COUR PERMANENTE D'ARBITRAGE

PERMANENT COURT OF ARBITRATION

PCA CASE No. 2018-02

IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, 1976

-between-

1. **JSC GEORGIAN OIL AND GAS CORPORATION**
2. **LEPL STATE AGENCY OF OIL AND GAS**

(Claimants)

-and-

1. **FRONTERA RESOURCES GEORGIA CORPORATION**
2. **FRONTERA RESOURCES UNITED STATES LLC**

(Respondents)

FINAL AWARD

Tribunal

Prof Dr Maxi Scherer (Presiding Arbitrator)
Prof Dr Nathalie Voser
Mr R. Doak Bishop

Registry

Permanent Court of Arbitration

17 April 2020

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GLOSSARY OF DEFINED TERMS AND ABBREVIATIONS

The Parties' Submissions

Request for Arbitration	Claimants' Request for Arbitration dated 15 January 2018
Response	Respondent 1's response to the Request for Arbitration dated 16 February 2018
Statement of Claim or SoC	Claimants' amended Statement of Claim submitted on 9 July 2018
Statement of Defense and Counterclaim or SoD	Respondent 1's Statement of Defense and Counterclaim dated 14 September 2018
Statement of Defense to Counterclaim or SoDC	Claimants' Statement of Defense to Counterclaim dated 18 January 2019
Statement of Reply or Reply	Claimants' Statement of Reply dated 13 June 2019
Statement of Rejoinder or Rejoinder	Respondent 1's Rejoinder Submission on Claims dated 8 August 2019
Respondent 1's Submission on Assignment or RSA	Respondent 1's amended Submission on Assignment dated 1 July 2019
Claimants' Reply Submission on Assignment or CSA	Claimants' Reply Submission on Assignment dated 11 July 2019
Respondent 1's Reply Submission on Assignment or RRSA	Respondent 1's Reply Submission on Assignment dated 25 July 2019
Claimants' Rejoinder Submission on Assignment or CRSA	Claimants' Rejoinder Submission on Assignment dated 8 August 2019
Respondents' Post-Hearing Brief	Respondents' Post-Hearing Brief dated 20 January 2020
Claimants' Submission on Costs	Claimants' Submission on Costs dated 31 January 2020
Respondents' Submission on Costs	Respondents' Submission on Costs dated 7 February 2020
Claimants' Response to Submission on Costs	Claimants' Response to Submission on Costs dated 14 February 2020
Respondents' Response to Submission on Costs	Respondents' Response to Submission on Costs dated 14 February 2020

Procedural Documents

Terms of Appointment	Terms of Appointment dated 30 April 2018
Amendment to Terms of Appointment	Amendment to the Terms of Appointment dated 5 September 2019
Procedural Order No. 1	Procedural Order No. 1 dated 15 May 2018
Procedural Order No. 2	Procedural Order No. 2 dated 3 October 2018

Procedural Order No. 3	Procedural Order No. 3 dated 22 November 2018
Procedural Order No. 4	Procedural Order No. 4 dated 26 November 2018
Procedural Order No. 5	Procedural Order No. 5 dated 29 March 2019
Procedural Order No. 6	Procedural Order No. 6 dated 12 April 2019
Procedural Order No. 7	Procedural Order No. 7 dated 11 June 2019
Procedural Order No. 8	Procedural Order No. 8 dated 24 September 2019
Procedural Order No. 9	Procedural Order No. 9 dated 25 September 2019
Procedural Order No. 10	Procedural Order No. 10 dated 3 October 2019
Procedural Order No. 11	Procedural Order No. 11 dated 16 October 2019
Procedural Order No. 12	Procedural Order No. 12 dated 5 December 2019

The Parties' Requests for Relief, Applications and Claims

Requests for Relief No. 1 to 14	Claimants' requests for relief as set out in paragraph 369 of their Statement of Reply
Requests for Relief No. (a) to (h)	Respondents' requests for relief as set out in paragraph 344 of their Statement of Defense and Counterclaim
Relinquishment Claim	Claimants' Requests for Relief No. 3 and 4
Work Product Claim	Claimants' Request for Relief No. 5
Non-Relinquishment Damage Claim	Claimants' Request for Relief No. 7
Material Breach Declaration Claim	Claimants' Request for Relief No. 6
Failure to Share Petroleum Damage Claim	Claimants' Requests for Relief No. 9 to 10
Tax Advance Claim	Claimants' Request for Relief No. 11
Claimants' SfC Application	Claimants' Application for Security for Costs dated 24 October 2018
Claimants' Document Requests	Claimants' Responses to Respondent 1's Objections dated 8 March 2019
Respondent 1's Document Requests	Respondent 1's document requests made in its letter dated 8 March 2019
Respondent 1's Request to Strike Evidence	Respondent 1's request to strike the CDR Exhibits from the record, made in its letter dated 14 March 2019
Assignment Issue	The validity of the purported assignment by Respondent 1 of all its rights under the PSC to Respondent 2
Withdrawal of the Counterclaims Issue	Respondent 1's request to withdraw its counterclaims on a without prejudice basis, and the Claimants' objections thereto
Application to Strike the Respondents' Witness Statements and Expert Report	Claimants' request to strike all of the written testimony submitted by Respondents' fact and expert witnesses from the record, on the basis that the Respondents failed to make those fact and expert witnesses available for cross-examination

Application for a Partial Award on Advance on Costs	Claimants' Application for a Partial Award on the Reimbursement of Advance on Costs dated 18 October 2019

Other Terms and Abbreviations

Amendment No. 1	First amendment to the PSC dated 29 August 2003
Amendment No. 2	Second amendment to the PSC dated 15 July 2009
Assignment Agreement	Farm-out agreement between Respondent 1 and Respondent 2 dated 13 April 2019
Available Crude Oil and Natural Gas	Available crude oil and natural gas as defined in Articles 1.7 and 1.8 of the PSC
BCP	Basin Centered Oil and Gas Play
Block XII or Contract Area	The Contract Area defined under the PSC
CDR Exhibits	Claimants' Exhibits CDR-1 to CDR-7
Chronology of Non-Disputed Facts	The chronology of non-disputed facts as agreed between the Parties and circulated by the PCA on 16 September 2019
Claimant 1	JSC Georgian Oil Gas Corporation, a company registered in Tbilisi, Georgia
Claimant 2	LEPL State Agency of Oil and Gas, a legal entity of public law established under the LGOG of 16 April 1999
Claimants	Claimant 1 and/or Claimant 2
Commercial Discovery	A discovery of crude oil or natural gas that the Contractor in its sole discretion in accordance with the provisions of Article 9 of the PSC commits itself to develop and produce under the terms of the PSC, as defined in Article 1.14 of the PSC
Commercial Production	The regular and continuous production of crude oil or natural gas from a Development Area in such quantities (taking into account any other relevant factors) as are worthy of commercial development, as defined in Article 1.15 of the PSC
Contractor	Frontera Resources Georgia Corporation, or Respondent 1, together with its successors and assignees, as defined in Article 1.19 of the PSC
Coordination Committee	The committee composed of representatives of Claimant 1 and Respondent 1, as constituted in accordance with Article 7, and defined in Article 1.20, of the PSC
Costs and Expenses	Costs and expenses as defined in Article 1.24 of the PSC
Development Area	The area in the Contract Area as originally defined in Article 1.30 of the PSC, namely "all or any part of the Contract Area specified in an approved Development Plan containing a Commercial Discovery, except those parts defined as Exploitation Areas"
Declaration of Commercial Feasibility	Letter from Respondent 1 to Claimant 1, dated 28 February 2017, in which it stated that "commercial production from the Contract Area is feasible" within the meaning of Article 9.1 of the PSC

Declaration under Article 9.4(c)	Letter from Respondent 1 to Claimant 1, dated 3 April 2017, in which Respondent 1 provided a written declaration "in accordance with Article 9.4(c) of the PSA […] that Commercial Production will be conditional on the outcome of the work that the Contractor commits to carry out under the Study Program within the Study Area"
Discovery	A well that the Contractor determines has encountered crude oil or natural gas which would justify regular and continuous production in such quantities (taking into account any other relevant factors) as are worthy of commercial development, as defined in Article 1.34 of the PSC
Evidentiary Hearing	Evidentiary hearing fixed in Procedural Order No. 2
Exploitation Area	The area in the Contract Area as originally defined in Article 1.30 of the PSC, namely "those volumes of rock that contain discoveries that were made before the execution of this Agreement, and which are specifically delineated in Annex F"
Exploitation/Development Area	The Exploitation Area, as delineated in Annex F of the PSC, and amended by Amendment No. 2 (which added to the five previous fields, one additional field (Mtsarekhevi)
Exploration Expenditures	Exploration expenditures as defined in Article 1.42 of the PSC
Exploration Work Program	Document submitted by Respondent 1 titled "Block 12 Petroleum and Gas Exploration 5-year Work Program (2017-2022)" on 24 January 2017
FIC	Frontera International Corporation, the sole shareholder of Frontera Resources Caucasus Corporation
FIFO	Accounting process to calculate costs and expenses on a "first in, first out" basis
FRCC	Frontera Resources Caucasus Corporation, the sole shareholder of Respondent 1
FRC	Frontera Resources Corporation
Frontera	Frontera Resources Georgia Corporation, a company incorporated in the Cayman Islands
FRUS	Frontera Resources US LLC, a company registered Houston, Texas, USA
FTI	FTI Consulting
GCC	Georgian Civil Code, adopted on 26 June 1997, entered into force on 25 November 1997
GOGC	JSC Georgian Oil Gas Corporation, a company registered in Tbilisi, Georgia
Hearing Transcript	Final Transcript for the Rescheduled Evidentiary Hearing, circulated by the court reporter on 10 January 2020
Initial Exploration Phase	The initial exploration phase as defined in Articles 1.43 and 5.1 of the PSC, lasting from 14 November 1997 to 14 November 2004
JVLs	Joint Voluntary Liquidators
Measurement Point	Measurement point as defined in Article 1.155 of the PSC

NSA	Netherland, Sewell & Associations
OMF	Outrider Master Fund
Operating Company	Frontera Eastern Georgia Limited, as defined in Article 1.65, and established in accordance with Article 2 and Annex G, of the PSC
Operation Expenses	Operation expenses as defined in Article 1.66 of the PSC
PCA	Permanent Court of Arbitration
Profit Oil and Profit Natural Gas	Profit oil and profit natural gas as defined in Article 11.10 of the PSC
PRMS 2007	Petroleum Resources Management System 2007
PRMS 2018	Petroleum Resources Management System 2018
PSC or Contract	Product Sharing Contract and Refinery Study dated 25 June 1997
Purported Assignment	Frontera's purported assignment of all of its rights under the PSC to FRUS
Rescheduled Evidentiary Hearing	Evidentiary hearing fixed in Procedural Order No. 10
Respondent 1	Frontera Resources Georgia Corporation, a company incorporated in the Cayman Islands
Respondent 2	Frontera Resources US LLC, a company registered Houston, Texas, USA
Respondents	Respondent 1 and/or Respondent 2
Secondary Exploration Phase	The second exploration phase as originally defined in Articles 1.43 and 5.1 of the PSC, lasting from 14 November 2004 to 14 November 2007
State	State of Georgia
State Agency	LEPL State Agency of Oil and Gas, a legal entity of public law established under the LGOG of 16 April 1999
Study Program	Study Program submitted by Frontera allegedly pursuant to Article 9.4 PSC dated 28 February 2017
UNCITRAL Rules	Arbitration Rules of the United Nations Commission on International Trade Law of 1976
USA	United States of America

I. INTRODUCTION

A. PARTIES

1. The Claimants in this arbitration are (i) JSC Georgian Oil Gas Corporation, a company incorporated under the laws of Georgia (the "**State**") with its registered address at 21 Kakheti Highway, Tbilisi 0152, Georgia ("**GOGC**" or "**Claimant 1**"), and (ii) LEPL State Agency of Oil and Gas ("**State Agency**" or "**Claimant 2**"), a legal entity of public law, established under the Law of Georgia on Oil and Gas dated 16 April 1999, with its registered address at 2 Sanapiro Street, Tbilisi 0105, Georgia (together, the "**Claimants**").

