to abandon their contractual rights and renegotiate the concession

⁴⁴² *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, Award dated 31 Oct. 2012 (CL-20) ¶¶ 506, 520–521, 559.

⁴⁴³ *Alpha Projektholding GmbH v. Ukraine*, ICSID Case No. ARB/07/16, Award dated 8 Nov. 2010 (CL-52) ¶¶ 408–409, 411–412.

⁴⁴⁴ *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentina*, ICSID Case No. ARB/97/3, Award dated 20 Aug. 2007 (CL-86) ¶ 7.5.26.

⁴⁴⁵ *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentina*, ICSID Case No. ARB/97/3, Award dated 20 Aug. 2007 (CL-86) ¶ 7.5.28.

⁴⁴⁶ *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentina*, ICSID Case No. ARB/97/3, Award dated 20 Aug. 2007 (CL-86) ¶ 7.5.29.

based on lower tariffs.”⁴⁴⁷ The similarities with Honduras’s measures under the present case are evident.

204. The **second factor** to be considered pursuant to Annex 10-C is “the extent to which the government action interferes with distinct, reasonable investment-backed expectations.”⁴⁴⁸ Tribunals have relied on the legitimate expectations of investors in a number of cases involving indirect expropriation. In *Revere Copper v. OPIC*, the host State had given explicit contractual assurances, which the State departed from. The tribunal found:

We regard these principles as particularly applicable where the question is, as here, whether actions taken by a government contrary to and damaging to the economic interests of aliens are in conflict with undertakings and assurances given in good faith to such aliens as an inducement to their making the investments affected by the action.⁴⁴⁹

205. Similarly, in *Metalclad v. Mexico*, the investor had acted in reliance on assurances to the effect it had all the necessary permits. However, the project was frustrated by the municipality’s refusal to grant the construction permit. The tribunal focused on the legitimate expectations created by the government’s assurances in finding that Metalclad suffered an indirect expropriation.⁴⁵⁰

206. The **third factor** referred to in Annex C-10 is the “character of the government action,”⁴⁵¹ directing the Tribunal to consider the arbitrary and unreasonable nature of the measures adopted in the assessment of whether the Claimants suffered an expropriation.

⁴⁴⁷ *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentina*, ICSID Case No. ARB/97/3, Award dated 20 Aug. 2007 (**CL-86**) ¶ 7.5.27.

⁴⁴⁸ CAFTA-DR (**CL-1**), Annex 10-C, ¶4(a)(ii).

⁴⁴⁹ *Revere Copper and Brass, Inc v Overseas Private - Investment Corp.*, Award dated 24 Aug. 1978, 56 *International Law Reports* 258, (**CL-141**) at 1331.

⁴⁵⁰ *Metalclad Corp. v. Mexico*, ICSID Case No. ARB(AF)/97/1, Award dated 30 Aug. 2000 (**CL-5**) ¶107.

⁴⁵¹ CAFTA-DR (**CL-1**), Annex 10-C, ¶4(a)(iii).

2. Honduras Expropriated Claimants' Investments

207. Applying the above factors, Honduras's measures have resulted in an indirect expropriation of Claimants' investments in Pacific Solar, all under the threat of Honduras's direct taking of the Plant.

208. **First**, the effect of Honduras's measures has resulted in a substantial deprivation of Claimants' investments. With the enactment of the 2022 New Energy Law, Honduras has essentially rendered the Agreements ineffective, unilaterally imposing the "renegotiation" of the PPA, which seeks to effectively (i) lower the energy base price at which ENEE purchases electricity from the Plant; (ii) eliminate capacity payments; and (iii) repudiate the payment of significant parts of the outstanding receivables that have already accrued.

209. Honduras is arbitrarily withholding the amounts it owes to Pacific Solar under the PPA, which had a devastating knock-on effect on the economic viability of the project given that these payments are Pacific Solar's only source of revenue as ENEE is the sole purchaser of energy in the country. When the 2022 New Energy Law was enacted, the Government's debt to Pacific Solar has continued to grow. At present, ENEE owes Pacific more than [REDACTED].⁴⁵² While ENEE has made sporadic payments since, this amount continues to increase and have reached unprecedented levels. Well aware of the magnitude and impact of its outstanding debt on Pacific Solar, the Government has been intransigent,⁴⁵³ making clear that it is no longer recognizing parts of the existing debt.⁴⁵⁴ The 2022 New Energy Law instructed ENEE to **settle the historical debt owed to the generators only "for up to one year,"** in contrast to its prior commitments, and **only**

⁴⁵² Compass Lexecon ¶¶ 44-48.

⁴⁵³ See, e.g., Letter from the Government to Pacific Solar, No. ENEE-GG-1083-X-2022, dated 11 Oct. 2022 (**Exh. C-69**); AHER, Report of Meeting between COHEP's Energy Committee and ENEE's General Manager, Minister Tejada dated 7 Sept. 2022 (**Exh. C-189**), at 2-4 (noting that Minister Tejada affirmed to the Honduran Council of Private Enterprises (*Consejo Hondureño de la Empresa Privada*) ("**COHEP**"), of which generators like Pacific Solar are members, that **"no plant would be paid until the 28 plants have renegotiated [their contracts and that] these were the conditions for financing" payments**); AHPEE, Minutes of the Solar Generators Attending Meeting with the Government dated May 2022 (**Exh. C-57**), at 2 ("[While we] have available the lines of financing to obtain the funds [needed for payment] . . . **payment to the generators will be effected simultaneously with the renegotiations of the contracts.**"). See also ENEE, "*The State will pay once the ENEE's revenues and costs are balanced,*" X (FORMERLY TWITTER) dated 18 July 2022 (**Exh. C-160**).

⁴⁵⁴ See e.g., Minister Tejada, "*Renegotiations Have Saved the State US\$ 400 million,*" X (FORMERLY TWITTER) dated 7 May 2024 (**Exh. C-178**). See also ENEE, "*Completing the third round of renegotiations,*" FACEBOOK dated 2 June 2022 (**Exh. C-213**).

if the PPA is “renegotiated” or “terminated.”⁴⁵⁵ At the same time, the Government has publicly acknowledged that it is using the promise of payments to pressure generators to agree to the State’s imposed terms.⁴⁵⁶ The Government has explicitly expressed in its communications and “renegotiation” meetings with Pacific Solar that it was conditioning payments on Pacific Solar’s agreement to the Government’s proposed terms.⁴⁵⁷

210. With its actions, Honduras is in essence repudiating its payment obligations under the Agreements, depriving Claimants of their interests or benefits arising from their commitment of capital in Honduras.

211. Honduras’s measures had a devastating effect on Pacific Solar. Its viability hinges on the stability and predictability of the revenue streams generated by the Plant. [REDACTED] Pacific has “only been able to pay interest on [its] loans and ha[s] been unable to even reduce the principal” and “[d]ue to the change that the New Energy Law implicates, [Pacific Solar is] trying to restructure [its] loans to alleviate [its] precarious [financial] situation, but even with those attempts, we have been unable to finalize it because of ENEE’s erratic behavior as it relates to payments.”⁴⁵⁸

⁴⁵⁵ New Energy Law (**Exh. C-10**), Art. 16 (“**Article 16.- PAYMENT OF AMOUNT IN ARREARS.** The Government of the Republic is hereby authorized, **once the renegotiation or contractual relationship has been concluded** with the generators with whom it has delays of **up to one (1) year**, to proceed to reconcile arrears and to define feasible terms for payment through the National or International Financial System, starting with small and medium-sized generators.”).

⁴⁵⁶ See, e.g., Radio Interview with Minister Tejada acknowledging that promise of payments is key to unlocking renegotiations, RADIO CADENAS VOCES dated 28 Nov. 2022 (**Exh. C-232**), at 4:29-4:58 (“We have been clear, it has been a pivotal point to unlocking the renegotiations, that we are going to pay, above all, those who have renegotiated” their PPAs.). See also Radio Interview with Minister Tejada regarding the Government’s priority for payments, RADIOHN dated 17 Oct. 2022 (**Exh. C-231**), at 1:03-1:24 (“quoting Minister Tejada as stating that the Government would “**meet [its] debt with the generators with whom [it] has come to an agreement . . . the Government’s priority**”).

⁴⁵⁷ Letter from the Government to Pacific Solar, Oficio No. ENEE-GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**), at 2 (“**ENEE is committed to the total payment of the accumulated debt with [Pacific Solar] within sixty (60) to ninety (90) business days from the signing of a Memorandum of Understanding.**”). See also AHER, Report of Meeting between COHEP’s Energy Committee and ENEE’s General Manager, Minister Tejada dated 7 Sept. 2022 (**Exh. C-189**), at 2-4 (noting that Minister Tejada affirmed to the Honduran Council of Private Enterprises (*Consejo Hondureño de la Empresa Privada*) (“**COHEP**”), of which generators like Pacific Solar are members, that “**no plant would be paid until the 28 plants have renegotiated [their contracts and that] these were the conditions for financing**” payments); AHPEE, Minutes of the Solar Generators Attending Meeting with the Government dated May 2022 (**Exh. C-57**), at 2.

212. These measures have rendered Claimants' investment in Pacific Solar worthless. The fact that Claimants continue to hold their interest in Pacific Solar or that the PPA has not officially been terminated does nothing to alter the economic reality or the legal consequences that flow from Respondent's refusal to pay the debts owed to Pacific Solar and threats of expropriation. [REDACTED], Pacific Solar has "only been able to pay interest on [its] loans and ha[s] been unable to even reduce the principal" because of Respondent's actions.⁴⁵⁹

213. Moreover, Pacific Solar continues to be subject to the State's egregious conduct, which has effectively destroyed the value of Claimants' investments. Despite Pacific Solar's refusal to renounce its rights under the applicable Agreements and the Renewables Laws, the Government continues to neglect the payment of its increasing outstanding debts that have rendered the investment untenable.⁴⁶⁰

214. In sum, the Government's withholding of compensation and refusal to recognize the entirety of Pacific Solar's existing debt has resulted in the destruction of the value of Claimants' contractual rights given that Pacific Solar's only source of revenue are these payments as ENEE is the sole purchaser of energy in the country. Honduras has expropriated rights to payment by refusing to recognize the outstanding obligations that Pacific Solar is entitled to under the Agreements and ordering the withholding of payment until Pacific Solar agrees to the "renegotiated" terms set by the State.

215. **Second**, Honduras's measures are also in breach of Claimants' distinct, reasonable investment-backed expectations. Claimants had every right to expect that Honduras would honor its payment obligations under the Agreements. The economic rights that were directly granted to Pacific Solar under the Agreements were in line with the economic regime that was promised under the 2013 Renewables Law and formed a fundamental part of the economic structure of

⁴⁶⁰ [REDACTED]
See, e.g., Compass Lexecon ¶¶ 44, 48.

Claimants' investment.⁴⁶¹ The Agreements thus served as the "legal basis" for Claimants' investment.⁴⁶²

216. Honduras used its sovereign power to deprive Claimants of their benefit of Pacific Solar's contractual rights. Instead of seeking to modify the PPA by "written mutual agreement" as provided in Article 18.1 of the PPA as the exclusive manner of its modification,⁴⁶³ Honduras is forcing the "renegotiation" of the PPA through the 2022 New Energy Law and essentially rendering the Agreements ineffective. This abrogation of contractual commitments through the "unilateral exercise of sovereign authority"⁴⁶⁴ has resulted in the destruction of "the legal basis" for Claimants' investment.⁴⁶⁵ Further, as noted above, Honduras's measures have substantially deprived Claimants of the interests and benefits that it legitimately expected from its investments in Pacific Solar, including its reasonable-to-be expected remuneration in accordance with the Agreements.

217. **Third**, the very nature—or character—of the measures here also confirm that they are expropriatory. It is clear that Honduras's intent has at all times been to deprive Pacific Solar and other generators of their rights under the relevant agreements. Indeed, the Government's intentions are clear: to cripple Pacific Solar's rights under the Agreements.

218. Having already suffered an indirect expropriation of their investments, Claimants' investments in Pacific Solar remain under the threat of a direct expropriation. The 2022 New Energy Law allows the State to terminate the PPA and permits the State to acquire Pacific Solar's assets if the generator does not agree to renounce several of its rights.⁴⁶⁶ However, the Government's actions demonstrate a clear lack of intention to engage in good-faith negotiations

⁴⁶¹ See *Ampal-American Israel Corp. et al. v. Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Losses dated 21 Feb. 2017 (**CL-89**) ¶ 183.

⁴⁶² See *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award dated 13 Sept. 2001 (**CL-5**) ¶¶ 593, 601, 607.

⁴⁶³ PPA (**Exh. C-1**), § 18.1 ("*Este Contrato puede ser modificado solamente por acuerdo escrito entre las Partes, siempre y cuando se observe el procedimiento establecido en las Leyes Aplicables.*").

⁴⁶⁴ See *Inmaris Perestroika Sailing Maritime Services GmbH and others v. Ukraine*, ICSID Case No. ARB/08/8, Award dated 1 Mar. 2012 (**CL-88**) ¶ 282.

⁴⁶⁵ See *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award dated 13 Sept. 2001 (**CL-80**) ¶ 603.

⁴⁶⁶ New Energy Law (**Exh. C-10**), Art. 5.

with Pacific Solar, undermining the Agreements and legal framework that protect Claimants' rights.⁴⁶⁷

219. In fact, even when Pacific Solar expressed its willingness to explore selling the plant to the Government, the Government failed to take any action with respect to the offer it discussed in meetings.⁴⁶⁸ [REDACTED] during related discussions, "the Government rejected the possibility of acquiring the whole Plant" and "offered to pay US\$ 80 million for a 51% interest in the Plant if [Pacific Solar] continued to be the owner of the remaining 49% of the Plant and remained responsible for the operation and maintenance of the Plant."⁴⁶⁹ Yet, despite Pacific Solar's insistence on advancing these discussions, given the "unprecedented and untenable levels" of ENEE's debt and the unpredictability and insufficiency of ENEE's sporadic payments,⁴⁷⁰ the Government has failed to take "any concrete or serious steps" and the "discussions [have] never advanced."⁴⁷¹

220. To make matters worse, the Government threatened generators with criminal prosecution if, at any point during the "renegotiations" process, the generators do not deliver energy to ENEE—if the generators fail to "guarantee the full and uninterrupted sale of energy to ENEE"⁴⁷²—which demonstrates that Honduras's "renegotiation" of the PPA is not in good faith.⁴⁷³

221. In sum, the nature of Honduras's measures confirms that the Government's intentions have at all times been to deprive Pacific Solar of its rights under the Agreements. Honduras continues to benefit from the Plant without providing the agreed compensation under the PPA and forcing Pacific Solar to continue to supply energy and capacity to the electric system under the threat of criminal charges, while also curtailing it as it pleases without compensation. These measures are all carried out in parallel to a forced "renegotiation" of the PPA and under the

⁴⁶⁷ See *supra* § II.G.1.

⁴⁶⁹ [REDACTED]; Minutes of the Meeting between Pacific Solar, Ministry of Energy and ENEE dated 1 Feb. 2023 (**Exh. C-216**).

[REDACTED]
[REDACTED]

⁴⁷² New Energy Law (**Exh. C-10**), Art. 15.

⁴⁷³ New Energy Law (**Exh. C-10**), Art. 15. See also *Manager of ENEE to thermal generators: 'We are not going to negotiate with a gun to our head,'* LA TRIBUNA dated 28 Apr. 2022 (**Exh. C-199**).

threat of direct expropriation of the Plant. Collectively, these measures have already rendered Claimants' Pacific Solar worthless resulting in a substantial deprivation of Claimants' investments.

3. Honduras's Expropriation of Claimants' Investment Was Unlawful

222. Honduras not only expropriated Claimants' investments, but it did so unlawfully. As noted, an expropriation is lawful under Article 10.7(1) of the Treaty only if the expropriation: (i) serves a public purpose; (ii) is not discriminatory; (iii) is carried in accordance with due process of law and respecting the standard of treatment under Article 10.5; and (iv) is accompanied by prompt, adequate, and effective compensation.

223. **First**, Honduras's justifications for expropriating Claimants' investments are clearly pretextual and do not serve a public purpose. While investment treaty jurisprudence recognizes that a State is "free to judge for itself what it considers useful or necessary for the public good," it also acknowledges that a State's public purpose must be (i) "for" the purpose expressed by the State and (ii) "genuine" for it to lawfully justify an expropriation.⁴⁷⁴ For instance, in *Hulley Enterprises v. Russia*, the tribunal held that when the State enacted a series of tax-related measures that affected claimant's "valuable assets," the State's primary objective was to "appropriate" such assets, not to "collect taxes" as the State had purported before the tribunal as its "public purpose."⁴⁷⁵ In making that determination, the tribunal noted, among other facts, the State's (i) "attribution to [the enterprise] of the revenues earned . . . and refusal at the same time to give [the enterprise] any of the benefits;" (ii) "refusal of the tax authorities to give [the enterprise] the benefit of . . . the . . . Tax Code to resolve doubts . . . in favor of the taxpayer;" (iii) "campaign of harassment carried out by the . . . authorities;" and (iv) the enterprise's "repeated, reasonable attempts to settle its tax debt with the [State], all of which proved futile."⁴⁷⁶

⁴⁷⁴ *Nachingwea U.K. Limited (UK), Ntaka Nickel Holdings Limited (UK) and Nachingwea Nickel Limited (Tanzania) v. United Republic of Tanzania*, ICSID Case No. ARB/20/38, Award dated 14 July 2023 (CL-93), ¶¶ 273-280; *See also ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award dated 2 Oct. 2006 (CL-94) ¶¶ 222, 304, 429-433.

⁴⁷⁵ *Hulley Enterprises Limited (Cyprus) v. Russia*, PCA Case No. 2005-03/AA226, Final Award dated 18 July 2014 (CL-127) ¶¶ 756-59, 1579-1581 ("[T]he Tribunal has concluded that the primary objective of the Russian Federation was not to collect taxes but rather to bankrupt Yukos and appropriate its valuable assets.").

⁴⁷⁶ *Hulley Enterprises Limited (Cyprus) v. Russia*, PCA Case No. 2005-03/AA226, Final Award dated 18 July 2014 (CL-127) ¶¶ 756, 759.

224. Here, Honduras has sought to justify its arbitrary repudiation of its obligations under the Agreements on the grounds that the PPAs that the previous Government entered into with private generators, including Pacific Solar's, "harm the interests, particularly the economic interests, of the Honduran people," because the payment obligations under the PPAs would bring ENEE to "insolvency."⁴⁷⁷ Yet, at the same time, the Government acknowledges that there are other reasons for ENEE's financial troubles, including the increase in the price of fuels,⁴⁷⁸ and the high level of nonrecoverable losses that ENEE incurs due to "theft, illegal connections, and fraud" in the electrical system⁴⁷⁹—losses that the Government continues to fail to address.⁴⁸⁰ Instead, the Government blames private generators, including Pacific Solar, in an effort to abandon its commitments under the Agreements. Therefore, ENEE's financial situation is a problem that Honduras has created and thus, cannot serve as a valid, proportional or rational policy goal for the measures that Honduras has taken against Claimants' investments.

225. In fact, in the Government's Report on the 2022 New Energy Law, the Government admitted that the reason why it was seeking the "renegotiation" of the PPAs was because the generators had "sufficient profit margins to be able to allow for a reduction, while still maintaining profitable," and should therefore accede to the much lower prices set by the State.⁴⁸¹ As Minister Tejada stated before the Honduran Congress during the legislative debate of the 2022 New Energy Law: "it has never been proposed, as it is currently being proposed from this Government, the

⁴⁷⁷ See, e.g., New Energy Bill (**Exh. C-22**), Explanatory Statement, at 1.

⁴⁷⁸ See, e.g., New Energy Bill (**Exh. C-22**), Explanatory Statement, at 1.

⁴⁷⁹ See Minister Tejada, "Nontechnical Losses since September 2023," X (FORMERLY TWITTER) dated 10 Sept. 2024 (**Exhs. C-128-129**) (publishing video in which Minister Tejada recognizes that ENEE's losses were at 36.88% in 2023); Minister Tejada, "Update on Energy Reform," X (FORMERLY TWITTER) dated 23 Aug. 2024 (**Exhs. C-162-163**) (publishing video in which the ministry of Finances recognizes that ENEE's losses are approximately at 36%); SEFIN, Institutional Report for 2018 dated 2018 (**Exh. C-198**), at 31; SEFIN, Institutional Report for 2022 dated 2022 (**Exh. C-236**), at 46-47. See also "ENEE's losses have not fallen since September 2023, despite what Erick Tejada says" EL HERALDO dated 19 Jan. 2024 (**Exh. C-237**) (showing that the technical and nontechnical losses experienced by Honduras's electrical sector have continued to increase since President Castro took office in 2022, with the highest peak amounting to 39%); "State of the Union – The Electrical Subsector: The Worst Crisis of Blackouts in the Last Three Decades" dated 2024 (**Exh. C-169**), at 24 ("In 2023, the losses increased instead of decreased."); Revised SREP Investment Plan for Honduras dated Mar. 2017 (**Exh. C-145**), at 27 (noting that the "reduc[tion of] distribution losses . . . will allow ENEE to balance its books in 2018 helping the sector achieve financial sustainability[.]").

⁴⁸⁰ See Revised SREP Investment Plan for Honduras, dated March 2017 (**Exh. C-145**) at 11 (noting that in 2018, the SREP observed that the "reduc[tion of] distribution losses . . . will allow ENEE to balance its books . . . helping the sector achieve financial sustainability").

⁴⁸¹ Government of Honduras, Report Outlining the Government's Plan for Reforming the Electricity Sector Under the New Energy Law dated 15 July 2022 (**Exh. C-11**) at 6. ENEE, "The contracts that are targets of the State have enough profit margins," X (FORMERLY TWITTER) dated 18 July 2022 (**Exh. C-223**).

renegotiation of contracts that **will lower** the conditions of certain contracts of generation that are harmful to the public interest.”⁴⁸² By that, the Minister meant that Pacific Solar “**renounce**” payments for “the incentive of 10%,” and “capacity,” as expressed in direct communications with Pacific Solar.⁴⁸³ There is no legitimate public purpose behind Honduras’s repudiation of its commitments under the PPA other than the Government’s individual perception that generators have had “sufficient profit margins,”⁴⁸⁴ which is entirely arbitrary and unreasonable.

226. Like in *Hulley Enterprises v. Russia*, the State has also engaged in conduct that demonstrates that the State is “purporting” to put forth a policy that is a veil for the State’s true intention: the State’s repudiation of its obligations under the Agreements. For instance, throughout the “renegotiations” process, the Government has continued to publicly recognize that it has an outstanding debt to the generators, while boasting about its intent to refashion the generators’ rights and impose significant haircuts on its existing debt with them.⁴⁸⁵ This is despite the Government’s past behavior and acknowledgment by ENEE’s Legal Directorate that Pacific Solar was entitled to compensation pursuant to the Agreements.⁴⁸⁶ At the same time, the Government has subjected the generators to invasive, financial audits to “fully identify the culprits for the current disaster and looting of ENEE[,] and the destruction of the [electricity] subsector.”⁴⁸⁷ As the tribunal in *ADC Affiliate v. Hungary* held, “a treaty requirement for ‘public interest’ requires some genuine interest of the public”—“mere reference to ‘public interest’ can[not] magically put such interest into existence and therefore satisfy this requirement.”⁴⁸⁸ As such, Honduras’s expropriation measures cannot be considered to have been adopted for a legitimate public purpose as they are not “genuine” or “for” the purpose expressed by the State.

⁴⁸² Honduran Congress, Debate Regarding 2022 New Energy Law (**Exh. C-76**), at 2:08:15-2:08:53.

⁴⁸³ Letter from ENEE to Pacific Solar, No. ENEE-GG-1083-X-2022 (**Exh. C-69**).

⁴⁸⁴ Government of Honduras, Report Outlining the Government’s Plan for Reforming the Electricity Sector Under the New Energy Law dated 15 July 2022 (**Exh. C-11**) at 6. ENEE, “*The contracts that are targets of the State have enough profit margins*,” X (FORMERLY TWITTER) dated 18 July 2022 (**Exh. C-223**).

⁴⁸⁵ Specifically, when reporting on the third round of “renegotiations,” ENEE recognized that, to date, it owed an estimated US\$ 566 million to the generators. Yet, it bemoaned its commitment to comply with its payment obligations, noting how 70% of the income “that enters ENEE [is] destined to pay the generators”. See ENEE, “*Completing the third round of renegotiations*,” FACEBOOK dated 2 June 2022 (**Exh. C-213**).

⁴⁸⁶ See ENEE, Legal Opinion No. D.L. 106-6-2020 dated 30 Jun. 2020 (**Exh. C-126**), at 2, 4-6, 8.

⁴⁸⁷ New Energy Bill (**Exh. C-22**), Explanatory Statement, at 3.

⁴⁸⁸ *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award dated 2 Oct. 2006 (**CL-94**) ¶ 432.

227. **Second**, Honduras's expropriation of Claimants' investment was in breach of due process. Honduras's measures also depart from the standard of treatment under Article 10.5 of the Treaty, as explained below.

228. For an expropriation to be in accordance with due process, "an actual and substantive legal procedure" must be available for the investor to "raise claims against the depriving actions already taken or about to be taken against it."⁴⁸⁹ "Some basic legal mechanisms, such as reasonable advance notice . . . and an unbiased and impartial adjudicator to assess the actions in dispute, are expected to be readily available and accessible to the investor to make such legal procedure meaningful. In general, the legal procedure must . . . grant an affected investor a reasonable chance within a reasonable time to claim its legitimate rights and have its claims heard" for the State's actions to be in accordance with due process.⁴⁹⁰ That is not the case here. The New Energy Law provides no unbiased and impartial adjudicator to conduct the direct expropriation process. In fact, during discussions with the Government regarding a potential sale of the Plant, the Government simply referred to the Audit Commission, which the Government established to further its agenda.⁴⁹¹

229. The 2022 New Energy Law was approved in the early morning hours of 12 May 2022,⁴⁹² and within hours of approval, the Government summoned several generators to the Presidential Palace and handed them identical one-page "offers," which threatened key rights and sought to lower compensation owed to Pacific Solar under the PPA.⁴⁹³ Moreover, the "offer" provided no insight into the criteria behind its vague terms, notwithstanding the radical changes that it represented to the Plant's contractual and legal framework. The Government's subsequent

⁴⁸⁹ *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award dated 2 Oct. 2006 (**CL-94**) ¶ 435.

⁴⁹⁰ *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award dated 2 Oct. 2006 (**CL-94**) ¶ 435.

⁴⁹¹ Government of Honduras, Report Outlining the Government's Plan for Reforming the Electricity Sector Under the New Energy Law dated 15 July 2022 (**Exh. C-11**), at 6. *See also* ENEE, "The State creates the National Audit Commission," X (FORMERLY TWITTER) dated 20 July 2022 (**Exh. C-112**).

⁴⁹² Honduras's Congress, "New Energy Law Approved in its Totality," X (FORMERLY TWITTER) dated 12 May 2022 (**Exh. C-208**) (showing the tweet's time stamp as "2:57 A.M. 12 May 2022") ; "Through the Special Energy Law they promise to restructure ENEE and provide electricity to the entire population," CONTRACORRIENTE dated 2 June 2022 (**Exh. C-209**).

⁴⁹³ *See* Government's "Renegotiation" Offer dated 12 May 2022 (**Exh. C-23**).

“offers” have done the same.⁴⁹⁴ The Government’s conduct thereafter demonstrates that its “renegotiation” process has been nothing more than a veil for the Government to dismantle Pacific Solar’s rights under the Agreements.

230. **Third**, Honduras has not made any offers for prompt, adequate and effective compensation to Claimants for the expropriation of their investments, which, in itself, renders the expropriation of these investments unlawful under the Treaty.⁴⁹⁵ As a matter of fact, the Government’s attitude towards Pacific Solar has been the opposite of a promise to provide prompt, adequate, and effective compensation. The Government has made it clear that its purpose is to lower Pacific Solar’s revenues during the 14 years remaining under the Agreements⁴⁹⁶ and to no longer recognize significant parts of the outstanding receivables that have already accrued.⁴⁹⁷

231. As noted above, even if the 2022 New Energy Law provides for the concept of the “*justiprecio*” in case of direct expropriation, this term is not defined in the 2022 New Energy Law.⁴⁹⁸ And while Pacific Solar has been open to discussing the terms of the “*justiprecio*,” the Government refused to take any steps to advance discussion or take action relating to terms it proposed, as explained above.⁴⁹⁹ In this context, it is clear that Honduras has expropriated Claimants’ investments by substantially depriving Claimants and Pacific Solar of the benefits they

⁴⁹⁴ See, e.g., Letter from the Government to Pacific Solar, No. ENEE-GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**).

⁴⁹⁵ See e.g., *Bank Melli Iran and Bank Saderat Iran v. The Kingdom of Bahrain*, PCA Case No. 2017-25, Final Award dated 9 Nov. 2021 (**CL-126**) ¶¶ 695-696.

⁴⁹⁶ See, e.g., Government of Honduras, Report Outlining the Government’s Plan for Reforming the Electricity Sector Under the New Energy Law dated 15 July 2022 (**Exh. C-11**) at 2-3.

⁴⁹⁷ See New Energy Law (**Exh. C-10**), Art. 16.

⁴⁹⁸ See generally New Energy Law (**Exh. C-10**), Art. 5. See also Honduran Congress, Debate Regarding 2022 New Energy Law dated 11 May 2022 (**Exh. C-76**), at 4:35:08-4:38:45 (“If here, it is not determined who is going to define the *justiprecio*, it creates a nebula over those who have already invested or those who want to invest . . . The more competition there is, the better. If [the *justiprecio*] is not clear, it is likely that we scare away those who have already invested . . . and surely we will scare away those who want to invest, and that can lead us to a crisis because the issue of energy generation is definitely not easy, and it is likely that the State as such, after having spent so many years where private enterprises have generated energy, will not have the conditions in the short-term [to handle energy generation] . . . **we need that legal clarity**”).

⁴⁹⁹ See generally New Energy Law (**Exh. C-10**), Art. 5. See also Honduran Congress, Debate Regarding 2022 New Energy Law dated 11 May 2022 (**Exh. C-76**), at 4:35:08-4:38:45 (“If here, it is not determined who is going to define the *justiprecio*, it creates a nebula over those who have already invested or those who want to invest . . . The more competition there is, the better. If [the *justiprecio*] is not clear, it is likely that we scare away those who have already invested . . . and surely we will scare away those who want to invest, and that can lead us to a crisis because the issue of energy generation is definitely not easy, and it is likely that the State as such, after having spent so many years where private enterprises have generated energy, will not have the conditions in the short-term [to handle energy generation] . . . **we need that legal clarity**”).

expected from the Plant without any compensation. As Compass Lexecon explains, it cannot assign a value to the Plant in the “actual scenario.”⁵⁰⁰ If Honduras acquires Pacific Solar’s generation assets, the price paid should be deducted from Pacific Solar’s damages. But given the 2022 New Energy Law and related threats, whether Honduras will pay for Pacific Solar’s assets remains uncertain. Even more uncertain is whether Honduras’s “*justiprecio*” would reflect the true fair market value of the investor’s assets.

232. In sum, without the long-term, stable, and predictable revenue streams under the PPA and under the threat of expropriation of the Plant, Honduras has destroyed the value of Claimants’ investments in Pacific Solar. The expropriation is unlawful, in breach of Article 10.7 of the Treaty, as it did not serve a legitimate public purpose, departs from due process, is in breach of the standards of treatment under Article 10.5 of the Treaty and Honduras has not offered to Claimants the payment of a prompt, adequate and effective compensation.

