

**IN THE MATTER OF AN ARBITRATION UNDER THE RULES OF THE
ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE**

BETWEEN

INTER RAO UES, PJSC

(Russia)

TELASI, JSC

(Georgia)

CLAIMANTS

AND

GOVERNMENT OF GEORGIA

(Georgia)

RESPONDENT

CLAIMANTS' REQUEST FOR ARBITRATION

9 JUNE 2017



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I. INTRODUCTION

1. This Request for Arbitration is submitted on behalf of PJSC Inter RAO UES (*Inter RAO*)¹ and its indirectly controlled subsidiary, JSC Telasi (*Telasi*, and collectively with Inter RAO, the *Claimants*)² against the Government of Georgia (the *Government* or *Respondent*).
2. The Parties' dispute relates to a Memorandum on the Development of Cooperation in the Electric Power Sector and the Implementation of Previous Agreements, dated 31 March 2013 (the *Memorandum 2013*).³ The Memorandum 2013 was concluded to regulate the operation of Telasi, an electricity distribution and sale company established in Georgia.
3. The Memorandum 2013 sets out the electricity tariffs to be applied to Telasi for a period from 1 April 2013 until 2025 (inclusive) and the rules for adjusting the tariffs. The Memorandum 2013 also obligates the Respondent to (i) take all actions necessary to implement the Memorandum 2013 and (ii) compensate the Claimants for any losses caused to Inter RAO or any Inter RAO group company in Georgia by legislative changes in Georgia after 31 March 2013.
4. As set out in more detail in Section IV below, this dispute arises out of the Government's breach of its tariff-related undertakings, and in particular the failure to ensure adjustment of the tariff in accordance with the Memorandum 2013. The Government has also failed to compensate for the adverse effects of legislative changes in Georgia.

¹ Extract from the Unified State Register of Legal Entities of the Russian Federation in respect of Inter RAO, 12 May 2017, **C-001**.

² Extract from the Registry of Entrepreneurs and Non-Entrepreneurial (Non-Commercial) Legal Entities of Georgia in respect of Telasi (with translation in Russian), 25 May 2017, **C-002**.

³ Memorandum on the Development of Cooperation in the Electric Power Sector and the Implementation of Previous Agreements, 31 March 2013, **C-005**.

II. THE ARBITRATION AGREEMENT

5. The Claimants have initiated this arbitration pursuant to Section 9 of the Memorandum 2013:

9. ARBITRATION AGREEMENT

9.1 Should any dispute or controversy arise between the Parties out of this Memorandum, the Party, willing to resolve the dispute, shall send a notice to the Party or the Parties containing details sufficient for understanding the main essence of the controversy and claim.

9.2 Within 60 (sixty) days following receipt of the notice, the persons authorized by the Parties involved in the dispute or representatives appointed by them shall procure the negotiation on the subject of the dispute or controversy, in order to resolve the dispute or controversy as quick as possible. In case if the Parties fail to reach the settlement within 30 (thirty) days from the date of the above mentioned negotiation, or if no negotiation took place during the term indicated in this Section of this Memorandum, such dispute shall be finally resolved according to Section 9.3 of this Memorandum.

9.3 Any dispute, controversy or claim arising out of or in connection with this Memorandum, including those relating to the breach, cessation or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

6. Pursuant to Section 9.1 of the Memorandum 2013, the Respondent was notified of the dispute by letter dated 1 March 2017 (the *Notice of Dispute*).⁴ The Notice of Dispute detailed the Government's failure to comply with its undertakings under the Memorandum 2013 to adjust tariffs and compensate for losses.
7. In accordance with Section 9.2 of the Memorandum 2013, the Claimants attempted to settle the dispute amicably through negotiations with the Respondent. The Parties' representatives met in Minsk on 14 March 2017 at

⁴ Notice of Dispute, 1 March 2017, **C-006**.

the invitation of Georgia's Vice Prime Minister and Minister of Energy, Mr Kakha Kaladze.⁵ These discussions did not result in a settlement.

8. Pursuant to Section 9.2 of the Memorandum 2013, if the Parties fail to settle a dispute within 30 days after negotiations begin, the dispute is to be resolved by arbitration at the Arbitration Institute of the Stockholm Chamber of Commerce.
9. The tariffs in place remain incompatible with the Memorandum 2013, as explained in more detail below, and no compensation has been paid. The Parties have not resolved the dispute amicably within the timeframe established in Section 9 of the Memorandum 2013. All pre-arbitration requirements have therefore been fulfilled.