2. The Claimants are represented in this arbitration by Mr Karl Pörnbacher, Mr Thomas N. Pieper, Ms Nata Ghibradze of Hogan Lovells International LLP, Karl-Scharnagl-Ring 5, 80539 Munich, Germany and Mr David Dunn of Hogan Lovells US LLP, 875 Third Avenue, New York, NY, 10022, United States of America ("**USA**").

3. The Respondents in this arbitration are (i) Frontera Resources Georgia Corporation ("**Frontera**," "**Contractor**" or "**Respondent 1**"), a company incorporated in the Cayman Islands, with its registered address at Maples Corporate Services Limited, P.O. Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands, and its principle place of business is at 3040 Post Oak Boulevard, Suite 730, Houston, TX 77056, USA, and (ii) as of 5 September 2019, Frontera Resources US LLC ("**FRUS**" or "**Respondent 2**"), with its registered address at 3040 Post Oak Boulevard, Suite 730, Houston, TX 77056, USA (together, the "**Respondents**").[1] According to the Respondents, Respondent 1 is indirectly and wholly-owned by Frontera Resources Corporation ("**FRC**"), through Frontera International Corporation ("**FIC**") and Frontera Resources Caucasus Corporation ("**FRCC**"), and Respondent 2 is directly and wholly-owned by FRC.[2]

4. Respondent 1 was represented in this arbitration by its in-house counsel Mr Levan Bakhutashvili up until 26 September 2019. Respondent 1 was also represented by Mr Stephen Kho of Akin Gump Strauss Hauer & Feld LLP, Robert S. Strauss Building, 1333 New Hampshire Avenue NW, Washington D.C. 20036-1564, USA, and Mr Brendan R. Casey of Akin Gump Strauss Hauer & Feld LLP, 54 Quai Gustave Ador, 1207 Geneva, Switzerland, up until 8 June 2019. On 14 June 2019, Respondent 1 subsequently instructed Mr William DeClercq, Mr Eric S. Fisher, and Mr John Mills of Taylor English Duma LLP, 1600 Parkwood Circle, Suite 200, Atlanta, GA 30339, USA, to act as its counsel. As of 5 September 2019, Mr Levan Bakhutashvili, Mr William DeClercq, Mr Eric S. Fisher, and Mr John Mills of Taylor English Duma LLP also acted as counsel to Respondent 2 in this arbitration. On 25 September 2019, Mr William DeClercq, Mr Eric S. Fisher and Mr John Mills of Taylor English Duma LLP withdrew their representation

[1] As detailed below, Respondent 2 was joined to the proceedings as a second respondent according to the Amendment to Terms of Appointment, dated 5 September 2019 (*see infra* ¶ 125), following the Purported Assignment of all rights under the PSC from Respondent 1 to Respondent 2 (*see infra* ¶ 60). The validity of the Purported Assignment is a matter of dispute between the Parties and dealt with in this Award (*see infra* Section V.D). In this award, any reference to the Respondents may be used, even if the specific action or argument historically related only to Respondent 1.

[2] *See* Letter from Respondent 1 to the Tribunal, dated 30 April 2019, Enclosure 2 (Comparative Corporate Structure of Frontera Resources Georgia Corporation and Frontera Resources US LLC).

of the Respondents. On 26 September 2019, Mr Levan Bakhutashvili resigned from FRC and, as such, no longer represented the Respondents.

B. OVERVIEW OF THE DISPUTE

5. This arbitration concerns a Product Sharing Contract and Refinery Study entered into between the Ministry of Oil and Energy of Georgia and the State Company Georgian Oil, on the one hand, and Respondent 1 as Contractor, on the other hand, on 25 June 1997 (the "**PSC**" or "**Contract**"), relating to a specific contract area in south-eastern Georgia also referred to as "block XII" ("**Contract Area**" or "**Block XII**"). Frontera Eastern Georgia Limited, which is 50% owned by Claimant 1 and 50% owned by Respondent 1, was established as the operating company under the PSC (the "**Operating Company**").

6. The Claimants allege, *inter alia*, that the Respondents have materially breached the PSC by failing to relinquish certain territories of the Contract Area under Article 6.1(b) of the PSC. In addition, the Claimants allege that the Respondents have materially breached the PSC by failing to share petroleum with the Claimants, by failing to submit a "work plan," and by purporting to assign Respondent 1's rights under the PSC to an affiliate.

7. The Respondents deny all of the Claimants' claims and maintain that they were entitled to rely on Article 9.5 of the PSC and therefore not obligated to relinquish any territories within Block XII, that they were not obligated to share any petroleum with the Claimants, that they complied with the requirement to submit a "work plan," and that the assignment was valid and fulfilled all the necessary requirements under Article 27.3 of the PSC.

8. Separately, Respondent 1 counterclaimed that the Claimants jointly and severally breached various provisions of the PSC, including but not limited to Articles 7.7, 9.1, 9.2, 9.4(c), 9.5, 11.5, 11.6, 14.1, 17.9, 13.1, 3.8, 17.9, 17.25(h) and 25.9, by obstructing the Respondents' oil and gas exploration activities in Block XII. In particular, the Respondents alleged that the Claimants denied all cost recovery for the years 2006 and 2007, consistently obstructed gas operations, wrongfully issued notices of material breach, sought to undermine Respondent 1's position in the market, wrongfully sought to exclude finance costs from the cost recovery pool, and failed to enact the tax exemptions contained in the PSC. Subsequently, Respondent 1 sought to withdraw their counterclaims on a without prejudice basis. While the Claimants initially objected to Respondent 1's withdrawal application, they eventually withdrew their objection on the condition that the costs for the counterclaims were imposed on the Respondents.

C. ARBITRATION AGREEMENT

9. According to the Claimants, the arbitration agreement on which they rely to bring this dispute against the Respondents is contained in Article 31 of the PSC, which provides:

> **ARTICLE 31**
> **DISPUTE RESOLUTION**
>
> 31.1 Except as otherwise provided in this Contract, all disputes arising between Georgian Oil and any or all of the Contractor Parties, including without limitation, any dispute as to the validity, construction, enforceability or breach of this Contract, shall be finally settled before a panel of three (3) arbitrators under the Arbitration Rules of The United Nations Commission on International Trade Law known as UNCITRAL (the "Rules"). In the event

the Rules fail to make provision for any matter or situation the arbitration tribunal shall establish its own rules to govern such matter and procedure and any such rules so adopted shall be considered as a part of the Rules. For purposes of allowing such arbitration, and enforcement and execution of any arbitration decision, award, issuance of any attachment, provisional remedy or other pre-award remedy, each Party waives any and all claims to immunity, including, but not limited to any claims to sovereign immunity.

31.2 The arbitration shall be held in Stockholm, Sweden. The language used during the procedure shall be the English language and the English language text of this Contract will be utilized by the arbitrators.

31.3 After providing thirty (30) days prior written notice to the other Party of intent to arbitrate, either Georgian Oil or Contractor may initiate arbitration (the Party initiating the arbitration shall hereinafter be called the "First Party") submitting a request for arbitration to the Secretary General of the Permanent Court of Arbitration in the Hague, as provided in the Rules, and appointing an arbitrator who shall be identified in said request. Within thirty (30) days of receipt of a copy of the request the other Party to the dispute ("Second Party") shall respond, identifying the arbitrator that it has selected. If the Second Party does not so appoint its arbitrator, the Secretary General of the Permanent Court of Arbitration in the Hague shall appoint a second arbitrator in accordance with the Rules. The two arbitrators shall, within thirty (30) days, select a third arbitrator failing which the third arbitrator shall be appointed by the Secretary General of the permanent Court of Arbitration in the Hague, in accordance with the Rules. Unless otherwise agreed in writing by the Parties, the third arbitrator to be appointed shall not be a citizen of a country in which any Party (including the ultimate parent of such Party) is incorporated.

31.4 The Parties shall extend to the arbitration tribunal all facilities (including access to the Petroleum Operations and facilities) for obtaining any information required for the proper determination of the dispute. Any Party shall be allowed only on absence or default beyond its reasonable control which prevents or hinders the arbitration proceeding in any or all of its stages. Additional absences, or absences which are within a Party's reasonable control, shall not be allowed to prevent or hinder the arbitration proceeding.

31.5 The arbitration tribunal's award shall be final and binding on the Parties and shall be immediately enforceable. Judgment on the award rendered may be entered and execution had in any court having jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of enforcement and execution, as applicable.

31.6 Each Party shall pay the costs of its own arbitrator and the costs of the third arbitrator in equal shares, and any costs imposed by the Rules shall be shared equally by the Parties. Notwithstanding the above, the arbitrators may, however, award costs (including reasonable legal fees) to the prevailing Party from the losing Party. In the event that monetary damages are awarded, the award shall include interest from the date of the breach or other violation to the date when the award is paid in full. The rate of interest shall be LIBOR plus 4% over the period from the date of the breach or other violation to the date the award is paid in full. Each Party waives any and all requirements or any national law relating to notice of a demand for interest or damage for the loss of the use of funds.

31.7 For purposes of arbitration, the Contractor and the Operating Company shall be conclusively deemed to be United States nationals.

31.8 Any arbitration tribunal constituted pursuant to this Contract shall apply the provisions of this Contract as supplemented and interpreted by general principles of the laws of Georgia, the United States of America and the State of Texas as are in force on the Effective Date.