B. RESPONDENT BREACHED THE MINIMUM STANDARD OF TREATMENT UNDER ARTICLE 10.5

233. As demonstrated below, by (i) reneging on the legal and contractual framework under the Agreements; (ii) engaging in arbitrary conduct towards Pacific Solar through the State’s repudiation of its payment obligations relating to the outstanding receivables and a unilaterally-imposed renegotiation of the PPA under threats of expropriation or State acquisition; (iii) failing to afford due process and transparency in the enactment of the 2022 New Energy Law and the purported “renegotiations” concerning the PPA; and (iv) engaging in hostile conduct towards solar generators during the legislative process to pass the 2022 New Energy Law, Honduras breached Article 10.5 of the Treaty.

⁵⁰⁰ Compass Lexecon ¶ 56.

1. Article 10.5 of the Treaty Prohibits States from Frustrating Investors' Legitimate Expectations and from Taking Arbitrary Measures Against Protected Investments

234. Article 10.5 of the Treaty obligates Honduras to provide covered investments, such as Pacific Solar, the customary international law minimum standard of treatment (“**MST**”), including FET.⁵⁰¹ Article 10.5 provides in full:

(1) Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

(2) For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of ‘fair and equitable treatment’ and ‘full protection and security’ do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) ‘fair and equitable treatment’ includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) ‘full protection and security’ requires each Party to provide the level of police protection required under customary international law.

(3) A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.⁵⁰²

235. Annex 10-B of the Treaty confirms that the MST extends “to all customary international law principles that protect the economic rights and interests of aliens.”⁵⁰³

236. Tribunals have acknowledged that the MST has evolved over time. As the tribunal in *Mondev v. United States* explained, “what is unfair or inequitable need not equate with the

⁵⁰¹ CAFTA-DR, Art. 10.5 (**CL-1**)

⁵⁰² CAFTA-DR (**CL-1**), Art. 10.5.

⁵⁰³ CAFTA-DR (**CL-1**), Annex 10-B; *see also* Vienna Convention on the Law of Treaties, Art. 31(1)-(2) (**CL-133**) (“1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes”).

outrageous or the egregious,” and “a State may treat foreign investment unfairly and inequitably without necessarily acting in bad faith.”⁵⁰⁴ Likewise, the *ADF v. United States* tribunal observed that “the customary international law referred to in [NAFTA’s MST/FET provision] is not ‘frozen in time’ and that the minimum standard of treatment does evolve,” such that the treaty at issue in that case, NAFTA, incorporates “customary international law ‘as it exists today.’”⁵⁰⁵

237. The *Waste Management v. Mexico II* tribunal observed more than 20 years ago that, “despite certain differences of emphasis a general standard for [FET] is emerging.”⁵⁰⁶ In that case, the tribunal interpreted the MST/FET provision in the NAFTA, which, read together with the Parties’ binding interpretation,⁵⁰⁷ is identical to the FET provision in the Treaty. Therefore, in interpreting Article 10.5 of the Treaty, the awards rendered in NAFTA investor-to-state arbitrations are relevant.

238. Pursuant to the customary international law minimum standard of treatment, as it has evolved over time and repeatedly been confirmed in investment treaty jurisprudence, a host State must (among other things) act in good faith, refrain from acting arbitrarily, provide a stable and secure legal and business environment, and respect an investor’s legitimate expectations that arise from conditions that the State offered to induce the investor’s investment.

⁵⁰⁴ *Mondev Int’l Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Final Award dated 11 Oct. 2002 (CL-9) ¶ 116.

⁵⁰⁵ *ADF Group Inc. v. United States of America*, ICSID Case No. ARB(AF)/00/1, Award dated 9 Jan. 2003 (CL-10) ¶ 179 ; see also *William Ralph Clayton and others v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability dated 17 Mar. 2015 (CL-11) ¶ 438 (“At the same time, the international minimum standard exists and has evolved in the direction of increased investor protection precisely because sovereign states—the same ones constrained by the standard—have chosen to accept it.”) ; *Chemtura Corp. v. Government of Canada*, PCA Case No. 2008-01, Award dated 2 Aug. 2010 (CL-12) ¶ 121 (observing that “the evolution of customary international law, [or the impact of BITs on [such] evolution” cannot be overlooked in determining the scope of MST) ; *Merrill & Ring Forestry L. P. v. Government of Canada*, ICSID Case No. UNCT/07/1, Award dated 31 Mar. 2010 (CL-110) ¶ 193 (noting “a shared view that customary international law has not been frozen in time and that it continues to evolve in accordance with the realities of the international community”) ; *Int’l Thunderbird Gaming Corp. v. United Mexican States*, UNCITRAL, Arbitral Award (English) dated 26 Jan. 2006 (CL-38) ¶ 194 (“The content of the minimum standard should not be rigidly interpreted and it should reflect evolving international customary law.”) ; *Pope & Talbot v. Canada*, Award in Respect of Damages dated 31 May 2002 (CL-130) ¶¶ 57-58 (“Canada considers that the principles of customary international law were frozen in amber at the time of the *Neer* decision. . . . The Tribunal rejects this static conception of customary international law.”).

⁵⁰⁶ *Waste Management Inc. v. United Mexican States (II)*, ICSID Case No. ARB(AF)/00/03, Award (CL-24) dated 30 Apr. 2004 ¶¶ 91-98.

⁵⁰⁷ See NAFTA Notes of Interpretation of Certain Chapter 11 Provisions NAFTA Free Trade Commission dated 31 July 2001 (CL-137).

239. Additionally, it is “[t]he record as a whole – not isolated events – [that] determines whether there has been a breach of international law.”⁵⁰⁸ Thus, tribunals have consistently held that a violation of the FET standard does not need to be based on a single unlawful act. Rather, a breach may also occur as part of a process extending over time and comprising “a succession or [an] accumulation of measures which, taken separately, would not [breach the FET standard] but, when viewed as a whole, do lead to that result.”⁵⁰⁹

240. Applying the principles set out above, Honduras has failed to meet its MST obligation under Article 10.5 of the Treaty, including the FET standard, through (a) a pattern of measures that are arbitrary or unreasonable; (b) a failure to respect procedural propriety or transparency with respect to Claimants’ investments; and (c) frustrating Claimants’ legitimate expectations.

2. Respondent’s Arbitrary and Unreasonable Measures Breach the Minimum Standard of Treatment

241. It is well-settled that the MST protects investors from arbitrary, grossly unfair, unjust or idiosyncratic and discriminatory conduct by the host State. In often-cited remarks that have established the contemporary minimum standard of treatment in the context of foreign investment, the *Waste Management v. Mexico* tribunal (NAFTA) stated:

Taken together, the *S.D. Myers*, *Mondev*, *ADF* and *Loewen* cases suggest that the minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the State and harmful to the claimant if

⁵⁰⁸ See *GAMI Investments, Inc. v. Mexico*, UNCITRAL, Final Award dated 15 Nov. 2004 (CL-27) ¶ 97 (referring to *Waste Management v. Mexico II*).

⁵⁰⁹ *El Paso Energy Int’l Co. v. Argentina*, ICSID Case No ARB/03/15, Award dated 31 Oct. 2011 (CL-19) ¶ 518 ; see also *Walter Bau AG v. Thailand*, UNCITRAL, Award dated 1 July 2009 (CL-28) ¶ 12.43 (“The Tribunal sees no reason why a breach of a FET obligation cannot be a series of cumulative acts and omissions. One of these may not on its own be enough, but taken together, they can constitute a breach of FET obligations.”) ; *OAO Tatneft v. Ukraine*, PCA Case No. 2008-8, Award dated 29 July 2014 (CL-29) ¶ 413 (“The aggregate of the events discussed can only be considered as amounting to arbitrariness and unreasonableness as far as the treatment of the Claimant’s rights are concerned.”) ; *Gold Reserve Inc v Venezuela*, ICSID Case No ARB(AF)/09/1, Award dated 22 Sept. 2014 (CL-30) ¶ 566 (“[E]ven if a measure or conduct by the State, taken in isolation, does not rise to the level of a breach of the FET, such a breach may result from a series of circumstances or a combination of measures.”) ; *Fleming Duty Free Shop Private Ltd. v Poland*, UNCITRAL, Award dated 12 Aug. 2016 (CL-31) ¶ 536 (“[A] succession of acts – whether or not individually significant – can build up to unfair and inequitable treatment.”) ; *Blusun SA, Jean-Pierre Lecorier & Michael Stein v Italy*, ICSID Case No ARB/14/3, Award dated 27 Dec. 2016 (CL-32) ¶ 362 (“A breach of an obligation to . . . ‘to accord at all times . . . fair and equitable treatment’ could be breached by a single transformative act aimed at an investment, or by a program of more minor measures, or by a series of measures taken without plan or coordination but having the prohibited effect.”).

the conduct is **arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice**, or involves a lack of due process leading to an outcome which offends judicial propriety. . . . In applying this standard it is relevant that the treatment is in breach of representations made by the host State which were reasonably relied on by the claimant.⁵¹⁰

242. The tribunal further elaborated that a “basic obligation of the State under [the MST/FET provision] is to act in good faith and form, and not deliberately to set out to destroy or frustrate the investment by improper means,”⁵¹¹ and noted that “[e]vidently the standard is to some extent a flexible one which must be adapted to the circumstances of each case.”⁵¹² While bad faith on the part of the State necessarily will establish a violation of the minimum standard of treatment, an investor need not demonstrate bad faith to engage the international responsibility of the State.⁵¹³

243. Since *Waste Management II*, numerous State Parties and tribunals, including those under CAFTA-DR, have endorsed this standard. The CAFTA-DR tribunal in *RDC v. Guatemala*, for example, held that “*Waste Management II* persuasively integrates the accumulated analysis of prior NAFTA tribunals and reflects a balanced description of the minimum standard of treatment.”⁵¹⁴ Similarly, the tribunal in *TECO v. Guatemala*, another case under CAFTA-DR, agreed with the *Waste Management* tribunal, confirming that the minimum standard of treatment under customary international law can be infringed “by conduct attributed to the State and harmful to the investor if the conduct is arbitrary, grossly unfair or idiosyncratic [or] is discriminatory.”⁵¹⁵ The *TECO* tribunal also emphasized:

[T]he minimum standard is part and parcel of the international principle of good faith. There is no doubt in the eyes of the Arbitral Tribunal that the **principle of good faith is part of customary international law** as established by Article 38.1(b) of the Statute of the International Court of Justice, and that a **lack of good faith on the part of the State or of one of**

⁵¹⁰ *Waste Management Inc. v. United Mexican States (II)*, ICSID Case No. ARB/AF/00/03, Award dated 30 Apr. 2004 (CL-24) ¶ 98.

⁵¹¹ *Id.* ¶ 138.

⁵¹² *Id.* ¶ 99.

⁵¹³ *Id.* ¶¶ 91-97.

⁵¹⁴ *Railroad Development Corp. v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award dated 29 June 2012 (CL-2) ¶ 219.

⁵¹⁵ *TECO Guatemala Hldgs., LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award dated 19 Dec. 2013 (CL-3) ¶¶ 454-455.

its organs should be taken into account in order to assess whether the minimum standard was breached.⁵¹⁶

244. In *Merrill & Ring v. Canada* (NAFTA), the tribunal observed that, even if there were no “stand-alone obligations” under NAFTA or international law regarding good faith and the prohibition of arbitrariness, “these concepts are to a large extent the expression of general principles of law and hence also a part of international law. . . . Good faith and the prohibition of arbitrariness are no doubt an expression of such general principles and no tribunal today could be asked to ignore these basic obligations of international law.”⁵¹⁷ The tribunal also noted that a “close connection” exists between these general principles of law and the “availability of a secure legal environment.”⁵¹⁸

245. The tribunal in *Merrill & Ring* further observed that a State must not only respect these general principles of law, but also must “provide[] for the fair and equitable treatment of alien investors within the confines of reasonableness.”⁵¹⁹ In reaching this conclusion, the tribunal looked to other NAFTA decisions and found a “trend towards liberalization of the standard applicable to the treatment of business, trade and investments” that has “continued unabated over several decades and has not yet stopped.”⁵²⁰ Taking note of prior decisions that found that a State could not engage in “[c]onduct which is unjust, arbitrary, unfair, discriminatory or in violation of due process,” the tribunal observed that “[a] requirement that aliens be treated fairly and equitably in relation to business, trade and investment is the outcome of this changing reality and as such it has become sufficiently part of widespread and consistent practice so as to demonstrate that it is reflected today in customary international law as *opinio juris*.”⁵²¹ The tribunal concluded that the

⁵¹⁶ *Id.* ¶ 456 (emphasis added).

⁵¹⁷ *Merrill & Ring Forestry L. P. v. Government of Canada*, ICSID Case No. UNCT/07/1, Award dated 31 Mar. 2010 (CL-110) ¶ 187 ; see also *Glamis Gold, Ltd. v. United States of America*, NAFTA/ UNCITRAL, Award dated 8 June 2009 (CL-125) ¶ 625 (concluding that “arbitrariness that contravenes the rule of law, rather than a rule of law, would occasion surprise not only from investors, but also from tribunals”) (emphasis omitted).

⁵¹⁸ *Merrill & Ring Forestry L. P. v. Government of Canada*, ICSID Case No. UNCT/07/1, Award dated 31 Mar. 2010 (CL-125) ¶ 187.

⁵¹⁹ *Id.* ¶ 213; see also *id.* ¶ 211 (finding that “fair and equitable treatment has become a part of customary law”).

⁵²⁰ *Id.* ¶ 207.

⁵²¹ *Id.* ¶¶ 208, 210.

applicable standard thus “protects against all such acts or behavior that might infringe a sense of fairness, equity and reasonableness.”⁵²²

246. Honduras’s arbitrary and unreasonable measures fall squarely within the type of conduct by a host State that the MST and the FET standard seek to protect.

247. **First**, Honduras engaged in arbitrary conduct towards Pacific Solar through the State’s repudiation of its payment obligations relating to the outstanding receivables and a unilaterally-imposed renegotiation of the PPA under threats of expropriation or State acquisition.

248. **Second**, Honduras arbitrarily held Pacific Solar hostage under the threat of expropriation, while forcing it to continue supplying electricity to ENEE under the PPA under conditions that render the project unviable.

249. **Third**, Honduras arbitrarily coerced Pacific Solar into the renegotiation process, engaging in conduct that is hostile towards the solar generators during the legislative process to pass the 2022 New Energy Law and thereafter, further disrupting the stability and predictability of the project’s business framework and severely affecting the value of Claimants’ investments in Pacific Solar.

250. **Fourth**, Honduras’s measures devastated Claimants’ investments in Pacific Solar, yet without any reasonable relationship to a rational policy goal and unfairly disregarding the harmful consequences imposed on foreign investors.

(a) **Honduras Arbitrarily Repudiated Its Payment Obligations with Pacific Solar and Forced the Renegotiation of the Agreements**

251. Arbitral tribunals have found that a State’s arbitrary repudiation or unilateral change of a contract with a foreign investor violates its FET obligation. The same applies to forced renegotiations of contracts, where the State uses its sovereign powers to impose new terms and conditions on contracts entered into with foreign investors.

252. In *Perenco v. Ecuador*, the tribunal found that investors could reasonably expect that the State will not unilaterally alter their contract structure except in accordance with the

⁵²² *Id.* ¶ 210.

contract's terms and State law.⁵²³ The tribunal in *Perenco* also found that the application of a decree, which purportedly was intended "to prompt re-negotiations" between the Ecuadorian government and an investor's oil company, amounted to a breach of FET because it "constituted an act of coercion . . . within the context of the parties' contractual relations."⁵²⁴

253. Similarly, in *PSEG v. Turkey*, the tribunal found that the Government's demands for the renegotiation of a contract went far beyond the requirements of the State's law because the Government's demands attempted to reopen aspects of the contract that were not at issue in that context, or even within the ministry's authority. Accordingly, the tribunal held that these demands were an "abuse of authority" and thus a breach of the FET standard.⁵²⁵

254. A State's unilateral change of an agreement with a foreign investor is also unfair and unequitable. In *Occidental v. Ecuador I*, the tribunal focused on the claimant's reimbursement rights over VAT payments under both applicable law and the investor's agreements with the government.⁵²⁶ Pursuant to this legal and contractual framework, the Ecuadorian tax authorities had reimbursed payments of VAT to the claimant for several years until the tax authority reinterpreted both the agreement and the tax law to (i) deny all further reimbursements and (ii)

⁵²³ See *Perenco Ecuador Ltd. v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Decision on Remaining Issues of Jurisdiction and on Liability dated 12 Sept. 2014 (**CL-67**) ¶ 564 (reasoning that a State, "particularly after changes in government occur, . . . must seek to act consistently with, and . . . cannot willfully repudiate, long-term commercial relationships with foreign investors concluded by their predecessors. New governments must bear in mind why the State engaged in such relationship in the first place, because . . . capital-intensive investments with substantial 'up-front' costs generally require a medium to long-term period of operations in order to be able to generate a reasonable return on investment. Such investments must be able to withstand deviations in government policy that could undermine [parties'] contractual framework.").

⁵²⁴ *Perenco Ecuador Ltd. v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Decision on Remaining Issues of Jurisdiction and on Liability dated 12 Sept. 2014 (**CL-67**) ¶¶ 402-411 (citing the following as reasons for finding a breach of the FET standard: (i) "the magnitude of the 'extraordinary revenues' claimed by the State" in the decree; (ii) "the demands made around the time of the decree's promulgation"; and (iii) that the decree's application "unilaterally converted [the agreements] while the State developed a new model of [agreements that] it demanded the claimant to sign," focusing, in particular, on how "[a]round the time of the [d]ecree's promulgation, the [new] Administration began to speak of converting [the agreements], which became "a major theme [for] the Administration[.]" and culminated in President Correa stating that the oil companies had but three choices under the decree: (i) to "comply with the payment of . . . the 'extraordinary income,'" (ii) to "renegotiate their . . . contracts by migrating to a [new] contract," or (iii) to "leave the country").

⁵²⁵ *PSEG Global Inc. and Konya Ilgin Elektrik Üretim ve Ticaret Limited Sirketi v. Republic of Turkey*, ICSID Case No. ARB/02/5, Award dated 19 Jan. 2007 (**CL-45**) ¶ 247.

⁵²⁶ *Occidental Exploration and Production Co. v. Ecuador (I)*, LCIA Case No. UN 3467, Award dated 1 July 2004 (**CL-26**).

require the return of prior reimbursements.⁵²⁷ The tribunal concluded that such reinterpretation constituted a FET violation because it amounted to a unilateral change in both the legal and contractual framework under which the investment had originally been made.⁵²⁸

255. The same arbitrary host State behavior described in *Occidental*, *PSEG* and *Perenco* can be found in the present case.

256. As explained above, in 2014, Honduras entered into long-term Agreements with Pacific Solar to encourage the investments it needed to increase its renewable energy power-generation capacity. Yet, from 2022 onwards, Honduras formally adopted a completely different attitude towards private generators, reneging on the legal and contractual framework under the Agreements, codifying the State's intent to repudiate its payment obligations relating to the outstanding receivables,⁵²⁹ and unilaterally imposing the "renegotiation" of the PPA under threats of expropriation or State acquisition.

257. With the enactment of the 2022 New Energy Law, Honduras arbitrarily mandated ENEE to "renegotiate" PPAs, including the PPA between ENEE and Pacific Solar. As a matter of fact, under the New Energy Law, the State, "through its prerogatives and powers, and for reasons of public interest," is authorized to unilaterally terminate, at its own liking, the PPAs and take over PV plants if the relevant generator does not accept the State's unilaterally-imposed "renegotiation" terms. And although the 2022 New Energy Law states that the State's acquisition is "subject to the payment of *justiprecio*,"⁵³⁰ the Government's statements reveal that the concept of a "*justiprecio*" in this context is a farce. Indeed, when Congressional representatives expressed concern over the term "*justiprecio*" not being defined in the 2022 New Energy Law and emphasized how such ambiguity "creates a nebula . . . over those who have already invested,"⁵³¹

⁵²⁷ *Occidental Exploration and Production Co. v. Ecuador (I)*, LCIA Case No. UN 3467, Award dated 1 July 2004 (CL-26) ¶¶ 1-3, 26, 32.

⁵²⁸ *Occidental Exploration and Production Co. v. Ecuador (I)*, LCIA Case No. UN 3467, Award dated 1 July 2004 (CL-26) ¶¶ 184, 187.

⁵²⁹ New Energy Law (Exh. C-10), Art. 16 (instructing ENEE to **settle the historical debt owed to the generators only "for up to one year,"** in contrast to its prior commitments, and **only once the PPA is "renegotiated" or "terminated."**).

⁵³⁰ New Energy Law (Exh. C-10), Art. 5.

⁵³¹ Honduran Congress, Debate Regarding 2022 New Energy Law (Exh. C-76), at 4:32:21-4:38:45 ("If here, it is not determined who is going to define the *justiprecio*, it creates a nebula over those who have already invested or those who want to invest . . . The more competition there is, the better. If [the *justiprecio*] is not clear, it is likely that we scare away those who have already invested . . . and surely we will scare away those who want to invest, and that

Minister Tejada confessed that the “*justiprecio*” was in reality a tool to be used to tilt the balance in favor of the State and put pressure on the generators to “renegotiate.”⁵³²

258. Moreover, when introducing the 2022 New Energy Law to the Honduran Congress, Minister Tejada made clear that 2022 New Energy Law was an affront on the generators' rights. Specifically, he described the 2022 New Energy Law as “put[ting] forth elements that had never been proposed before because there was no political will to do so after 12 years of living under the terrible cover of dictatorship.”⁵³³ He further clarified that legislation like the 2022 New Energy Law **“ha[d] never been proposed, as it [wa]s currently being proposed from this Government, the renegotiation of contracts that will lower the conditions of certain contracts of generation that are harmful to the public interest.”**⁵³⁴ By enacting the 2022 New Energy Law, the State intended for **“the old regime, the terrible night that [Honduras] lived, the dictatorship, [to] start[] to die,** and [for] the new . . . to be born . . . the new ENEE, the ENEE of Xiomara, the spreadhead for us to reform this country.”⁵³⁵

259. Only a few hours after the 2022 New Energy Law was introduced, the Government handed Pacific Solar a one-page “offer” in which the Government imposed, among other terms: (i) lowering the energy base price under the PPA by almost half; (ii) eliminating capacity payments; and (iii) eliminating the Renewables Incentives⁵³⁶—four days before the 2022 New Energy Law entered into force and authorized the expropriation of PV plants if the State deems that a “renegotiation” is not possible with a generator.⁵³⁷ The Government offered no insight into

can lead us to a crisis because the issue of energy generation is definitely not easy, and it is likely that the State as such, after having spent so many years where private enterprises have generated energy, will not have the conditions in the short-term [to handle energy generation] . . . **we need that legal clarity**”); *see also* “*Justiprecio*” *the word that shakes the private sector in the New Energy Law*, DINEROHN dated 14 May 2022 (**Exh. C-226**).

⁵³² Honduran Congress, Debate Regarding 2022 New Energy Law (**Exh. C-76**), at 4:32:21-4:38:45.

⁵³³ Honduran Congress, Debate Regarding 2022 New Energy Law (**Exh. C-76**), at 2:03:34-2:05:57.

⁵³⁴ Honduran Congress, Debate Regarding 2022 New Energy Law (**Exh. C-76**), at 2:03:34-2:05:57.

⁵³⁵ Honduran Congress, Debate Regarding 2022 New Energy Law (**Exh. C-76**), at 2:13:37-2:14:09. *See also* “*The scenario of legal certainty for renewable generators in Honduras worsens*,” ENERGÍA ESTRATÉGICA dated 12 May 2022 (**Exh. C-210**).

⁵³⁶ Government's “Renegotiation” Offer dated 12 May 2022 (**Exh. C-23**).

⁵³⁷ *See supra* § II.G.1.

the rationale behind the new terms it sought to impose on Pacific Solar through the 12 May 2022 “offer.”⁵³⁸

260. The Government’s conduct thereafter demonstrates that it will accept nothing other than terms that eliminate Pacific Solar’s key rights under the Agreements. Through a series of non-transparent meetings to “renegotiate” the PPA, Honduras further confirmed its intent to reduce generators’ revenues without any technical or legal basis.⁵³⁹ As contemporaneous statements on social media confirm, before the meetings discussing the “renegotiation” process had ended, the Government was already boasting that it “had already set the parameters **and prices** under which the renegotiations [with the private generators] would take place,”⁵⁴⁰ despite knowing that the most important concern to the generators was “the settlement of the debt” owed to them.⁵⁴¹ In parallel, the Government launched a public campaign against the generators, threatening to subject them to additional harmful measures, such as energy curtailments.⁵⁴²

261. Moreover, to add further pressure to the generators, the Government established a short deadline in the New Energy Law to finalize its “renegotiation,” giving itself the prerogative to terminate the contract and acquire the generator’s plant if “renegotiation” was not complete by that deadline.⁵⁴³ Pacific Solar nevertheless attempted to engage in good faith negotiations with the Government from the outset.

262. When the Government finally responded to Pacific Solar, it did so by doubling down on its resolve to unilaterally change Pacific Solar’s rights under the PPA. It demanded that Pacific Solar “**renounce**” payments for “the incentive of 10%,” and “capacity,” and restated its demand to lower the base price for energy to “0.11\$/kWh.”⁵⁴⁴ The Government conditioned its

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⁵³⁹ See *supra* § II.G.1; ■

⁵⁴⁰ ENEE, “*We Set the Parameters of the Renegotiations*,” X (FORMERLY TWITTER) dated 3 May 2022 (**Exh. C-206**).

⁵⁴¹ ENEE, “*The Important Issues in the Renegotiations*,” X (FORMERLY TWITTER) dated 3 May 2022 (**Exh. C-207**) (“For us, as a Government, the issue of prices is important, and for them (the generators), it is the issue of debt reconciliation . . .”).

⁵⁴² See Minister Erick Tejada, ENEE Press Release on Curtailments on Renewables, dated 8 July 2022 (**Exh. C-222**).

⁵⁴³ See New Energy Law (**Exh. C-10**), Art. 15.

⁵⁴⁴ Letter from ENEE to Pacific Solar, No. ENEE-GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**), at 2.

payments on Pacific Solar accepting the contract terms set by it,⁵⁴⁵ reminding Pacific Solar of its power to terminate the PPA and take over the Plant if an agreement cannot be reached between them.⁵⁴⁶

263. Pacific Solar has since continued to express its willingness to explore certain concessions for the PPA and reach an agreement with the Government, in light of the precarious situation in which the Government has put it in.⁵⁴⁷ In contrast, the Government has been intransigent and dismissive, arbitrarily moving its self-imposed deadlines to complete the “renegotiation” process, often informing the generators until after the lapse of such deadlines.⁵⁴⁸

264. By refusing to pay Pacific Solar as it is duly owed under the Agreements, the Government is cornering Pacific Solar into accepting the “renegotiated” terms put forth by it and placing it in a financially unviable situation.

(b) Honduras Arbitrarily Held Pacific Solar Hostage under the Threat of Expropriation, while Forcing It to Continue Supplying Electricity to ENEE under the PPA under Conditions that Render the Project Unviable

265. Tribunals have also found States’ conduct arbitrary and in breach of the FET standard when the State holds the investor hostage in the host State under the threat of expropriation, while forcing the investor to continue providing services under forced and unsustainable conditions.

266. For example, in *BBVA v. Bolivia*,⁵⁴⁹ the State adopted a policy of “recovery” of resources and entities that were considered as “strategic” by the State. In 1997, the State signed a contract with BBVA in which the State granted a license to claimant to operate as a pension fund

⁵⁴⁵ Letter from ENEE to Pacific Solar, No. ENEE-GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**), at 2.

⁵⁴⁶ Letter from ENEE to Pacific Solar, No. ENEE-GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**), at 1 (citing Article 5 of the 2022 New Energy Law, which provides the State with the power to terminate the power purchase agreements and acquire the generators’ plants in case no agreement can be reached between the Government and the generators).

⁵⁴⁷ [REDACTED] Letter from Pacific Solar to Minister Tejada (Ministry of Energy and ENEE) dated 4 July 2022 (**Exh. C-68**); Letter from Pacific Solar to ENEE dated 21 June 2022 (**Exh. C-65**).

⁵⁴⁸ See e.g., ENEE, “*The first phase of renegotiations is concluded*,” X (FORMERLY TWITTER) dated 19 July 2022 (**Exh. C-224**) (informing the generators that the “first phase” of renegotiations had concluded 4 days after the Government’s deadline to complete the “renegotiation” as outlined in the 2022 New Energy Law).

⁵⁴⁹ *Banco Bilbao Vizcaya Argentaria S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB(AF)/18/5, Award, 12 July 2022 (**CL-99**).

manager. Subsequently, however, the State nationalized the services of pension administration pursuant to the Bolivian Constitution of 2009 and a Pension Law of 2010. These provisions established that a Public Manager of Pensions would oversee pensions management. Moreover, the Pension Law provided for a transitional period until the Public Manager of Pensions began operations, where BBVA was legally bound to keep providing pension management services in Bolivia. This transition period lasted for years. The tribunal found that Bolivia's conduct was arbitrary or unreasonable, in breach of the FET standard, because the investor was held "hostage" within the Bolivian territory, given that BBVA continued to provide services while being impeded from managing its own investment and deprived of any certainty as to when the State would take over its investment.⁵⁵⁰

267. The *BBVA* tribunal relied on *Vivendi II*,⁵⁵¹ a case in which the investor held a 30-year water concession with the Argentine Province of Tucumán. The claimants in *Vivendi II* encountered fierce opposition from a new Government of Tucumán elected soon after the concession had been granted. As a result, the new legislature adopted a resolution that recommended the Governor to unilaterally impose a temporary tariff reduction on claimants. Furthermore, government officials called for non-payment of invoices for the services provided under the concession, which led to a steady decline in the concessionaire's payment of invoices. Various governmental agencies continuously exerted pressure on the concessionaire to reduce the tariffs that were agreed to in the concession agreement, culminating in the Government forcing the claimants to re-negotiate their agreement to lower the tariffs. After various failed attempts of renegotiation, the claimant terminated the contract but was forced by the provincial authorities to continue providing services. The tribunal concluded that the illegitimate campaign mounted by the Provincial Government against the concession, aimed either at reversing the concession or forcing the concessionaire to renegotiate, constituted numerous breaches of the FET obligation. According to the Tribunal, "[u]nder the fair and equitable standard, there is no doubt about a

⁵⁵⁰ *Banco Bilbao Vizcaya Argentaria S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB(AF)/18/5, Award, 12 July 2022 (CL-99) ¶¶ 555, 579 ("The Tribunal shares the characterization of 'hostage' that the Claimant has made regarding the current situation of its investment in the Respondent's territory... This translates into the fact that the AFPs have remained in a state of transition and uncertainty for a period of twelve years which, in the Tribunal's opinion, has no justification").

⁵⁵¹ *Banco Bilbao Vizcaya Argentaria S.A. v. Plurinational State of Bolivia*, ICSID Case No. ARB(AF)/18/5, Award, 12 July 2022 (CL-99) ¶ 581 (citing *Compañía de Aguas del Aconquija S.A. (formerly Aguas del Aconquija) and Vivendi Universal S.A. (formerly Compagnie Générale des Eaux) v. Argentine Republic (I)*, ICSID Case No. ARB/97/3, Award, 20 August 2007 (CL-86) ¶¶ 5.3.18, 7.4.45).

government's obligation not to disparage and undercut a concession (a 'do no harm' standard) that has properly been granted, albeit by a predecessor government, based on falsities and motivated by a desire to rescind or force a renegotiation. And that is exactly what happened in Tucumán.”⁵⁵²

268. It is therefore arbitrary and unreasonable, not only for a State to dismantle agreements that have been properly granted, but to further demand the investor to keep executing contractual obligations when the State has *de facto* or *de jure* repudiated its contractual obligations with the foreign investor.