III. THE PARTIES

A. THE CLAIMANTS

10. The first claimant is Inter RAO, a public joint stock company established under the laws of the Russian Federation. The registered office of Inter RAO is:

Building 2
27, Bolshaya Pirogovskaya str.
119435, Moscow
Russian Federation

11. The second claimant is Telasi, a joint stock company established under the law of Georgia. The registered office of Telasi is:

3 Vani str.
Tbilisi 0119
Georgia

⁵ The meeting was attended, *inter alia*, by representatives of the Claimants and of the Government, including Mr Kaladze personally. Mr Kaladze was officially appointed by the Government to conduct negotiation with the Claimants. Order of the Government of Georgia No. 587 (with translation in Russian), 24 March 2017, **C-007**.

12. The Claimants have authorized Freshfields Bruckhaus Deringer LLP to represent them in this arbitration.⁶ All correspondence in this arbitration should be addressed to the Claimants' counsel as follows:

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Kadashevskaya nab 14/2
119017 Moscow
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B. THE RESPONDENT

13. The Respondent is the Government of the Republic of Georgia. Its address for receipt of notices under the Memorandum 2013, as well as its official address, is as follows:

7 Ingorokva Street
Tbilisi 0114
Georgia

IV. SUMMARY OF THE DISPUTE

A. TELASI AND INTER RAO

14. Telasi is an electricity distribution and sales company which is located and operates in Georgia.
15. Telasi was established in 1995 as Georgian joint stock company. Since its establishment until 1998, it was owned by the State of Georgia. Pursuant to a sale and purchase agreement of 21 December 1998,⁷ 75% of the shares in

⁶ Power of Attorney issued by Inter RAO, 2 May 2017, **C-003**; Power of Attorney issued by Telasi, 29 May 2017, **C-004**.

⁷ Sale and Purchase Agreement in relation to 75% of shares in Telasi, 21 December 1998, **C-008**.

Telasi were acquired by AES Silk Road Holdings B.V., which latter changed its name to Silk Road Holdings B.V. (the *Telasi SPA*).⁸

16. Pursuant to a sale and purchase agreement of 11 July 2003,⁹ RAO Nordic Oy (a Finnish company wholly owned by Inter RAO)¹⁰ acquired 100% of the shares in Silk Road Holdings B.V. Pursuant to a sale and purchase agreement dated 25 April 2008,¹¹ RAO Nordic Oy sold the shares in Silk Road Holdings B.V. to Inter RAO Holding B.V. (another wholly-owned subsidiary of Inter RAO),¹² which remains the sole shareholder of Silk Road Holdings B.V. today.¹³ Since the 2003 acquisition, Inter RAO has thus held a 75% indirect stake in Telasi. On 13 May 2012 and 24 August 2012 Silk Road Holdings B.V. acquired additional 23,582,505 Telasi shares out of an additional share issuance, resulting in an indirect aggregate stake in Telasi of about 75.11%.¹⁴

17. The remaining shares in Telasi are held by Partnership Fund, a Georgian state-owned company (with about 24.53% share in capital of Telasi), and the remaining 0.36% is freely floated on the Georgian Stock Exchange.¹⁵

B. THE MEMORANDA BETWEEN THE GOVERNMENT AND INTER RAO AND TELASI'S TARIFFS

18. The Telasi SPA established long-term rules in respect of the electricity tariffs to be applied to Telasi. Following the acquisition by Inter RAO group in 2003,

⁸ Deed of amendment of the articles of association of Silk Road Holdings B.V. and translation of the articles of association in English, 14 October 2003, **C-009**.

⁹ Sale and Purchase Agreement, 11 July 2003, **C-010**.

¹⁰ Extract from the register of the shareholders in relation to "RAO Nordic" Oy, 31 March 2017, **C-011**.

¹¹ Sale and Purchase Agreement, 25 April 2008, **C-012**.

¹² The Netherlands Chamber of Commerce Business Register extract in respect of Inter RAO Holding B.V., 31 March 2017, **C-013**.

¹³ The Netherlands Chamber of Commerce Business Register extract in respect of Silk Road Holdings B.V., 31 March 2017, **C-014**.