10. The Respondents have not raised any challenges to the jurisdiction of this Tribunal over this dispute.[3]

II. PROCEDURAL HISTORY

A. COMMENCEMENT OF THE PROCEEDINGS AND CONSTITUTION OF THE TRIBUNAL

11. By request for arbitration dated 15 January 2018 (the "**Request for Arbitration**"), the Claimants commenced arbitration proceedings against Respondent 1 pursuant to Article 31.3 of the PSC and Article 3 of the Arbitration Rules of the United Nations Commission on International Trade Law, 1976 (the "**UNCITRAL Rules**").

12. In their Request for Arbitration, the Claimants appointed Professor Dr Nathalie Voser as the first arbitrator in the proceedings. Prof Voser's contact details are:

Professor Dr Nathalie Voser
Schellenberg Wittmer Ltd.
Löwenstraße 19
P.O. Box 2201
8021 Zurich
Switzerland
Tel. (Direct):+41 44 215 5280
Tel. (Main): +41 44 215 5252
Fax: +41 44 215 5200
E-mail: nathalie.voser@swlegal.ch

13. On 16 February 2018, Respondent 1 submitted its response to the Request for Arbitration (the "**Response**"). In its Response, Respondent 1 appointed Mr R. Doak Bishop as second arbitrator. Mr Bishop's contact details are:

Mr R. Doak Bishop
King & Spalding LLP
1100 Louisiana
Suite 4000
Houston, TX 77002
USA
Tel.: +1 713 751 3205
E-mail: dbishop@kslaw.com

14. On 29 March 2018, in accordance with Article 7(1) of the UNCITRAL Rules, the co-arbitrators jointly appointed Professor Dr Maxi Scherer as presiding arbitrator. Prof Scherer's contacts details are:

Professor Dr Maxi Scherer
Wilmer Cutler Pickering Hale and Dorr LLP
49 Park Lane
London, W1K 1PS
United Kingdom
Tel.: +44 (0)20 7872 1067
Fax: +44 (0)20 7839 3537
E-mail: maxi.scherer@wilmerhale.com

[3] *See generally* Response (as defined in *infra* ¶ 13); SoD (as defined in *infra* ¶ 35) (neither of which raise any jurisdictional objections).

B. INITIAL PROCEDURAL STEPS

15. On 19 April 2018, the Permanent Court of Arbitration ("**PCA**") was appointed as registry in the present arbitration.

16. On 30 April 2018, the Tribunal convened the first case management conference with the Parties *via* telephone conference.

17. On 14 May 2018, the Tribunal issued its terms of appointment which were signed by the Claimants, Respondent 1 and each member of the Tribunal (the "**Terms of Appointment**"). In the Terms of Appointment, the Tribunal, in accordance with the agreement of the Parties, *inter alia* fixed Stockholm, Sweden, as the seat of arbitration, and English as the language of the arbitration.

18. On 15 May 2018, the Tribunal issued its first procedural order ("**Procedural Order No. 1**") which, *inter alia*, set out the procedural timetable for the initial phase of the arbitration.

19. On 2 October 2018, the second case management conference was held, with the Parties' consent, at the Claimants' offices in Munich, Germany.

20. On 3 October 2018, the Tribunal issued its second procedural order ("**Procedural Order No. 2**"), which set out *inter alia* the procedure for document production and the procedural timetable for the subsequent phase of the proceedings, including the Claimants' planned security for costs application.

21. By letter of the same date, the Tribunal wrote to the Parties *inter alia* fixing a date for a potential hearing on the Claimants' planned security for costs application.

C. CLAIMANTS' APPLICATION FOR SECURITY FOR COSTS

22. On 24 October 2018, the Claimants submitted their application for security for costs (the "**Claimants' SfC Application**"), along with expert reports CER-2 and CER-3, and legal authorities CLA-23 to CLA-56. The Claimants requested *inter alia* that the Tribunal order Respondent 1 to provide security for costs with respect to its counterclaims, in an amount no less than US$2 million.

23. On 14 November 2018, Respondent 1 submitted its response to the Claimants' SfC Application along with witness statement RWS-5, expert report RER-2, and legal authorities RLA-29 to RLA-59.

24. On 16 November 2018, the Parties exchanged communications on the necessity to hold a hearing on the Claimants' SfC Application. On the same day, the Claimants' requested that Respondent 1 produce two documents for the purposes of the possible hearing on the Claimants' SfC Application.

25. By letter dated 19 November 2018, the Tribunal decided, after considering the Parties' positions, to hold a one-day hearing on the Claimants' SfC Application on 3 December 2018, in London, United Kingdom. The Tribunal also scheduled a pre-hearing conference call on 21 November 2018 and invited Respondent 1 to comment on the Claimants' requests for document production of 16 November 2018.

26. On 21 November 2018, the Tribunal circulated a draft Procedural Order No. 3 to be discussed at the pre-hearing conference. On the same day, the pre-hearing conference call took place.

27. On 22 November 2018, the Tribunal issued its third procedural order ("**Procedural Order No. 3**"), which *inter alia* fixed the timetable for the hearing on the Claimants' SfC Application, the examination of witnesses and experts, including *via* videolink.

28. On 23 November 2018, Respondent 1 submitted its comments on the Claimants' requests for document production dated 16 November 2018.

29. On 26 November 2018, the Tribunal, having considered the Parties' submissions on the Claimants' requests for document production, issued its fourth procedural order ("**Procedural Order No. 4**") granting the Claimants' first request in part and dismissing the other in its entirety.

30. The hearing on the Claimants' SfC Application took place, with the Parties' consent, on 3 December 2018 at the offices of Wilmer Cutler Pickering Hale and Dorr LLP, 49 Park Lane, W1K 1PS London, United Kingdom. The following individuals were in attendance:

Tribunal

Professor Dr Maxi Scherer
Professor Dr Nathalie Voser
Mr R. Doak Bishop

Claimants

Party Representatives
Mr Givi Bakhtadze
Ms Mzekala Gazdeliani
Mr Vazha Khidasheli
Mr David Oniani
(JSC Georgian Oil and Gas Corporation)

Counsel
Mr David Dunn
Mr Karl Pörnbacher
Mr Thomas N. Pieper
Ms Nata Ghibradze
(Hogan Lovells LLP)

Expert Witnesses
Mr Hans Dahlberg Kolga
(Setterwalls Advokatbyrå)
Mr Walter Bratic (testifying from Marshall, TX)
(Whitley Penn LLP)

Respondent 1

Party Representatives
Mr Levan Bakhutashvili
(Frontera Resources Georgia Corporation)

Counsel
Mr Hamish Lal

Mr Brendan Casey
Ms Tania Iakovenko-Grassër
(Akin Gump Strauss Hauer & Feld LLP)

Fact and Expert Witnesses
Mr Giorgi Kalandarishvili
(Frontera Resources Georgia Corporation)
Mr David Leathers
(Alvarez & Marshal)

Permanent Court of Arbitration

Ms Christel Y. Tham

Court Reporters

Ms Diana Burden (in London, United Kingdom)
Ms Monique McAllister (in Marshall, Texas)

31. On 10 December 2018, the Parties notified the Tribunal that they were finalizing an agreement to be concluded between them with regard to the Claimants' SfC Application. On 11 December 2018, the Parties concluded a parent company guarantee in lieu of an order for security for costs by the Tribunal.

32. After accounting for the Parties' agreed comments on the hearing transcripts on 18 December 2019, the Tribunal circulated updated versions of the transcripts on 20 December 2019. On the same day, the Tribunal informed the Parties that it would not issue a decision on the Claimants' SfC Application in light of the Parties' agreement and the parent company guarantee.

D. PARTIES' INITIAL WRITTEN SUBMISSIONS

33. On 6 July 2018, the Claimants submitted their statement of claim along with witness statements CWS-1 to CWS-6, expert report CER-1, factual exhibits C-007 to C-125, legal exhibits CLA-01 to CLA-22, and a glossary of defined terms.

34. On 9 July 2018, the Claimants submitted an amended statement of claim (the "**Statement of Claim**" or "**SoC**") correcting a typographical error in the previous version, along with a "compare version" of the original and corrected statement of claim.

35. On 14 September 2018, Respondent 1 submitted its statement of defense and counterclaim (the "**Statement of Defense and Counterclaim**" or "**SoD**"), along with witness statements RWS-1 to RWS-4, expert report RER-1, and factual exhibits R-1 to R-103.

36. On 18 January 2019, the Claimants submitted their statement of defense to counterclaim (the "**Statement of Defense to Counterclaim**" or "**SoDC**"), accompanied by witness statements CWS-7 to CWS-11, expert reports CER-4 to CER-7, a list of exhibits, a glossary of defined terms, factual exhibits C-126 to C-190, and legal authorities CLA-57 to CLA-151.

E. DOCUMENT PRODUCTION PHASE

37. On 8 February 2019, the Parties submitted to the PCA their requests for document production in the form of Stern Schedules. The PCA simultaneously circulated them to the Parties.

38. On 21 February 2019, Respondent 1 notified the Tribunal of the Parties' joint agreement to extend the deadline for the "Production of Documents Responsive to Uncontested Requests" from 22 February 2019 to 8 March 2019. On the same day, the Claimants confirmed that Respondent 1's e-mail accurately reflected the Parties' agreement. The Parties confirmed that all other deadlines remained unaffected.

39. On 22 February 2019, the Parties submitted to the PCA their respective objections to the other Party's document production requests. In support of their objections, the Claimants submitted legal authorities CLA-151 to CLA-157 on the same day. The PCA simultaneously circulated them to the Parties.

40. On 8 March 2019, the Parties submitted to the PCA their completed Stern Schedules, which included their responses to the other Party's objections, as well as their productions of documents responsive to the uncontested document requests. The PCA simultaneously circulated the Parties' respective productions of documents to the Parties.

41. By e-mail of the same date, the PCA circulated to the Tribunal and to the Parties (i) the Claimants' responses to Respondent 1's objections (the "**Claimants' Document Requests**"), along with exhibits CDR-1 to CDR-7; and (ii) Respondent 1's letter of the same date, along with annexes A (Summary of the Claimants' Objections) and B (the "**Respondent 1's Document Requests**"), and legal authorities RLA-60 to RLA-63.

42. On 11 March 2019, the Tribunal noted that the objections, and the responses to the objections, regarding the Claimants' Document Request No. 7 appeared to be missing from the Claimants' Document Requests, and invited the Parties to provide a complete version of the request by 14 March 2019.

43. By letter of the same date, the Claimants *inter alia* clarified that they added Document Request No. 7 in light of "newly discovered evidence" that came to the Claimants' attention only after submitting their original document requests, and noted that they were willing to respond to Respondent 1's objections, if any, to this request but sought some time to do so.