269. In the present case, Honduras implemented the 2022 New Energy Law mandating the renegotiation of the PPAs while threatening the generators with criminal prosecution if during the “renegotiations” process they did not continue to supply energy to ENEE under the PPA. The Government made it abundantly clear that it did “not want to sit at the renegotiation table . . . with a gun to the head,” referring to the possibility that the generators would stop supplying energy during the “renegotiations” process.⁵⁵³ Like in *BBVA* and *Vivendi II*, Pacific Solar has been forced into a renegotiation of the PPA, under unilaterally-imposed terms it does not agree with, while also being forced to continue supplying electricity to ENEE.

270. As in *BBVA v. Bolivia*, Honduras's conduct has also left Pacific Solar operating under the threat of expropriation, without visibility as to the regime that will apply to it in the future, in an unstable and unpredictable framework. Honduras has, therefore, acted arbitrarily and unfairly towards Pacific Solar, in breach of the FET standard.

(c) Honduras Arbitrarily Coerced and Harassed Pacific Solar, Through Hostile Conduct

271. Coercion and harassment by the host State has also been found to be arbitrary and in breach of the FET standard. The type of impermissible harassment can adopt different forms, including: (i) the threat of and/or initiation of regulatory or criminal proceedings with the aim of

⁵⁵² *Compañía de Aguas del Aconquija S.A. (formerly Aguas del Aconquija) and Vivendi Universal S.A. (formerly Compagnie Générale des Eaux) v. Argentine Republic (I)*, ICSID Case No. ARB/97/3, Award, 20 August 2007 (CL-99) ¶¶7.4.19-46.

⁵⁵³ Honduran Congress, Debate Regarding 2022 New Energy Law dated 11 May 2022 (Exh. C-76), at 4:36:45-4:38:54.

applying pressure on the investor, or otherwise impairing the value of the protected investment;⁵⁵⁴ (ii) the issuing of burdensome and disproportionate demands for information and threats of criminal prosecution;⁵⁵⁵ or (iii) the exertion of undue pressure on the investor to renegotiate contracts.⁵⁵⁶

272. In the present case, the Government is engaging in acts that constitute coercion and harassment against generators, like Pacific Solar, who have yet to accede to the State's imposed terms. For example, the Government imposed its "renegotiations" once it had gained significant leverage over the generators, like Pacific Solar, hindering the payment of due compensation and placing generators in a financially precarious situation prior to its mandate. As noted above, ENEE currently owes Pacific more than [REDACTED].⁵⁵⁷ Honduras is arbitrarily using its sovereign powers and this debt, which it has escalated because of the New Energy Law, to put pressure on Pacific Solar in the forced "renegotiation" of the PPA, as Minister Tejada has expressed in multiple radio interviews with the public.⁵⁵⁸

273. Further, the Government has simultaneously pursued a public smear campaign against the generators. During the legislative process to pass the 2022 New Energy Law, it accused the generators of "harm[ing] the interests... of the Honduran people."⁵⁵⁹ It described PPAs, such

⁵⁵⁴ *Swisslion DOO Skopje v. The Former Yugoslav Republic of Macedonia*, ICSID Case No. ARB/09/16, Award, 6 July 2012 (CL-134) ¶¶ 298-300 ; *Krederi Ltd. v. Ukraine*, ICSID Case No. ARB/14/17, Award, 2 July 2018 (CL-135) ¶ 638.

⁵⁵⁵ *Pope & Talbot v. Government of Canada*, Ad Hoc Arbitration, Award in Respect of Damages, 31 May 2022 (CL-130) ¶ 68.

⁵⁵⁶ *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award dated 7 Feb. 2017 (CL-68) ¶¶ 172-174 ; *Compañía de Aguas del Aconquija S.A. (formerly Aguas del Aconquija) and Vivendi Universal S.A. (formerly Compagnie Générale des Eaux) v. Argentine Republic (I)*, ICSID Case No. ARB/97/3, Award, 20 August 2007 (CL-86) ¶¶ 7.4.19, 7.4.24, 7.4.31 ; *PSEG Global Inc. and Konya Ilgin Elektrik Üretim ve Ticaret Limited Sirketi v. Republic of Turkey*, ICSID Case No. ARB/02/5, Award of 19 Jan. 2007 (CL-45) ¶ 247.

⁵⁵⁷ Compass Lexecon ¶¶ 44-48.

⁵⁵⁸ Radio Interview with Minister Tejada acknowledging that promise of payments is key to unlocking renegotiations, RADIO CADENAS VOCES dated 28 Nov. 2022 (Exh. C-232), at 4:29-4:58 ("We have been clear, it has been a pivotal point to unlocking the renegotiations, that we are going to pay, above all, those who have renegotiated" their PPAs . . . We already have, we are arranging for, [an estimated US\$ 605 million] to pay the generators, and we hope that it will be before the end of the year, if it is not by the end of the year, it will be at the beginning of next year, that we will be paying, we are going to give priority, we must say it, to those who have reached an agreement, to those who have reached an agreement with us . . ."). See also Radio Interview with Minister Tejada regarding the Government's priority for payments, RADIOHN dated 17 Oct. 2022 (Exh. C-231), at 1:03-1:24 (quoting Minister Tejada as stating that the Government would "meet [its] debt with the generators with whom [it] has come to an agreement . . . the Government's priority").

⁵⁵⁹ New Energy Bill (Exh. C-22), Explanatory Statement, at 1.

as Pacific Solar's, as contracts that are "injurious to the public interest,"⁵⁶⁰ and declared those generators who refuse to accept its unilateral "offers" as "enemies of the nation."⁵⁶¹ The State also boasts about its power to take over the assets of the generators who have yet to "agree" to the State's "renegotiations."⁵⁶²

274. Moreover, the Government has abused its authority in subjecting the generators to penal measures. In accordance with the 2022 New Energy Law, the Government subjected the generators to invasive, financial audits to "fully identify those responsible for the current disaster and looting present in ENEE[,] and the destruction of the [electricity] subsector."⁵⁶³ The State went so far as to codify in the 2022 New Energy Law threats of criminal prosecution against the generators if at any point during the "renegotiations" process, the generators could not deliver energy to ENEE:

During the renegotiation process, generators shall ensure the whole and uninterrupted supply of energy to the National Company of Electrical Energy (ENEE), **otherwise the provisions of the Criminal Code and other special laws shall apply.**⁵⁶⁴

275. As Minister Tejada stated during the debate to approve the 2022 New Energy Law: "We do not want to sit at the renegotiation table, as we are already doing, with a gun to the head, so that the [generators] can threaten us."⁵⁶⁵ He added: "That is the spirit of Article[] . . . 5," the

⁵⁶⁰ ENEE, "*It's Impossible to Rescue ENEE Without Renegotiations*," X (FORMERLY TWITTER) dated 28 Apr. 2022 (**Exh. C-200**).

⁵⁶¹ ENEE, "*Not all generators are enemies of the nation*," X (FORMERLY TWITTER) dated 27 June 2022 (**Exh. C-219**) ("Not all generators are enemies of the nation, this week, we will be announcing some of the generators that are willing to lower the costs of their contracts.").

⁵⁶² *See Government Warns It Will Intervene and Acquire Power Plants*, PROCESO DIGITAL dated 13 June 2023 (**Exh. C-28**).

⁵⁶³ New Energy Bill (**Exh. C-22**), Explanatory Statement, at 3.

⁵⁶⁴ New Energy Law (**Exh. C-10**), Art. 15. *See also Manager of ENEE to thermal generators: 'We are not going to negotiate with a gun to our head,'* LA TRIBUNA dated 28 Apr. 2022 (**Exh. C-199**) (explaining that when a thermal plant warned ENEE that it may have to cease its generation of energy because ENEE's lack of payment presented problems in their purchase of bunker, which it needed to fuel the plant, Minister Tejada characterized this as the plant trying to renegotiate its contract with a gun to the Government's head.).

⁵⁶⁵ Honduran Congress, Debate Regarding 2022 New Energy Law dated 11 May 2022 (**Exh. C-76**), at 4:36:45-4:38:54.

State's right to expropriate if "renegotiation" is not possible with a generator in order to tilt the balance in favor of the State.⁵⁶⁶

276. The threatening provisions of the 2022 New Energy Law did not go unnoticed by generators, like Pacific Solar. As [REDACTED] explains, "[o]f particular impact to me at the time were the threat of expropriation, references to criminal charges if any generator stopped supplying electricity, and the creation of an audit commission comprised of several agencies with broad authority."⁵⁶⁷

277. Honduras's conduct demonstrates that the Government's purported "renegotiations" is nothing more than a non-transparent attempt to use its State powers to take away Pacific Solar's rights under the PPA.⁵⁶⁸

278. Like in *PSEG, Burlington*, and *Perenco*, Honduras's purported "renegotiations" represent an abuse of public authority that breaches the FET standard. Arbitrary, non-transparent, and coercive, the contractual "renegotiations" are not conducted "within the confines of the law and pursuant to a negotiated mutual agreement between the contractual partners."⁵⁶⁹ On the contrary, like in *SGS v. Paraguay*, Honduras's "renegotiations" constitute a "repudiation" of its contractual commitments towards Pacific Solar and a "frustration" of the "economic purpose" of the PPA resulting in the "deprivation" of Pacific Solar's rights under the contract.⁵⁷⁰ Accordingly, because Honduras's conduct has "altered" the "longer term outlook [of Claimants' investments] in such a way that there ends up being no outlook at all," Honduras's conduct is arbitrary and in breach of the FET standard.⁵⁷¹

⁵⁶⁶ Honduran Congress, Debate Regarding 2022 New Energy Law dated 11 May 2022 (**Exh. C-76**), at 4:36:45-4:38:54.

[REDACTED]

⁵⁶⁸ See *supra* § II.F.

⁵⁶⁹ *Murphy Exploration & Production Co. Int'l v. Ecuador II*, PCA Case No. 2012-16, Partial Final Award dated 6 May 2016 (**CL-21**) ¶ 273.

⁵⁷⁰ *SGS Société Générale de Surveillance S.A. v. Paraguay*, ICSID Case No. ARB/07/29 (**CL-65**), Decision on Jurisdiction dated 12 Feb. 2010 ¶¶ 145-146.

⁵⁷¹ See *PSEG Global Inc. et al., v. Turkey*, ICSID Case No. ARB/02/5, Award of 19 Jan. 2007 (**CL-45**) ¶ 254.

(d) Honduras's Measures Are Unreasonable or Arbitrary as There Is No Rational Policy Goal Behind Them

279. Honduras's measures are also profoundly unreasonable and, therefore, in breach of the FET standard. A determination of whether a State's conduct has been unreasonable requires a demonstration that the conduct "bears a reasonable relationship to some rational policy."⁵⁷² Thus, in order for Honduras to justify the measures at issue, it must identify a rational policy goal and show that the measures taken were reasonable, *i.e.*, reasonably correlated, or appropriately tailored, to addressing that policy goal with due regard for the consequences imposed on foreign investors such as Claimants.

280. There is simply no justification for the series of heavy-handed actions Honduras took on the basis of the Government's arbitrary and unilateral perception that its legal and contractual commitments with Pacific Solar "harm the interests . . . of the Honduran people,"⁵⁷³ blaming renewable energy generators for ENEE's "bankruptcy and insolvency" as a result of the debt owed to the generators.⁵⁷⁴ Put differently, Honduras's primary justification of the measures adopted against Pacific Solar is that they would be necessary to address ENEE's financial difficulties, making Honduras financially unable to meet its payment obligations under the PPA. Yet, ENEE's financial situation is a problem that Honduras created and aggravated⁵⁷⁵ and cannot

⁵⁷² *Saluka Investments BV (The Netherlands) v. Czech Republic*, UNCITRAL, Partial Award dated 17 Mar. 2006 (**CL-40**) ¶ 460.

⁵⁷³ See New Energy Bill (**Exh. C-22**), Explanatory Statement, at 1; ENEE, "*It's Impossible to Rescue ENEE Without Renegotiations*," X (FORMERLY TWITTER) dated 28 April 2022 (**Exh. C-200**).

⁵⁷⁴ New Energy Bill (**Exh. C-22**), Explanatory Statement, at 1.

⁵⁷⁵ The Government acknowledges that there are other reasons for ENEE's financial troubles, including the increase in the price of fuels, and the high level of nonrecoverable losses that ENEE suffers from due to "theft, illegal connections, and fraud" in the electrical system—losses that the Government continues to fail to address.⁵⁷⁵ See New Energy Bill (**Exh. C-22**), Explanatory Statement, at 1; Minister Tejada, "*Nontechnical Losses since September 2023*," X (FORMERLY TWITTER) dated 10 Sept. 2024 (**Exhs. C-128-129**) (publishing video in which Minister Tejada recognizes that ENEE's losses were at 36.88% in 2023); Minister Tejada, "*Update on Energy Reform*," X (FORMERLY TWITTER) dated 23 Aug. 2024 (**Exhs. C-162-163**) (publishing video in which the ministry of Finances recognizes that ENEE's losses are approximately at 36%). See also [REDACTED] ("the primary issue for ENEE is its technical and non-technical losses" and "[a]s such, lowering the price under the PPA would not result in lower costs of electricity."); *ENE's losses have not fallen since September 2023, despite what Erick Tejada says* EL HERALDO dated 19 Jan. 2024 (**Exh. C-237**) (showing that the technical and nontechnical losses experienced by Honduras's electrical sector have continued to increase since President Castro took office in 2022, with the highest peak amounting to 39%); Asociación para una Sociedad más Justa (ASJ), "*State of the Union – The Electrical Subsector: The Worst Crisis of Blackouts in the Last Three Decades*" dated 2024 (**Exh. C-169**), at 24 ("In 2023, the losses increased instead of decreased.").

serve as a valid and rational policy goal for the arbitrary measures Honduras adopted against Claimants' investments.

281. On this basis alone, Honduras's measures cannot be considered to be correlated to a rational policy goal. Honduras's actions are thus unreasonable and arbitrary.

3. Honduras's Lack of Transparency and Due Process in Rendering the Agreements Ineffective Violates the Minimum Standard of Treatment

282. Honduras's lack of transparency and candor in the process of rendering Pacific Solar's Agreements ineffective violates the MST obligation under Article 10.5 of the Treaty.

283. As the *Waste Management* tribunal reasoned, "tak[ing] together, the *S.D. Myers*, *Mondev*, *ADF* and *Loewen* cases . . . the minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the State and harmful to the claimant if the conduct . . . involves a lack of due process leading to an outcome which offends judicial propriety—as might be the case with a manifest failure of natural justice in judicial proceedings or a complete lack of transparency and candour in an administrative process."⁵⁷⁶ CAFTA-DR tribunals have essentially followed the same approach in determining the scope of the MST, finding that the standard is breached if the State measures "involve[] a lack of due process leading to an outcome which offends judicial propriety"⁵⁷⁷ or manifestly fails to respect procedural propriety."⁵⁷⁸

284. The New Energy Law was adopted without complying basic transparency standards. President Castro submitted the New Energy Bill for approval to Congress, in April 2022, without considering input from the sector, despite the implications of the New Energy Bill on the generators' PPA and corresponding rights.⁵⁷⁹ Instead, between the New Energy Bill's introduction and the Honduran Congress's approval of the 2022 New Energy Law, the Government invited the solar generators to one meeting at the Presidential Palace to discuss the

⁵⁷⁶ *Waste Management Inc. v. United Mexican States (II)*, NAFTA, ICSID Case No. ARB/AF/00/03, Award dated 30 Apr. 2004 (**CL-24**) ¶ 98 (emphasis added).

⁵⁷⁷ *TECO Guatemala Hldgs., LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Award dated 19 Dec. 2013 (**CL-3**) ¶¶ 454-455.

⁵⁷⁸ *The Lopez-Goyne Family Trust and others v. Republic of Nicaragua*, ICSID Case No. ARB/17/44, Award, 01 March 2023 (**CL-138**) ¶ 428(ii).

⁵⁷⁹ See AHPEE, Minutes of the Solar Generators Attending Meeting with the Government dated May 2022 (**Exh. C-57**), at 2.

“renegotiation” process.⁵⁸⁰ Publicly, Minister Tejada characterized this meeting as the start of a “renegotiation” process, even though the 2022 New Energy Law had not yet been approved or enacted,⁵⁸¹ illustrating the Government’s lack of transparency and process regarding the 2022 New Energy Law.

285. Furthermore, Honduras’s forced renegotiation of the PPA has also been opaque and obscure, leaving Pacific Solar in the dark as to the future regime that will apply to the Plant. It suffices to see the one-page “offer” by the Government, of 12 May 2022, to illustrate the lack of transparency that Pacific Solar and other generators face.⁵⁸² The Government offered no insight into the rationale behind the new terms it seeks to impose on generators. Moreover, Pacific Solar’s efforts to seek guidance from the Government regarding the “renegotiations” were in vain.⁵⁸³ Thereafter, the Government engaged in the forced renegotiation of the PPAs in parallel with public threats on how the Government intended to subject solar generators to additional harmful measures.⁵⁸⁴ Even for generators, like Pacific Solar, who are open to discussing the sale of the plant, the Government has refused to take any action regarding the process, the terms, and the price, even after discussing specific values with Pacific Solar.⁵⁸⁵

⁵⁸⁰ The Government hosted three separate meetings at the Presidential Palace – one for the solar generators, one for the hydro and wind generators, and one for the thermal generators – to discuss the “renegotiations” process. All meetings had a nearly identical agenda. See Press Secretary of Honduras, “*Call for Negotiations with Solar Generators*,” X (FORMERLY TWITTER) dated 2 May 2022 (**Exh. C-202**); ENEE, “*Start of Historic Negotiations*,” X (FORMERLY TWITTER) dated 2 May 2022 (**Exh. C-203**); ENEE, “*Call for Negotiations with Hydros and Wind Generators*,” X (FORMERLY TWITTER) dated 3 May 2022 (**Exh. C-204**); ENEE, “*Call for Negotiations with Thermal Generators*,” X (FORMERLY TWITTER) dated 4 May 2022 (**Exh. C-205**). The Government’s meeting with the solar generators took place on 2 May 2022. In attendance were the generators, including Pacific Solar, as well as various Cabinet members, such as the Secretary of SEFIN, Ministry of Economic Development, and Revenue Administration Service, Secretary of Energy, Renewable Resources, Environment and Mines, Ministry of Investment, and Minister Tejada in his capacity as the President of ENEE’s Board of Directors, Secretary of Energy, and General Manager of ENEE. AHPEE, Minutes of the Solar Generators Attending Meeting with the Government dated May 2022 (**Exh. C-57**), at 1.

⁵⁸¹ These negotiations meetings at the Presidential Palace took place from 2 May 2022 to 4 May 2022, more than a week before the New Energy Law was approved. See *Government and generators start dialogue over energy prices*, PROCESO DIGITAL dated 3 May 2022 (**Exh. C-201**). The New Energy Law did not enter into force until 16 May 2022. New Energy Law (**Exh. C-10**), Art. 21.

⁵⁸² See Government’s “Renegotiation” Offer dated 12 May 2022 (**Exh. C-23**)



⁵⁸⁴ See Minister Erick Tejada, ENEE Press Release on Curtailments on Renewables dated 8 July 2022 (**Exh. C-222**).



286. In sum, Honduras's lack of transparency and candor in the process of introducing the 2022 New Energy Law and applying it to Pacific Solar, together with Honduras's opaque and obscure forced renegotiation of the PPA, violates the MST.

4. Respondent Frustrated Claimants' Legitimate Expectations and Failed to Provide a Secure Legal Environment for Pacific Solar

287. In the present case, the main legal question on legitimate expectations is simple: does the MST under Article 10.5 of the Treaty permit Honduras to induce foreign investment through direct Agreements with Pacific Solar, and then ignore the specific commitments under those Agreements once Claimants made their investments in Pacific Solar in reliance upon them? The answer to that question is unequivocally "no."

288. Tribunals deciding cases under NAFTA and CAFTA-DR have found that a breach of an investor's legitimate expectations must be considered in the assessment of whether the host State breached the MST, including the FET standard. The Preambles of both CAFTA-DR and NAFTA state that one of the purposes of these treaties is to establish "clear . . . rules" and "ensure a predictable commercial framework for business planning and investment."⁵⁸⁶

289. In *Thunderbird v. Mexico*, the tribunal found that "the concept of 'legitimate expectations' relates . . . to a situation where a Contracting Party's conduct creates reasonable and justifiable expectations on the part of an investor (or investment) to act in reliance on said conduct, such that a failure by the NAFTA Party to honour those expectations could cause the investor (or investment) to suffer damages."⁵⁸⁷ Based on the facts of that case, a majority of the tribunal concluded that the investor did not have any legitimate expectations and that Mexico thus was not liable.⁵⁸⁸ Writing separately, Professor Wälde observed that while "'legitimate expectation' is not explicitly mentioned" in the NAFTA or other investment treaties, it is "part of the 'good faith' principle which is a guiding principle (also a principle of international law) for applying the 'fair and equitable treatment' standard in Art. 1105, a standard that is repeated, more or less identically, in most of the other over 2500 investment treaties in force at present."⁵⁸⁹ Although he disagreed

⁵⁸⁶ CAFTA-DR (CL-1), Preamble; NAFTA (CL-139) Preamble.

⁵⁸⁷ *Int'l Thunderbird Gaming Corp. v. Mexico*, UNCITRAL, Award dated 26 Jan. 2006 (CL-38) ¶ 147.

⁵⁸⁸ *Int'l Thunderbird Gaming Corp. v. Mexico*, UNCITRAL, Award dated 26 Jan. 2006 (CL-38) ¶ 166.

⁵⁸⁹ *International Thunderbird Gaming Corp. v. The United Mexican States*, Separate Opinion of Thomas Walde dated Dec. 2005 (CL-140) ¶ 25 (further observing that both parties and the tribunal "assume the existence of such a

with the disposition of the case, Professor Wälde thus concurred with the majority that “the principle of legitimate expectation forms part, i.e. a subcategory, of the duty to afford fair and equitable treatment under Art. 1105 of the NAFTA.”⁵⁹⁰

290. Similarly, in *Merrill & Ring v. Canada*, the tribunal observed that “any investor will have an expectation that its business may be conducted in a normal framework free of interference from government regulations which are not underpinned by appropriate public policy objectives.”⁵⁹¹ This is why the concept of legitimate expectations is, at the very least, relevant to the assessment of whether the conduct of a host State towards an investor was arbitrary and unfair or unjust. In this regard, the *Waste Management II* tribunal held that “in applying [the minimum] standard [of treatment] it is relevant that the treatment is in breach of representations made by the host State which were reasonably relied on by the claimant.”⁵⁹²

291. In the specific context of CAFTA-DR, the *RDC v. Guatemala* tribunal found that the relevant measures adopted by Guatemala, “taken together[,] demonstrate the arbitrary, grossly unfair, and unjust nature” of the measures “in breach of representations made by Guatemala upon which Claimant reasonably relied.”⁵⁹³ Further, the tribunal in *Lopez-Goyne v. Nicaragua* was even more explicit in finding that the MST “protects the investor’s legitimate expectations that are reasonable and objective in light of the circumstances and the State’s conduct.”⁵⁹⁴

292. Therefore, either as a stand-alone element in determining Honduras’s breach of the MST, or as a factor that the Tribunal should take into account in determining the arbitrary nature

standard under Art. 1105,” and “can, correctly, rely on the recognition of ‘good faith’ principle – either as a separate obligation or . . . as a major interpretative principle that is applied ancillary to a principal obligation (such as ‘fair and equitable treatment’).

⁵⁹⁰ *Id.*

⁵⁹¹ *Merrill & Ring Forestry L. P. v. Government of Canada*, ICSID Case No. UNCT/07/1, Award dated 31 Mar. 2010 (CL-110) ¶ 233.

⁵⁹² *Waste Management Inc. v. United Mexican States (II)*, ICSID Case No. ARB/AF/00/03, Award dated 30 Apr. 2004 (CL-24) ¶ 98 (emphasis added). See also *BG Group v. Argentina*, Final Award dated 24 Dec. 2007 (CL-33) ¶¶ 294, 296, 298 (citing to *Waste Management II* as a point of departure that is “particularly fitting” for tribunals that are under obligations similar to those outlined in NAFTA when analyzing the FET standard).

⁵⁹³ *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award dated 29 June 2012 (CL-2) ¶ 235.

⁵⁹⁴ *The Lopez-Goyne Family Trust and others v. Republic of Nicaragua*, ICSID Case No. ARB/17/44, Award dated 1 Mar. 2023 (CL-138) ¶ 428(iii).

of Honduras's measures, Honduras's breach of Claimants' legitimate expectations violates Article 10.5 of the Treaty.

293. Moreover, the MST undeniably protects an investor's legitimate expectations that a host State will respect the contractual obligations that it has entered into with the investor in a sovereign capacity. As the *Mondev v. United States* tribunal explained, "a governmental prerogative to violate investment contracts would appear to be inconsistent with the principles embodied in Article 1105 and with contemporary standards of national and international law concerning governmental liability for contractual performance."⁵⁹⁵

294. Directly linked to the protection of legitimate expectations is the host State's obligation, also under the MST, to provide "a secure legal environment."⁵⁹⁶ This is of particular importance in the energy sector where, as in the present case, a substantial amount of capital is required at the outset of the project to generate returns in the long-term, accounting for project finance obligations. Therefore, for energy investments to be made in the first place, investors must have confidence that there will be a stable and predictable legal and contractual framework. This is the reason why tribunals have found that "that FET is not accorded when after an investment is executed and costs are sunk, conditions that formed the basis for an investment are not kept stable to a certain degree, or when an investment is not treated in a stable and consistent manner to a sufficient degree, or when it turns out that a host State was insufficiently transparent about the true conditions for an investment."⁵⁹⁷

295. Investment treaty jurisprudence establishes a three-step approach to determine whether a host State has breached the FET standard by frustrating an investor's legitimate

⁵⁹⁵ *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award dated 11 Oct. 2002 (CL-9) ¶ 134. See also *Waste Management Inc. v. Mexico (II)*, ICSID Case No. ARB/AF/00/03, Award dated 30 Apr. 2004 (CL-24) ¶ 115 (holding that "an outright and unjustified repudiation of the transaction" may constitute a breach of the FET obligation where there is no "remedy [] open to the [investor] to address the problem").

⁵⁹⁶ *Merrill & Ring Forestry L. P. v. Government of Canada*, ICSID Case No. UNCT/07/1, Award dated 31 Mar. 2010 (CL-110) ¶ 187.

⁵⁹⁷ *ACF Renewable Energy Limited v. Republic of Bulgaria*, ICSID Case No. ARB/18/1, Award dated 5 Jan. 2024 (CL-46) ¶ 1726. See also *Total S.A. v. Argentina*, ICSID Case No. ARB/04/01, Decision on Liability dated 27 Dec. 2010 (CL-57) ¶¶ 326-333 (holding the State breached the FET standard when it took actions that had a "negative impact" on claimant's investment and were "incompatib[le] with the criteria of economic rationality, public interest, reasonableness and proportionality"—actions that included, among others, imposing on claimant a price that was significantly lower than the price originally in place at the time of investment and subsequently adopting a program that renumeralated new electricity producers at a higher price than the one it imposed on claimant).

expectations: (a) whether the host State induced the investments by creating legitimate expectations on the part of the investor; (b) whether the investor reasonably relied on the host State's representations when deciding to invest; and (c) whether the host State subsequently failed to honor the expectations it created.⁵⁹⁸ Each of those elements is satisfied in this case.

(a) Honduras Induced Claimants' Investments by Creating Legitimate Expectations Over the Economic Regime Applicable to the Plant

296. The instruments giving rise to legitimate expectations can take many different forms, such as promises, guarantees, commitments or assurances, and can be derived from statutory sources,⁵⁹⁹ general legislation or regulations,⁶⁰⁰ repeated statements from the State,⁶⁰¹ specific undertakings between the concerned investor and the State,⁶⁰² the general investment context,⁶⁰³ or the State's other conduct.⁶⁰⁴

⁵⁹⁸ *Int'l Thunderbird Gaming Corp. v. Mexico*, UNCITRAL, Award dated 26 Jan. 2006 (CL-38) ¶ 147 ; *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Government of Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum dated 22 May 2012 (CL-47) ¶ 52 (“[I]n determining whether the [FET] standard has been violated it will be a relevant factor if the treatment is made against the background of (i) clear and explicit representations made by or attributable to the NAFTA host State in order to induce the investment, and (ii) were, by reference to an objective standard, reasonably relied on by the investor, and (iii) were subsequently repudiated by the NAFTA host State.”) . *Mohammad Ammar Al-Bahloul v. Republic of Tajikistan*, SCC Case No. V064/2008, Partial Award on Jurisdiction and Liability dated 2 Sept. 2009 (CL-48) ¶ 200 (“To establish a failure to meet legitimate expectations, several factors must be demonstrated - the nature of the expectation, the reliance on the expectation and the legitimacy of that reliance.”) . *Waste Management Inc. v. Mexico (II)*, ICSID Case No. ARB/AF/00/03, Award dated 30 Apr. 2004 (CL-24) ¶ 98 ; RUDOLPH DOLZER, FAIR AND EQUITABLE TREATMENT: TODAY'S CONTOURS, 12 SANTA CLARA JOURNAL OF INTERNATIONAL LAW 7 DATED 17 JAN. 2014 (CL-49), at 20 (“In the light of the arbitral jurisprudence, the details of the current state of the law will be summarized by way of five components, the existence of which determines whether the FET standard will protect the expectations of the investor in a given case: - The objective conduct of the host state inducing legitimate expectations on the part of the foreign investor; - reliance on that conduct on the part of the foreign investors; - frustration of investor's expectation by subsequent conduct of the host state; - unilateralism of conduct of the host state, i.e., absence of meaningful communication and/or consent with investors; and - damages for the investor.”).

⁵⁹⁹ *Enron Co. and Ponderosa Assets L.P. v. Argentina*, ICSID Case No. ARB/01/3, Award dated 22 May 2007 (CL-55) ¶ 265 ; *LG&E Energy Corp., LG&E Capital Corp., and LG&E Int'l, Inc. v. Argentina*, ICSID Case No. ARB/02/1, Decision on Liability dated 3 Oct. 2006 (CL-44) ¶¶ 130-133.

⁶⁰⁰ *Mathias Kruck et al v. Spain*, ICSID Case No. ARB/15/23, Decision on Jurisdiction, Liability and Principles of Quantum dated 14 Sept. 2022 (CL-56) ¶¶ 189-192.

⁶⁰¹ *El Paso Energy Int'l Co. v Argentina*, ICSID Case No ARB/03/15, Award dated 31 Oct. 2011 (CL-19) ¶ 377.

⁶⁰² *Total S.A. v. Argentina*, ICSID Case No. ARB/04/01, Decision on Liability dated 27 Dec. 2010 (CL-57) ¶¶ 119, 120.

⁶⁰³ *Micula v. Romania*, ICSID Case No. ARB/05/20, Award dated 11 Dec. 2013 (CL-51) ¶¶ 691 *et seq.*

⁶⁰⁴ *Novenergia II - Energy & Environment (SCA) (Grand Duchy of Luxembourg), SICAR v. Spain*, SCC Case No. 2015/063, Final Award dated 15 Feb. 2018 (CL-58) ¶ 651.