¹⁴ Subscription agreement between Telasi and Silk Road Holdings B.V., 13 May 2012, **C-015**; Subscription agreement between Telasi and Silk Road Holdings B.V., 24 August 2012, **C-016**.

¹⁵ Extract from register of shareholders of Telasi, 31 March 2017, **C-017**; Printout from the Georgian Stock Exchange's website, 8 June 2017, **C-018**.

the arrangements between the Government and Inter RAO group in respect of the tariffs to be applied to Telasi were reconfirmed and modified several times by the Memoranda concluded in 2007, 2010, 2011 and 2012,¹⁶ and finally by the Memorandum 2013.

19. These arrangements consistently reflected the mutual interests of the Parties. For example, in Section 2.2.1 of the Memorandum 2013, the Parties agreed that:

the long-term electricity tariffs may be equally profitable for both JSC Telasi and electricity consumers of all categories, including the general public.

In this same clause, Telasi agreed to a reduction of its Consumer Tariff for the 2013-2016 period.

20. The tariffs at which Telasi acquires electricity from the generating companies in Georgia and then sells it to end customers are regulated by a Georgian government agency, the National Energy and Water Supply Regulatory Commission (the *NERC*). The tariffs and tariff adjustments agreed in the Telasi SPA and various Memoranda were consistently documented in corresponding NERC enactments.

C. THE MEMORANDUM 2013 AND TELASI'S TARIFF TERMS THEREUNDER

21. The Memorandum 2013 provides for the precise tariffs to be applied to Telasi for the period from 1 April 2013 through 2025 and rules for their modification.
22. Sections 2.2.1 and 2.3.1 of the Memorandum 2013 set out the Consumer Tariff, Weighted Average Purchase Tariff and Distribution Tariff for Telasi at particular levels.¹⁷ In particular, these Sections set out the Distribution Tariff

¹⁶ Memorandum on the Development of Cooperation in the Electric Power Sector and the Implementation of Previous Agreements, 20 June 2007, **C-019**; Memorandum of Understanding, 1 October 2010, **C-020**; Memorandum on the Development of Cooperation in the Electric Power Sector and the Implementation of Previous Agreements, 31 March 2011, **C-021**; Intermediate Memorandum on the Development of Cooperation in the Electric Power Sector and the Implementation of Previous Agreements, 26 December 2012, **C-022**.

¹⁷ *Consumer Tariff* means the end-user tariff set out for the consumers of electricity.

and Consumer Tariff for two periods (i.e. from 1 April 2013 through 2016 and from 2017 through 2025, with certain increase of the tariffs in the second period) and fix the same maximum level of the Weighted Average Purchase Tariff for the whole period from 1 April 2013 through 2025.

23. Sections 2.3.2 and 2.3.4 of the Memorandum 2013 set out the rules for correcting Telasi's tariffs, and in particular called for the adjustment of the Consumer Tariff concurrently with any increase of the Weighted Average Purchase Tariff and the raising the Distribution Tariff should the Georgian national currency (the lari) depreciate against the US dollar.
24. The Parties further agreed in Section 1.4 of the Memorandum 2013 that each of them would:

take, within its authority, all the necessary steps and initiate all the necessary procedures and measures aimed at the implementation of this Memorandum.

25. On 3 April 2013, the NERC issued a resolution amending the pre-existing tariff regime for Telasi and documenting Telasi's tariffs as agreed in the Memorandum 2013 (*NERC Resolution No. 3*).¹⁸

D. NO CONSUMER TARIFF ADJUSTMENT FOR INCREASE IN ELECTRICITY PRICE

26. In each electricity consumption year ("energy year") from 2014 to 2016¹⁹, the Weighted Average Purchase Tariff (Telasi's primary cost element) exceeded the maximum threshold under the Memorandum 2013, triggering Telasi's right to a tariff adjustment. Specifically, the actual average cost of buying

Weighted Average Purchase Tariff means an annually set tariff which includes elements such as imports, reserves, losses on power transmission networks (other than JSC Telasi's networks), as well as expenses related to transmission, transit and distribution control.

Distribution Tariff means the difference between the Consumer Tariff and the Weighted Average Purchase Tariff.

Memorandum on the Development of Cooperation in the Electric Power Sector and the Implementation of Previous Agreements, 31 March 2013, **C-005**, Annex 1.