44. On 12 March 2019, the Tribunal invited Respondent 1's comments on the Claimants' Document Request No. 7. Respondent 1 submitted its objections to the Claimants' Request No. 7 on 14 March 2019, and requested that the Tribunal reject the Claimants' exhibits CDR-1 to CDR-7 (the "**CDR Exhibits**") and "strike them from the record including striking those portions of Claimants' Replies relying on the new CDR exhibits as new reasons for the relevance and materiality of Claimants' Document Requests" (the "**Respondent 1's Request to Strike Evidence**"). In the alternative, should the Tribunal deny its Request to Strike Evidence, Respondent 1 requested that it be given the opportunity to object to the new factual bases and arguments for relevance and materiality.

45. On 18 March 2019, at the invitation of the Tribunal, the Claimants provided their comments to both Respondent 1's objections to Document Request No. 7 and Respondent 1's Request to Strike Evidence.

46. On 29 March 2019, the Tribunal issued its fifth procedural order ("**Procedural Order No. 5**") on Respondent 1's Request to Strike Evidence, the Claimants' Document Requests and Respondent 1's Document Requests. It dismissed, *inter alia,* Respondent 1's Request to Strike Evidence, and partially granting the Parties' respective requests for document production.

47. On 9 April 2019, Respondent 1 wrote to the Tribunal requesting an extension to the deadline for the production of documents and to reschedule the hearing from October 2019, as fixed in the procedural timetable in Procedural Order No. 2, to December 2019 or January 2020. On the same day, the Tribunal invited the Claimants to comment on Respondent 1's request.

48. On 11 April 2019, the Claimants presented such comments, objecting to the requests and arguing in favour of maintaining the procedural timetable as set in Procedural Order No. 2.

49. The Tribunal issued its sixth procedural order ("**Procedural Order No. 6**") on 12 April 2019, partially granting Respondent 1's requests, but maintaining the dates of the hearing as set in Procedural Order No. 2.

50. On 18 April 2019, the Parties submitted, *inter alia*, documents responsive to the other Party's document production requests pursuant to Procedural Order No. 5 and 6.

51. On 7 May 2019, the Claimants wrote to the Tribunal regarding Respondent 1's document production, alleging that it had failed to comply with certain requests made by the Claimants and ordered by the Tribunal. On 8 May 2019, the Tribunal acknowledged receipt of the Claimants' letter and invited Respondent 1 to comment on its contents.

52. On 10 May 2019, the Claimants wrote to the Tribunal regarding its Document Request No. 1, and asked that the Tribunal *inter alia* order Respondent 1 to provide certain clarifications with regard to its document production and to order Respondent 1 to produce the native files of documents listed in the Claimants' communication. The Tribunal invited Respondent 1 to comment on this letter.

53. On 13 May 2019, at the Tribunal's invitation, Respondent 1 responded to the Claimants' letters of 7 May 2019 and 10 May 2019. In the same submission, Respondent 1 raised certain objections to the Claimants' document production.

54. Following a further submission of comments on 16 May 2019 by the Claimants, the Tribunal *inter alia* issued its decision on 18 May 2019 with regard to the Parties' respective objections to the other's document production, partially upholding the Parties' objections.

55. On 23 May 2019, Respondent 1 requested a short extension to comply with the Tribunal's instructions of 18 May 2019 on document production.

56. On 24 May 2019, the Claimants objected to Respondent 1's request for extension. By letter of the same date, the Tribunal invited Respondent 1 to provide reasons for its request for extension. Respondent 1 provided such reasons on the same day, in accordance with the Tribunal's instructions.

57. On 25 May 2019, the Claimants again objected to Respondent 1's request for extension and requested that the Tribunal grant no further extensions to any other stage in the proceedings.

58. On 25 May 2019, the Tribunal, *inter alia*, granted Respondent 1's request for extension as regards document production.

59. On 31 May 2019, Respondent 1 produced further documents in line with the Tribunal's directions of 18 May 2019. In accordance with the Tribunal's instructions, the PCA circulated the Claimants' submission of 23 May 2019, which included its corresponding production of

documents, as well as a letter informing Respondent 1 of the Claimants' progress in obtaining certain documents from the relevant parties and furnishing letters demonstrating the same.

F. ASSIGNMENT, WITHDRAWAL OF THE COUNTERCLAIMS, AND MODIFICATION OF THE PROCEDURAL TIMETABLE

60. On 24 April 2019, Respondent 1 wrote to the Tribunal informing them that on 13 April 2019 it had assigned all of its rights under the PSC to FRUS, a limited liability company incorporated in Texas, USA, and wholly-owned subsidiary of FRC, Respondent 1's parent company (the "**Purported Assignment**"). Respondent 1 argued that the Purported Assignment complied with Article 27.3 of the PSC and that "the counterclaims held by [Respondent 1] have been assigned to [FRUS] such that [FRUS] must now replace [Respondent 1]" in this arbitration. Respondent 1 accordingly requested that the Parties be allowed to amend their pleadings in this arbitration to reflect this assignment.

61. On 26 April 2019, at the Tribunal's invitation, the Claimants submitted their comments on Respondent 1's letter, *inter alia* requesting that Respondent 1 furnish proof of the Purported Assignment.

62. On 30 April 2019, Respondent 1 submitted its response with leave of the Tribunal, appending a copy of a farmout agreement between it and FRUS relating to the assignment of rights and obligations under the PSC, dated 13 April 2019 (the "**Assignment Agreement**").

63. On 1 May 2019, the Tribunal invited the Parties to confer and agree on any amendments they find to be necessary resulting from the Assignment Agreement.

64. On 9 May 2019, Respondent 1 wrote to the Tribunal reasserting that Respondent 1 must be replaced in the arbitration by FRUS in order to give full effect to the Assignment Agreement. On 10 May 2019, the Claimants wrote to the Tribunal objecting to the validity of the Purported Assignment and the replacement of Respondent 1 in the arbitration.

65. On 12 May 2019, the Tribunal circulated a draft amendment to the Terms of Appointment by which the Parties would agree to add FRUS as second respondent in the present arbitration, without replacing Respondent 1, and without prejudice to the determination of the validity of the Purported Assignment by the Tribunal in the final award (the "**Assignment Issue**"). The Tribunal invited the Parties to submit their comments on the draft, and thereafter comment on the Assignment Issue and its consequences for the Claimants' claims and Respondent 1's counterclaims in their upcoming written submissions and at the evidentiary hearing.

66. The Claimants submitted their comments on the draft amendment to the Terms of Appointment on 16 May 2019, generally agreeing with the draft subject to a slight amendment.

67. On 17 May 2019, Respondent 1 notified the Tribunal that the public registry in Georgia had refused to issue the transfer of shares in Frontera Eastern Georgia Limited from Respondent 1 to FRUS, alleging that this was due to Claimant 1's interference. As a result, Respondent 1 stated that it was "not in a position to agree to the Tribunal's proposal."

68. In its letter of 18 May 2019, the Tribunal *inter alia* noted that Respondent 1 did not consent to joining FRUS to the proceedings and as such the latter was not named as second respondent. As

detailed below, the Parties later agreed to sign the amendment to the Terms of Appointment.[4] The Tribunal also extended the deadline for the Parties' respective reply submissions.

69. On 22 May 2019, Respondent 1's representatives wrote to the Tribunal informing them that due to its legal obligations pursuant to the Assignment Agreement, and the Claimants' objections to its replacement with FRUS in the arbitration, Respondent 1 was withdrawing (i) its request to amend the pleadings; and (ii) the counterclaims made in the Statement of Defense and Counterclaim, on a "without prejudice basis." Respondent 1 further proposed a draft procedural timetable to account for such changes.

70. On 23 May 2019, the Claimants wrote to the Tribunal objecting to Respondent 1's withdrawal of its counterclaims, and requested an opportunity to comment thereon.

71. In its letter of 25 May 2019, the Tribunal *inter alia* noted Respondent 1's request to withdraw its counterclaims and the Claimants' objections thereto (the "**Withdrawal of the Counterclaims Issue**"), and set a schedule for an exchange of comments before deciding thereon. Further, the Tribunal extended the deadline for the Parties' respective reply submissions to 13 June 2019 in light of the Withdrawal of the Counterclaims Issue.

72. On 30 May 2019, the Tribunal informed the Parties that it had set aside time on 6 June 2019 for a telephonic hearing to allow the Tribunal to address any outstanding questions with the Parties as regards the Withdrawal of the Counterclaims Issue and Assignment Issue and requested that the Parties confirm their availabilities.

73. On 31 May 2019, the Parties separately confirmed their availability for the telephonic hearing.

74. On the same day, the Claimants submitted their comments on the Withdrawal of the Counterclaims Issue and Assignment Issue, requesting, *inter alia*, that the Tribunal dismiss the request for the withdrawal of the counterclaims and declare the assignment invalid, or in the alternative, issue a termination award dismissing the counterclaims and terminating the arbitration with respect to the same.

75. On 4 June 2019, the Tribunal fixed the date for the telephonic hearing for 6 June 2019.

76. On 5 June 2019, Respondent 1 informed the Tribunal that FRCC, the sole shareholder of Respondent 1, was placed into voluntary liquidation in the Cayman Islands, and that Respondent 1's directors continued to be responsible for managing Respondent 1's affairs, including this arbitration. In addition, Respondent 1 informed the Tribunal of the Parties' agreement to engage in efforts to resolve through mediation the claims and counterclaims in this arbitration and therefore requested, *inter alia*, that the Tribunal stay the proceedings for no less than 30 days, and cancel the 6 June 2019 hearing.

77. On 6 June 2019, the Claimants wrote to the Tribunal opposing both Respondent 1's request to stay the proceedings, and to cancel the 6 June 2019 hearing.

78. On the same day, the Tribunal informed the Parties that it was maintaining the telephonic hearing, which took place later that day.

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[4] *See infra* ¶ 125.

79. By letter of the same date sent following the telephonic hearing, the Tribunal informed the Parties of its decision (i) to dismiss Respondent 1's request to stay the proceedings; and (ii) to separate the Parties' submissions into two tracks: the first track was to proceed according to the procedural timetable set forth in Procedural Orders No. 2 and 6, as amended by the Tribunal, and the second track was to deal with the Assignment Issue and the Withdrawal of the Counterclaims issue. Both tracks were then to be decided together after the scheduled evidentiary hearing. The Tribunal circulated for the Parties' comments a draft procedural timetable setting out these amendments.

80. On 8 June 2019, the Claimants submitted its comments on the draft procedural timetable.

81. On 8 June 2019, Akin Gump wrote to the Tribunal informing them that the firm had withdrawn with immediate effect from its representation of Respondent 1 in the arbitration, and asking that all communications be directed to Mr Levan Bakhutashvili.

82. On 10 June 2019, Respondent 1 submitted its comments on the Tribunal's draft procedural timetable.

83. On 11 June 2019 the Tribunal issued its seventh procedural order ("**Procedural Order No. 7**") fixing the amended procedural timetable, taking into account the Parties' comments.