297. The most fundamental element of this principle is whether the expectation can be qualified as “legitimate,” that is, whether the investor was entitled to rely on that expectation because it was generated by acts or declarations of the State, but there is no rule as to how that expectation must be generated. It is irrelevant whether the State intended to give rise to legitimate expectations.⁶⁰⁵

298. The large number of awards rendered in claims brought against Spain under the Energy Charter Treaty (“ECT”) are illustrative of the instruments that can give rise to legitimate expectations under international law. In these cases, Spain sought to become a world leader in renewable energy, putting in place a regulatory regime to induce investment in renewable energy projects. Royal Decree No. 661/2007 of 25 May 2007 was part of that Special Regime, which provided for different economic incentives for qualifying projects, including a feed-in tariff applicable to the entire operational life of the plants. RD 661/2007 attracted a large number of foreign investors into the Spanish renewable energy sector. Despite Spain’s representations under RD 661/2007, in 2012, Spain began to scale back the regime and, in July 2013, Spain repealed RD 661/2007, prompting dozens of investment claims against Spain under the ECT. As of today, most tribunals have found that RD 661/2007 was a source of legitimate expectations protected under the ECT⁶⁰⁶ and Spain’s withdrawal of the regime was in breach of the FET standard under the ECT.⁶⁰⁷

⁶⁰⁵ As the *Micula I* tribunal found: “There must be a promise, assurance or representation attributable to a competent organ or representative of the state, which may be explicit or implicit. The crucial point is whether the state, through statements or conduct, has contributed to the creation of a reasonable expectation, in this case, a representation of regulatory stability. It is irrelevant whether the state in fact wished to commit itself; it is sufficient that it acted in a manner that would reasonably be understood to create such an appearance.” See *Micula v. Romania*, ICSID Case No. ARB/05/20, Award dated 11 Dec. 2013 (CL-51) ¶ 669. See also *Foresight Luxembourg Solar 1 S.A.R.L., Foresight Luxembourg Solar 2 S.A.R.L., Greentech Energy Systems A/S, GWM Renewable Energy I SPA, GWM Renewable Energy II SPA v Kingdom of Spain*, SCC Arbitration V (2015/150), Award dated 14 Nov. 2018 (CL-34) ¶ 353. *Novenergia II - Energy & Environment (SCA) (Grand Duchy of Luxembourg), SICAR v. Spain*, SCC Case No. 2015/063, Final Award dated 15 Feb. 2018 (CL-58) ¶ 652.

⁶⁰⁶ See e.g., *Triodos SICAV II v. Spain*, SCC Case No. 2017/194, Final Award dated 24 Oct. 2022 (CL-59) ¶¶ 672-674; *InfraRed Environmental Infrastructure GP Ltd. et al., v. Spain*, ICSID Case No. ARB/14/12, Award dated 2 Aug. 2019 (CL-60) ¶ 453.

⁶⁰⁷ See *Antin Infrastructure Services Luxembourg s.à.r.l. and Antin Energia Termosolar B.V. v. Kingdom of Spain*, ICSID Case No. ARB/13/31, Award, 15 June 2018 (CL-61) ¶ 552, where the tribunal considered that “given the precision and detail exhibited in the royal decrees, particularly the contemplation that the treatment would be accorded for a defined period of time, the Tribunal has no difficulty in concluding that this falls squarely into the type of State conduct that was intended to, and did, give rise to legitimate expectations”. See also *Mathias Kruck and others v. Kingdom of Spain*, ICSID Case No. ARB/15/23, Decision on Jurisdiction, Liability and Principles of Quantum dated 14 Sept. 2022 (CL-56); *Masdar Solar & Wind Cooperatief U.A. v. The Kingdom of Spain*, ICSID

299. Honduras's commitments towards Pacific Solar are substantially similar to those made by Spain towards renewable energy producers under RD 661/2007, albeit in stronger terms as Honduras's commitments were expressly endorsed under direct agreements with the generators. Claimants' legitimate expectations regarding the continued application of the economic regime under the PPA were further reinforced by the signing of the State Guarantee in October 2014, wherein Honduras expressly provided that it is jointly and severally liable to Pacific Solar for ENEE's obligations under the PPA.⁶⁰⁸ Under the State Guarantee, Honduras expressly confirmed that the purpose was to "reassure that ENEE would fulfill its obligations"⁶⁰⁹ and would "provide certainty as to the fulfillment of ENEE's . . . obligations" under the PPA.⁶¹⁰

300. Honduras was thus well aware of the importance of the stability and predictability of the legal and contractual framework for Pacific Solar under the PPA to attract the investments that were necessary to develop the Plant. Indeed, the 2013 Renewables Law itself explicitly sought to incentivize "the interest of financial development and international cooperation institutions" that "finance power generation projects with renewable resources and whose purpose is to promote the sustainable socio-economic development of the countries to which the cooperation is directed," explicitly referring to "the Export-Import Bank of the United States (Ex-Im Bank), the International Financial Corporation (IFC) of the World Bank Group, [and] the European Development Finance Institutions (EDFI) . . . which are **the K[f]W of Germany, the FMO of Netherlands, FINNFUND of Finland and the OeEB of Austria.**"⁶¹¹ Among these were Pacific Solar's own lenders,⁶¹² DEG, which is part of the KfW Group,⁶¹³ and FMO.⁶¹⁴

Case No. ARB/14/1, Award, 16 May 2018 (**CL-43**) ¶ 505 ; *Watkins Spain S.À.R.L., Watkins (Ned) B.V. and others v. The Kingdom of Spain*, ICSID Case No. ARB/15/44, Award, 21 January 2020 (**CL-62**) ¶¶ 526-527 . *See also* *9REN Holding S.À.R.L. v. The Kingdom of Spain*, ICSID Case No. ARB/15/15, Award, 31 May 2019 (**CL-63**) ¶ 295, 297.

⁶⁰⁸ State Guarantee (**Exh. C-2**) . Pursuant to the 2007 Renewables Law, renewable energy generators who signed a PPA with ENEE were granted the right to request a State Guarantee from Honduras to ensure that the obligations under the PPA would be fulfilled. *See* 2007 Renewables Law (**Exh. C-4**), Art. 4 ("Los proyectos de generación de energía renovable que suscriban un Contrato de Suministro de Energía Eléctrica con la ENEE, tendrán derecho a celebrar con la Procuraduría General de la Republica un Acuerdo de Apoyo para el Cumplimiento del Contrato con el Estado de Honduras.").

⁶⁰⁹ State Guarantee (**Exh. C-2**) ; PPA (**Exh. C-1**), Annex X, Recitals.

⁶¹⁰ State Guarantee (**Exh. C-2**); PPA (**Exh. C-1**), Annex X, Art. 4.2

⁶¹¹ 2013 Renewables Law (**Exh. C-5**), A.3, Tenth Recital.

⁶¹² FMO, Pacific Solar Energy S.A. de C.V. Project Page (**Exh. C-71**) (last accessed on 13 Sept. 2024).

⁶¹³ KfW DEG, About Us Page (**Exh. C-48**) (last accessed in Sep. 2023).

⁶¹⁴ FMO, About FMO Page, available at <https://www.fmo.nl/profile> (**Exh. C-52**).

301. Naturally, investment treaty tribunals have considered that the expectations properly arising from underlying agreements at issue, such as contracts constituting direct promises by the State, are reliable expressions of intent upon which an investor may reasonably rely.⁶¹⁵

302. Investment treaty jurisprudence also recognizes that if a host State induces an investment (through one of a variety of means discussed above), the State will be bound to maintain the conditions that led to that inducement, as to do otherwise would be unfair and inequitable. As the tribunal reasoned in *Watkins v. Spain*, the claimant's expectations in that case were reasonable and legitimate, not only because of Spain's express commitments under RD 661/2007, but also because the purpose of that regulation "was to attract the necessary investments in renewable energy projects."⁶¹⁶ The findings of other tribunals based on the State's breach of legitimate expectations have also hinged on inducement.⁶¹⁷ The element of inducement can take many forms, as discussed above, from laws and regulations to other forms of representations addressed to investors or to a defined category of investors and, of course, as direct agreements between the host state and a foreign investor and its investments.

303. Here, Honduras entered into the Agreements with Pacific Solar to further a specific State policy: to incentivize the private investments Honduras needed to achieve its renewable

⁶¹⁵ See, e.g., *Suez, Sociedad General de Aguas de Barcelona S.A. et al., v. Argentina*, ICSID Case No. ARB/03/19, Decision on Liability dated 30 July 2010 (CL-54) ¶¶ 230-231 (referring to a concession contract and the legal framework of the concession as one that "clearly meet[s] the conditions proposed by tribunals" that to be protected, expectations must be reasonable and legitimate because they "set down the conditions offered by Argentina at the time that Claimants made their investment"); *Parkerings-Compagniet AS v. Lithuania*, ICSID Case No. ARB/05/8, Award dated 11 Sept. 2007 (CL-50) ¶ 331 (explaining that the strongest evidence for legitimate expectations arises from a State's promises, guaranties and assurances that the investor properly (*i.e.*, objectively) takes into account when making the investment, noting that the "expectation is legitimate if the investor received an explicit promise or guaranty from the host-State, or if implicitly, the host-State made assurances or representations that the investor took into account in making the investment.").

⁶¹⁶ *Watkins Spain S.À.R.L., Watkins (Ned) B.V. and others v. The Kingdom of Spain*, ICSID Case No. ARB/15/44, Award, 21 Jan. 2020 (CL-62) ¶ 527.

⁶¹⁷ See *Micula v. Romania*, ICSID Case No. ARB/05/20, Award dated 11 Dec. 2013 (CL-51) ¶ 686 ("As stated above, the Tribunal considers that, in determining whether the Claimants had a legitimate expectation, it must take account of the accepted principle that Romania is free to amend its laws and regulations absent an assurance to the contrary. However, in this case the Tribunal finds that **Romania's conduct had included an element of inducement that required Romania to stand by its statements and its conduct**") (emphasis added). See also *Total S.A. v. Argentina*, ICSID Case No. ARB/04/01, Decision on Liability dated 27 Dec. 2010 (CL-57) ¶¶ 117-118 ("[T]he expectation of the investor is undoubtedly "legitimate" . . . when public authorities of the host country have made the private investor believe that such an obligation existed through conduct or by a declaration. Authorities may also have announced officially their intent to pursue a certain conduct in the future, on which, in turn, the investor relied in making investments or incurring costs.").

energy goals. The Agreements that Honduras entered into with Pacific Solar need to be understood in this context and with this goal in mind. As a matter of fact, Honduras's specific commitments towards Pacific Solar under the PPA, to a defined economic regime and for a defined duration, are so clear that they alone are sufficient for the Tribunal to conclude that the PPA gave rise to legitimate expectations based on the very terms of the contract.

304. The PPA and the State Guarantee alone demonstrate that the present case is stronger than the ECT cases involving Spain, where the majority of awards to date found that Spain violated the FET standard, even without a direct contract between the host State and the foreign investor. Unlike the Spain ECT cases, the present case is not a dispute over a change of the regulatory regime. When Honduras granted the economic regime to the Plant under the Agreements, it did so under a long-term PPA protected by a State Guarantee, which specifically recognized Pacific Solar's rights to sell energy to ENEE for 20 years at the agreed energy base price and incentives. Further, through the Operations Agreement, Honduras ratified that Pacific Solar is entitled, among other rights, to the "incentives and benefits" that Honduras enacted in its legal framework.⁶¹⁸ These Agreements were intended to generate expectations for Claimants, and that is precisely what they did.

(b) Claimants Invested in Pacific Solar in Reliance on Those Expectations

305. The Agreements are sufficient evidence of Claimants' legitimate reliance on Honduras's commitments towards the project. The Agreements set out the expectations and responsibilities of each party and they were entered into with the expectation that Honduras would uphold its commitments towards Pacific Solar. Claimants therefore committed substantial financial resources to develop of the Plant, having invested more than [REDACTED] in the project,⁶¹⁹ an investment that Claimants would have not otherwise made.⁶²⁰

306. On the basis of the express terms of the Agreements, Claimants reasonably expected that Pacific Solar would enjoy the rights granted thereunder for a long period. Like in *Murphy v. Ecuador II*, Claimants legitimately expected that the key terms of the contract would

⁶¹⁸ See Operations Agreement (Exh. C-3), § 1.4.7.

⁶¹⁹ Compass Lexecon ¶ 6.

⁶²⁰ See Paiz WS ¶¶ 12-17; [REDACTED]

not change, and that any changes would be done “within the confines of the law and pursuant to a negotiated mutual agreement between the contractual parties.”⁶²¹ As [REDACTED] explains, “[t]he PPA was particularly important [in the decision to invest in Pacific Solar] because it included certain key commitments by ENEE, for which the Honduran State was also responsible, which assured a steady and predictable revenue stream for [Pacific Solar.]”⁶²² Among these guarantees was a “guaranteed [] energy base price” for energy delivered to the grid.⁶²³

307. Clearly, this was a two-way deal: through Pacific Solar, Claimants made the necessary investments for the development of the Plant which allowed Honduras to meet its goals of diversifying its energy matrix. In return, Claimants—like other private investors—had to be provided with the necessary commitments from Honduras regarding the continued application of the commercial and economic parameters for the project. Thus the *quid pro quo* was for Pacific Solar to invest in the Plant in exchange for Honduras maintaining the economic regime under the PPA that made the investment possible in the first place.

308. But for Honduras’s specific commitments under a legal and contractual framework, tailored to attract private investments, Claimants would not have agreed to invest in Pacific Solar and develop the Plant. [REDACTED] “the[] assurances [provided for in the Agreements] were of particular importance because they offered stable and predictable revenue streams, which are key for projects with high upfront costs, such as a PV plant.”⁶²⁴ Mr. Paiz himself explains that “based on the Government’s guarantees, and the Project’s rights and potential, my wife and I decided to invest in Pacific Solar[.]”⁶²⁵ That the State Guarantee from the Attorney General and the Secretary of Finance subsequently enshrined and confirmed the State’s express and specific commitments towards the project was of particular importance to Claimants. As Mr. Paiz notes, when he was assessing to invest in Pacific Solar: “I found it very valuable that the Government had signed a government guarantee certifying that it would back the obligations of ENEE in case

⁶²¹ See *Murphy Exploration & Production Co. Int'l v. Ecuador II*, PCA Case No. 2012-16, Partial Final Award dated 6 May 2016 (CL-21) ¶¶ 248-249, 281, 292-293.

[REDACTED]
[REDACTED]
[REDACTED]

⁶²⁵ Paiz WS ¶ 17.

of default under the PPA . . . mak[ing] this investment a no-brainer to me I understood that this investment would be safe because the Government was confirming its commitments.”⁶²⁶

309. Claimants and Pacific Solar were not alone in relying on Honduras's representations under the 2013 Renewables Law and the direct agreements entered into with the different generators. Other actors, such as financial institutions, international organizations, and other foreign investors relied on the same commitments. Between 2015 and 2017, many other PV projects were developed as a result of the State's commitments, bringing in foreign capital into Honduras, particularly from U.S. and Spanish investors⁶²⁷ and international development banks, such as Pacific Solar's lenders, DEG and FMO.

310. For years, Honduras has benefited—and continues to benefit—from the energy produced by the Plant. Since 2016, Pacific Solar's PV plant has been delivering clean energy for the Honduran people, meeting the State's policy of diversifying the energy matrix and improving the reliability of the power grid.⁶²⁸ And for a time period after, Pacific Solar received ENEE's payments for energy produced by the Plant under the PPA.⁶²⁹ Although ENEE's payments were at times partial or late, Honduras, through written and verbal representations,⁶³⁰ reassured Pacific Solar that it would receive full payment for energy and capacity delivered, as well as for the interests, curtailments, and Renewables Incentives – payments it is entitled to receive under the Agreements.

311. Indeed, the Government was fully aware of the specific commitments it had entered into with investors, such as Pacific Solar, and initially took steps to comply with those commitments, promising compliance with its payment obligations up until mid-2022. Prior to enacting the 2022 New Energy Law, the Government announced the October 2018 Agreement, in which it reiterated that “commitments assumed by the [St]ate with national and foreign investors [would] not [be] affected and . . . fulfilled” when Honduras sought to address issues in the

⁶²⁶ Paiz WS ¶ 13.

⁶²⁷ See *supra* § II.B.4. See also Database Earth, *Solar Power Plants in Honduras (Exh. C-140)* (last accessed 5 Aug. 2024) (stating that Honduras currently has 15 solar power plants with a total installed capacity of 604.5 MW and indicating that at least 6 of the plants were commissioned in 2015, which investors coming from countries such as Spain and the United States invested in).

⁶²⁸ See *supra* § II.D.

⁶²⁹ See *supra* § II.F.

⁶³⁰ See *supra* § II.F. See also Paiz WS ¶ 21.

electricity sector.⁶³¹ To that end, Honduras raised funds for ENEE to repay the debt owed to the generators. Honduras, however, decided to change its rhetoric and go back on these commitments once President Castro came into power in 2022.

(c) Honduras Breached Claimants' Legitimate Expectations

312. Notwithstanding Honduras's specific commitments towards Pacific Solar under the Agreements, and once Honduras secured the investments it needed, it engaged in a series of actions in complete disregard of those commitments, including but not limited to, Honduras's failure to comply with its payment obligations under the PPA (accumulating [REDACTED] of dollars in debt towards Pacific Solar), and unilaterally imposing on Pacific Solar the "renegotiation" of the PPA under the threat of expropriation and without providing any visibility as to the economic regime that will apply to the Plant in the future.

313. **First**, Honduras passed the 2022 New Energy Law, as an affront on generators, like Pacific Solar. Among other provisions, the 2022 New Energy Law mandates the "renegotiation" of PPAs, such as Pacific Solar's, under threat of expropriation. It authorizes the "termination" of Honduras's contractual relationship with generators, including Pacific Solar, and the "State acquisition" of the generator's assets if the generator does not agree to the "renegotiated" terms imposed by the State for the generator's PPA.⁶³² It also formally codified the State's intention to repudiate the compensation owed to energy generators.⁶³³

314. **Second**, Honduras has failed to pay the remuneration as promised to Pacific Solar under the Agreements. Honduras is not compensating Pacific Solar for (i) the energy and capacity that the Plant has delivered, and (ii) the Renewables Incentives and interests that it is owed, as promised under the Agreements.⁶³⁴ Although the Government's message to the generators until mid-2022 was that payments for compensation owed would be forthcoming,⁶³⁵ as of today,

⁶³¹ See *supra* § II.F; October 2018 Agreement (**Exh. C-175**) ¶ 2 ("The Government of the Republic reiterates that it will act under the legal framework, guaranteeing legal certainty so that the commitments assumed by the country with national and foreign investors are not affected and can be fulfilled.").

⁶³² New Energy Law (**Exh. C-3**), Art. 5.

⁶³³ New Energy Law (**Exh. C-3**), Art. 16.

⁶³⁴ See Compass Lexecon ¶¶ 41-45.

⁶³⁵ [REDACTED] See also, e.g., AHPEE, Minute of Meeting with ENEE's Auditing Commission dated 20 Aug. 2021 (**Exh. C-161**) (acknowledging payments owed to the solar generators for invoices dated up until May 2021 and detailing the Government's plan for paying off its debts).

Honduras's debt towards Pacific Solar from unpaid invoices exceeds [REDACTED]⁶³⁶ In fact, the State formally codified its intention to repudiate the compensation owed to energy generators, like Pacific Solar, under the Agreements when it enacted the 2022 New Energy Law. The 2022 New Energy Law instructed ENEE to settle the historical debt owed to the generators **only “for up to one year,”** in contrast to its prior commitments, and **only if the PPA is “renegotiated” or “terminated.”**⁶³⁷

315. By withholding payments owed to generators who refuse to submit to the “renegotiated” terms imposed by the State for the PPAs, Honduras has arbitrarily put pressure on Pacific Solar to force the “renegotiation” of the PPA. Indeed, the Government has acknowledged that it was using the promise of payments to pressure generators to agree to the State's imposed terms.⁶³⁸ It has weaponized its existing debt to Pacific Solar by conditioning its payment on Pacific Solar's agreement to the contract terms set by the State, expressing as much in direct communications with Pacific Solar.⁶³⁹

316. Honduras's arbitrary actions to force a unilateral renegotiation of the PPA violates Claimants' legitimate expectations to the continued application of the agreed terms and conditions under the PPA. Claimants made its decision to invest in the development of the Plant based on the commitments and assurances provided by Honduras under the Agreements, but Honduras's forced and arbitrary renegotiation of the PPA violates Claimants' legitimate expectations. Honduras's actions to force the “renegotiation” of the PPA, in complete disregard of the State

⁶³⁶ Compass Lexecon ¶¶ 44-48.

⁶³⁷ New Energy Law (**Exh. C-3**), Art. 16.

⁶³⁸ Radio Interview with Minister Tejada acknowledging that promise of payments is key to unlocking renegotiations, RADIO CADENAS VOCES dated 28 Nov. 2022 (**Exh. C-232**), at 4:29-4:58 (“We have been clear, it has been a pivotal point to unlocking the renegotiations, that we are going to pay, above all, those who have renegotiated” their PPAs.). *See also* Radio Interview with Minister Tejada regarding the Government's priority for payments, RADIOHN dated 17 Oct. 2022 (**Exh. C-231**), at 1:03-1:24 (quoting Minister Tejada as stating that the Government would “**meet [its] debt with the generators with whom [it] has come to an agreement . . . the Government's priority**”).

⁶³⁹ Letter from ENEE Pacific Solar, Oficio No. ENEE-GG-1083-X-2022 dated 11 Oct. 2022 (**Exh. C-69**), at 2 (“**ENEE undertakes to fully pay the debt accrued with [Pacific Solar] within a term of sixty (60) to ninety (90) business days, as from the signing of a Memorandum of Understanding.**”). *See also* AHER, Report of Meeting between COHEP's Energy Committee and ENEE's General Manager, Minister Tejada dated 7 Sept. 2022 (**Exh. C-189**), at 2-4 (noting that Minister Tejada affirmed to the Honduran Council of Private Enterprises (*Consejo Hondureño de la Empresa Privada*) (“**COHEP**”), of which generators like Pacific Solar are members, that “**no plant would be paid until the 28 plants have renegotiated [their contracts and that] these were the conditions for financing**” payments); AHPEE, Minutes of the Solar Generators Attending Meeting with the Government dated May 2022 (**Exh. C-57**), at 2.

Guarantee and under the threat of expropriation, certainly erode the trust in the State's reliability and adherence to its commitments with investors, increasing the perceived risks over the project and, ultimately, substantially diminishing the value of Claimants' investments in Pacific Solar.

317. **Third**, Honduras has improperly curtailed the Plant's energy without proper compensation, in breach of ENEE's obligation under the PPA to compensate Pacific Solar. If the Government curtails the Plant's production for more than six hours in a month, under the PPA, ENEE is obligated to compensate Pacific Solar for such events and justify the reason for them.⁶⁴⁰ Honduras has failed to comply with these commitments.

318. Each of the above measures amounts to a direct violation of Honduras's commitments under the Agreements in breach of Claimants' legitimate expectations.

319. As many tribunals found in similar cases, a violation of Claimants' legitimate expectations is in breach of the FET standard.⁶⁴¹ The reason for this is simple: "for [Honduras] to offer advantages" that induce investment and then "require these investors to maintain their investments . . . in [a] formal shell of the regime [for which it has] eviscerated . . . all (or substantially all) content" would be unfair and inequitable.⁶⁴²

320. All of Honduras's harmful measures are examples of giving with one hand and taking with another. Honduras's measures stand in stark contrast to Honduras's commitments under the Agreements enticing Claimants to invest in the Honduran renewable energy sector. As

⁶⁴⁰ See PPA (**Exh. C-1**) § 2, Cl. 9.5.1, Annex IV, 1. Compensation is dependent on the number of hours and the duration of interruption. See *id.*

⁶⁴¹ See, e.g., *PSEG Global Inc. et al., v. Turkey*, ICSID Case No. ARB/02/5, Award dated 19 Jan. 2007 (**CL-45**) ¶¶ 248-49 (holding that "ignor[ing] rights," including contractual rights that had been upheld by court decision, is a "breach of the standard of fair and equitable treatment"); *Siemens A.G. v. Argentina*, ICSID Case No. ARB/02/8, Award dated 6 Feb. 2007 (**CL-66**) ¶¶ 173, 308-09 (granting FET claim where the State attributed delays in contractual payments to "institutional changes" and alleged "lack of cooperation" of the claimant, which the tribunal determined were "without basis in the Contract" and which showed a "lack of transparency" and finding that the Government's initiation of a renegotiation had been "for the sole purpose of reducing its costs, unsupported by any declaration of public interest.").

⁶⁴² See *Watkins Holding s.à.r.l, et al., v. Spain*, ICSID Case No. ARB/15/44, Award dated 21 Jan. 2020 (**CL-62**) ¶¶ 536-538 (noting that the tribunal relied on the decision in *Micula v. Romania* for holding that Spain breached FET when it eliminated the regime that induced investors to make investments and expected investors to continue maintaining them). See also *Micula v. Romania*, ICSID Case No. ARB/05/20, Award dated 11 Dec. 2013 (**CL-51**) ¶¶ 674-689, 827, 872 (finding that Romania "failed to 'ensure fair and equitable treatments of'" claimants' investments when it "acted unreasonably by maintaining investors' obligations after terminating the incentives" regime whose purpose was to attract investment "in an otherwise unattractive region").

a matter of fact, this case is a paradigm of a host state entering into direct commitments with a foreign investor or its investments and, after reaping the benefits of those commitments, backtracking on them, thereby undermining the very expectations—and damaging the investments—it purposefully sought to induce.

321. Considering Honduras's measures, Honduras has also failed to provide the stability and predictability that Claimants expected. In sum, Honduras's measures have rendered Pacific Solar's rights under the Agreements ineffective. Like in *Murphy v. Ecuador II*, Honduras has “fundamentally, and prejudicially, changed” (i) the “business and legal framework” that induced Claimants to invest in Honduras and (ii) the “foundational premise” of the Agreements it enacted with Pacific Solar.⁶⁴³

⁶⁴³ See *Murphy Exploration & Production Co. Int'l v. Ecuador II*, PCA Case No. 2012-16, Partial Final Award dated 6 May 2016 (CL-21) ¶¶ 258, 281-282.

C. HONDURAS BREACHED THE TREATY BY FAILING TO ACCORD PACIFIC SOLAR TREATMENT NO LESS FAVORABLE THAN IT ACCORDS TO INVESTORS OF ANY OTHER PARTY OR ANY NON-PARTY, IN BREACH OF ARTICLE 10.4

322. Article 10.4 of the Treaty requires Honduras to treat Claimants and Pacific Solar in the same manner as it treats investors, and their investments of any other Party, or any non-Party State. In particular, Article 10.4 provides as follows:

1. Each Party shall accord to investors of another Party treatment no less favourable than that it accords, in like circumstances, to investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any other Party or of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.⁶⁴⁴

323. Therefore, by virtue of Article 10.4 of the Treaty, Claimants are entitled to any substantive protections available to investors from other countries that are more favorable than those contained in the CAFTA-DR.

324. Invoking the MFN clause in Article 10.4 of the Treaty, Claimants rely on the umbrella clauses in the Switzerland-Honduras BIT and the Germany-Honduras-BIT.⁶⁴⁵

1. It Is Well-Accepted That MFN Enables the Importation of Substantive Protections in Other Investment Treaties

325. Many tribunals have accepted the application of MFN clauses to substantive provisions in comparator treaties, allowing investors to import more favorable provisions with respect notably to umbrella clauses:

⁶⁴⁴ CAFTA-DR (CL-1), Art. 10.4.

⁶⁴⁵ Agreement Concerning the Promotion and Reciprocal Protection of Investments between the Swiss Confederation and the Republic of Honduras ("Switzerland-Honduras BIT") (CL-113), Art. 11; Agreement Concerning the Promotion and Reciprocal Protection of Capital Investments between the Federal Republic of Germany and the Republic of Honduras ("Germany-Honduras BIT") (CL-114), Art. 8(2).

326. *Arif v. Moldova*. In a dispute involving a similarly-worded MFN clause, the tribunal found that the claimant could rely on the umbrella clause in a third-party BIT.⁶⁴⁶ The tribunal noted that MFN clauses apply to substantive treaty obligations, and it was thereby possible to “extend[] the more favorable standard of protection granted by the ‘umbrella’ clause in either [the UK-Moldova BIT or the US-Moldova BIT] into the BIT at hand.”⁶⁴⁷

327. *EDF v. Argentina*. Based on the application of the MFN clause in the France-Argentina BIT, the tribunal found that the claimant could rely on the umbrella clause in a third-party BIT.⁶⁴⁸ In so doing, noted that to “ignore[] the MFN clause in [that] case would permit more favorable treatment to investors under third countries, which is exactly what the MFN clause is intended to prevent” and that to rule otherwise, “would effectively read the MFN language out of the treaty.”⁶⁴⁹

328. Commentators have also recognized that investors may rely on MFN clauses to invoke the substantive protections in other BITs concluded by the respondent State. As Professors Dolzer and Schreuer explain in their treatise on *Principles of International Investment Law*: “[t]he

⁶⁴⁶ *Mr. Franck Charles Arif v. Moldova*, ICSID Case No. ARB/11/23, Award dated 8 April 2013 (CL-97) ¶ 396 (agreeing to import an umbrella clause from the Moldova-UK or the Moldova-US BIT and holding that the tribunal therefore “ha[d] jurisdiction over Claimant’s ‘specific commitments’ claim”). The treaty at issue in that case was the Moldova-France BIT, whose MFN clause provided, in the relevant part, as follows: “Each Contracting Party shall accord, in its territory and in its maritime area, to nationals or companies of the other Contracting Party, with respect to their investments and activities connected with such investments, treatment no less favorable than that accorded to its nationals or companies, or the treatment accorded to nationals or companies of the most favored nation, whichever is more advantageous.” (“*Chaque Partie contractante applique, sur son territoire et dans sa zone maritime, aux nationaux ou sociétés de l’autre Partie, en ce qui concerne leurs investissements et activités liées à ces investissements, un traitement non moins favorable que celui accordé à ses nationaux ou sociétés, ou le traitement accordé aux nationaux ou sociétés de la Nation la plus favorisée, si celui-ci est plus avantageux.*”). Agreement Between the Government of the French Republic and the Government of the Republic of Moldova on Mutual Encouragement and Protection of Investments, dated 8 Sept. 1997 (entered into force on 11 Mar. 1999) (CL-98), Art. 4.

⁶⁴⁷ *Mr. Franck Charles Arif v. Moldova*, ICSID Case No. ARB/11/23 dated 8 April 2013 (CL-97) ¶ 396.

⁶⁴⁸ *EDF International S.A., et al., v. Argentina*, ICSID Case No. ARB/03/23, Award dated 11 June 2012 (CL-8) ¶¶ 929-934. The treaty at issue in that case was France-Argentina BIT, whose MFN clause provided, in the relevant part, as follows: “Each Contracting Party shall accord in its territory and maritime zone to investors of the other Party, in respect of their investments and activities in connection with such investments, treatment that is no less favourable than that accorded to its own investors or the treatment accorded to investors of the most-favoured nation, if the latter is more advantageous.” Agreement Between the Government of the French Republic and the Government of the Argentine Republic on the Reciprocal Promotion and Protection of Investments dated 3 July 1991 (entered into force on 3 Mar. 1993) (CL-132), Art. 4.