¹⁸ NERC Resolution No. 3 (with translation in Russian), 3 April 2013, **C-023**.

¹⁹ Generally, from 1 September until 31 August.

power exceeded the agreed cap by 1% in 2014, by 7% in 2015, and by 51% in 2016.

27. Contrary to the Government's clear obligation established in Section 2.3.2 of the Memorandum 2013, Telasi was accorded no corresponding increase of Consumer Tariff for any of these years.

E. NO DISTRIBUTION TARIFF ADJUSTMENT FOR LARI DEPRECIATION

28. The lari depreciated sharply in 2013-2016, triggering Telasi's rights under the Memorandum 2013 to a tariff adjustment. Between 1 September 2013 and 1 September 2016, the Georgian currency fell by more than 40% against the dollar,²⁰ and Telasi was therefore entitled to a commensurate increase in the Distribution Tariff from 1 November 2016.
29. On 19 May 2016, in accordance with Section 2.3.4 of the Memorandum 2013, Telasi applied to the Ministry of Energy and Natural Resources for approval of the requisite Distribution Tariff adjustment.²¹ On 2 June 2016, the Ministry of Energy and Natural Resources responded with a flat refusal even to discuss Telasi's request.²²
30. On 3 August 2016, Telasi informed the NERC that the Distribution Tariff would need to be adjusted in accordance with Section 2.3.4 of the Memorandum 2013.²³
31. On 8 August 2016, the NERC responded that it lacked the legal basis to effect an adjustment of the Distribution Tariff in accordance with the provisions of the Memorandum 2013.²⁴ According to the NERC, tariffs must always be set and modified by application of its June 2014 Methodology for Electricity

²⁰ Printout from Georgian Central Bank website showing exchange rates as at 1 September 2013 and 1 September 2016, **C-024**.

²¹ Letter from Telasi to Ministry of Energy and Natural Resources (with translation in Russian), 19 May 2016, **C-025**.

²² Letter from Ministry of Energy and Natural Resources to Telasi (with translation in Russian), 2 June 2016, **C-026**.

²³ Letter from Telasi to the NERC (with translation in Russian), 3 August 2016, **C-027**.

²⁴ Letter from the NERC to Telasi (with translation in Russian), 8 August 2016, **C-028**.

Tariff Calculation (*Methodology 2014*).²⁵ Since the Methodology 2014 did not envisage depreciation-based tariff adjustments, any such modification would be impossible. This refusal was contrary to the terms of the Memorandum 2013 and subsequent representations of the Government that the NERC's regulatory oversight would not negatively impact the implementation of the Memorandum 2013.²⁶

F. FAILURE TO COMPENSATE FOR ADVERSE LEGISLATIVE CHANGES

32. Section 5.2 of the Memorandum 2013 provides that:

In the event that, following the signing of this Memorandum, any amendments have been made to the legislation of Georgia, making the position of Inter RAO or of any Inter RAO Group company in Georgia worse as compared to the position as of the date of signing of this Memorandum, the Government of Georgia shall compensate Inter RAO or the relevant Inter RAO Group company in Georgia for all losses caused by such a change in the legislation, including by means of an increase of the Consumer Tariff of Telasi, JSC in accordance with section 2.2.2.

33. When the Memorandum 2013 was signed in March 2013, electricity tariffs were regulated primarily by the Methodology for Electricity Tariff Calculation of 8 June 2011 (*Methodology 2011*).²⁷ This instrument gave preeminence to contractual and other specific arrangements accepted by the Government. Thus, Article 27 of Methodology 2011 provided:

The terms and conditions set by this methodology do not apply to the companies (until the date of the tariff expiry), which are subject to the long-term tariffs pursuant to the agreements entered into by the state.

²⁵ Methodology for Electricity Tariff Calculation adopted by the NERC Resolution No. 14 (with translation in English), 30 June 2014, **C-029**.

²⁶ Letter from Ministry of Energy and Natural Resources to Telasi (with translation in Russian), 21 July 2015, **C-030**.

²⁷ Methodology for Electricity Tariff Calculation adopted by the NERC Resolution No. 8 (with translation in Russian), 8 June 2011, **C-031**.