84. On 14 June 2019, the Tribunal was informed that Messrs William DeClercq, Eric S. Fisher and John Mills of Taylor English Duma LLP had been appointed by Respondent 1 as its new external legal counsel.

G. PARTIES' FURTHER WRITTEN SUBMISSIONS AND CHRONOLOGY OF NON-DISPUTED FACTS

85. On 15 February 2019, the PCA circulated a draft chronology of non-disputed facts for the Parties' review.

86. On 13 June 2019, the Claimants submitted their statement of reply (the "**Statement of Reply**" or "**Reply**") along with factual exhibits C-198 to C-219, legal authorities CLA-163 to CLA-211, witness statements CWS-12 to CWS-17, and expert reports CER-8 to CER-11.

87. On 27 June 2019, following several extensions agreed by the Parties and granted by the Tribunal, the Parties separately submitted their comments on the draft chronology of non-disputed facts.

88. Also on 27 June 2019, Respondent 1 submitted its submission on the Assignment Issue along with factual exhibits A-C.

89. On 28 June 2019, the PCA wrote to the Parties inviting them to indicate whether they agreed to the other Party's proposed amendments to the draft chronology of non-disputed facts.

90. On 1 July 2019, Respondent 1 submitted an amended submission on the Assignment Issue (the "**Respondent 1's Submission on Assignment**" or "**RSA**"), along with re-numbered factual exhibits R-104 to R-106.

91. On 5 July 2019, the Claimants submitted their responses to Respondent 1's proposed amendments to the draft chronology and, on 15 July 2019, Respondent 1 submitted the Parties' agreed text on the proposed amendments.

92. On 11 July 2019, the Claimants submitted their reply submission on the Assignment Issue (the "**Claimants' Reply Submission on Assignment**" or "**CSA**") along with factual exhibit C-220, and legal authorities CLA-212 to CLA-213.

93. On 25 July 2019, Respondent 1 submitted its reply submission on the Assignment Issue (the "**Respondent 1's Reply Submission on Assignment**" or "**RRSA**").

94. On 8 August 2019, Respondent 1 submitted its statement of rejoinder on the Claimants' claims (the "**Statement of Rejoinder**" or "**Rejoinder**"), and the Claimants submitted their rejoinder submission on the Assignment Issue (the "**Claimants' Rejoinder Submission on Assignment**" or "**CRSA**").

H. AMENDMENT OF THE TERMS OF APPOINTMENT AND ADJOURNMENT OF THE EVIDENTIARY HEARING

95. As detailed above, in Procedural Order No. 2 the Tribunal *inter alia* fixed the dates of the evidentiary hearing to 1-4 and 8-11 October 2019, with additional days to be confirmed (the "**Evidentiary Hearing**").

96. On 5 July 2019, the Claimants *inter alia* informed the Tribunal that the Parties agreed to a venue for the Evidentiary Hearing, whereby the Claimants would host it at cost at the London offices of Hogan Lovells.

97. On 16 August 2019, the Claimants requested an extension to 30 August 2019 of the deadline for the Parties to nominate witnesses and submit a joint expert report, and Respondent 1 confirmed that it joined in the Claimants' request. On the same day, the Tribunal granted the Parties' joint request for an extension, but requested that, to the extent the Parties already agreed on the Evidentiary Hearing length or certain reserved days being released, they inform the Tribunal thereof in advance of 30 August 2019.

98. On 21 August 2019, the Claimants submitted for the Tribunal's approval a revised draft amendment to the Terms of Appointment adding FRUS as a second respondent to the arbitration as per the Parties' joint agreement.[5] On 22 August 2019, Respondent 1 confirmed its agreement with the Claimants' communication.

99. On 27 August 2019, the Tribunal sent the Parties its comments on the revised draft amendment to the Terms of Appointment and requested the Parties to provide any further comments by 30 August 2019.

100. On 30 August 2019, the Claimants wrote to the Tribunal accepting the Tribunal's edits to the amendment to the Terms of Appointment, subject to certain comments, and made submissions on the arrangements for the Evidentiary Hearing.

101. On 1 September 2019, the Tribunal acknowledged receipt of the Claimants' communication, and requested that Respondent 1 submit its outstanding response on the arrangements for the Evidentiary Hearing, including appointment of witnesses, and on the revised draft amendment to Terms of Appointment before 2 September 2019.

[5] *See also supra* ¶ 68.

102. On the same day, Respondent 1 wrote to the PCA, copying the Tribunal but not the Claimants, *inter alia* informing that Respondent 1 had "reached agreement on Thursday of last week with the Prime Minister of Georgia to suspend the arbitration proceedings in favour of settlement and termination of the arbitration," and promising to revert to the Tribunal with the "details of the above agreement as well the settlement and suspension/termination of the proceedings."

103. On 2 September 2019, the Tribunal forwarded Respondent's 1 September 2019 communication to the Claimants and invited them to comment thereon by 3 September 2019.

104. On 3 September 2019, the Claimants *inter alia* informed the Tribunal that "they are not aware of any discussions, let alone an agreement" between Respondent 1 and the Prime Minister of Georgia to suspend the arbitration proceedings in favour of settlement and termination of the arbitration. The Claimants noted that they are "the sole entities authorized to agree on any settlement and termination of the arbitration" and that since no such agreement existed, the Tribunal should "proceed with the case as scheduled, maintaining all the appropriate deadlines and the upcoming Evidentiary Hearing."

105. By separate communication of the same date, the Claimants further noted Respondent 1's failure to provide a timely response on the outstanding issues regarding the Evidentiary Hearing and the draft amendment to the Terms of Appointment, and therefore, the Claimants understood that Respondent 1 agrees to the Claimants' proposals, and that Respondent 1 did not wish to nominate any of the Claimants' fact or expert witnesses for examination at the upcoming Evidentiary Hearing.

106. On the same date, the Tribunal, acknowledging receipt of the Claimants' communications, (i) noted that without agreement of the Parties, it would not suspend the arbitration on the basis of possible settlement discussions; (ii) extended the deadline for Respondent 1 to comment on the arrangements for the Evidentiary Hearing; and (iii) noted that unless both Parties confirm their agreement with the draft amendment to the Terms of Appointment, the arbitration would continue under the originally signed Terms of Appointment without FRUS as a second respondent.

107. On 5 September 2019, Respondent 1 wrote to the Tribunal *inter alia* agreeing to the draft amendment to the Terms of Appointment, nominating the witnesses it wished the Claimants to produce for examination at the Evidentiary Hearing and commenting on the Claimants' suggestions as to the hearing arrangements.

108. On the same date, the Tribunal *inter alia* acknowledged receipt of Respondent 1's communication, circulated the finalised amendment to Terms of Appointment for the Parties' signature, and informed them that it would provide the Parties with a draft procedural order on hearing arrangements in advance of the pre-hearing conference scheduled to take place on 16 September 2019 in accordance with Procedural Order No. 7.

109. On 6 September 2019, the PCA wrote on behalf of the Tribunal to the Parties noting that the extended deadline for Respondent 1's payment of its share of the supplementary deposit had elapsed on 30 August 2019 and invited the Claimants to make a substitute payment on behalf of Respondent 1 by 1 October 2019, failing a change of position within seven days of the date of the letter.

110. On the same date, the Claimants wrote to the Tribunal *inter alia* requesting confirmation that the supplementary deposit requested was for costs related only to the adjudication of the claim and

the Assignment Issue, addressing other hearing arrangements, and proposing that, failing any communication from Respondent 1 on the chronology of non-disputed facts, the deadline for the submission of the comments and revisions to the chronology of non-disputed facts be set at 10 September 2019.

111. On 9 September 2019, the Tribunal confirmed that the deadline for comments and revisions to the chronology of non-disputed facts, as well as for Respondent 1's comments on the hearing arrangements, is set as 10 September 2019.

112. On 10 September 2019, the Claimants submitted their comments on the draft chronology of non-disputed facts, noting that they had not received any comments from Respondent 1.

113. On 10 September 2019, Respondent 1 stated that it had no comments on the draft chronology of non-disputed facts and provided its comments on the hearing arrangements.

114. On 11 September 2019, based on the Parties' responses, the Tribunal circulated a draft procedural order no. 8 concerning hearing arrangements, and invited comments from the Parties by 13 September 2019.

115. On 13 September 2019, the Claimants submitted their comments to draft procedural order no. 8 and *inter alia* proposed that 20 September 2019 be set as the cut-off date for the presentation of new evidence prior to the Evidentiary Hearing.

116. On 16 September 2019, the Tribunal held a pre-hearing conference with the Parties during which the following issues were discussed: (i) the amendment to the Terms of Appointment; (ii) the status of the case deposit; (iii) a possible stay or termination of the proceedings based on possible settlement discussions; (iv) the chronology of non-disputed facts; (v) the hearing arrangements; and (vi) the cut-off date for the presentation of new evidence.

117. On the same date, the PCA circulated to the Parties the final chronology of non-disputed facts (the "**Chronology of Non-Disputed Facts**").

118. On 17 September 2019, Respondent 1 submitted to the PCA a scanned copy of the signature page of the amendment to the Terms of Appointment, and confirmed that the original copies had been couriered to the PCA.

119. On the same date, the Tribunal sent a letter to the Parties recalling the points discussed during the pre-hearing conference including *inter alia* that (i) following receipt of the executed signature page from Respondent 1, the Tribunal would circulate the signed amendment to the Terms of Appointment to the Parties; (ii) the Respondent's share of the supplementary deposit was still outstanding and that the Tribunal may suspend or terminate the proceedings if the deposit was not made; (iii) the status of a possible settlement was still unconfirmed; (iv) the Parties were expected to share any non-Party-specific costs relating to the holding of the Evidentiary Hearing; and (v) the Claimants were to seek leave from the Tribunal by 19 September 2019 to request and submit additional documents from Respondent 1 as new evidence on the record, with detailed reasons as to why the additional documents were necessary at this stage.

120. On 19 September 2019, the Claimants wrote to the Tribunal *inter alia* providing their response on outstanding hearing arrangements, and agreeing to make the substitute deposit payment on behalf of Respondent 1 by 1 October 2019 if Respondent 1 failed to make the payment, noting

that Respondent 1's failure would, in the Claimants' view, constitute a material breach of the PSC which would give rise to a claim for which they reserved their right.

121. In addition, the Claimants sought leave from the Tribunal to submit the additional documents on the basis that they could not have been submitted previously because they did not exist and/or were not in the Claimants' possession, custody or control at the time of the Claimants' last submission. The Claimants also requested the Tribunal to (i) direct Respondent 1 to provide, prior to the Evidentiary Hearing, information on the implementation of the 2019 Work Program and the Study Program, as well as financial information regarding the Operating Company; and alternatively (ii) sought leave to submit correspondence between the Claimants and Respondent 1 regarding the aforementioned issues.