⁶⁴⁹ *EDF International S.A., et al., v. Argentina*, ICSID Case No. ARB/03/23, Award dated 11 June 2012 (CL-8) ¶¶ 932-933. Likewise, the EDF tribunal observed that while there was some “divergence of opinion . . . with respect to application of MFN clauses,” such divergence only concerned the extent to which an MFN clause reached the jurisdictional and procedural provisions of third-country treaties. *Id.* ¶¶ 935-936.

weight of authority clearly supports the view that an MFN rule grants a claimant the right to benefit from substantive guarantees contained in third treaties.”⁶⁵⁰

329. In particular, other arbitral investment tribunals have had the occasion of confirming that the MFN clause contained in Article 10.4 of the Treaty, “expressly encompasses the treatment to which, at the time CAFTA-DR was concluded, investors were already entitled under preexisting investment treaties.”⁶⁵¹ Since both the Switzerland-Honduras and the Germany-Honduras predate the entry into force of the Treaty,⁶⁵² there can be little doubt that Claimants should be afforded the treatment contained under those treaties, namely the umbrella clause protections.⁶⁵³ In other cases where investment tribunals have rejected the importation of the umbrella clause through the MFN provision, the respondent State had made specific reservations for that purpose under the applicable treaty.⁶⁵⁴ It is not the case of Honduras and the CAFTA-DR, and thus there is no reason for Claimants to be barred from importing the umbrella clauses in the Switzerland-Honduras and Germany-Honduras BITs.

2. The Umbrella Clauses in Honduras's Bilateral Investment Treaties with Switzerland and Germany Require Honduras to Observe All Obligations Entered into with Pacific Solar

330. Pursuant to the MFN clause in Article 10.4 of the Treaty, Claimants rely on the more favorable treatment that Honduras provides to Swiss and German investors under the

⁶⁵⁰ See RUDOLF DOLZER & CHRISTOPH SCHREUER, PRINCIPLES OF INTERNATIONAL INVESTMENT LAW 125 2D. EDITION, 98 (2012) (CL-82), at 211. See also Ieva Kalnina, *White Industries v. The Republic of India: A Tale of Treaty Shopping and Second Chances*, 9 Transnat'l Disp. Mgmt. 1 (2012), at 6 (CL-142) (concurring that the importation of substantive provisions through MFN provisions is not controversial); J. Romesh Weeramantry, *Treaty Interpretation in Investment Arbitration* (OUP 2012) at 177 (CL-143); Scott Vesel, *Clearing a Path Through a Tangled Jurisprudence: Most-Favored-Nation Clauses and Dispute Settlement Provisions in Bilateral Investment Treaties*, 32 Yale J. Int'l L. 125 (2007), at 163 (CL-144); *White Industries Australia Ltd. v. The Republic of India*, UNCITRAL, Final Award, Nov. 30, 2011, ¶¶ 11.2.3-11.2.4 (CL-145) (importing a more favorable substantive provision does not upset the negotiated balance of the BIT but rather “achieves exactly the result which the parties intended by the incorporation in the BIT of an MFN clause”).

⁶⁵¹ *The Lopez-Goyne Family Trust and others v. Republic of Nicaragua*, ICSID Case No. ARB/17/44, Award dated 1 Mar. 2023 (CL-138) ¶ 430.

⁶⁵² CAFTA-DR was signed on 5 August 2004 and entered into force in Guatemala on 1 July 2006 and in Honduras on 1 April 2006. The Switzerland-Honduras BIT was signed on 14 October 1993 and entered into force on 31 August 1998. For its part, the Germany-Honduras BIT was executed on 21 March 1995 and entered into force on 27 May 1998.

⁶⁵³ Switzerland-Honduras BIT (CL-113), Art. 11; Germany-Honduras BIT (CL-114), Art. 8(2).

⁶⁵⁴ *Grupo Energía Bogotá S.A. E.S.P. y Transportadora de Energía de Centroamérica S.A. v. República de Guatemala*, ICSID Case No. ARB/20/48, Decision on Preliminary Objections dated 24 Nov. 2023 (CL-146), ¶ 317.

Switzerland-Honduras BIT and Germany-Honduras BIT.⁶⁵⁵ By application of the umbrella clause in the Switzerland-Honduras BIT and the Germany-Honduras BIT, Honduras is under an obligation to observe all commitments or obligations entered into with Pacific Solar.

331. Specifically, Article 11 of the Switzerland-Honduras BIT provides:

Each Contracting Party shall at all times ensure compliance with the commitments assumed by it in respect of investments of investors of the other Contracting Party.⁶⁵⁶

332. Further, Article 8(2) of the Germany-Honduras BIT provides:

Each Contracting Party shall comply with any other obligation which it has assumed in respect of investments in its territory by nationals or companies of the other Contracting Party.⁶⁵⁷

333. Notably, other bilateral investment treaties to which Honduras is a party include umbrella clauses.⁶⁵⁸

334. As the *Enron v. Argentina* tribunal found, state commitments under both laws and contracts may be covered by an umbrella clause.⁶⁵⁹ Similarly, in *Siemens v. Argentina*, construing a similarly-worded umbrella clause, the tribunal reasoned:

The Tribunal does not subscribe to the view of the Respondent that investment agreements should be distinguished from concession agreements of an administrative nature. Such distinction has no basis in Article 7(2) of the Treaty which refers to ‘any obligations’, or in the definition of ‘investment’ in the Treaty. **Any agreement related to an**

⁶⁵⁵ Switzerland-Honduras BIT (CL-113), Art. 11; Germany-Honduras BIT (CL-114), Art. 8(2).

⁶⁵⁶ Switzerland-Honduras BIT (CL-113), Art. 11.

⁶⁵⁷ Germany-Honduras BIT (CL-114), Art. 8(2).

⁶⁵⁸ See, e.g., Agreement on Encouragement and Reciprocal Protection of Investments Between the Republic of Honduras and the Kingdom of the Netherlands (CL-122), Art. 3(4) ; Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Honduras for the Promotion and Protection of Investments (CL-123), Art. 2(2).

⁶⁵⁹ See *Enron Co. and Ponderosa Assets L.P. v. Argentina*, ICSID Case No. ARB/01/3, Award dated 22 May 2007 (CL-55) ¶ 274 (emphasis in original) (annulled on other grounds) (holding that a similarly-worded umbrella clause in the U.S.-Argentina BIT “cover[s] both contractual obligations such as payment, as well as obligations assumed through law or regulation” and that “[o]bligations covered by the ‘umbrella clause’ are nevertheless limited by their object: ‘with regard to investments.’”); see also *Gardabani Holdings B.V. and Silk Road Holdings B.V. v. Georgia*, ICSID Case No. ARB/17/29, Award dated 27 Oct. 2022 (CL-128) ¶ 691 (holding that “legislation or regulations are capable of creating obligations that are protected under an umbrella clause . . . as in the case of contractual obligations”).

investment that qualifies as such under the Treaty would be part of the obligations covered under the umbrella clause. The Tribunal does not find significant, for purposes of the ordinary meaning of this clause, that it does not refer to 'specific' investments. The term 'investment' in the sense of the Treaty, linked as it is to 'any obligations', **would cover any binding commitment entered into by Argentina in respect of such investment.**⁶⁶⁰

335. Tribunals have recognized that an umbrella clause elevates contractual obligations under municipal law to international treaty obligations.⁶⁶¹ In this way, a violation of a contractual obligation in respect of an investment becomes a violation of the relevant treaty.⁶⁶² Moreover, multiple tribunals have recognized that umbrella clauses prohibit a State from using its sovereign authority to avoid contractual or other obligations towards covered investments. As the *El Paso v. Argentina* tribunal found:

[T]here is no doubt that if the State interferes with contractual rights by a unilateral act, whether these rights stem from a contract entered into by a foreign investor with a private party, a State autonomous entity or the State itself, in such a way that the State's action can be analysed as a violation of the standards of protection embodied in a BIT, the treaty-based arbitration tribunal has jurisdiction over all the claims of the foreign investor, including the claims arising from a violation of its contractual rights.⁶⁶³

336. In *Duke Energy v. Ecuador*, the claimants submitted that the State breached different agreements, which "embody obligations in connection with the investment within the

⁶⁶⁰ *Siemens A.G. v. Argentina*, ICSID Case No. ARB/02/8, Award dated 6 Feb. 2007 (CL-66) ¶ 206 (emphasis added). The umbrella clause in the treaty at issue in that case, the Germany-Argentina BIT, provided that "each Contracting Party will comply with any other commitment contracted in relation with investments of nationals or enterprises of the other Contracting Party in its territory." See also Treaty between the Federal Republic of Germany and the Republic of Argentina on the Reciprocal Promotion and Protection of Investments (CL-131), Art. 7(1).

⁶⁶¹ See, e.g., *SGS Société Générale de Surveillance S.A. v. Philippines*, ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction, 29 January 2004 (CL-129) ¶ 115 (interpreting a similar clause in the Philippines-Switzerland BIT and stating that the umbrella clause "includes commitments or obligations arising under contracts entered into by the host State"); see also J.P. Gaffney and James L. Loftis, *The "Effective Ordinary Meaning" of BITs and the Jurisdiction of Treaty-based Tribunals to Hear Contract Claims*, JOURNAL OF WORLD INVESTMENT & TRADE 8, 5 (2007) (CL-100), at 17 ("[I]t is precisely the purpose of 'umbrella clauses' to create a link between commitments taken by States in national / municipal legal instruments and to elevate those in the international sphere so as to create international State responsibility.").

⁶⁶² *Gardabani Holdings B.V. and Silk Road Holdings B.V. v. Georgia*, ICSID Case No. ARB/17/29, Award dated 27 Oct. 2022 (CL-128) ¶¶ 687-692 (holding that the scope of the umbrella clause in the treaty at issue in that case, which is similarly worded to the one in the Switzerland-Honduras BIT, "covers any failure to observe any obligation entered into with regard to the investments" of claimants).

⁶⁶³ *El Paso Energy Int'l Co. v. Argentina*, ICSID Case No. ARB/03/15, Decision on Jurisdiction dated 27 Apr. 2006 (CL-116) ¶ 84.

meaning of Article II(3)(c) of the BIT.”⁶⁶⁴ The tribunal interpreted the umbrella clause in accordance with Article 31(1) of the Vienna Convention,⁶⁶⁵ finding that “the conditions for a breach of this article are that: (i) there exists an “obligation” of the State which is (ii) “entered into with regard to investments” and which (iii) “has not been observed.”⁶⁶⁶ Each element of this test is addressed below. Indeed, here, Respondent took sovereign actions that repudiated its obligations that it entered into with respect to Claimants’ investments, thus breaching the umbrella clause.

3. Honduras Violated Its Commitment to Observe All Obligations Entered into With Pacific Solar

337. Considering the text of Article 11 of the Switzerland-Honduras BIT and Article 8(2) of the Germany-Honduras BIT, both of which refer to obligations or commitments entered into “in respect of investments,”⁶⁶⁷ there can be no doubt that it includes contractual obligations, such as Honduras’s obligations under the Agreements, and obligations assumed through laws or in legislation, such as Honduras’s 2013 Renewables Law.

338. As the factual record shows, Honduras, in its own name or through ENEE, entered into the following obligations when, pursuant to the 2013 Renewables Law, it signed the Agreements with Pacific Solar:

- **PPA.** In accordance with rights enumerated under the Renewables Laws, Honduras, through ENEE, agreed to: (i) pay a fixed base energy price;⁶⁶⁸ (ii) pay an additional incentive of 10% on the energy base price;⁶⁶⁹ (iii) adjust the energy base price at the end of each contractual year, during the first ten years of the Plant’s commercial operation

⁶⁶⁴ *Duke Energy Electroquil Partners & Electroquil S.A. v. Ecuador*, ICSID Case No. ARB/04/19, Award dated 18 Aug. 2008 (**CL-42**) ¶ 314.

⁶⁶⁵ Vienna Convention on the Law of Treaties (**CL-133**), Art. 31(1) (“A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.”).

⁶⁶⁶ *Duke Energy Electroquil Partners & Electroquil S.A. v. Ecuador*, ICSID Case No. ARB/04/19, Award dated 18 Aug. 2008 (**CL-42**) ¶ 318.

⁶⁶⁷ Switzerland-Honduras BIT (**CL-113**), Art. 11; Germany-Honduras BIT (**CL-114**), Art. 8(2).

⁶⁶⁸ See PPA (**Exh. C-1**), § 1(G); § 2, Cl. 9.2. See also 2013 Renewables Law (**Exh. C-5**), Art. 2 (amending Art. 3(2)(b) of the 2007 Renewables Law).

⁶⁶⁹ See PPA (**Exh. C-1**), § 2, Cl. 9.2. (referring to it as “IRE” or “Incentive for Renewable Generators,” and clarifying that it corresponds to the additional 10% adjustment over the Base Price contemplated in Article 2 of the 2013 Renewables Law, which in turn amended a very similar provision contained in Art. 3.2(c) of the 2007 Renewables Law). See 2013 Renewables Law (**Exh. C-5**), Art. 2 (amending Arts. 3(2)(a) and 3(2)(c) of the 2007 Renewables Law); 2007 Renewables Law (**Exh. C-4**), Art. 3(2)(c).

based on U.S. CPI inflation rates up to a certain rate;⁶⁷⁰ (iv) pay for capacity;⁶⁷¹ (v) compensate Pacific Solar in the event that it is not able to deliver energy for more than six hours in a month (i.e., curtailments);⁶⁷² (vi) purchase all the capacity and energy that the Plant generates and delivers;⁶⁷³ (vii) apply all tax incentives granted to renewable energy generators under the Renewables Laws;⁶⁷⁴ (viii) pay interest over invoices it failed to pay after 45 days of their receipt;⁶⁷⁵ (ix) allow Pacific Solar to sell “any amount of energy the plant produces” to third parties if, after four consecutive months, ENEE does not fully pay the charges invoiced by Pacific Solar;⁶⁷⁶ (x) dispatch all the energy that the Plant generates and delivers;⁶⁷⁷ and (xi) back ENEE’s obligations under the PPA.⁶⁷⁸

- **State Guarantee.** Honduras, moreover, undertook to “comply with the due and timely observance and fulfillment of ENEE’s payment obligations contained in and derived from the PPA.”⁶⁷⁹ This obligation originates, and may be “demanded with the **sole failure of payment** . . . by ENEE to [Pacific Solar] on the due dates on which payment corresponds according to the PPA or as established by a competent court.”⁶⁸⁰
- **Operations Agreement.** Honduras ratified that Pacific Solar is entitled, among other rights, to the “incentives and benefits” that Honduras enacted in its legal framework,⁶⁸¹ have the electricity it generates dispatched to the grid,⁶⁸² and be able to sell energy to third parties.⁶⁸³

⁶⁷⁰ See *supra* § II.B.1; PPA (**Exh. C-1**), § 2, Cl. 9.2; 2013 Renewables Law (**Exh. C-5**), Art. 2 (amending Art. 3(2)(d) of the 2007 Renewables Law).

⁶⁷¹ See *supra* § II.B.1; PPA (**Exh. C-1**), § 1(G), § 2, Cl. 9.2; 2013 Renewables Law (**Exh. C-16**), Art. 2 (amending Art. 3.2(a) of the 2007 Renewables Law).

⁶⁷² See *supra* § II.B.1; PPA (**Exh. C-1**), § 2, Cl. 9.5.1.

⁶⁷³ See *supra* § II.B.1; PPA (**Exh. C-1**), § 2, Cls. 2.3, 9.1. See also 2013 Renewables Law (**Exh. C-5**), Art. 2 (amending article 3(2) of the 2007 Renewables Law, confirming that ENEE has the obligation to purchase the energy produced by private renewable energy generators)

⁶⁷⁴ These incentives include, *inter alia*, a VAT exemption for the life of the project, a corporate income tax exemption for the first ten years of operation of the Plant, and a complete tax exemption for all financial service provided for the construction of operation of the projects. See *supra* § II.B.1; PPA (**Exh. C-1**), § 2, Cl. 14.1. See also 2013 Renewables Law (**Exh. C-5**), Art. 1 (amending Arts. 2(1-3) and 2(5) of the 2007 Renewables Law); 2007 Renewables Law, (**Exh. C-4**), Art. 2(4).

⁶⁷⁵ See *supra* § II.B.1; PPA (**Exh. C-1**), § 2, Cl. 9.6.3.

⁶⁷⁶ See *supra* § II.B.1; PPA (**Exh. C-1**), § 2, Cl. 2.5; 2007 Renewables Law (**Exh. C-4**), Art. 3(1) (confirming that private renewable energy generation companies are entitled to sell their production to third parties other than ENEE), 8 (amending Art. 17 of the 1994 Electricity Law).

⁶⁷⁷ See *supra* § II.B.1; PPA (**Exh. C-1**), § 2, Cls. 2.4, 6.1. See also 2007 Renewables Law (**Exh. C-4**), Art. 9.

⁶⁷⁸ See *supra* § II.B.1; PPA (**Exh. C-1**), § 2, Cl. 9.7, Annex X. See also 2007 Renewables Law (**Exh. C-4**), Art. 4.

⁶⁷⁹ See *supra* § II.B.2; State Guarantee (**Exh. C-2**), Art. 4.2. See also PPA (**Exh. C-1**), Annex X, Art. 4.2.

⁶⁸⁰ See *supra* § II.B.2; State Guarantee (**Exh. C-2**), Art. 4.2. See also PPA (**Exh. C-1**), Annex X, Art. 4.2.

⁶⁸¹ See *supra* § II.B.3; Operations Agreement (**Exh. C-3**), § 1.4.7.

⁶⁸² Operations Agreement, (**Exh. C-3**), § 1.4.4.

⁶⁸³ See *supra* § II.B.3; Operations Agreement, (**Exh. C-3**), § 1.4.5.

339. Honduras has, therefore, entered into specific commitments and obligations towards Claimants' Enterprise, Pacific Solar – commitments that it later failed to comply with.

340. **First**, Honduras is not paying (i) the remuneration to which Pacific Solar is entitled for the energy and capacity that the Plant delivered, (ii) the Renewables Incentives, including the 10% Incentive, and (iii) and interest that Pacific Solar is duly owed, as promised under the PPA and State Guarantee. By enacting 2022 New Energy Law, the State put into law its intention to repudiate the compensation it owes to Pacific Solar, instructing ENEE to **settle the historical debt owed to the generators only “for up to one year,” and only if the PPA is “renegotiated” or “terminated.”**⁶⁸⁴ After the enactment of the 2022 New Energy Law, the Government has attempted to formally deprive Pacific Solar from key rights under the PPA, including the 10% Incentive and the payments for capacity through the forced renegotiation of the PPA.⁶⁸⁵ Honduras's failure to comply with its payment obligations of (i) the energy and capacity that the Plant delivered, (ii) the Renewables Incentives, and (iii) interest owed to Pacific Solar is in breach of Section 1.G and Clauses 9.2 and 9.6.3 of the PPA, Article 4.2 of the State Guarantee and Clause 1.4.7 of the Operations Agreement. As explained in the Compass Lexecon Report, ENEE had accrued a debt of more than [REDACTED]⁶⁸⁶ which has resulted in significant harm to Pacific Solar.⁶⁸⁷

341. **Second**, Honduras has unduly and arbitrarily curtailed the Plant's energy dispatch for reasons not attributable to Pacific Solar in contravention of its obligation to guarantee the dispatch of the energy produced by the plant.⁶⁸⁸ But Honduras was not only under the obligation to dispatch the energy produced by the Plant: the PPA requires ENEE to compensate Pacific Solar if the Government curtails the Plant's production for more than six hours in a month for reasons not attributable to Pacific Solar⁶⁸⁹—with restricted exceptions to this obligation.⁶⁹⁰ This has been

⁶⁸⁴ New Energy Law (**Exh. C-10**), Art. 16.

⁶⁸⁵ See Letter from the Government to Pacific Solar, No. ENEE-GG-1083-X-2022, dated 11 Oct. 2022 (**Exh. C-69**), at 2 (For instance, in October 2022, the Government requested that Pacific Solar “**renounce**” payments for (i) “the incentive of 10%,” and (ii) “capacity.”).

⁶⁸⁶ Compass Lexecon ¶¶ 44, 48.

⁶⁸⁷ Compass Lexecon ¶ 60.

⁶⁸⁸ Compass Lexecon ¶ 47; [REDACTED]

⁶⁸⁹ PPA (**Exh. C-1**), § 2, Cl. 9.5.1.

⁶⁹⁰ PPA (**Exh. C-1**), § 2, Cl. 2.4.

precisely the case. While the State has curtailed the energy produced by the Plant, it has failed to compensate Pacific Solar for those curtailments, in breach of Articles 2.4, 6.1 and 9.5.1 of the PPA and 4.2 of the State Guarantee.⁶⁹¹ Honduras's breach of this obligation has not only placed Pacific Solar in a dire financial situation, but has also damaged the Plant's equipment.⁶⁹²

342. **Third**, Honduras is refusing to support Pacific Solar in accessing the “incentives and benefits” that Honduras enacted in its legal framework⁶⁹³ in breach of its commitments under the Operations Agreement. SERNA – Pacific Solar's counterparty in the Operations Agreement and the entity committed to supporting Pacific Solar in accessing these “incentives and benefits” – sits on ENEE's Board of Directors.⁶⁹⁴ ENEE's Board of Directors, responsible for the “management and administration” of ENEE, set the stage for the enactment of 2022 New Energy Law.⁶⁹⁵ In other words, SERNA, forming part of ENEE's Board of Directors, has instructed ENEE to repudiate payment obligations to generators, like Pacific Solar, and enabled the Government to “renegotiate” away the “incentives and benefits” that SERNA is supposed to facilitate access to, in breach of the Operations Agreement.

343. Accordingly, each of the above measures amounts to a direct violation of Honduras's commitments under the Agreements.

344. Honduras is also aggravating the dispute by proposing the Bill Against Existing Incentives Regimes, which seeks, among other measures, to repeal “tax exemptions, exonerations, and incentives” in the Renewables Laws, including those listed in the 2013 Renewables Law for any investor that “develops and operates energy projects with national renewable resources” that has a PPA with ENEE.⁶⁹⁶ While the Bill Against Existing Incentives Regimes provides that these

⁶⁹¹ PPA (**Exh. C-1**), § 2, Cls. 2.4, 6.1, 9.5.1; State Guarantee (**Exh. C-2**), Art. 4.2.

⁶⁹³ Operations Agreement (**Exh. C-3**), § 1.4.7.

⁶⁹⁴ Decree No. 48-1957 dated 27 Feb. 1957 (**Exh. C-6**), Art. 7 (“*La dirección y gobierno de la Empresa Nacional de Energía Eléctrica estará a cargo de una Junta Directiva, integrada en la forma siguiente: a) El Secretario de Estado en los Despachos de Comunicaciones, Obras Públicas y Transporte; b) El Secretario de Estado en el Despacho de Recursos Naturales; c) El Secretario de Estado en los Despachos de Hacienda y Crédito Público; ch) el Secretario Ejecutivo del Consejo Superior de Planificación Económica; d) El Presidente del Banco Central de Honduras; y, e) Un representante del Consejo Hondureño de la Empresa Privada (COHEP)*”).

⁶⁹⁵ See ENEE, Board Minutes No. JD-01-2022 dated 11 Mar. 2022 (**Exh. C-197**), at 2.

⁶⁹⁶ Bill Against Existing Incentives Regime (**Exh. C-41**), Art. 16.

repeals are non-retroactive, it still authorizes SEFIN to repeal existing tax exemptions, whenever – at SEFIN's discretion – there is abuse or misuse of the exemptions.⁶⁹⁷ Its passage would further undermine Pacific Solar's rights to the package of incentives provided under the Renewables Laws, as reflected in the Agreements.⁶⁹⁸

345. Honduras's departure from its commitments towards Pacific Solar is further worsened by the fact that if Pacific Solar does not accept the Government's unilaterally-imposed terms, the Government can, under the 2022 New Energy Law, terminate the Agreements and take control over the Plant.⁶⁹⁹ This is in direct contravention of the PPA, which provides that it "may be modified **only** by written agreement between the Parties."⁷⁰⁰

346. Honduras's violations of its commitments under the Agreements are egregious and numerous. Thus, Honduras's conduct, in breach of its commitments towards Pacific Solar, violates Honduras's obligation under the Treaty to provide Claimants and their investments MFN treatment as specified in the umbrella clauses that Claimants invoke through the Treaty's MFN clause.

D. HONDURAS BREACHED INVESTMENT AGREEMENTS, WHICH IS ACTIONABLE UNDER ARTICLE 10.16(1)(A)(I)(C) OF THE TREATY

347. As explained in Section regarding jurisdiction, the Agreements qualify as "investment agreements" pursuant to Article 10.28 of the Treaty and Claimants are entitled to bring claims against Honduras for its breaches of the Agreements pursuant to Article 10.16(1)(b) of the Treaty, which permits a claimant, on behalf of an enterprise it owns and controls, to claim under the CAFTA-DR for breaches of 'investment agreement[s],' where, as here, "the enterprise has incurred loss or damage by reason of, or arising out of, that breach." This claim is brought in addition to the treaty claims set out above (including Honduras's breach of the umbrella clauses imported through the MFN provision of Article 10.4 of the Treaty).

348. In short, Honduras's wrongful actions and commissions can be summarized as follows. First, the State is failing to pay Pacific Solar for (i) the remuneration for the energy and

⁶⁹⁷ Bill Against Existing Incentives Regime (**Exh. C-41**), Arts. 14, 31.

⁶⁹⁸ See PPA (**Exh. C-1**), Cl. 14.1.

⁶⁹⁹ New Energy Law (**Exh. C-10**), Art. 5.

⁷⁰⁰ PPA (**Exh. C-1**), §2, Cl. 18.1.

capacity produced by the Plant; (and (ii) and interest that Pacific Solar is duly owed, rendering Pacific Solar's financial situation untenable.⁷⁰¹ Second, Honduras is unduly and arbitrarily curtailing the Plant's electricity dispatch to the grid and has blatantly failed to pay for those curtailments.⁷⁰² Third, Honduras is depriving Pacific Solar from enjoying the Renewables Incentives that it had committed to afford Pacific Solar and that attracted the Paizes' investment in the first place.⁷⁰³ Finally, Honduras is threatening to aggravate the dispute by stripping away Pacific Solar's right to the tax incentives contained in the Renewables Laws, and to expropriate the Plant if Pacific Solar does not renegotiate the PPA in terms in Honduras's own liking.⁷⁰⁴ Honduras's breach is clear, particularly considering the State Guarantee, pursuant to which the central Government undertook to be jointly liable with ENEE for its remuneration breaches under the PPA. Indeed, the State Guarantee—"a valid, obligatory and enforceable legal obligation of the State"⁷⁰⁵—was "a condition for [Pacific Solar] to commit itself to the PPA."⁷⁰⁶ The Attorney General's Office stated that for the generator to commit to its obligations under the PPA, "the State [was to] reassure that ENEE would fulfil its obligations."⁷⁰⁷

349. Honduras's conduct is in breach of the basic legal principle of *pacta sunt servanda*, which ENEE itself acknowledged in an internal legal opinion.

350. Indeed, Honduras (through ENEE, SERNA or in its own behalf under the all-encompassing State Guarantee) has an obligation to honor its commitments and abide by them.⁷⁰⁸ This principle, also known as *pacta sunt servanda*, can be found in most legal systems around the world and constitutes a basic cornerstone of any developed society. Here, it is clear that Honduras has failed to abide by its commitments to timely remunerate Pacific Solar, as well as to refrain

⁷⁰¹ See *supra* § C.

⁷⁰² See *supra* § C.

⁷⁰³ See *supra* § C.

⁷⁰⁴ See *supra* § C.

⁷⁰⁵ State Guarantee (**Exh. C-2**), Art. 1.2.; PPA (**Exh. C-1**), Annex X, Art. 1.1.2

⁷⁰⁶ State Guarantee (**Exh. C-2**) Third Whereas Clause; PPA (**Exh. C-1**), Annex X, Third Recital ("For its part, the Office of the Attorney General of the Republic states that as a condition for the Generator to commit to the PPA, it has required that the State provide security to comply with the obligations of ENEE and/or its successors under the PPA[.]").

⁷⁰⁷ State Guarantee (**Exh. C-2**) Third Whereas Clause; PPA (**Exh. C-1**), Annex X, Third Recital.

⁷⁰⁸ Honduran Civil Code (**Exh. C-114**), Art. 1546 ("Contracts must be performed in good faith, and therefore bind not only to what is expressed in them, but to all things which arise precisely from the nature of the obligation, or which by law or custom belong to it.").

from curtailing the Plant's electricity dispatch, to guarantee Pacific Solar's access to the Renewables Incentives, and to allow the Plant to sell its energy to third parties different from ENEE. When analyzing a potential lack of payment to electricity generators for energy or capacity, ENEE concluded that it would constitute a breach of the PPA (and thus, the State Guarantee) and would contravene Honduran law.⁷⁰⁹

351. Secondly, the parties to a contract must fulfill their obligations in good faith.⁷¹⁰ Honduras's bad faith in performing (or failing to perform) the Agreement is notorious. It has used its own wrongdoing –maintaining a monstrous outstanding debt– to force a renegotiation of the PPA aimed precisely at drastically changing Honduras's obligations under the PPA and the State Guarantee.⁷¹¹ Honduras's announced intentions to remove Pacific Solar's right to tax incentives under the Renewables Law, and its thinly disguised threat of expropriation only confirms the State's lack of intention to perform the Agreements in good faith.⁷¹²

352. Thirdly, and derived from its obligation to act in good faith, the State is also estopped from performing against its own previous acts even as a matter of Honduran law.⁷¹³ After Castro came to power in 2022, Honduras decided to systematically defer its payments to Pacific Solar and fail to honor its obligations under the Agreements,⁷¹⁴ in contrast with Honduras's prior conduct.⁷¹⁵

353. Fourthly, Honduran law, similarly to other civil law jurisdictions, recognizes the principle of unjust enrichment, by which one party cannot benefit from its own wrongdoing to the other party's detriment.⁷¹⁶ It is precisely the case here, where Pacific Solar is forced to continue producing electricity at its own cost whereas Honduras benefits from the clean energy from the Plant and does not remunerate it as required by the Agreements and Honduran law. When analyzing the issue ENEE itself provided, in unqualified terms, that “the non-payment of electricity

⁷⁰⁹ ENEE, Legal Opinion No. D.L. 106-6-2020 dated 30 Jun. 2020 (**Exh. C-126**), at 2, 4, 6.

⁷¹⁰ Honduran Civil Code (**Exh. C-114**), Art. 1546 (“Contracts must be performed in good faith”). *See also* ENEE, Legal Opinion No. D.L. 106-6-2020 dated 30 Jun. 2020 (**Exh. C-126**), at 2.

⁷¹¹ *See supra* § II.F.1(b).

⁷¹² *See supra* § II.F..

⁷¹³ *See* ENEE, Legal Opinion No. D.L. 106-6-2020 dated 30 Jun. 2020 (**Exh. C-126**), at 2.

⁷¹⁴ *See supra* § II.F.1.

■ [REDACTED]

⁷¹⁶ *See* ENEE, Legal Opinion No. D.L. 106-6-2020 dated 30 Jun. 2020 (**Exh. C-126**), at 3.

received and marketed by ENEE would violate the general principle[] of law known as the prohibition of unjust or unfair enrichment” together with the principles of equity and *alterum not laedere*.