34. When Methodology 2014 was promulgated, it excluded this fundamental rule, allowing the NERC a justification for refusing to adjust Telasi's Distribution Tariff as required by the Memorandum 2013.
35. Far from recognizing the State's obligations, by Resolution No. 26 of 3 September 2015 and Resolution No. 38 of 26 December 2016,²⁸ the NERC actually *decreased* the Distribution Tariff for Telasi from the level set in the Memorandum 2013, contradicting its own Resolution No. 3 of 2013 (which had been adopted to implement the Memorandum 2013). The tariff shortfall compared to the mandated levels was nearly 31% for non-household consumers, and for smaller industrial facilities was in the range of 74%. This regulatory change had a direct and substantial negative effect on Telasi's profit and the value of Telasi to Inter RAO.

G. PRELIMINARY ESTIMATE OF LOSSES

36. The failure by the Government to ensure adjustment of the Consumer Tariff and the Distribution Tariff has caused losses to the Claimants currently estimated at no less than US\$89 million, including without limitation lost profit.
37. The Claimants' losses continue to mount, and they reserve the right further to quantify and modify their monetary claims at an appropriate stage of these proceedings.

H. APPLICABLE LAW

38. The Memorandum 2013 is governed by Georgian law.²⁹
39. According to Article 6(2) of the Constitution of Georgia, the Georgian legislation must always remain compliant with universally recognized

²⁸ NERC Resolution No. 26 (with translation in Russian), 3 September 2015, **C-032**; NERC Resolution No. 38 (with translation in Russian), 26 December 2016, **C-033**.

²⁹ Memorandum on the Development of Cooperation in the Electric Power Sector and the Implementation of Previous Agreements, 31 March 2013, **C-005**, Section 8.1.

principles and rules of international law.³⁰ Good faith and *pacta sunt servanda* are fundamental principles of international and Georgian law. In particular, the Georgian Civil Code expressly recognizes these basic principles in Articles 8(3) and 361(2).³¹

V. NUMBER OF ARBITRATORS, LANGUAGE AND PLACE OF ARBITRATION

40. In accordance with Section 9.4 of the Memorandum, the Arbitral Tribunal is to be composed of three arbitrators.
41. Section 9.6 of the Memorandum 2013 stipulates that the language of the arbitration is Russian. The Claimants seek the Respondent's consent to use English as the language of the arbitration. This arbitration will be closely related to the one commenced under a Request for Arbitration filed on the same date by Gardabani Holdings B.V. against the Government of Georgia, Ministry of Economy and Sustainable Development of Georgia and State Service Bureau Ltd. That arbitration will take place in English. The Claimants believe that it will be more efficacious for all parties involved to adopt the same language for both arbitrations.
42. In accordance with Section 9.5 of the Memorandum 2013, the seat of the arbitration is Stockholm, Sweden.

³⁰ Constitution of Georgia, Article 6(2) (with translation in English), **CLA-001**.

³¹ Georgian Civil Code, Articles 8(3) and 361(2) (with translation in English), **CLA-002**.

VI. APPOINTMENT OF ARBITRATOR

43. In accordance with Article 17 of the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce and Section 9.4 of the Memorandum 2013, the Claimants hereby appoint as their party-appointed arbitrator:

Stanimir A. Alexandrov
1501 K Street, N.W.
Washington D.C.
20005
Phone: +1 202 736 8115

salexandrov@sidley.com

VII. PRELIMINARY STATEMENT OF THE RELIEF REQUESTED

44. On the basis of the foregoing, the Claimants respectfully request that the Arbitral Tribunal:
- (a) DECLARE that the Respondent breached the Memorandum 2013;
 - (b) ORDER the Respondent to pay the Claimants compensation for damage caused to them, in an amount to be quantified at a later stage;
 - (c) ORDER the Respondent to pay interest on all amounts awarded, at a commercially reasonable rate or such other rate determined by applicable law, from date of award until full payment of the award;
 - (d) ORDER the Respondent to pay the Claimants' arbitration costs, including the costs of the SCC, the Arbitral Tribunal, and the legal and other costs incurred by the Claimants in an amount to be determined by the Tribunal; and
 - (e) AWARD such other and further relief as the Tribunal may deem appropriate.

45. The Claimants reserve the right to amend or supplement this Request for Arbitration, including its Request for Relief.

For the Claimants:



 **Freshfields Bruckhaus Deringer**

Noah Rubins
Dmitry Surikov
Alexey Yadykin
Elena Khmelevskaya