122. On 20 September 2019, the Tribunal acknowledged receipt of the Claimants' response on hearing arrangements and application to submit additional documents for the Evidentiary Hearing, and invited Respondent 1 to comment thereon by 23 September 2019.

123. On 22 September 2019, the Tribunal circulated a revised draft of procedural order no. 8 taking into account the Parties' comments.

124. On 23 September 2019, Respondent 1 objected to the Claimants' application to submit additional documents for the Evidentiary Hearing on the grounds that the Claimants "have had ample opportunity and time to do so well in advance" and have "failed to demonstrate any justifiable reason as to why such submission would not be possible in due time, as opposed to just several days before the hearing date." By separate communication of the same date, Respondent 1 confirmed that it had no comments to the revised draft procedural order no. 8. On the same date, the Claimants confirmed that they had no comments either.

125. On 24 September 2019, the PCA circulated the signed amendment to Terms of Appointment dated 5 September 2019 (the "**Amendment to Terms of Appointment**"), pursuant to which FRUS was formally joined to the proceedings as a second respondent. Among other things, by signing the Amendment to the Terms of Appointment, Respondent 2 agreed "to be joined to the present arbitration and consents to all provisions in the Terms of Appointment" as well as "to be bound, among other things, by (i) the arbitration agreement and other provisions in Article 31 of the PSC; (ii) any prior submission made by […] Respondent 1; and (iii) any prior decision, order or other ruling by the Tribunal."[6]

126. On the same date, the Tribunal issued its eighth procedural order ("**Procedural Order No. 8**") detailing the arrangements for the upcoming Evidentiary Hearing.

127. On 25 September 2019, Messrs William DeClercq, Eric S. Fisher and John Mills of Taylor English Duma LLP informed the Tribunal they had withdrawn with immediate effect from their representation of both Respondents in these proceedings, and requested that going forward, all correspondence in the arbitration be addressed to Mr Levan Bakhutashvili.

128. On the same date, the Tribunal acknowledged receipt of the communication by Taylor English Duma LLP, and issued its ninth procedural order ("**Procedural Order No. 9**"), in which it granted the Claimants' request to submit updated versions of Exhibits C-122 to C-124, directed the Claimants to submit these documents on or before 27 September 2019, after which the

[6] Amendment to the Terms of Appointment, ¶ 7.

Respondents would have an opportunity to comment thereon by 30 September 2019, and denied all of the Claimants' other requests.

129. On the same date, the Claimants wrote to the Tribunal (i) seeking confirmation that as a result of the withdrawal of the Respondents' external counsel, the Respondents "will, for all purposes, be represented by their General Counsel, Levan Bakhutashvili, individually and by him alone;" (ii) confirming their understanding that the Evidentiary Hearing would proceed as scheduled, and that the Parties were each responsible for ensuring the attendance of the witnesses they had proffered for examination; and (iii) enquiring of the Respondents as to whether they intended to make payment for their share of the supplementary deposit, or whether the Claimants would need to make arrangements to do so instead.

130. On 26 September 2019, Mr Levan Bakhutashvili informed the Tribunal that he had resigned from his employment at FRC and, as such, no longer represented the Respondents in the arbitration. Mr Bakhutashvili noted that his resignation at this stage was *inter alia* "due to punishing actions taken by the Georgian government instrumentalities against [the Respondents], more heavily during the last several months, which have made it impossible to continue working in a normal manner." Mr Bakhutashvili requested that going forward all correspondence in the arbitration be addressed to Mr Steve Nicandros and Mr Zaza Mamulaishvili, the Chairman of the Board of Directions, and President/CEO, respectively, of the Respondents.

131. On the same date, Mr Steve Nicandros sent a letter dated 25 September 2019 to the Tribunal on behalf of the Respondents requesting the Tribunal "to reschedule the upcoming hearing […] in order to give Frontera the possibility to acquire replacement internal and external legal counsel who will be able to effectively represent and defend its rights and interests in this arbitration" and that "Frontera be given at least 3 months to accomplish this." Mr Nicandros assured the Tribunal that they were taking "immediate steps to engage replacement" counsel, and reiterated that they "have received a clear message from the top levels of the Georgian government, namely the Prime Minister's office, who has agreed to halt the proceeding in favour or completing an agreed settlement."

132. On the same date, the Tribunal acknowledged receipt of the Claimants', Mr Bakhutashvili's and Mr Nicandros's respective communications and invited the Claimants to provide their comments on the Respondents' application to postpone the Evidentiary Hearing by the close of business that day.

133. On the same day, the Claimants sent a letter to the Tribunal opposing the Respondents' application to postpone the Evidentiary Hearing, arguing *inter alia* that the resignation of Respondents' counsel was "contrived and orchestrated for the purposes of unilaterally manufacturing a basis for delay" and that the resignation of Respondents' counsel do not constitute circumstances "beyond their reasonable control" that would allow them an "absence or default […] which prevents or hinders the arbitration proceeding in any or all of its stages" under Article 3.14 of the PSC.

134. On 27 September 2019, Mr Zaza Mamulaishvili wrote to the Tribunal on behalf of the Respondents reiterating their request to postpone the Evidentiary Hearing and proposing that the Tribunal convene a conference call to discuss the application with the Parties.

135. On the same date, having confirmed the Parties' availability, the Tribunal held a conference call at 19:30 CEST with the Parties to discuss the Respondents' request to postpone the Evidentiary Hearing.

136. On the same date, the Tribunal informed the Parties that, having carefully considered their written and oral submissions, it granted the Respondents' request to postpone the Evidentiary Hearing "specifically on the basis of the Respondents' undertaking given during the Procedural Conference to make themselves available on alternative hearing dates." The Tribunal noted that it would provide the Parties with a reasoned procedural order containing its decision in due course, but wished to inform the Parties as early as possible. The Tribunal invited the Parties by 2 October 2019 to rank alternative hearing dates, namely, 9 to 14 December 2019, 27 to 4 February 2020, or 2 to 10 March 2020, in order of preference and indicate the day(s), if any, for which external witnesses would have conflicts and why.

137. On the same date, the Claimants made a payment of EUR 150,000 to the PCA, representing their substitute payment of the Respondents' share of the supplementary deposit requested by the Tribunal on 6 September 2019.

138. On 30 September and 2 October 2019, respectively, the Respondents and Claimants each submitted their preferences to the PCA regarding alternative hearing dates, and the PCA, in turn, transmitted these responses to the Tribunal.

139. On 3 October 2019, the Tribunal issued its tenth procedural order ("**Procedural Order No. 10**") on the Respondents' request to postpone the Evidentiary Hearing, in which it formally granted the request and directed that the Evidentiary Hearing was rescheduled to take place from 9 to 14 December 2019 (the "**Rescheduled Evidentiary Hearing**"). In assessing the Respondents' request, the Tribunal held that it needed "to determine whether the resignation [of the Respondents' external and internal legal counsel due to their financial difficulties] is a 'valid' or 'sufficient' cause within the meaning of […] Section 24(3) of the Swedish Arbitration Act and Articles 28(2) of the UNCITRAL Rules, and 'beyond [the Respondents'] reasonable control' according to Article 31.4 of the PSC." In this regard, the Tribunal concluded that while it "is doubtful whether the resignation of legal counsel because of Respondents' failure to pay them can be seen as beyond the Respondents' reasonable control […] taking into account the specific circumstances that the Respondents were without legal representation two business days before the Hearing was due to start, the Tribunal is satisfied that the Respondents were unable to organize alternative solutions on such short notice." The Tribunal further noted that "pursuant to Article 31.4 of the PSC, a Party is only allowed one 'absence or default beyond its reasonable control which prevents or hinders the arbitration proceeding in any or all of its stages' […] [and] that any "[a]dditional absences," even if they are beyond the Parties' reasonable control, 'shall not be allowed to prevent or hinder the arbitration proceeding.'" The Tribunal noted that it would "apply this provision to any future absence or default on the Respondents' side."

I. RESCHEDULED EVIDENTIARY HEARING

140. On 8 October 2019, the Tribunal invited the Parties' comments on the venue for the Rescheduled Evidentiary Hearing and draft procedural order no. 11, which transposed directions contained in Procedural Order No. 8 for the rescheduled dates.

141. On 11 October 2019, the Claimants indicated their preference for the IDRC in London as the hearing venue, and submitted their comments on draft procedural order no. 11. The Respondents did not provide any comments.

142. On 16 October 2019, the Tribunal issued its eleventh procedural order ("**Procedural Order No. 11**"), in which it confirmed, *inter alia*, that the Rescheduled Evidentiary Hearing would take place from 9 to 14 December 2019 at the IDRC, 70 Fleet Street, London, EC4Y 1EU, United Kingdom.

143. On the same date, the Tribunal invited the Respondents to confirm by 15 November 2019 whether they (i) had secured new legal counsel; (ii) would attend the Rescheduled Evidentiary Hearing as scheduled; and (iii) had arranged for their fact and expert witnesses to appear at the dates and times provided in Procedural Order No. 11.

144. On the same date, the PCA circulated information regarding the logistical arrangements for the Rescheduled Evidentiary Hearing and invited the Parties to comment thereon.

145. On 28 October 2019, the Claimants provided their comments on the logistical arrangements for the Rescheduled Evidentiary Hearing. The Respondents did not provide any comments.

146. On 6 November 2019, the Tribunal *inter alia* circulated to the Parties a list of questions for the Rescheduled Evidentiary Hearing, noting that this list was only preliminary and indicative, and that (i) the Tribunal had not taken any decision on any of the issues on the merits; (ii) the Tribunal or the Parties remained "free to address any point they wish at the hearing;" and (iii) while some of the questions had at least partly been addressed in the Parties' written submissions, the Tribunal nevertheless invited the Parties to also address them at the Rescheduled Evidentiary Hearing.

147. On 9 November 2019, Mr Steve Nicandros on behalf of the Respondents confirmed receipt of the Tribunal's 6 November 2019 letter.

148. On 15 November 2019, in response to the Tribunal's 16 October 2019 letter, Mr Steve Nicandros informed that "Frontera has not yet secured legal counsel [and that this] effort is still in progress." He further advised that "[i]t remains [their] intention to appear as scheduled."

149. On 18 November 2019, the Tribunal acknowledged receipt of the Respondents' 9 and 15 November 2019 communications. The Tribunal noted that the Respondents had not confirmed whether they have arranged for their fact and expert witnesses to appear at the Rescheduled Evidentiary Hearing and once more invited them to do so by 20 November 2019. The Tribunal also noted that the Respondents "have had ample time since the withdrawal of their external legal counsel and departure of their internal legal counsel to appoint new counsel, and for new counsel to familiarize themselves with this case for the [Rescheduled Evidentiary Hearing]."