354. Finally, Honduran law provides a basic contractual principle by which the performance of a contract cannot be left to one’s party discretion.⁷¹⁷ Once again, this principle is present in other civil law jurisdictions; and once again, it has been disregarded by Honduras when performing the Agreements. In particular, and as explained at length, Honduras has sought to unilaterally impose a unilateral renegotiation of the PPA by weaponizing the outstanding debt owed to Pacific Solar and threatening with an ill-defined expropriation. While ENEE already enjoyed a dominant position as the sole offtaker in the market, Honduras worsened the situation by impeding Pacific Solar from ceasing to produce electricity for the country, even at the Paizes’ and the Enterprise’s own cost.⁷¹⁸ This violates any notion of contractual balance and even breaches Article 1548 of the Honduran Civil Code, which bars the performance of the Agreements at Honduras’s discretion.

355. In sum, Honduras’s actions and omissions breached the Agreements. These departures do not only constitute a violation of international law, but also of Honduran law, as ENEE itself has confirmed.

E. HONDURAS IS DISREGARDING ITS ENVIRONMENTAL UNDERTAKINGS UNDER THE TREATY AND OTHER INTERNATIONAL INSTRUMENTS

356. Honduras’s conduct, in addition to a violation of CAFTA-DR Chapter 10 and the Investment Agreements,⁷¹⁹ is inconsistent with its international commitments on environmental protection and preservation.

⁷¹⁷ Honduran Civil Code (**Exh. C-114**), Art. 1548. *See* ENEE, Legal Opinion No. D.L. 106-6-2020 dated 30 Jun. 2020 (**Exh. C-126**), at 3.

⁷¹⁸ New Energy Law (**Exh. C-10**), Art. 15 (“During the renegotiation process, generators shall ensure the whole and uninterrupted supply of energy to the National Company of Electrical Energy (ENEE), otherwise the provisions of the Criminal Code and other special laws shall apply.”).

⁷¹⁹ *See supra* §§ IV.I-II.

357. One of the Treaty's declared objectives is to "protect and preserve the environment."⁷²⁰ As such, the State Parties resolved to "implement [the Treaty] in a manner consistent with environmental protection and conservation," as well as to "promote sustainable development[.]"⁷²¹ To make good on their objective of protecting the environment, the State Parties to CAFTA-DR undertook to "ensure that its laws and policies provide for and encourage high levels of environmental protection" and to "strive to continue to improve those laws and policies."⁷²² Further, under CAFTA-DR, Honduras recognized that "incentives" (such as the ones contained in the Renewables Law and the Agreements) "can contribute to the achievement and maintenance of environmental protection,"⁷²³ and thus to the fulfillment of its obligation of implementing laws that provide for "high levels of environmental protection."⁷²⁴ Honduras's enactment of the National Plan and the Renewables Laws,⁷²⁵ together with its implementation through the Agreements, are aligned with these objectives.⁷²⁶

358. Honduras, moreover, is a Party to the UN Framework Convention on Climate Change and the Paris Agreement. Pursuant to the latter, it committed to make its best efforts to hold the increase in the global average temperature below 1.5°C above pre-industrial levels.⁷²⁷ To achieve that, the Paris Agreement provides that the Parties –like Honduras, must draft a series of "nationally determined contributions" or "NDCs,"⁷²⁸ by which they must abide.⁷²⁹ Honduras submitted its NDC in May 2021, undertaking, *inter alia*, to reduce by 16% its carbon emissions

⁷²⁰ CAFTA-DR (CL-1), Preamble ("P[rotect] and preserve the environment and enhance the means for doing so, including through the conservation of natural resources in their respective territories"). (Capitals and bold removed)

⁷²¹ CAFTA-DR (CL-1), Preamble ("I[mplement] this Agreement in a manner consistent with environmental protection and conservation, promote sustainable development, and strengthen their cooperation on environmental matters").

⁷²² CAFTA-DR (CL-1), Art. 17.1 ("Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall ensure that its laws and policies provide for and encourage high levels of environmental protection, and shall strive to continue to improve those laws and policies.").

⁷²³ CAFTA-DR (CL-1), Art. 17.4 ("The Parties recognize that incentives and other flexible and voluntary mechanisms can contribute to the achievement and maintenance of environmental protection . . . which may include incentives . . . to encourage conservation, restoration, and protection of natural resources and the environment").

⁷²⁴ CAFTA-DR (CL-1), Art. 17.1; *see also* CAFTA-DR (CL-1), Chapter 10, § A, Art. 10.11.

⁷²⁵ *See supra* § II.A.

⁷²⁶ *See supra* § II.B.

⁷²⁷ Paris Agreement dated 12 Dec. 2015 (CL-148), Art. 2.

⁷²⁸ Paris Agreement dated 12 Dec. 2015 (CL-148), Art. 4.2.

⁷²⁹ Paris Agreement dated 12 Dec. 2015 (CL-148), Art. 3.

by year 2030 through the “promotion of renewable energy[.]”⁷³⁰ As the NDC rightly points out, this obligation was consistent with Honduras’s domestic commitments and policy objectives on the field, as enshrined in the National Plan.⁷³¹

359. By destroying the renewable energy investments, it previously incentivized, Honduras is disregarding its international commitments to protect the environment, including under the Treaty. Rather than supporting the investments that foster the energy transition, Honduras is discriminating against renewable generators and favoring fossil fuel producers.⁷³² Among many other actions, ENEE prioritizes payments to fossil fuel-powered plants over renewable producers.⁷³³ As explained, Honduras has simultaneously deployed a campaign targeting renewable investors, rather than supporting the very investors that bet on Honduras and the energy transition.

360. Therefore, the measures described in Section II actions are not only breaches of CAFTA-DR Chapter 10 and Honduran Law. They also are inconsistent with Honduras’s commitments under Article 17 of CAFTA-DR and the Paris Agreement. In regard of CAFTA-DR environmental provision, it is beyond discussion that Honduras’s current legislative framework and policies **do not** “encourage high levels of environmental protection,” let alone that the country is not “strive[ing] to continue to improve those laws and policies.”⁷³⁴ On the contrary, Honduras’s

⁷³⁰ SERNA, Honduras First Nationally Determined Contribution dated 19 May 2021 (**Exh. C-218**), at 20, 24.

⁷³¹ SERNA, Honduras First Nationally Determined Contribution dated 19 May 2021 (**Exh. C-218**), at 22. See also National Plan (**Exh. C-66**), at 26, 100-101, 110, 113, 112, 147.

⁷³² See, e.g., AHER, Report of Meeting between AHER’s Board of Directors and the ENEE’s General Manager, Minister Tejada dated 14 July 2022 (**Exh. C-188**), at 2 (where Minister Tejada acknowledges that payments to conventional generators took half as long as to solar and wind producers) ; AHER, Report of Meeting between AHER’s Board of Directors and the ENEE’s General Manager, Minister Tejada dated 14 July 2022 (**Exh. C-189**) , at 2 (where Minister Tejada admits that Honduras satisfied most of the debt owed to thermal generators, while maintaining a monstrous debt with renewable producers); ENEE, Press Release regarding Status of Payments dated 5 Sep. 2022 (**Exh. C-192**) ; ENEE’s Auditing Commission, Resolution No. CIENEE-174-2021 dated 25 Jun. 2021 (**Exh. C-193**), at 1, 4 ; Asociación para una Sociedad más Justa (ASJ), “*State of the Union – The Electrical Subsector: The Worst Crisis of Blackouts in the Last Three Decades*” dated 2024 (**Exh. C-169**), at 11 (showing that CREE and ENEE prioritized the connection to the grid of thermal plants).

⁷³³ AHER, Report of Meeting between AHER’s Board of Directors and the ENEE’s General Manager, Minister Tejada dated 14 July 2022 (**Exh. C-189**), at 2 ; ENEE’s Auditing Commission, Resolution No. CIENEE-174-2021 dated 25 Jun. 2021 (**Exh. C-193**), at 4, First Resolution; Asociación para una Sociedad más Justa (ASJ), “*State of the Union – The Electrical Subsector: The Worst Crisis of Blackouts in the Last Three Decades*” dated 2024 (**Exh. C-169**), at 11.

⁷³⁴ CAFTA-DR (**CL-1**), Art. 17.1 (“Recognizing the right of each Party to establish its own levels of domestic environmental protection and environmental development policies and priorities, and to adopt or modify accordingly

actions have been followed by a significant decrease in the share of renewable energy.⁷³⁵ Honduras's actions and omissions are not aimed at "ensuring that investment activity in its territory is undertaken in a manner sensitive to environmental concerns."⁷³⁶

V. COMPENSATION

361. Honduras's Treaty breaches have ultimately deprived Claimants of the value of their investments in Honduras. Therefore, Claimants, acting on their own behalf and on behalf of Pacific Solar,⁷³⁷ seek an award that fully compensates such Enterprise for all the historical damages and its loss of fair market value ("FMV"), which Honduras caused by its Treaty violations, as set forth below.

A. UNDER INTERNATIONAL LAW, STATES ARE OBLIGATED TO MAKE FULL REPARATION FOR THE INJURIES CAUSED BY THEIR WRONGFUL ACTS

362. In accordance with the terms of the Treaty and international law,⁷³⁸ Claimants are entitled to relief that would put them and Pacific Solar, an Enterprise in which Claimants own and control, in the position in which they would have been but-for Honduras's Treaty breaches.⁷³⁹

363. As is commonplace in many investment treaties, the Treaty provides only a formula for compensation for lawful expropriation⁷⁴⁰ but does not set out a standard of compensation or

its environmental laws and policies, each Party shall ensure that its laws and policies provide for and encourage high levels of environmental protection, and shall strive to continue to improve those laws and policies.").

⁷³⁵ Asociación para una Sociedad más Justa (ASJ), "State of the Union – The Electrical Subsector: The Worst Crisis of Blackouts in the Last Three Decades" dated 2024 (**Exh. C-169**), at 13.

⁷³⁶ CAFTA-DR (**CL-1**), Art. 10.11.

⁷³⁷ See *supra* § III.B; Treaty (**CL-1**), Chapter 10, § B, Arts. 10.16.1(a), 10.16.1(b).

⁷³⁸ Article 10.22 of the Treaty provides that claims submitted for violations of Section A of the Treaty shall be decided "in accordance with th[e] Treaty and applicable rules of international law." Moreover, Article 10.22 also states that claims submitted for violations of an investment agreement shall be decided in accordance with: "the rules of law specified in the pertinent investment agreement." Treaty (**CL-1**), Chapter 10, § B, Art. 10.22. Claimants' damages claim set forth in this Section is consistent with the Treaty, international law, and the PPA.

⁷³⁹ See S. RIPINSKY AND K. WILLIAMS, DAMAGES IN INTERNATIONAL INVESTMENT LAW (2008) (**CL-111**), at 155 (explaining that "[s]ome investment treaties . . . enable investors of one State to bring claims on behalf of companies incorporated in the host State, which the foreign investor owns or controls directly or indirectly Thus, a foreign investor, provided it owns or controls a host-State enterprise, may bring the claim on behalf of that enterprise and claim the [damages caused by the State's breach]. In this case, again the foreign claimant will be able to recover all damages suffered by the local enterprise . . .").

⁷⁴⁰ Treaty (**CL-1**), Chapter 10, § B, Art. 10.7.2 ("Compensation shall: (a) be paid without delay; (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ('the date of expropriation'); (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and (d) be fully realizable and freely transferable."); *id.*, Art. 10.7.3 ("If the fair market value is denominated

specify any other form of reparation for **both** unlawful expropriation or all other violations of its investment protections. Where, as here, the applicable investment treaty provides no express form of reparation or compensation standard for violations, **customary international law** applies to determine the appropriate measure of damages.⁷⁴¹

364. Customary international law—reflected in the ILC Articles and the landmark *Chorzów Factory* case—indicates that the general standard of compensation for international wrongful acts is “full reparation.”⁷⁴² The ILC Articles recognize a State’s duty to compensate for

in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.”). Multiple tribunals have refused to apply specific compensation standards in treaties in the event of an unlawful expropriation and followed the principle of full reparation when awarding compensation. *See, e.g., Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award dated 7 Feb. 2017 (**CL-68**) ¶ 160 (holding that “[i]n the Tribunal’s view, the appropriate standard of compensation in this case is the customary international law standard of full reparation. [The relevant expropriation provision the applicable BIT] only describes the conditions under which an expropriation is considered lawful; it does not set out the standard of compensation for expropriations resulting from breaches of the Treaty.”); *see also Waguih Elie George Siag and Clorinda Vecchi v. Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Award dated 1 June 2009 (**CL-22**) ¶ 540. As of the present date, this distinction has no practical implications. While Honduras unlawfully expropriated Claimants’ investments, their damages valuation is consistent with both the principle of full reparation, as well as the Treaty’s standard for compensating lawful expropriations.

⁷⁴¹ *See, e.g., Khan Resources Inc., Khan Resources B.V. and CAUC Holding Co. Ltd. v. The Government of Mongolia and MonAtom LLC*, UNCITRAL, PCA Case No. 2011-09, Award on the Merits dated 2 Mar. 2015 (**CL-147**) ¶¶ 368-369 (applying “the customary international law principles set out in the *Chorzów Factory* case” where “the liability of the Respondents having been established under the Foreign Investment Law – a Mongolian statute – and the ECT – an international treaty – . . . neither the ECT nor Mongolian law set out a specific standard of compensation for illegal expropriation”); *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award dated 6 Feb. 2007 (**CL-66**) ¶ 349 (“The law applicable to the determination of compensation for a breach of such Treaty obligations [unlawful expropriation and fair and equitable treatment] is customary international law. The Treaty itself only provides for compensation for expropriation in accordance with the terms of the Treaty.”); *CMS Gas Transmission Co. v. The Argentine Republic*, ICSID Case No. ARB/01/8, Award dated 12 May 2005 (**CL-17**) ¶ 409 (“[T]he Treaty offers no guidance as to the appropriate measure of damages or compensation relating to fair and equitable treatment and other breaches of the standards laid down in Article II. This is a problem common to most bilateral investment treaties and other agreements such as NAFTA. The Tribunal must accordingly exercise its discretion to identify the standard best attending to the nature of the breaches found.”).

⁷⁴² International Law Commission, *Articles of the International Law Commission on the Responsibility of States for Internationally Wrongful Acts* dated 2001 (A/56/10) (**CL-79**), Art. 31 (declaring that it is a fundamental principle of international law that States have the obligation to make “full reparation” for the injuries caused by their wrongful acts); *see also Glencore Int’l A.G. and C.I. Prodeco S.A. v. Republic of Colombia*, ICSID Case No. ARB/16/6, Award dated 27 Aug. 2019 (**CL-101**) ¶¶ 1566-1567 (holding that “[t]he legal standard which the Tribunal must apply is not disputed by the Parties: it is the principle of full reparation of the injury caused, firmly established in jurisprudence since the PCIJ’s seminal *Chorzów Factory* decision”); *CME Czech Republic B.V. (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award dated 13 Sept. 2001 (**CL-80**) ¶ 616 (holding that “[t]he obligation to make full reparation is the general obligation of the responsible State consequent upon the commission of an internationally wrongful act . . . [which] was stated by the Permanent Court in the *Factory at Chorzów* case”); *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. The Argentine Republic*, ICSID Case No. ARB/09/1, Award dated 21 July 2017 (**CL-102**) ¶ 1089 (noting that “[t]he adoption of the ILC Articles, which clearly articulate a State’s obligation to provide full reparation in the event of a breach of an international obligation, and the practice of States in paying reparations in these circumstances, suggest that States accept this obligation”).

the damages resulting from the breaches of international obligations. Article 31 of the ILC Articles declares that it is fundamental principle of international law that States have the obligation to make “full reparation” for the injuries caused by their wrongful acts.⁷⁴³ Article 34, in turn, provides that “full reparation” has three components: restitution, compensation, and satisfaction, and indicates that in some instances, “full reparation may only be achieved . . . by the combination of different forms of reparation.”⁷⁴⁴

365. The Permanent Court of International Justice (“**PCIJ**”), in turn, explained in the landmark *Chorzów Factory* case that the obligation to make “full reparation” requires that the State “**wipe out all the consequences of the illegal act**, and reestablish the situation which would, in all probability, have existed if that act had not been committed.”⁷⁴⁵

366. Since the PCIJ issued the *Chorzów Factory* decision, international tribunals and courts, including investment tribunals, have affirmed and applied the principle of full reparation in hundreds of cases.⁷⁴⁶ The *Teinver v. Argentina* tribunal, for example, recognized that international law requires a respondent “to make reparation” to a claimant for breaches of a treaty

⁷⁴³ International Law Commission, *Articles of the International Law Commission on the Responsibility of States for Internationally Wrongful Acts* dated 2001 (A/56/10) (**CL-79**), Art. 31 (“The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act. . . . Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.”); *id.*, Art. 36 (“The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution. The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.”).

⁷⁴⁴ International Law Commission, *Articles of the International Law Commission on the Responsibility of States for Internationally Wrongful Acts* dated 2001 (A/56/10) (**CL-79**), Art. 34.

⁷⁴⁵ *Chorzów Factory (Ger. v. Pol.)*, P.C.I.J. Series A, No. 17 (1928), Judgment No. 13 (Merits) dated 13 Sept. 1928 (**CL-103**) at 47 (emphasis added).

⁷⁴⁶ See, e.g., *ADC Affiliate Ltd. and ADC & ADMC Management Limited v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award of the Tribunal dated 2 Oct. 2006 (**CL-94**) ¶ 493 (holding that “there can be no doubt about the present vitality of the *Chorzów Factory* principle, its current vigor having been repeatedly attested by the International Court of Justice.”); *id.*, ¶¶ 486-495 (surveying numerous international cases and other sources of international law reasserting the validity of the *Chorzów Factory* formulation); *Glencore Int’l A.G. and C.I. Prodeco S.A. v. Republic of Colombia*, ICSID Case No. ARB/16/6, Award dated 27 Aug. 2019 (**CL-101**) ¶¶ 1566-1567 (holding that “[t]he legal standard which the Tribunal must apply is not disputed by the Parties: it is the principle of full reparation of the injury caused, firmly established in jurisprudence since the PCIJ’s seminal *Chorzów Factory* decision”); *CME Czech Republic B.V. (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award dated 13 Sept. 2001 (**CL-80**) ¶ 616 (holding that “[t]he obligation to make full reparation is the general obligation of the responsible State consequent upon the commission of an internationally wrongful act . . . [which] was stated by the Permanent Court in the *Factory at Chorzów* case”).

and that a tribunal's "award of damages should seek to put [a claimant] in a position they would have been in but for [r]espondent's breaches."⁷⁴⁷

367. Thus, the full reparation principle (*i.e.*, "wiping out the consequences" of the unlawful act) set out above applies in respect of the losses caused by all of Honduras's breaches of the Treaty alleged in these proceedings. This begins by providing the value that restitution (in the sense of restoring the *status quo ante*) would bring and adding further compensation to that if necessary. Accordingly, tribunals, for example, have awarded investors compensation for known past financial harm resulting from State treaty breaches, as actual, liquidated losses.⁷⁴⁸

368. If a treaty breach (or a combination thereof) results in a significant deprivation of the value of property rights, regardless of whether the treaty breach is characterized as an expropriation, compensation can be based on the FMV of the impacted property rights assessed immediately prior to the wrongful act. This, to re-establish the *status quo ante* without taking into account any impact on value of the wrongful act.⁷⁴⁹ For example, the *Gold Reserve* tribunal,

⁷⁴⁷ *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. The Argentine Republic*, ICSID Case No. ARB/09/1, Award dated 21 July 2017 (CL-102) ¶ 1092; see also *CME Czech Republic B.V. (The Netherlands) v. The Czech Republic*, UNCITRAL, Partial Award dated 13 Sept. 2001 (CL-80) ¶ 616 (holding that "[t]he obligation to make full reparation is the general obligation of the responsible State consequent upon the commission of an internationally wrongful act . . . [which] was stated by the Permanent Court in the *Factory at Chorzów* case").

⁷⁴⁸ See *e.g.*, *Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. (formerly Aguas Argentinas, S.A.) v. Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A.) v. Argentine Republic* (II), ICSID Case No. ARB/03/19, Award dated 9 Apr. 2015 (CL-104) ¶ 63 ("Whereas the calculations of other elements of loss, such as the loss on equity, of necessity require the formulation of a hypothetical situation that posits what the Claimants' assets would have been worth if Argentina had accorded the Claimants fair and equitable treatment, such a hypothesis need not be deployed to determine the loss on sponsored debt since the amounts that the Claimants paid to the multilaterals are known exactly. The Claimants' losses on guaranteed debt are therefore actual, liquidated losses, not potential hypothetical losses."); *SGS Société Générale de Surveillance S.A. v. The Republic of Paraguay*, ICSID Case No. ARB/07/29, Award dated 10 Feb. 2012 (CL-105) ¶¶ 189, 193-198 (ordering the respondent to compensate the claimant for unpaid invoices plus interest); see also CHRISTOPHER SCHREUER et al., *THE ICSID CONVENTION: A COMMENTARY* (2009) (CL-106), at 1136-1139 (explaining that "[t]here is a wide range of possibilities for non-pecuniary obligations that awards might impose" which include the "obligation to pay a certain amount of money").

⁷⁴⁹ See *e.g.*, *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award dated 4 Apr. 2016 (CL-92) ¶¶ 846, 850 (holding that "[g]iven the cumulative nature of the breaches that the Tribunal must compensate, and especially in view of its findings on FET that the Respondent's conduct caused all the investments made by Crystallex to become worthless, the Tribunal will apply the full reparation standard according to customary international law;" and noting "it is well-accepted that reparation should reflect the 'fair market value' of the investment. Appraising the investment in accordance with the fair market value methodology indeed ensures that the consequences of the breach are wiped out and that the situation which would, in all probability, have existed if the wrongful acts had not been committed is reestablished."); *PSEG Global Inc. et al v. Republic of Turkey*, ICSID Case No. ARB/02/5, Award dated 19 Jan. 2007 (CL-45) ¶¶ 307-308 (recognizing that "a number of cases accepted the measure of compensation based on the fair market value as appropriate for treaty breaches not amounting to expropriation and relating to the breach of fair and equitable treatment and other standards of protection under the

having found that the State's denial of FET caused the loss of the entire value of Gold Reserve's rights under domestic law, held that "under the principles of full reparation and wiping-out the consequences of the breach, a fair market value methodology [was] appropriate[.]"⁷⁵⁰

369. Thus, compensation for all of Honduras's breaches of the Treaty should be made in accordance with the principle of full reparation and in a way that re-establishes the *status quo ante*.

B. CLAIMANTS SEEK COMPENSATION IN THE AMOUNT NEEDED TO WIPE OUT ALL THE CONSEQUENCES THAT PACIFIC SOLAR HAS SUFFERED DUE TO HONDURAS'S TREATY BREACHES

370. Claimants have retained Compass Lexecon to calculate Pacific Solar's losses. Compass Lexecon is a world-recognized leader in the field of damages valuation. Mr. Miguel A. Nakhle, who authored the accompanying report on quantum, has over 20 years of experience in economic and financial consulting, including experience in the valuation of renewable energy generation assets.⁷⁵¹

371. Compass Lexecon, as an independent expert, has confirmed that the loss suffered by Pacific Solar totals [REDACTED] (including pre-Award interest as of 30 June 2024, a proxy for the date of the Award),⁷⁵² which is composed of the sum of Pacific Solar's historical and FMV losses (minus Pacific Solar's actual cash flows between 30 April 2022 and 30 June 2024);⁷⁵³ specifically:

treaty in question" and noting that in those cases, the damage was caused "at the production stage" of the relevant assets).

⁷⁵⁰ *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award dated 22 Sept. 2014 (CL-30) ¶ 680. The *Gold Reserve* tribunal further noted the following: "[t]he relevant principles of international law applicable in this situation are derived from the judgment of the Permanent Court of International Justice in the *Chorzów Factory* case that reparation should wipe-out the consequences of the breach and re-establish the situation as it is likely to have been absent the breach. As the consequence of the serious breach in the present situation was to deprive the investor totally of its investment, the Tribunal considers it appropriate that the remedy that would wipe-out the consequences of the breach is to assess damages using a fair market value methodology."). *Id.*, ¶ 681.

⁷⁵¹ Compass Lexecon § II ("Qualifications").

⁷⁵² Compass Lexecon ¶¶ 9, 126, Table 8; *see also* Treaty (CL-1), Chapter 10, § B, Art. 10.36(3) (providing that damages are to be determined in the currency in which the investment was made).

⁷⁵³ Counsel for Claimants instructed Compass Lexecon to express the resulting compensation as of a current date by adding pre-Award interest between the Valuation Date and a proxy for the date of the Award, for which Compass Lexecon has selected 30 June 2024 (and continue to be updated throughout the course of the proceedings). As further detailed below and in Compass Lexecon's report, to express the compensation as of a current date, Compass

Historical losses: [REDACTED], which correspond to the actual past due principal and unpaid interest resulting from Honduras's insufficient payments for energy and capacity supplied by Pacific Solar, as well as uncompensated curtailments of energy as of 30 April 2022 (the "**Valuation Date**") plus interest through 30 June 2024.⁷⁵⁴

FMV losses: [REDACTED], which correspond to Pacific Solar's fair market value ("**FMV**") as of the Valuation Date because of Honduras's measures plus interest through 30 June 2024.⁷⁵⁵

- (v) Minus, [REDACTED] in actual cash flows between 30 April 2022 and 30 June 2024 (including interest through 30 June 2024).⁷⁵⁶

372. To assess these damages, Counsel for Claimants instructed Compass Lexecon to adopt 30 April 2022 as the Valuation Date, corresponding to the month immediately before the enactment of the New Energy Law.⁷⁵⁷ As detailed above, this is when the Government breached the Treaty by, among others, implementing policies that render the Agreements ineffective; withholding the compensation owed to Pacific Solar causing its situation to be untenable; and mandating the "renegotiations" of the PPA under the threat of expropriation, which, in light of the Government's conduct, are nothing more than an attempt to unilaterally impose lower energy prices and eliminate the incentives previously awarded under the Renewables Laws and the Agreements.⁷⁵⁸

373. Compass Lexecon's valuation approach for both historical and FMV damages is further detailed in the following subsections.

Lexecon further deducts from Pacific Solar's damages the actual cash flows generated by Pacific Solar between the Valuation Date and 30 June 2024, plus pre-Award interest. Compass Lexecon § V.1 ("**Damages Framework**").

⁷⁵⁴ Sum includes pre-Award interest. Excluding pre-Award interest, the historical damages total [REDACTED]. Compass Lexecon, ¶ 9, Table 1.

⁷⁵⁵ Sum includes pre-Award interest. Excluding pre-Award interest, the FMV losses total [REDACTED]. Compass Lexecon, Table 1. As Compass Lexecon clarifies in its report, this calculation does not include the outstanding balance of unpaid energy, capacity, and curtailment invoices as of 30 April 2022. Compass Lexecon n. 63.

⁷⁵⁶ Compass Lexecon ¶ 55, Table 1.

⁷⁵⁷ Compass Lexecon ¶¶ 7, 53. The New Energy Law was submitted to the Honduran Congress on 29 April 2022, and entered into force on 17 May 2022. See New Energy Bill dated 29 Apr. 2022 (**Exh. C-34**); New Energy Law dated 16 May 2022 (**Exh. C-3**); Honduras's Congress, "New Energy Law Decree Approved in its Totality," X (FORMERLY TWITTER) dated 12 May 2022 (**Exh. C-208**).

⁷⁵⁸ See *supra* §§ II.G and IV.

1. Pacific Solar's Historical Losses

374. As set forth above, prior to the passage of the New Energy Law in May 2022, Honduras's payments to Pacific Solar under the PPA were incomplete and delayed.⁷⁵⁹ Nonetheless, the Government, through actions, as well as written and verbal representations, had often assured Pacific Solar that full payment would be forthcoming for compensation owed to date.⁷⁶⁰

375. Under President Castro's administration, however, the Government's rhetoric turnaround and through the passage of the New Energy Law, the Government made clear that it would not compensate generators in full in repudiation of its obligations under the Agreements and the Renewables Laws.⁷⁶¹ Such resolve applied to the existing unpaid invoices (the damages of which are hereby referred to as Pacific Solar's historical losses) as reflected by: (i) the New Energy Law's instruction to settle the historical debt owed to the generators only "for up to one year," and only if the PPA was "renegotiated" or "terminated"⁷⁶² and (ii) the Government's subsequent withholding of the existing debt in the context of the "renegotiations" mandated by the New Energy Law, in which the Government has made clear it will only honor existing debt if the generators "renegotiate their PPAs."⁷⁶³ This is confirmed by [REDACTED] testimony, who describes how Pacific Solar's "fate changed shortly after Xiomara Castro was sworn in as

⁷⁵⁹ See *supra* §§ II.F, II.G.

⁷⁶⁰ See *supra* § II.F; Paiz WS ¶¶ 19, 21 (noting that "[a]t certain times throughout the Project, ENEE's payments for energy were delayed. However, in 2018 and 2019, the Government, including ENEE, worked with international agencies, including the International Monetary Fund ('IMF'), to address inefficiencies in the country's electrical sector. This involved aiding ENEE to become current on its obligations, which included payments owed to Pacific Solar for energy delivered" and that "[t]he Government's significant payments to Pacific Solar, coupled with the Government's openness to dialogue from the generators, gave us the confidence that the Government was committed to supporting our investment"); [REDACTED] (explaining that, between 2018 and mid-2020, Pacific Solar engaged in discussions with Honduras to address certain payment delays and other issues affecting the electricity sector and by mid-2020, Honduras "made significant catch-up payments to PSE and other generators, preventing the situation from escalating further. These payments led us to believe that the Government would continue to pay us in the future, as it had represented to us in the past.").

⁷⁶¹ See *supra* § II.G.

⁷⁶² See New Energy Law (**Exh. C-3**), Art. 16 ("*Artículo 16: Pago de Mora. Se autoriza al Gobierno de la Republica para que una vez concluida la renegociacion o la relacion contractual con las empresas generadoras con las que tiene retrasos de hasta un (1) ano, proceda a conciliar la mora y se establezca el mecanismo posible para el pago a traves del Sistema Financiero Nacional o Internacional, iniciando con los pequenos y medianos generadores.*") ("Article 16. Delinquent Payments. The Government of the Republic is authorized, once the renegotiation or contractual relationship has been concluded with the generator companies with whom it has delays of up to one (1) year, to proceed to reconcile arrears and to establish the possible mechanism for payment through the National or International Financial System, starting with small and medium-sized generators.").

⁷⁶³ See *supra* § II.G; [REDACTED]

President in January 2022” and started “targeting energy generators that had invested during prior administrations.”⁷⁶⁴

376. As Compass Lexecon explains, the fact that Honduras’s payments to Pacific Solar are late and insufficient directly impacts the economics of the project—including its expected return—which are premised on Honduras paying Pacific Solar’s invoices in accordance with the payment terms contained in the PPA and reinforced in the State Guarantee (*i.e.*, [REDACTED] after the presentation of the respective invoice).⁷⁶⁵ As further explained above, moreover, it also violated Honduras’s obligations to (i) accord the minimum standard of treatment to Claimants, including FET; (ii) not discriminate by providing less favorable treatment to foreign investors; (iii) abide by investment agreements; and (iv) not unlawfully expropriate Claimants’ investments.⁷⁶⁶

(a) Valuation Approach

377. To measure Pacific Solar’s historical losses, Compass Lexecon computed the past due amounts that Honduras owed Pacific Solar **as of the Valuation Date**, which are composed of:

- (i) **The outstanding balance of past due invoices and unpaid interest resulting from energy and capacity delivered to the grid.** As detailed above, Honduras incurred in delays and made insufficient payments to Pacific Solar for energy and capacity supplied to the grid.⁷⁶⁷ Specifically, by the Valuation Date, Honduras owed Pacific Solar **US\$ 14.3 million** (without pre-Award interest) as of 30 April 2022 for energy and capacity delivered to the grid.⁷⁶⁸
- (ii) **The outstanding balance of past due invoices, as well as unpaid interest for curtailments of energy.** As further explained above, Honduras also failed to provide **any** compensation to Pacific Solar for the output that ENEE had previously curtailed (beyond six cumulative hours a month).⁷⁶⁹

⁷⁶⁴ [REDACTED]; *see also* Paiz WS ¶¶ 23-34.