150. On 20 November 2019, Mr Steve Nicandros confirmed on behalf of the Respondents "once again that it is [their] intention to appear as scheduled with the appropriate expertise."

151. On 21 November 2019, the Claimants asserted that the Respondents' communication "still does not respond to the Tribunal's inquiry and as a result impairs the Tribunal's and Claimants' ability to plan and prepare adequately for the hearing." The Claimants further submitted that failing a response from the Respondents by 25 November 2019, (i) "[i]t should be assumed that [the

Respondents'] fact and expert witnesses will not appear, and they should not be allowed to testify at the hearing absent at least 10 days written notice;" (ii) "[u]nless it is confirmed that [the Respondents'] witnesses will appear, the order of examination of the Claimants' witnesses should be heard first" and invited the Tribunal to indicate which of these witnesses it wishes to examine; and (iii) "[i]n the event that [the Respondents] do[] not appear and/or [their] witnesses do not attend" the Rescheduled Evidentiary Hearing could be concluded in "2-3 days, at most."

152. On 22 November 2019, the Tribunal acknowledged receipt of the Parties' respective communications of 20 and 21 November 2019 and again invited the Respondents by 25 November 2019 to (i) confirm that they had arranged for their fact and expert witnesses to appear at the Rescheduled Evidentiary Hearing; (ii) accompany this confirmation with evidence; and (iii) comment on the arrangements suggested in the Claimants' letter of 21 November 2019.

153. On 25 November 2019, Mr Steve Nicandros on behalf of the Respondents advised that they had "not yet confirmed attendance of [their] fact and expert witnesses to appear at the hearing" but that their "intention [wa]s to do so shortly and, in the absence of their attendance […] will be able to address their work to date." The Respondents also noted that they did not have any comments on the arrangements suggested by the Claimants in their 21 November 2019 letter.

154. On 26 November 2019, the Claimants commented *inter alia* that "[s]ince Respondents have not provided the required confirmation, the Tribunal should now revise the hearing schedule assuming that Respondents and their fact and expert witnesses will not appear." The Claimants further urged the Tribunal to "immediately order that all written testimony previously submitted by Respondents' fact and expert witnesses [be] stricken from the record" and submitted that "[a]s a result, Claimants' fact and expert witnesses should not be (cross-)examined on such testimony" (the "**Application to Strike the Respondents' Witness Statements and Expert Report**").

155. On 27 November 2019, the Tribunal acknowledged receipt of the Parties' communications of 25 and 26 November 2019, including the Claimants' Application to Strike the Respondents' Witness Statements and Expert Report. Referring to paragraphs 4.8 and 4.9 of Procedural Order No. 1, the Tribunal reminded the Respondents that each Party was responsible for summoning its own witnesses to the applicable hearing, and that as such, "in case any of the Respondents' witnesses or experts fail to appear at the Hearing, the Tribunal may strike those from the record, unless there is a valid reason for their failure to appear." In the meantime, given that the Respondents "have been unable to confirm to date – less than two weeks before the Hearing – that they have taken steps for their fact and expert witnesses to appear, the Tribunal [noted that it] must start planning for the possibility that the Respondents' witnesses and experts may not appear" and considered shortening the Rescheduled Evidentiary Hearing to two or three days. The Tribunal directed the Respondents to provide final confirmation of the presence of their witnesses and experts, and to advise whether they intended to cross-examine the Claimants' witnesses and experts, by 29 November 2019.

156. On 29 November 2019, the Claimants informed the Tribunal that in the process of preparing to respond to the Tribunal's list of preliminary and indicative questions, they "noted that certain documents [*i.e.*, "the 2019 Amended Budget and the 2010 Work Program and Budget" that] they recently received from Respondents are directly relevant" and sought leave to submit them into the record. In this regard, the Claimants argued that the Respondents "are not prejudiced by their submission given that all of these documents were prepared by Respondents" and noted that the

Claimants only received them on 11 November 2019 and thus could not have submitted them earlier.

157. On 30 November 2019, Mr Steve Nicandros on behalf of the Respondents informed the Tribunal *inter alia* as follows: "it will not be possible for our expert witnesses to attend the upcoming hearing. Moreover, other employee witnesses that we had planned to attend are also not able to do so as they are no longer in our employ and have been pressured not to participate. Given this, Mr Mamulaishvili and I have also taken the decision that we will not be able to attend due to the overall pressures that are currently placed upon our business as a result of the State's actions." Among other things, Mr Nicandros further noted that they had reached this decision because of the "significant challenges [the Respondents face] as a result of the 'soft expropriation' that Claimants have conducted against [their] business in Georgia with the current arbitration proceeding, as well as with associated actions of in-country duress."

158. On 1 December 2019, the Claimants responded to Mr Nicandros' 30 November 2019 communication, noting *inter alia* that his "renewed insinuations as to the alleged 'soft expropriation' of Respondents' business are untrue, but in any event irrelevant at this point. These allegations are wholly unsubstantiated. By not appearing, Mr Nicandros obtains the collateral benefit of not being subject to examination that would show their lack of basis. In any event, they do not explain or excuse the non-appearance at the hearing." The Claimants further noted that without the opportunity to cross-examine the Respondents' fact and expert witnesses, "all written testimony previously submitted by [them] shall be stricken from the record," pursuant to paragraphs 4.9 and 5.3 of Procedural Order No. 1. In addition, the Claimants requested the Tribunal to indicate which of their fact and expert witnesses it wished to hear from. The Claimants also noted that in light of the latest development, it would be possible to shorten the Rescheduled Evidentiary Hearing to "two days, or a bit more at the most" and proposed that it take place from 10 to 11 or 12 December 2019.

159. On the same date, the Tribunal acknowledged receipt of the Parties' communications of 29 and 30 November, and 1 December 2019. The Tribunal circulated a draft revised hearing schedule for the Parties' comments, noting that it did not consider necessary to hear from the Claimants' legal experts (Messrs Knieper and Jefferson), as well as from Mr Aldrich, and therefore did not expect them to attend the Hearing, unless the Claimants requested leave from the Tribunal pursuant to paragraph 4.7 of Procedural Order No. 1. The Tribunal further noted that it would decide on the Claimants Application to Strike the Respondents' Witness Statements and Expert Report in due course.

160. In the same communication, the Tribunal granted the Claimants' request to add additional documents to the record, on the understanding that the Claimants' reference to the 2010 Work Program and Budget was a clerical error and that it was in fact a reference to the 2020 Work Program and Budget. The Tribunal invited the Parties to comment on these documents, if they so wished, either orally at the Rescheduled Evidentiary Hearing or in writing.

161. On 2 December 2019, the Claimants provided their comments to the draft revised hearing schedule and *inter alia* requested the Tribunal to confirm that the "Respondents' evidence, i.e. the submitted expert and witness testimony has been formally stricken from the record." Further to the Tribunal's decision of 1 December 2019, the Claimants also submitted two new exhibits to the record (i) the 2019 Amended Budget (Exhibit C-221); and (ii) the 2020 Work Program and Budget (Exhibit C-222).

162. On 3 December 2019, Mr Nicandros wrote to the Tribunal on behalf of the Respondents, requesting that the Tribunal postpone the Rescheduled Evidentiary Hearing to March 2020 to "allow [the Respondents] to secure counsel […] as well as continue [their] negotiations with the government of Georgia."

163. On 4 December 2019, the Claimants objected to the Respondents' request to postpone the Rescheduled Evidentiary Hearing. The Claimants also noted that there was "no settlement between the Parties, and as such the proceeding continues."

164. On the same date, Mr Nicandros on behalf of the Respondents reiterated their request to postpone the Rescheduled Evidentiary Hearing.

165. On 5 December 2019, the Tribunal issued its twelfth procedural order ("**Procedural Order No. 12**") on the Respondents' application to postpone the Rescheduled Evidentiary Hearing and found that the Respondents had not shown any valid or sufficient cause for such a postponement within the meaning of Section 24(3) of the Swedish Arbitration Act and Article 28(2) of the UNCITRAL Rules. *Inter alia*, the Tribunal referred to Article 31.4 of the PSC in which the Parties had expressly agreed that a Party would only be allowed one "absence of default beyond its reasonable control which prevents or hinders the arbitration proceeding in any or all of its stages" and that any "[a]dditional absences, or absences which are within a Party's reasonable control shall not be allowed to prevent or hinder the arbitration proceeding." Accordingly, the Tribunal directed that the Evidentiary Hearing take place on 10 and 11 December 2019, as scheduled, and issued a final hearing schedule.

166. On the same date, the Claimants acknowledged receipt of Procedural Order No. 12 and noted that "[w]hile not expressly addressing this issue, [they] understand Procedural Order No. 12 to confirm that the witness statements of Messrs. Kalandarishvili, Mamulaishvili, Nicandros and Zabakhidze as well as the expert report of Mr Patterson are stricken from the record pursuant to paras. 4.9 and 5.3, respectively, of Procedural Order No. 1."

167. On 6 December 2019, the Tribunal acknowledged receipt of the Claimants' correspondence, referring to its Application to Strike the Respondents' Witness Statements and Expert Report. The Tribunal noted that Procedural Order No. 12 did not address the Claimants' Application to Strike the Respondents' Witness Statements and Expert Report and advised that, as previously noted, it would "deliberate on the legal consequences of the non-appearance of the Respondents' witnesses and expert and the evidentiary value of the statements and report together with the merits in this phase of the arbitration, following the [Rescheduled Evidentiary] Hearing." The Tribunal further invited the Respondents to comment on the Claimants' Application to Strike the Respondents' Witness Statements and Expert Report by 9 December 2019.

168. On 9 December 2019, Mr Nicandros, on behalf of the Respondents, objected to the Claimants' Application to Strike the Respondents' Witness Statements and Expert Report and to "any other action that may result in having [their] written witness statements or any of [their] prior submissions and correspondence to the Tribunal stricken from the record and from consideration." Mr Nicandros argued *inter alia* that the Respondents were "not receiving appropriate due process related to the action" and reiterated the existence of "extraordinary circumstances" impairing their ability to "maintain a proper defense against the parallel legal action." Mr Nicandros requested that the Tribunal "seek ways to fairly accommodate the[ir] circumstances."

J. CLAIMANTS' APPLICATION FOR A PARTIAL AWARD ON THE REIMBURSEMENT OF ADVANCE ON COSTS

169. On 18 October 2019, the Claimants submitted an application for a partial award on the reimbursement of advance on costs (the "**Application for a Partial Award on Advance on Costs**") in which they requested that the Tribunal order the Respondents to reimburse them for the substitute payment made. The Application was submitted along with Exhibits CLA-217 to CLA-223.

170. The Tribunal acknowledged receipt on the following day and invited the Respondents to comment on the Application for a Partial Award on Advance on Costs by 4 November 2019.