⁷⁶⁵ Compass Lexecon ¶¶ 6, 45; § IV.1-2; *see also* PPA (**Exh. C-1**), Cls. 9.6.1, 9.6.3.

⁷⁶⁶ *See supra* § IV.

⁷⁶⁷ Compass Lexecon ¶ 58; *see also supra* §§ II.F, II.G; Compass Lexecon ¶ 44 (explaining that “[t]he information provided by Pacific Solar shows that, historically, ENEE has incurred significant delays in the payment of energy and capacity supplied by Pacific Solar to the system, and also that those payments have been insufficient. Pacific Solar thus has accrued a substantial and growing balance of unpaid invoices.”).

⁷⁶⁸ Compass Lexecon ¶¶ 45, 64; Tables 1 and 3.

⁷⁶⁹ Compass Lexecon ¶¶ 46-48, Table 1; *see also supra* § II.G.2. As Compass explains, “output curtailments accounted for 13% of Pacific Solar’s potential monthly output, on average, from January 2021 to June 2024” and curtailments “increased by 40% in 2022, from 12,494 MWh in 2021 to 17,869 MWh in 2022.” Despite the fact that Pacific Solar “has been issuing monthly invoices requesting ENEE compensation for output curtailments, none [of these invoices] have been paid as of the writing of th[e] [Compass] report.” Compass Lexecon ¶¶ 47-48.

Honduras owed Pacific Solar a total of [REDACTED] as of 30 April 2022 in this respect.⁷⁷⁰

378. To conduct such computation, Counsel for Claimants instructed Compass Lexecon to compute the outstanding balance of unpaid invoices by applying Honduras's payments to the outstanding interest first and outstanding principal second.⁷⁷¹ This approach is consistent with Honduran law and is reasonable from an economic perspective.

- (i) As regards Honduran law, the Honduran Civil Code provides that "if the debt accrues interest, the payment cannot be considered made towards the principal **until the interest has been covered.**"⁷⁷² In other words, any payment on a debt shall be first applied to cover interest.
- (ii) From an economic point of view, Compass Lexecon explains that calculating the outstanding balance of debt by applying any payments towards accrued interest first is a "reasonable approach," where the past due amounts accrue simple interest (*i.e.*, the outstanding interest cannot accrue interest).⁷⁷³ That is the case here because under the PPA, the outstanding invoices were to only accrue simple interest.⁷⁷⁴ As Compass Lexecon further notes, "[o]therwise, there would be no financial incentive to pay off outstanding interest."⁷⁷⁵ Rather, a debtor would have "an incentive to make payments of outstanding principal first, such that interest on the principal stops accruing, and the outstanding interest balance remains."⁷⁷⁶

⁷⁷⁰ Compass Lexecon ¶ 65; Tables 1, 4.

⁷⁷¹ Compass Lexecon ¶ 60. Payments are also allocated according to the invoices' aging, such that interest (and then principal) payments are assigned first to invoices with the oldest due dates. *Id.* To illustrate how this approach works, Compass Lexecon provides the following example in its report: "assume that during a period of [REDACTED] Pacific Solar sent ENEE an invoice per month (total [REDACTED]). Assume also that ENEE does not pay any of these invoices, and by the end of month six, the interest accrued on those invoices is [REDACTED]. If ENEE makes a payment of [REDACTED] such payment would be first applied to satisfy the [REDACTED] outstanding interest, and then satisfy [REDACTED] of outstanding principal. This would leave [REDACTED] of principal debt outstanding, which will continue to accrue interest until ENEE makes another payment to Pacific Solar." Compass Lexecon n. 67.

⁷⁷² Honduran Civil Code (**Exh. C-114**), Art. 1438 ("*Si la deuda produce interés, no podrá estimarse hecho el pago por cuenta del capital mientras no estén cubiertos los intereses.*") ("If the debt generates interest, the payment cannot be considered as made towards the principal until the interest has been covered.").

⁷⁷³ Compass Lexecon ¶ 60, n. 67.

⁷⁷⁴ PPA (**Exh. C-1**), Cl. 9.6.3 ("*En caso de Incumplimiento en la Fecha de Pago, el COMPRADOR pagará intereses a la tasa promedio correspondiente al mes anterior en que se efectúe el pago para operaciones activas del sistema bancario nacional y en ningún caso serán capitalizables[.]*") ("In the event of Default in the Payment Date, the BUYER shall pay interest at the average rate corresponding to the previous month in which the payment is made for active operations within the national banking system, and under no circumstances shall the interest be capitalized.").

⁷⁷⁵ Compass Lexecon n. 67.

⁷⁷⁶ Compass Lexecon n. 67.

379. As detailed above, in light of the 10-year income tax exemption provided in the 2013 Renewables Law and confirmed in the PPA, which Compass Lexecon assumes to expire in September 2026 (for both phases of the Plant),⁷⁷⁷ any income to be received under the aforementioned invoices would not be subject to any income taxes in Honduras.⁷⁷⁸ Compass Lexecon thus, is not required to make any further adjustments to account for taxes due for historical losses.⁷⁷⁹

(b) Quantum

380. In sum, as of the Valuation Date, the total amount of compensation that Honduras owes Claimants for Pacific Solar's historical losses is **US\$ 16.5 million** (before adding pre-Award interest).⁷⁸⁰ As of 30 June 2024, the historical losses total **US\$ 19.5 million**.⁷⁸¹

2. Pacific Solar's FMV Losses

381. As detailed above, the New Energy Law mandated the "termination" of Honduras's contractual relationship with generators, including Pacific Solar's PPA, and the "State acquisition" of generators' assets if the generator did not agree to the "renegotiated" terms imposed by the State for the generator's PPA.⁷⁸² As further detailed above, the Government's subsequent conduct demonstrates that it did not intend to engage in good-faith negotiations with the generators.⁷⁸³ Rather, the Government is choosing to cripple the agreements and framework that granted the generators' rights.⁷⁸⁴

382. This has left Pacific Solar in an untenable situation.⁷⁸⁵ This conduct also has signaled to the market that the State is to pursue a unilateral and forceful elimination of Pacific

⁷⁷⁷ Compass Lexecon ¶¶ 92-93.

⁷⁷⁸ See *supra* § II.B.

⁷⁷⁹ As Compass Lexecon notes in its report, "should the Tribunal award compensation to Pacific Solar for its historical damages and this compensation was subject to tax in Honduras, the Award amount should be grossed up accordingly." Compass Lexecon ¶ 61.

⁷⁸⁰ Compass Lexecon ¶ 61 (noting that this sum includes US\$ 16.2 million of outstanding principal and US\$ 0.3 million of outstanding interest).

⁷⁸¹ Compass Lexecon Table 1.

⁷⁸² See *supra* § II.G.1; New Energy Law dated 16 May 2022 (**Exh. C-3**).

⁷⁸³ See *supra* § II.G.1.

⁷⁸⁴ See *supra* § II.G.1.

⁷⁸⁵ See *supra* § II.G; [REDACTED] (explaining that "[t]he enactment of the New Energy Law and President Castro's policies toward renewable energy generators has had a snowball effect on PSE, which we have been unable to mitigate. ENEE's debt to PSE is at unprecedented and untenable levels. ENEE occasionally pays, but the amounts are insufficient and unpredictable. We have tried to sell energy in the spot market, but there are only a

Solar's rights, resulting in a substantial deprivation of the FMV of its assets and for which to date, Honduras has provided no compensation.⁷⁸⁶ As further explained above, such conduct violated Honduras's obligations to: to (i) accord the minimum standard of treatment to Claimants, including FET; (ii) not discriminate by providing less favorable treatment to foreign investors; (iii) abide by investment agreements; and (iv) not unlawfully expropriate Claimants' investments.⁷⁸⁷

383. Accordingly, in addition to compensating for the historical losses set out above, Honduras should compensate Pacific Solar for its lost FMV as of the Valuation Date. As further explained below, Compass Lexecon values the FMV of Pacific Solar as of the Valuation Date using a discounted-cash flow ("DCF") analysis in the absence of the Measures.⁷⁸⁸ Here, such analysis involves looking forward from the Valuation Date and projecting Pacific Solar's expected revenues and expenses, year by year, until the end of each of the Plant's phases' useful life.⁷⁸⁹ Among other steps detailed below, Compass Lexecon further discounts such cash flows to the Valuation Date at a rate reflecting Pacific Solar's weighted average cost of capital ("WACC") (██████).⁷⁹⁰

384. The following sub-sections explain that the DCF method is the most appropriate method available to measure Pacific Solar's FMV and details Compass Lexecon's approach.

(a) The DCF Method Is the most Appropriate Method Available to Measure Pacific Solar's Loss of FMV

385. The DCF method has been endorsed in circumstances where, as here, companies have had a historic record of performance and where a company's business allows for profits to

handful of transactions in the whole country, which is entirely dominated by ENEE. As to our lenders, we have only been able to pay interest on our loans and have been unable to even reduce the principal. Due to the change that the New Energy Law implicates, we are trying to restructure our loans to alleviate the precarious situation, but even with those attempts, we have been unable to finalize it because of ENEE's erratic behavior as it relates to payments. Given ENEE's arrears, we are at risk of not even being able to pay interest on our loans. To make matters worse, the Government has tightened access to hard currency, and it is quite difficult to access U.S. dollars to make our payments in dollars to make our payments promptly to banks and vendors. The Government also has started to reject PSE's tax exemptions request to which it is entitled, even for concepts that the Government had routinely granted to PSE in prior years. Through its nonpayment and conduct, the Government has simply put PSE in an untenable situation.").

⁷⁸⁶ See *supra* § II.G.

⁷⁸⁷ See *supra* § IV.

⁷⁸⁸ Compass Lexecon ¶ 69 (describing the DCF method as "one of the most fundamental and established financial valuation tools.").

⁷⁸⁹ Compass Lexecon ¶ 71.

⁷⁹⁰ Compass Lexecon ¶¶ 71, 102; Appendix B.

be analyzed based on data.⁷⁹¹ As Compass Lexecon explains, “[t]his method is . . . widely used to estimate the value of renewable energy assets where certain aspects of the project’s performance can be reasonably forecasted into the future, for example, when there is a PPA in place.”⁷⁹²

386. Notably, multiple tribunals evaluating measures in the renewable energy sector have confirmed this view and applied the DCF method to quantify the losses of investors.⁷⁹³ This, even in circumstances **not** involving express direct expropriation threats by a State and where a State had **not** committed to paying the specific remuneration in both a PPA and a State Guarantee entered into with the generator, as it is the case here.

387. For example, in *Antin v. Spain*, one of the cases analyzing Spain’s unilateral modification to the remuneration for renewable energy generators, the tribunal calculated damages using a DCF valuation.⁷⁹⁴ In holding that the DCF method was appropriate under the circumstances, the tribunal endorsed the view that “[p]ower stations (both conventional and renewables) have a relatively simple business, producing electricity, whose demand and long-run value can be analyzed and modelled in detail based on readily available data.”⁷⁹⁵ Similarly, the *Masdar v. Spain* tribunal, which also analyzed Spain’s measures, recognized that “power plants . . . rely on a relatively simple business model – limited only to generating electricity, pursuant to generally stable parameters” and thus “the income generated and costs incurred are relatively predictable in the renewable sector.”⁷⁹⁶ Commentators likewise, recognize that the main

⁷⁹¹ See, e.g., *Walter Bau v. Thailand*, UNCITRAL, Award dated 1 July 2009 (CL-28) ¶ 14.22 (observing that if “value and the damages must be computed on the basis of what was legitimately expected at a given time, then the DCF method is the most reasonable one to apply.”).

⁷⁹² Compass Lexecon ¶ 69.

⁷⁹³ See, e.g., *ACF Renewable Energy Ltd. v. Bulgaria*, ICSID Case No. ARB/18/1, Award dated 5 Jan. 2024 (CL-46) ¶ 1796 (applying the DCF method to quantify the claimant’s losses); *Greentech Energy Systems A/S, NovEnergia II Energy & Environment (SCA) SICAR, and NovEnergia II Italian Portfolio SA v. The Italian Republic*, SCC Case No. V 2015/095, Award dated 23 Dec. 2018 (CL-107) ¶ 562 (same); *NovEnergia II- Energy & Environment (SCA) (Grand Duchy of Luxembourg), SICAR v. The Kingdom of Spain*, SCC Arbitration /2015/063, Award dated 15 Feb. 2018 (CL-58) ¶¶ 818, 820-821 (same); *OperaFund Eco-Invest SICAV PLC and Schwab Holding AG v. The Kingdom of Spain*, ICSID Case No. ARB/15/36, Award dated 6 Sept. 2019 (CL-108) ¶ 621 (same); *SolEs Badajoz GmbH v. The Kingdom of Spain*, ICSID Case No. ARB/15/38, Award dated 31 July 2019 (CL-109) ¶ 538 (same); *Watkins Spain S.À.R.L., Watkins (Ned) B.V. et al., v. The Kingdom of Spain*, ICSID Case No. ARB/15/44, Award dated 21 Jan. 2020 (CL-62) ¶ 689 (same).

⁷⁹⁴ *Antin Infrastructure Services Luxembourg S.à.r.l. et al., v The Kingdom of Spain*, ICSID Case No. ARB/13/31, Award dated 15 June 2018 (CL-61) ¶¶ 572-573, 576-580.

⁷⁹⁵ *Antin Infrastructure Services Luxembourg S.à.r.l. et al., v The Kingdom of Spain*, ICSID Case No. ARB/13/31, Award dated 15 June 2018 (CL-61) ¶ 689.

⁷⁹⁶ *Masdar Solar & Wind Cooperatief U.A. v. The Kingdom of Spain*, ICSID Case No. ARB/14/1, Award dated 16 May 2018 (CL-43) ¶ 582.

advantage of the DCF method is that it establishes FMV in the “most conceptually correct matter—as present worth future benefits.”⁷⁹⁷

388. Compass Lexecon, moreover, affirms that the DCF method is “a highly suitable methodology for computing [Pacific Solar’s] FMV, since [it] is an established going concern with a track record of profitability.”⁷⁹⁸ Indeed, as the record in this case shows, by the time Honduras enacted the New Energy Law, Pacific Solar’s Plant had been operating for over [REDACTED] and—according to Honduras’s specific commitments under the legal framework and the Agreements—was entitled to a specific and predictable remuneration regime.⁷⁹⁹ Therefore, Pacific Solar’s cash flows in the But-For Scenario—and thus its But-For FMV—can be predicted with sufficient certainty throughout its useful life.

(b) Applying the DCF Method, Compass Lexecon Calculates Pacific Solar’s FMV Relying on Honduras’s Specific Commitments and Pacific Solar’s Track-Record

389. As part of its DCF analysis, Compass Lexecon forecasts the cash-flows that Pacific Solar would be expected to generate in the But-For Scenario applying the three steps set out below.

390. As **Step 1**, Compass Lexecon projects Pacific Solar’s positive cash flows in a But-For Scenario (*i.e.*, but-for the Treaty breaches) starting from the Valuation Date relying on the following assumptions that are based on Honduras’s specific commitments in the Agreements and/or Pacific Solar’s track-record:

- (iii) **Remuneration.** To project the remuneration that Pacific Solar would receive in a But-For Scenario, Compass Lexecon assumes that Honduras would continue compensating Pacific Solar in accordance with Honduras’s specific commitments under the Agreements until the expiration of the [REDACTED] term of the PPA (*i.e.*, in December [REDACTED]) and reasonable market

⁷⁹⁷ S. RIPINSKY AND K. WILLIAMS, DAMAGES IN INTERNATIONAL INVESTMENT LAW (2008) (CL-111), at 200.

⁷⁹⁸ Compass Lexecon ¶ 69.

⁷⁹⁹ See *supra* § II.B; Compass Lexecon, n. 109; [REDACTED] (testifying that “the PPA provided for numerous assurances that reinforced the expected stability of PSE’s remuneration, such as: (i) the applicability of the tax exemptions provided under Honduran law for renewable energy projects to the Plant; (ii) the indexation of the base energy price with U.S. inflation rates during the first ten years of operation, subject to certain caps; (iii) ENEE’s obligation to purchase and dispatch all the capacity and energy that the Plant produces and delivers, and to pay PSE if its dispatch was curtailed under certain criteria; (iv) the accrual of a pre-determined interest over invoices in which payments are delayed more than 45 days; and (v) PSE’s right to sell to third parties if ENEE did not pay its invoices for more than four consecutive months. Further, the Honduran State itself committed to honor ENEE’s obligations under the PPA through the State Guarantee, which gave further reassurances to the project. All these assurances were of particular importance because they offered stable and predictable revenue streams, which are key for projects with high upfront costs, such as a PV plant. This provided comfort to PSE and the stakeholders in the project.”).

benchmarks (until the end of the useful life of each of the Plant's Phases, assumed to be in September [REDACTED] for Phase I, and December [REDACTED] for Phase II).⁸⁰⁰ Specifically:

- (A) **Between the Valuation Date and [REDACTED] (when the PPA is set to expire),**⁸⁰¹ Compass assumes that Honduras would pay Pacific Solar:
- (1) **a Base Price** equal to 114.14 US\$/MWh for the duration of the PPA (plus an inflation adjustment equal to the maximum of U.S. CPI or 1.5% per year);⁸⁰²
 - (2) **an Additional 10% on the Fixed Base Price** for the first 15 years of the commercial operation of each Phase of the Plant (*i.e.*, until September [REDACTED] and December [REDACTED], respectively) (equivalent to 11.41 US\$/MWh and remaining constant as it is not subject to inflation adjustments);⁸⁰³
 - (3) **Capacity Payments** equivalent to 8.92 US\$/Kw-month for the first 10 years of the commercial operation of the Plant (*i.e.*, until September [REDACTED] for Phase I, and December [REDACTED] for Phase II).⁸⁰⁴
- (B) **Between [REDACTED] and the end the useful life of each of the Plant's Phases (September [REDACTED] for Phase I and December [REDACTED] for Phase II):** Compass Lexecon assumes that Pacific Solar will renegotiate and extend its PPA in line with the terms agreed by Honduras in recent negotiations with other PV generators (adjusted negatively to predict the price that Honduras could reasonably

⁸⁰⁰ Compass Lexecon ¶¶ 35, 78-82, n. 109; *see also* PPA (Exh. C-1), § 1(B) (providing that “the term of this Contract for the purposes established in Clause 2.1 General Description of the Object of the Contract, of the General Conditions is twenty (20) years counted from the final Commercial Operation Start Date [*i.e.*, December 2018].”); Commercial Operating Certificate for Pacific Solar's Second Phase, dated 8 Jan. 2019 (Exh. C-16) (certifying that the Final COD is 28 December 2018).

⁸⁰¹ PPA (Exh. C-1) § 1(B).

⁸⁰² Compass Lexecon ¶¶ 5, 32, 78, 81; PPA (Exh. C-1), § 1(G)(ii). The US\$ 114.14/MWh Base Price under the PPA is equivalent to the Short-Term Marginal Cost published in Honduras's Official Gazette in 2014. *See supra* § II.B.1; PPA (Exh. C-1), § 1(G), § 2, Cl. 4.2, § 2, Cl. 9.2; Compass Lexecon ¶ 25; [REDACTED]

⁸⁰³ Compass Lexecon ¶ 32; *see also supra* § II.B.1; PPA (Exh. C-1) § 2, Cl. 9.2 (“*El Incentivo para Generadores Renovables (IRE) se aplicará únicamente para los primeros quince (15) Años de Operación Comercial de la Planta en aplicación del Artículo 3, Numeral 2), Literal c) de la Ley de Promoción a la Generación de Energía Eléctrica con Recursos Renovables. El COMPRADOR pagará al VENDEDOR el precio base de potencia igual al Costo Marginal de Corto Plazo Potencia vigente al momento de la firma del Contrato, aplicado a la Capacidad de Potencia generada por la Planta . . .*”) (“The Incentive for Renewable Generators (IRE) will be applied only for the first fifteen (15) years of Commercial Operation of the Plant, in accordance with Article 3, Section 2), Subsection c) of the Law for the Promotion of Electricity Generation with Renewable Resources. The BUYER shall pay the SELLER the base capacity price equal to the Short-Term Marginal Cost of Capacity in effect at the time of the Contract signing, applied to the Capacity generated by the Plant...”); [REDACTED].

⁸⁰⁴ Compass Lexecon ¶ 32; *see also supra* § II.B.1; PPA (Exh. C-1), § 1(G), § 2, Cl. 9.2; [REDACTED].

accept after the expiration of the PPA).⁸⁰⁵ Such rate is [REDACTED].⁸⁰⁶

- (iv) **Plant's generation.** To forecast the Plant's But-For generation, Compass Lexecon relies on the average energy output that the Plant dispatched between [REDACTED], accounting for the curtailments experienced during this time and a brief business interruption covered by insurance.⁸⁰⁷ Such average (*i.e.*, [REDACTED]) —which is the estimate applied for [REDACTED] is projected until the end of the Plant's useful life of each of the Plant's Phases by applying a degradation rate of [REDACTED] MWh/per annum for Phase I and Phase II, respectively.⁸⁰⁸ As Compass Lexecon notes, such "degradation rate reflects the reduction in solar panel efficiency, and therefore output, over time" of the Plant's solar panels.⁸⁰⁹
- (v) **Plant's useful life.** Compass Lexecon, moreover, projects the cash flows until the end of the useful life of each of the Plant's Phases, which is reasonably estimated to be at least [REDACTED] (September [REDACTED] for Phase I, and December [REDACTED] for Phase II).⁸¹⁰ This useful life projection is consistent with the contemporaneous assumptions of both Pacific Solar's representatives⁸¹¹ and the industry (which estimate that PV plants have a useful life of more than [REDACTED]).⁸¹²

⁸⁰⁵ Compass Lexecon ¶¶ 80-81 (explaining that "[d]uring early [REDACTED] ENEE agreed to pay other PV generators a 'monomic price' of [REDACTED]. This price implied a reduction of approximately [REDACTED] in the monomic price of generators that, as Pacific Solar, do not qualify for the Special PV Incentive, which was approximately [REDACTED]. The price of [REDACTED] lower than the short-term marginal cost of the system in [REDACTED] (of [REDACTED]). Assuming a similar decreasing trend for the next [REDACTED] years results in a price of [REDACTED] by [REDACTED], which [Compass] assume[s] will be Pacific Solar's new monomic price after the expiration of the PPA on December [REDACTED]. [Compass] notes that this price is approximately [REDACTED] lower than the monomic prices under the PPA for Phase I and Phase II, respectively, immediately before its expiration (*i.e.*, [in] December [REDACTED]).").

⁸⁰⁶ Compass Lexecon ¶ 81. Compass Lexecon further assumes that such price will be increased by U.S. CPI (between [REDACTED]) up to [REDACTED]. *Id.*, n. 92.

⁸⁰⁷ Compass Lexecon ¶¶ 74-76, Figure 10.

⁸⁰⁸ Compass Lexecon ¶ 77, n. 86.

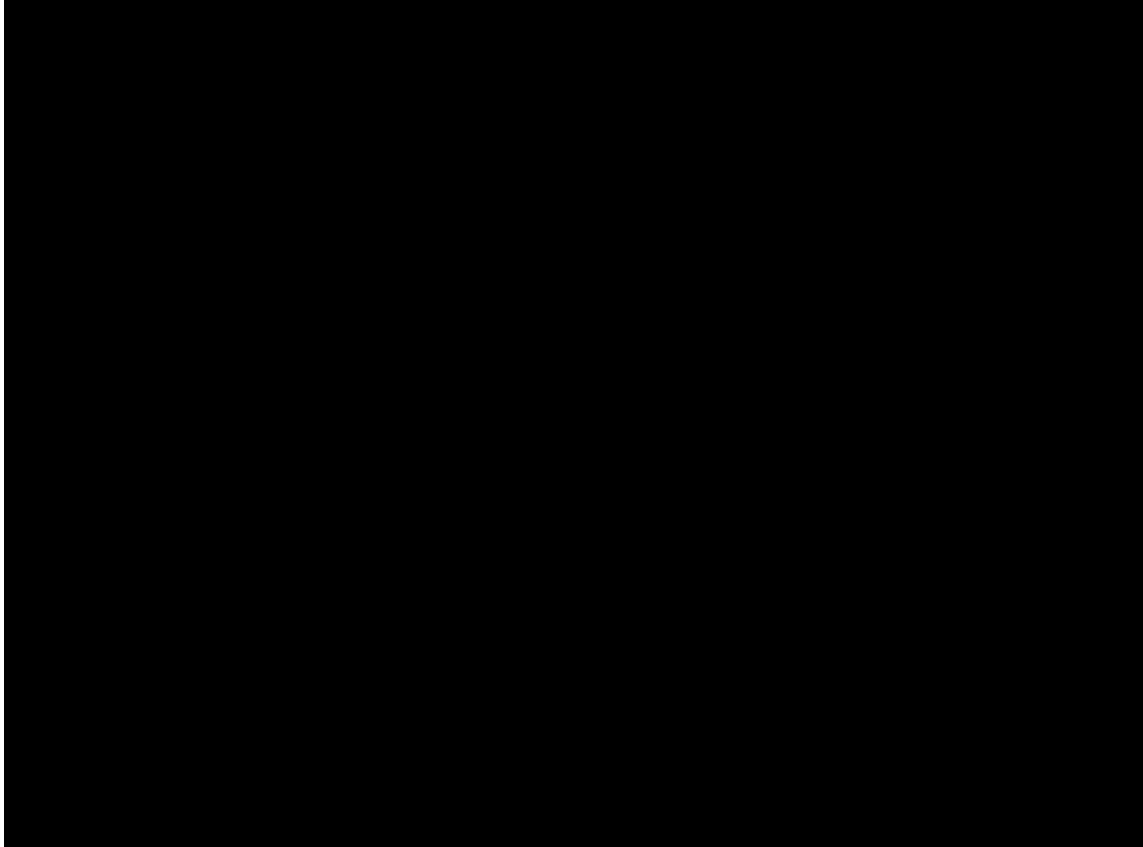
⁸⁰⁹ Compass Lexecon, n. 81.

⁸¹⁰ Compass Lexecon ¶ 89; Figure 9.

⁸¹² *See, e.g.*, U.S. Office of Energy Efficiency & Renewable Energy, End-of-Life Management of Solar Photovoltaics available at <https://www.energy.gov/eere/solar/end-life-management-solar-photovoltaics> (Exh. C-78) (explaining that "[t]he estimated operational lifespan of a PV module is about **30-35 years**, although some may produce power much longer") (emphasis added); European Commission DG ENV, Study on Photovoltaic Panels Supplementing the Impact of the WEEE Directive, Final Report dated 14 Apr. 2011 available at <https://ec.europa.eu/environment/pdf/waste/weee/Study%20on%20PVs%20Bio%20final.pdf> (Exh. C-79) p. 13 (observing as early as 2011, that photovoltaic panels have a long life time, "which is estimated at 25 years" and that this "represents the warranty lifetime; **technical lifetime could be as long as 30 to 40 years.**") (emphasis added).

391. The following figure from Compass Lexecon's report illustrates the forecast of Pacific Solar's revenues in the But-For Scenario using the above-described assumptions:

Forecast of Pacific Solar's Revenues in the But-For Scenario⁸¹³



392. As **Step 2**, Compass Lexecon projects Pacific Solar's expenses and subtracts them from Pacific Solar's projected revenues, which include the following:

- (i) **Maintenance and equipment expenses.** These costs are forecasted from the Valuation Date onwards based on Pacific Solar's O&M costs recorded in its financial statements.⁸¹⁴ They also capture a conservative assumption of equipment-related expenses to ensure the continued operation of the Plant⁸¹⁵.

⁸¹³ As Compass Lexecon points out, capacity payments expire 10 years after the beginning of operations (in 2026 and 2028 for Phase I and Phase II, respectively) and the 10% incentive expires 15 years after the beginning of operations (in 2031 and 2033, for Phase I and Phase II, respectively). The expiration of the PPA on December 28, 2038 explains the drop in revenues in 2039, whereas the end of the useful life of Phase I explains the further drop in revenues in 2042." Compass Lexecon, Figure 9, note in Figure 9.

⁸¹⁴ Compass Lexecon ¶¶ 84-85.

⁸¹⁵ Compass Lexecon ¶ 86. Compass Lexecon assumes that Pacific Solar will have to replace most of the Plant's inverters at an assumed cost of [REDACTED] (plus U.S. inflation). This assumption stems from the fact that Pacific Solar had to replace [REDACTED] inverter units in [REDACTED]. Compass Lexecon ¶¶ 84, 86; *see also* [REDACTED]

- (ii) **Other Pacific Solar's anticipated service costs and operating and administrative expenses.** These service costs (other than O&M and equipment-related expenses) are forecasted from the Valuation Date onwards based on the historical cost data in Pacific Solar's audited financial statements and escalated in line with the inflation forecast of the currency they are incurred in.⁸¹⁶
- (iii) **Depreciation.** Compass Lexecon accounts for the depreciation of the Plant and its equipment from the Valuation Date through the end of the Plant's useful life relying on the Plant's book value as recorded in 2021 and applying the straight-line method.⁸¹⁷
- (iv) **Income Tax.** Compass further deducts the income taxes that Pacific Solar would be liable after the exemption for the first ten years of operations provided in the 2013 Renewables Law and the PPA lapses.⁸¹⁸ Since Pacific Solar initiated its partial operations in September 2016, Compass Lexecon conservatively assumes that Pacific Solar's exemption will expire in September 2026.⁸¹⁹ Thus, as with the historical losses, the compensation that Pacific Solar is to receive for its FMV losses should not be subject to any income taxes in Honduras.⁸²⁰

393. As **Step 3**, Compass Lexecon discounts the projected yearly cash flows to the Valuation Date using a discount rate that reflects the time value of money and the risks associated with operating a PV plant in Honduras.⁸²¹ This discount rate is Pacific Solar's WACC, which Compass Lexecon estimates to be [REDACTED] as of the Valuation Date.⁸²²

(explaining that "ENEE's excessive curtailments have forced the plant to generate energy output below optimal levels, contrary to its design. In turn, this situation has affected the plant's inverters, which had to be replaced.").

⁸¹⁶ Compass Lexecon ¶ 87.

⁸¹⁷ Compass Lexecon ¶ 89.

⁸¹⁸ See *supra* § II.B.1. To account for the income taxes that Pacific Solar would be liable after the 10-year income tax exemption lapses, Compass Lexecon applies Honduras's corporate income rate for corporations, which was 25% from 2019 through 2022, plus a surtax of 5% on net taxable income for solidarity contributions. Compass Lexecon also accounts for additional municipal or local taxes as part of the operating costs of the company. Compass Lexecon ¶ 93.

⁸¹⁹ Compass Lexecon ¶¶ 90-93. Pacific Solar applied for an income tax exemption in 2016, which was subsequently granted by Honduras. Therefore, the 10-year term of the tax exemption is calculated from 2016 and runs through 2026). See also 2013 Renewables Law, Art. 2.3 (**Exh. C-5**) (An income tax exemption applies for a period of 10 years from the commencement of a plant's commercial operations. A company may also benefit from tax exemptions during the plant's construction phase, upon request from the generator, particularly for plants constructed in multiple phases, as it was the case with Nacaome-I).

⁸²⁰ Compass Lexecon ¶¶ 91-95. As Compass Lexecon notes in its report, should the Tribunal award compensation to Pacific Solar for its FMV damages and this compensation was subject to tax in Honduras, the Award amount should be grossed up accordingly. *Id.* ¶ 92.

⁸²¹ Compass Lexecon ¶¶ 99-100.

⁸²² Compass Lexecon ¶¶ 99-102, Table 6, Appendix B.

394. Finally, Compass Lexecon clarifies that its DCF analysis does not include an estimate of the value of the Plant in the actual scenario.⁸²³ This is because the *justiprecio* that Honduras would pay Pacific Solar for the threatened acquisition of the Plant, as provided for in the New Energy Law, has not been determined yet.⁸²⁴ This is consistent with Claimants' position that Honduras's conduct has substantially deprived Pacific Solar's value.⁸²⁵ As Compass Lexecon explains, once Honduras acquires Pacific Solar's generation assets, any price paid for those assets should be deducted from Pacific Solar's damages (expressed as of the date of the acquisition).⁸²⁶

395. As noted above, Compass Lexecon does deduct from the total damages the actual cash flows that Pacific Solar has generated from 30 April 2022 onwards (namely, the payments it received from Honduras, net of the Plant's operating and maintenance costs), including pre-Award interest.⁸²⁷

(c) Quantum and Relative Valuation

396. After applying the above-listed steps, Compass Lexecon estimates that Pacific Solar's FMV losses are [REDACTED] as of the Valuation Date (*i.e.*, before adding pre-Award interest).⁸²⁸ [REDACTED].⁸²⁹ These findings are reasonable as set forth below.

397. Compass Lexecon has benchmarked the results of the DCF approach against an offer that Claimants received in 2021 for the potential acquisition of a [REDACTED] stake in Pacific Solar by a third party (the "**Third Party**").⁸³⁰ The terms of a binding offer that Pacific Solar signed with Third Party implied an enterprise value of [REDACTED].⁸³¹ Regarding this valuation, Compass notes the following:

- The enterprise value of [REDACTED] as of 31 December 2021, "reflects the value that the parties assigned to Pacific Solar at the time and is about [REDACTED] lower

⁸²³ See Compass Lexecon ¶ 56.

⁸²⁴ Compass Lexecon ¶ 56.

⁸²⁵ See *supra* § III.A.

⁸²⁶ Compass Lexecon ¶¶ 8, 56.

⁸²⁷ Compass Lexecon ¶¶ 8, 55.

⁸²⁸ Compass Lexecon ¶ 103; Table 1.

⁸²⁹ Compass Lexecon, Table 1.

⁸³⁰ Compass Lexecon ¶ 105.

⁸³¹ As Compass Lexecon notes, this is obtained by adding a debt balance of [REDACTED], net of cash, to the equity value, as reflected in the binding offer. Compass Lexecon ¶ 107.

than the enterprise value of [REDACTED] that results from the DCF valuation.”⁸³²

- Since the binding offer does not reflect a “but-for scenario,” it is reasonable to assume that the result would be lower than the result of the DCF valuation.⁸³³ Indeed, at the time, Pacific Solar **did** expect to be paid by ENEE.⁸³⁴

398. Compass Lexecon has further benchmarked its DCF analysis against the EV/EBITDA multiples for traded companies in the renewable energy sector.⁸³⁵ The below figure from Compass Lexecon’s report shows the distribution of the EV/EBITDA in the sample, compared to the implicit multiple in the DCF valuation of the Plant.⁸³⁶ As Compass Lexecon points out, the “resulting multiple is at the **lower end of the range**, which indicates that [its] DCF valuation is reasonable and prudent.”⁸³⁷

⁸³² Compass Lexecon ¶ 107.

⁸³³ Compass Lexecon ¶ 108.

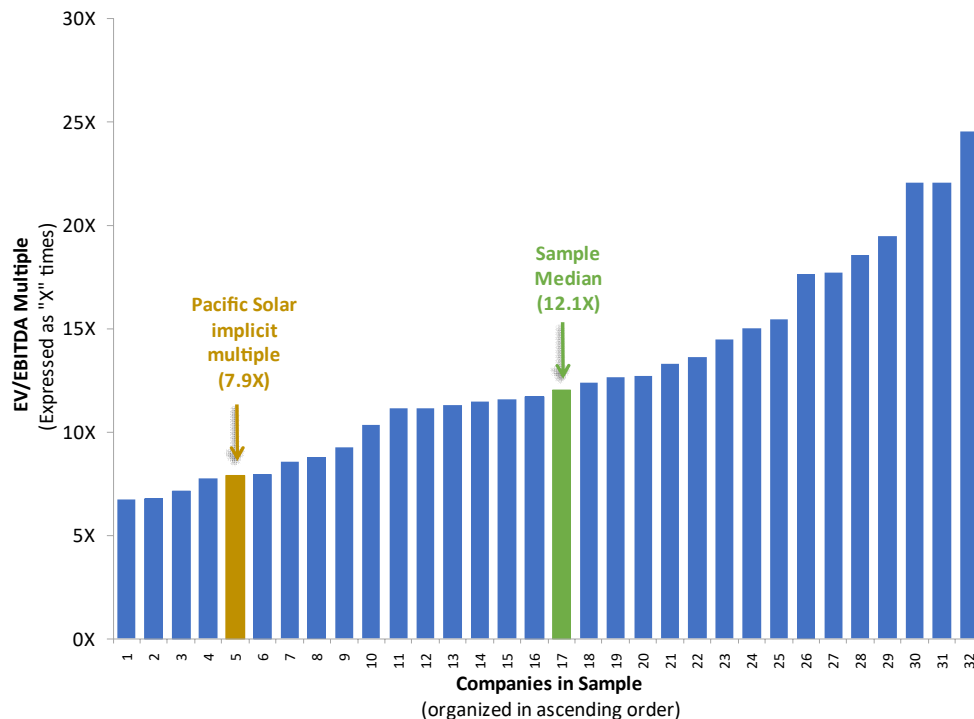
⁸³⁴ Such conclusion is consistent with the fact that the parties agreed to additional earnouts to be paid by the third party to claimants “as part of the sale price, if the actual level of curtailments was lower than expected, and if ENEE paid out the interest and curtailment invoices accrued up to the transaction.” Compass Lexecon ¶ 108; *see also* [REDACTED] (explaining that “in mid-2020, ENEE made significant catch-up payments to PSE and other generators, preventing the [existing delays in payments] from escalating further. These payments led us to believe that the Government would continue to pay us in the future, as it had represented to us in the past.”).

⁸³⁵ Compass Lexecon ¶¶ 105-115.

⁸³⁶ Compass Lexecon ¶ 115.

⁸³⁷ Compass Lexecon ¶ 115 (emphasis added).

EV/EBITDA Multiple for Renewable Energy Companies (April 2022)⁸³⁸



3. The Award Must Include Pre-Award Interest at a Commercially Reasonable Rate

399. Pacific Solar's compensation also must include pre-Award interest established on a market basis at a commercially reasonable rate.⁸³⁹ It is well-accepted that a delay in payment of principal by a debtor may cause further economic harm to a creditor. Indeed, such delay: (i) deprives the investor of the opportunity to use the funds it was entitled to receive;⁸⁴⁰ and

⁸³⁸ Compass Lexecon, Figure 11.

⁸³⁹ Article 10.26.1 of the Treaty provides for the award of "any applicable interest," and Articles 10.7.3 and 10.7.4 of the Treaty provide that, to be lawful, an expropriation must be accompanied by compensation that includes "interest at a commercially reasonable rate . . . accrued from the date of expropriation until the date of payment." Treaty (CL-1), Chapter 10, § B, Arts. 10.26.1, 10.7.3, 10.7.4. As the Treaty thus requires compensation to include interest at a commercially reasonable rate until the date of payment in the case of a lawful expropriation, any award of compensation in this case for an unlawful expropriation or other violations of the Treaty likewise must be accompanied by interest at least at that level. See MARBOE, CALCULATION OF COMPENSATION AND DAMAGES IN INTERNATIONAL INVESTMENT LAW (Oxford University Press), 2017 ¶ 3.81 (CL-112) (noting that "compensation for unlawful conduct cannot be at a level less than that which would be owed for a lawful taking, that "the financial consequences of lawful and unlawful behaviour would otherwise be the same," and that "[t]his would not be in the interest of legal justice and [would] run counter the general preventive function of law.").

⁸⁴⁰ S. RIPINSKY AND K. WILLIAMS, DAMAGES IN INTERNATIONAL INVESTMENT LAW (2008) (CL-111), at 363; *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v Argentine Republic*, ICSID Case No. ARB/97/3, Award dated 20 Aug. 2007 ¶ 9.2.3 (CL-86) (holding that "the object of an award of interest is to compensate the

(ii) forces the investor to raise funds at a cost that would otherwise been avoided.⁸⁴¹ This can also be seen as a benefit to the debtor, who has gained an additional financial benefit from the funds that have been withheld by, at a minimum, avoiding the need to borrow such funds at a cost.⁸⁴²

400. That interest is necessary to ensure full reparation for wrongful conduct is also an established principle of international law.⁸⁴³ Indeed, tribunals have found that “in order to ensure full compensation to injured parties, customary international law authorizes the payment of interest on the principal sum due from the time the amount should have been paid until the date when the payment obligation is actually fulfilled.”⁸⁴⁴ As investment tribunals have concluded “interest . . . is an essential component of full reparation.”⁸⁴⁵

401. International tribunals and commentators widely agree that interest should be determined based on the investor's opportunity foregone due to the treaty breach.⁸⁴⁶

damage resulting from the fact that, during the period of non-payment by the debtor, the creditor is deprived of the use and disposition of that sum he was supposed to receive.”).

⁸⁴¹ S. RIPINSKY AND K. WILLIAMS, DAMAGES IN INTERNATIONAL INVESTMENT LAW (2008) (CL-111), at 363.

⁸⁴² I. MARBOE, CALCULATION OF COMPENSATION AND DAMAGES IN INTERNATIONAL INVESTMENT LAW (Oxford University Press), 2017 ¶ 6.28 (CL-112) (explaining that the “[t]he temporary withholding of money typically entails a financial advantage for the debtor. In the present context, it is the state who gains this advantage through the withholding of an amount of compensation or damages. The prevention of such enrichment can also be a function of an award on interest”); see also *SGS Société Générale de Surveillance S.A. v. The Republic of Paraguay*, ICSID Case No. ARB/07/29, Award dated 10 Feb. 2012 (CL-105) ¶ 183 (holding that interest is not “punitive or unfair to award . . . given that Respondent has been in possession of the unpaid sums for several years and has presumably made use of those funds. If it had not been in possession of those funds, then it presumably would have had to borrow the money and been required to repay it with interest. It is fully appropriate, therefore, to apply interest to the principal awarded to Claimant.”).

⁸⁴³ International Law Commission, *Articles of the International Law Commission on the Responsibility of States for Internationally Wrongful Acts* dated 2001 (A/56/10) (CL-79), Art. 38 (“Interest on any principal sum due . . . shall be payable when necessary, in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result. Interest runs from the date when the principal sum should have been paid until the date the obligation to pay is fulfilled.”).

⁸⁴⁴ *Suez, Sociedad General de Aguas de Barcelona S.A., and Vivendi Universal S.A. v. The Argentine Republic*, ICSID Case No. ARB/03/19, Award dated 9 Apr. 2015 (CL-104) ¶ 27.

⁸⁴⁵ See, e.g., *SGS Société Générale de Surveillance S.A. v. The Republic of Paraguay*, ICSID Case No. ARB/07/29, Award dated 10 Feb. 2012 (CL-105) ¶ 183.

⁸⁴⁶ See, e.g., *Phillips Petroleum Co. Venezuela Ltd. et al., v. Petróleos de Venezuela S.A.*, ICC Case No. 16848/JRF/CA (C-16849/JRF/CA), Final Award dated 17 Sept. 2012 (CL-121) ¶¶ 294-295 (awarding interest at a cost of capital rate, stating that “the interest rate to be applied should measure the opportunity cost of capital, i.e. the cash flows [the claimant] was deprived of as a result of Respondent’s contractual breach which, had they been timely received by the [the claimant], it would have had the opportunity to apply them to the Project or some alternative productive use. On the contrary, the principle of full compensation would not be satisfied”); *Sylvania Technical Systems v. Iran*, Award dated 27 June 1985, 8 Iran-US CTR 298 (CL-136), at 31 (noting that “[i]n the absence of a contractually stipulated rate of interest, the Tribunal will derive a rate of interest based approximately on the amount that the successful claimant would have been in a position to have earned if it had been paid in time and thus had the funds available to invest in a form of commercial investment in common use in its own country”); *Santa Compañía del Desarrollo de Santa Elena, S.A. v. Republic of Costa Rica*, ICSID Case No. ARB/96/1, Final Award dated

For example, in *Vantage v. Petrobras*, the majority of the tribunal awarded the WACC of the claimant as pre and post award interest, after deciding that a risk free rate “would not suffice to make Claimants whole.”⁸⁴⁷

402. Moreover, awarding compound interest not only reflects the commercial reality of the circumstances, but it is also consistent with the current practice of investment treaty tribunals.⁸⁴⁸ Indeed, at present, the overwhelming majority of tribunals award interest on a compounding basis because, as the tribunal in *Wena Hotels v. Egypt* observed, awarding simple interest is “neither logical nor equitable.”⁸⁴⁹

403. In contrast, awarding simple interest based on a risk-free rate would give Honduras the perverse incentive to delay the conclusion of this arbitration. Indeed, Honduras would be able to continue benefitting from the funds it owes Pacific Solar at below-market conditions. This would be at odds with the prohibition against unjust enrichment recognized under international law, a critical consideration for tribunals in determining the interest rates applicable to States.⁸⁵⁰

17 Feb. 2000 (**CL-91**) ¶ 104 (“[T]he amount of compensation should reflect, at least in part, the additional sum that this money would have earned, had it, and the income generated by it, been reinvested each year at generally prevailing rates of interest.”).

⁸⁴⁷ See *Vantage Deepwater Company and Vantage Deepwater Drilling, Inc. v. Petrobras America Inc., Petrobras Venezuela Investments & Services, BV, Petróleo Brasileiro S.A. (Petrobras Brazil)*, ICDR Case No. 01-15-0004-8503, Award dated 29 June 2018 (**CL-120**) ¶¶ 461-463.

⁸⁴⁸ In the investor-State dispute context, the appropriateness of awarding compound interest was first discussed in *Santa Elena v. Costa Rica*, which held that to compensate for an unlawful expropriation, “the amount of compensation should reflect, at least in part, the additional sum that his money would have earned, had it, and the income generated by it, been reinvested each year at generally prevailing rates of interest.” *Compañía del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica*, ICSID Case No. ARB/96/1, Final Award dated 17 Feb. 2000 (**CL-91**) ¶¶ 104, 106. More recent tribunals have recognized that the standard set forth in *Santa Elena* constitutes *jurisprudence constante* in investment cases, including for breaches beyond expropriation. See, e.g., *Murphy Exploration and Production Company International v. The Republic of Ecuador*, PCA Case No. 2012-16 (formerly AA 434), Partial Final Award dated 6 May 2016 (**CL-21**) ¶ 520 (“Subsequent tribunals have repeatedly followed the Santa Elena approach, creating what has been referred to as a form of *jurisprudence constante* in investor-State cases, including cases decided under the U.S.-Ecuador BIT. The Tribunal is conscious of the fact that the majority of these cases have found liability for unlawful expropriations, but notes that tribunals—in particular in more recent cases—have also granted compound interest for the violation of other treaty obligations. While the Tribunal is not bound by previous decisions, it does not consider it appropriate to deviate from this established practice in the absence of special circumstances, which Respondent has failed to prove”).

⁸⁴⁹ *Wena Hotels Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award dated 8 Dec. 2000 (**CL-115**) ¶ 129 (internal quotation omitted).

⁸⁵⁰ See, e.g., *Compañía del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica*, ICSID Case No. ARB/96/1, Final Award, 17 Feb. 2000 (**CL-91**) ¶ 101 (finding that a State is “not entitled to enrich itself by reason of the fact that the payment of compensation has been long delayed.”).

404. In light of the above, Compass Lexecon has applied pre-Award interest to its assessment of damages to Pacific Solar until 30 June 2024 (a calculation to be further updated throughout the course of these proceedings) based on Pacific Solar's WACC (*i.e.*, 8.03%), compounded annually.⁸⁵¹

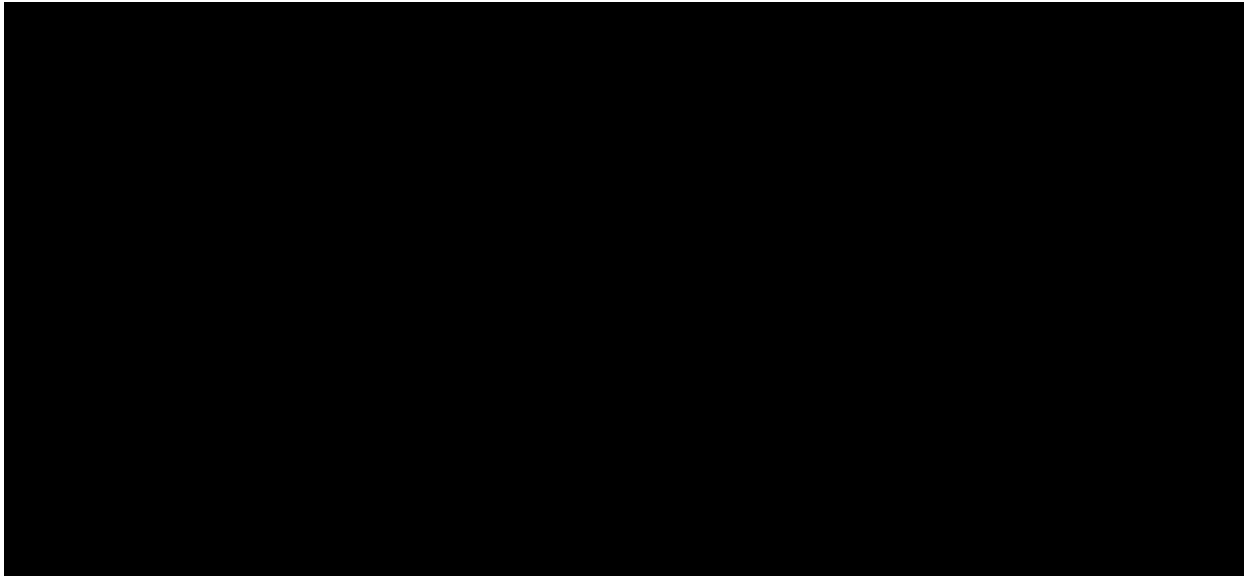
4. Total Damages

405. Compass Lexecon has calculated that Pacific Solar's total damages, net of any taxes in Honduras, are **US\$ 119.9 million** as of the Valuation Date.⁸⁵² Since Counsel instructed Compass Lexecon to express such total damages as of a current date, such amount: (i) includes pre-Award interest as of 30 June 2024 and (ii) deducts the cash flows generated by Pacific Solar since the Valuation Date (net of operating and maintenance costs) and including pre-Award interest.⁸⁵³ The below chart breaks down such total damages:

⁸⁵¹ Compass Lexecon ¶¶ 118-120 (relying on commentators that explain that the "cost of capital" reflects "the realistic assumption that if claimants would have had the use of their money earlier, they would have invested it in a way that would have earned a higher rate of return than the risk-free rate"). Alternatively, the Tribunal can also apply Honduras's cost of debt (compounded annually) as the applicable interest rate in this case. This rate is the cost of raising money for the Honduran government in international markets and is a reasonable commercial rate of interest to apply in this case because the lack of compensation has effectively turned Claimants and Pacific Solar into unwilling lenders to Honduras. As such, Claimants and Pacific Solar should be entitled to the same rate of interest Honduras pays to willing lenders. Compass Lexecon ¶¶ 121-122. Tribunals have found Respondent States' cost of debt to be an appropriate interest rate in previous cases. In *Antin v. Spain*, for example, the tribunal applied the rate of Spain's 10-year bonds when awarding interest to an investor. *See, e.g., Antin Infrastructure Services Luxembourg S.à.r.l. et al., v. The Kingdom of Spain*, ICSID Case No. ARB/13/31, Award dated 15 June 2018 (**CL-61**) ¶¶ 589, 733 (finding that the respondent's borrowing rate affords full reparation and is a commercial rate).

⁸⁵² Compass Lexecon, Tables 1, 8. Alternatively, should the Tribunal apply Honduras's cost of debt (8% on average between 2022 and 2024) as pre-Award interest, Pacific Solar's total damages amount to **US\$ 119.5 million**. Compass Lexecon ¶ 127; Table 9.

⁸⁵³ Compass Lexecon ¶¶ 8, 55, 117.



5. The Award Should Be Net of any Taxes in Honduras

406. Claimants further ask the Tribunal to declare that: (i) the Award, including any pre and post-Award interest, should be net of any Honduran taxes and (ii) Honduras may not impose or attempt to impose taxes on the Award.⁸⁵⁵ This is because, as noted above, Pacific Solar is entitled to an exemption to income tax pursuant to the 2013 Renewables Laws and the Agreements for the initial ten years of operations and Compass Lexecon has conservatively deducted the payment of income taxes September 2026 as part of its valuation.⁸⁵⁶

407. Claimants and Pacific Solar will not be made whole if Honduras can apply any taxes on the Award. This follows the full reparation principle that the Claimants, which here act on behalf of their Enterprise, must be made whole—*i.e.*, put in the same position they would have been but-for Honduras's breaches of the Treaty.⁸⁵⁷

⁸⁵⁴ Compass Lexecon, Table 8.

⁸⁵⁵ See *e.g.*, *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award dated 7 Feb. 2017 (CL-68) ¶¶ 554-547 (agreeing that the “amounts awarded to Burlington in this Award are net of income and labor participation taxes, and that Ecuador may not impose or attempt to impose these taxes on the Award” where the experts already had taken such labor and income taxes into consideration when making calculations). Alternatively, compensation should be increased or grossed up if Honduras were to seek to impose taxes on the Award. See *Venezuela Holdings, B.V., et al v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Award of the Tribunal dated 9 Oct. 2014 (CL-119) ¶ 386, 404(g) (granting the claimant's request that “compensation be increased to include the amount of any tax levied by the Respondent and the amount of any tax liability that may be incurred as a result of the Award and as a consequence of the Respondent's wrongful measures.”).

⁸⁵⁶ See *supra* § II.B; Compass Lexecon ¶¶ 90-94.

⁸⁵⁷ See, *e.g.*, *Glencore Int'l A.G. and C.I. Prodeco S.A. v. Republic of Colombia*, ICSID Case No. ARB/16/6, Award dated 27 Aug. 2019 (CL-101) ¶ 1627 (“Thus, in order to guarantee that Claimants receive full reparation for Colombia's international wrong, the restitution and interest awarded to Prodeco by this Tribunal must be tax neutral. This implies that neither -(i) the payment of the Fiscal Liability Amount by Prodeco to the *Contraloría* and the State's

6. The Awarded Compensation Should Further Accrue Post-Award Interest

408. Further to the international and economic principles set forth above in Section V(B)(3), the Award should further be subject to post-Award interest until its effective date of payment, which should also be established on a market basis and compounded annually. As with regard to pre-Award interest, Claimants ask that the post-Award interest rate be Pacific Solar's WACC (*i.e.*, [REDACTED]), compounded annually.⁸⁵⁸

409. As further noted above in Section V(B)(3), such rate would compensate Claimants and Pacific Solar for the lost opportunity cost to re-invest the awarded funds that likely will be deprived if Honduras does not afford them compensation in a timely manner. In contrast, awarding simple interest based on a risk-free rate would give Honduras the perverse incentive to delay the payment of the Award—and yet again—turn Claimants and Pacific Solar into unwilling lenders to Honduras.⁸⁵⁹ Preventing such perverse incentive is particularly critical here. As detailed above in Section II(G)(2)(c), Honduras has clearly signaled its intent to evade international responsibility for the arbitrary actions in which it is engaging, including through failure to pay compensation to Pacific it acknowledges to owe, the denunciation of the ICSID Convention and singling out investors that have commenced ICSID proceedings.⁸⁶⁰

7. Claimants Are Entitled to Costs and Expenses

410. In accordance with the Treaty, the ICSID Convention, and the ICSID Arbitration Rules, Claimants request that the Tribunal order Honduras to bear the costs incurred by Claimants in connection with this proceeding, including attorney's fees, expert witness fees, the Tribunal members' fees and expenses, and the costs of the Centre.⁸⁶¹ Article 61(2) of the ICSID

repayment of such amount to Prodeco, taken together, nor - (ii) the interest awarded in this procedure must result in any tax liability to Prodeco.”).

⁸⁵⁸ See *supra* § V.B.3; Compass Lexecon ¶¶ 119-120. Alternatively, the Tribunal can also apply Honduras's cost of debt (compounded annually) as the applicable interest rate in this case. Compass Lexecon ¶¶ 121-122.

⁸⁵⁹ See *supra* § II(G)(2)(c).

⁸⁶⁰ See *supra* § II(G)(2)(c); see also ICSID News Release, “Honduras Denounces the ICSID Convention,” dated 29 Feb. 2024 (**Exh. C-166**); “Honduran Government Denounces ICSID Convention and Begins Exit,” EL HERALDO dated 29 Feb. 2024 (**Exh. C-165**); “Honduras Accuses ICSID of Illegality in Proceedings in Zede Prospera Case,” DINEROHN dated 31 May 2023 (**Exh. C-94**) (noting that Honduras's Secretary of Finance described investors that brought forth an ICSID claim as “enemies [that] are going to lose at the national and international level”).

⁸⁶¹ Treaty (**CL-1**), Chapter 10, § B, Art. 10.26(1) (allowing the Tribunal to award costs and attorney's fees in accordance with the applicable arbitration rules).

Convention, together with Rule 52(1) of the ICSID Arbitration Rules, give ICSID tribunals broad discretion to allocate costs between the parties.⁸⁶²

411. Investment tribunals recognize the principle that “costs follow the event.”⁸⁶³ Similarly, full reparation requires that Claimants be made whole for the costs of the arbitration proceedings and its legal expenses. In fact, this has become common practice in investor-State disputes, as reflected in the decisions of many arbitral tribunals.⁸⁶⁴ The *ADC v. Hungary* tribunal, for example, underscored that an award of costs may be a necessary element of compensation:

[T]he Tribunal can find no reason to depart from the starting point that the successful party should receive reimbursement from the unsuccessful party. This was a complex, difficult, important and lengthy arbitration which clearly justified experienced and expert legal representation as well as the engagement of top quality experts on quantum. The Tribunal is not surprised at the total of the costs incurred by the Claimants. Members of the Tribunal have considerable experience of substantial ICSID cases as well as commercial cases and the amount expended is certainly within the expected range. Were the Claimants not to be reimbursed their costs in

⁸⁶² ICSID Convention, Art. 61(2) (“[T]he Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid.”); ICSID Arbitration Rules, Rule 52 (1) (“In allocating the costs of the proceeding, the Tribunal shall consider all relevant circumstances, including: (a) the outcome of the proceeding or any part of it; (b) the conduct of the parties during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner and complied with these Rules and the orders and decisions of the Tribunal; (c) the complexity of the issues; and (d) the reasonableness of the costs claimed.”); *ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award of the Tribunal dated 2 Oct. 2006 (CL-94) ¶ 530 (“It is clear from Article 61(2) of the ICSID Convention and . . . ICSID Arbitration Rules that the Tribunal has a wide discretion with regard to costs.”).

⁸⁶³ *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. The Argentine Republic*, ICSID Case No. ARB/09/1, Award dated 21 July 2017 (CL-102) ¶¶ 1131, 1144-1146.

⁸⁶⁴ See, e.g., *Rusoro Mining Limited v. The Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award dated 22 Aug. 2016 (CL-117) ¶ 865, 878 (observing “the criterion, often used in investment arbitration, that the losing party should make a significant contribution to the payment of the arbitration fees and the costs and expenses incurred by the prevailing party,” and requiring the losing party to bear US\$ 3.3 million of the successful party’s costs in the arbitration); *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award dated 22 Sept. 2014 (CL-30) ¶¶ 860, 862 (noting “a number of cases” that have “awarded costs on a ‘loser pays’ basis,” and requiring the losing party to bear US\$ 5 million of the successful party’s legal costs and expenses); *Ioannis Kardassopoulos and Rob Fuchs v. The Republic of Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award dated 3 Mar. 2010 (CL-118) ¶¶ 689, 692 (noting that “ICSID arbitration tribunals have exercised their discretion to award costs which follow the event in a number of cases, demonstrating that there is no reason in principle why a successful claimant in an investment treaty arbitration should not be paid its costs,” and requiring the losing party to bear US\$ 7.9 million of the successful parties’ costs, including legal fees, experts’ fees, administrative fees, and the fees of the tribunal).

justifying what they alleged to be egregious conduct on the part of [the Respondent] it could not be said that they were being made whole.⁸⁶⁵

412. As Claimants demonstrated in this Memorial and will demonstrate in further submissions, an award of costs to Claimants is fully justified and necessary to make them whole.

VI. RESERVATION OF RIGHTS

413. Claimants reserve all of their rights, including the right to vary, amend, and/or supplement this Memorial on the Merits and/or subsequent pleadings, and in particular their claims for relief, to the full extent permitted by the Treaty, the ICSID Rules, and applicable law, including in light of further actions on the part of Honduras with respect to Claimants' investments.

⁸⁶⁵ *ADC Affiliate Limited and ADC & ADMC Management Limited v. The Republic of Hungary*, ICSID Case No. ARB/03/16, Award of the Tribunal dated 2 Oct. 2006 (**CL-94**) ¶ 533.

VII. REQUEST FOR RELIEF

414. For the foregoing reasons, Claimants respectfully request an award:

- (a) declaring that Honduras has breached its obligations under the Treaty, including its obligations:
 - (i) under Article 10.7 not to expropriate Claimants' investment except if made for a public purpose, in no case discriminatory, on payment of prompt, adequate and effective compensation, and in accordance with due process;
 - (ii) under Article 10.5 to accord Claimants and their Enterprise the Minimum Standard of Treatment, including fair and equitable treatment; and
 - (iii) imported through the most-favored nation treatment clause under Article 10.4 of the Treaty, to observe obligations it entered into with regard to investments;
- (b) declaring that the Agreements are investment agreements as defined by the CAFTA-DR and that Honduras has violated its obligations under the Agreements;
- (c) ordering the Republic of Honduras to:
 - (i) pay compensation for the losses arising from Honduras's breaches of the Treaty and the Agreements in accordance with Section V above;
 - (ii) refrain from aggravating the dispute;
 - (iii) pay pre- and post-Award interest on any damages awarded in this Arbitration at a rate to be established during its course; and
 - (iv) pay all the costs of this Arbitration, including without limitation, Claimants' legal costs, expert fees, and in-house costs, the fees and expenses of the Tribunal, and ICSID's costs.
- (d) grant any other relief that the Tribunal may deem just and proper.

Respectfully submitted,


White & Case LLP

Counsel for Claimants

20 September 2024