171. On 6 November 2019, the Tribunal noted that the Respondents had not provided their comments on the Application for a Partial Award on Advance on Costs and further advised that the Tribunal would now deliberate and issue its decision thereon in due course.

172. On 18 November 2019, further to the Application for a Partial Award on Advance on Costs, the Tribunal noted that "the Parties ha[d] not provided any comments on the relevant applicable legal standards under Swedish law, as the *lex arbitri.*" Accordingly the Tribunal invited the Parties to comment by 25 November 2019 on (i) the legal standards of Swedish law relevant to the Claimants' Application for a Partial Award on Advance on Costs; and (ii) in particular, the consequences of the Swedish Supreme Court decision rendered on 29 December 2000 in case *3S Swedish Special Supplier v Sky Park*, T-5119-99.

173. On 25 November 2019, the Claimants submitted their comments on the above-mentioned issues along with Exhibit CLA-224.

174. By letter dated 27 November 2019, the Tribunal acknowledged receipt of the Claimants' comments and noted that the Respondents had not provided any comments.

K. HEARING

175. The Rescheduled Evidentiary Hearing took place on 10 and 11 December 2019 at the International Dispute Resolution Centre, 70 Fleet Street, EC4Y 1EU London, United Kingdom.

176. The Claimants were represented at the Rescheduled Evidentiary Hearing by both counsel and party representatives. The Respondents did not attend or otherwise participate in the Rescheduled Evidentiary Hearing.

177. The following individuals were in attendance:

Tribunal

Professor Dr Maxi Scherer
Professor Dr Nathalie Voser
Mr R. Doak Bishop

Claimants

Party Representatives
Ms Ekaterine Sisauri
Mr Vazha Khidasheli
Mr David Oniani

(JSC Georgian Oil and Gas Corporation)
Mr Giorgi Tatishvili
(State Agency)

Counsel
Mr David Dunn
Mr Karl Pörnbacher
Ms Nata Ghibradze
(Hogan Lovells LLP)

Fact and Expert Witnesses
Mr David Tvalabeishvili
Ms Mariam Valishvili
Mr Aleksandre Abaiadze
Mr Artem Sanishvili
Dr Mehmet Arif Yukler
Dr Stephen C. Wright

Permanent Court of Arbitration

Ms Christel Y. Tham

Interpreter

Mr Tariel Davitashvili

Court Reporters

Mr Trevor McGowan

178. During the Rescheduled Evidentiary Hearing, as further detailed below,[7] the Claimants *inter alia* withdrew (i) their opposition to, *i.e.*, finally accepted, the Respondents' Withdrawal of the Counterclaims under the condition that the costs for the counterclaims are imposed on the counterclaimant;[8] and (ii) their Application for a Partial Award on Advance on Costs, being understood that the Tribunal would deal with Parties' costs in the final award.

L. POST-HEARING DEVELOPMENTS

179. On 13 December 2019, the Tribunal addressed various matters raised at the end of the Rescheduled Evidentiary Hearing and in particular, (i) invited the Parties to review the transcript based on the audio-recordings and indicate any egregious or significant errors therein by 19 December 2019; (ii) recalled that its preference not to have any post-hearing briefs was agreed by the Claimants and invited the Respondents to indicate any view to the contrary by 18 December 2019; and (iii) invited the Parties to submit their respective submissions on costs by 31 January 2020 and any responses they may have to the opposing Parties' submissions on costs simultaneously by 14 February 2020.

[7] *See infra* ¶¶ 222, 308.

[8] For the avoidance of doubt, the Tribunal made no decision on costs during the Rescheduled Evidentiary Hearing.

180. On 19 December 2019, Mr Nicandros wrote to the Tribunal on behalf of the Respondents, requesting the opportunity to submit post-hearing briefs.

181. On the same date, the Tribunal acknowledged receipt of the Respondents' communication and directed that the Parties "may if they so wish, submit simultaneous post-hearing briefs" by 20 January 2020, and that such briefs "shall be strictly limited to addressing the witness and expert evidence presented at the [Rescheduled] Evidentiary Hearing." The Tribunal further confirmed that all other deadlines as stated in the Tribunal's 13 December 2019 letter to the Parties remained in place and unaffected.

182. On the same date, the Claimants submitted by separate communication their proposed corrections to the hearing transcript.

183. On 21 December 2019, the Tribunal acknowledged receipt of the Claimants' proposed corrections to the hearing transcript and noted that the Respondents had not submitted any proposed corrections within the stipulated deadline. The Tribunal confirmed that the Claimants' proposed corrections would be transmitted to the court reporter for incorporation into the final transcript.

184. On 10 January 2020, the court reporter circulated the final transcript for the Rescheduled Evidentiary Hearing (the "**Hearing Transcript**").

185. On 18 January 2020, the Tribunal requested the Parties to make a supplementary deposit of EUR 200,000 (*i.e.*, EUR 100,000 from each side) by 17 February 2020, in order to ensure the adequacy of the deposit for the fees and expenses of the Tribunal through the issuance of the final award.

186. On 21 January 2020, the Respondents submitted their post-hearing brief dated 20 January 2020 (the "**Respondents' Post-Hearing Brief**"), along with factual exhibits A, B, D, and E. In their Post-Hearing Brief, the Respondents noted, *inter alia*, that the "government of Georgia, as Claimants, has intentionally, systematically and successfully suffocated [their] ability to properly defend [them]selves before the Tribunal due to their actions over time to affect a soft expropriation of [their] business from Georgia." The Respondents additionally "strongly protest that this process has been permitted to proceed without taking into consideration [their] circumstances and the related actions of the Georgian government."

187. On the same date, the Tribunal acknowledged receipt of the Respondents' submission, and requested that the Respondents resubmit their factual exhibits in accordance with the requirements of Procedural Order No. 1.

188. On 28 January 2020, the Respondents submitted factual exhibits R-107 to R-111. In the same e-mail, the Respondents *inter alia* informed the Tribunal that over the past week, the government of Georgia has "deployed harassment tactics to further challenge our ability to conduct business" and "continued to aggressively violate the confidentiality of this proceeding with members of the Georgian Parliament making public statements on Georgian television and print media about the proceedings." The Respondents alleged that these actions have "further corrupt[ed] [the Respondents'] ability to receive proper due process" and "respond to this tribunal on a level playing field."

189. On 29 January 2020, the Claimants wrote to the Tribunal and, among other things, requested the Tribunal to disregard the Respondents' Post-Hearing Brief and new evidence submitted therein on the basis that it (i) was filed out of time; (ii) addressed issues that went beyond the specific scope for Post-Hearing Briefs as set out by the Tribunal; and (iii) was accompanied by new evidence. In addition, in the event that the Tribunal decided to admit the Respondents' factual exhibit R-109, the Claimants sought leave to submit factual exhibits C-223 and C-225 as rebuttal evidence.

190. On 30 January 2020, the Claimants paid their EUR 100,000 share of the supplementary deposit requested by the Tribunal on 18 January 2020.

191. On 31 January 2020, the Claimants submitted only to the PCA their Submission on Costs and updated list of factual exhibits (the "**Claimants' Submission on Costs**").

192. On 1 February 2020, the PCA acknowledged receipt of the Claimants' Submission on Costs and noted that it had yet to receive the Respondents' corresponding submission. The PCA noted that in accordance with paragraph 2.7 of Procedural Order No. 1, it shall only distribute copies of the Parties' Submissions on Costs to the Tribunal and opposing Parties once both have been received, and invited the Respondents to provide an update on the status of their Submission on Costs by 2 February 2020.

193. On 2 February 2020, the Tribunal acknowledged receipt of the Claimants' 29 January 2020 communication, and noted that it would deliberate on the issues raised therein, "including whether and to what extent recently submitted exhibits are admitted to the file, and provide directions to the Parties in due course."

194. On 3 February 2020, the Respondents stated that they would "deliver [their Submission on Costs] no later than close of business on February 7, 2020."

195. On the same date, the Tribunal granted the Respondents a one-week extension of the deadline for their Submission on Costs, until 7 February 2020, but emphasized that no further extensions would be granted and that any late submissions would be ignored.

196. On 5 February 2020, the Respondents wrote to the Tribunal alleging that the Claimants "have made public statements via their counsel and highlighted inappropriate/inaccurate public commentary regarding our pending arbitration process." The Respondents further "protest[ed] [their] inability to receive proper due process" and asked the Tribunal to "note the continued disadvantage at which our defense has been placed and the ongoing 'suffocation tactics' that the sovereign State is employing to quash our ability to exist as a company and defend ourselves."

197. On 7 February 2020, the Tribunal acknowledged receipt of the Respondents' 5 February 2020 communication, and invited the Claimants to provide their comments by 14 February 2020.

198. On 8 February 2020, the Respondents submitted their Submission on Costs (the "**Respondents' Submission on Costs**") to the PCA, and the PCA simultaneously circulated to the Tribunal and the Parties both the Claimants' and Respondents' Submissions on Costs.

199. On 14 February 2020, the Claimants and the Respondents, respectively submitted to the PCA only their Responses to the opposing Parties' Submissions on Costs (the "**Claimants' Response to Submission on Costs**" and the "**Respondents' Response to Submission on Costs**").

200. On 15 February 2020, the PCA simultaneously circulated both Parties' Responses to Submissions on Costs to the Tribunal and the Parties.

201. On 17 February 2020, the Claimants submitted a letter to the Tribunal "strongly deny[ing] and oppos[ing] all allegations" made in the Respondents' 5 February 2020 communication. The Claimants clarified *inter alia* that they published their counsel's 30 January 2020 letter "in direct response to U.S. Congressional statements and inquiries based on inaccurate information that appears to have been provided to them by the Respondents and/or their affiliates" and that they "have been compelled to address numerous public statements made by US Congressmen accusing the Georgian Government of 'harassment and expropriation attack' towards U.S. and European businesses based on the supposed example of [Respondent 1]." The Claimants further reiterated that they "have strictly complied with their assurances to refrain from any unilateral actions, in advance of or outside the arbitration process."

202. On 24 February 2020, the Tribunal acknowledged receipt of the Parties' respective correspondence and decided (i) to admit into the record the Respondents' Post-Hearing Brief, despite it being filed out of time, as well as new Exhibits R-107 to R-111 and Exhibits C-223 to C-226; and (ii) that the Claimants' public 30 January 2020 letter did not contain inappropriate information and did not breach any of the Parties' confidentiality obligations in this arbitration under Terms of Appointment, the PSC, the UNCITRAL Rules or the Swedish Arbitration Act.

203. On the same day, the Tribunal closed the proceedings and noted that it would render its final award in due course.

204. On 30 March 2020, the PCA wrote on behalf of the Tribunal to the Parties noting that the deadline for the Respondents' payment of their share of the supplementary deposit requested on 18 January 2020 had elapsed on 17 February 2020 and invited the Claimants to make a substitute deposit on behalf of the Respondents by 29 April 2020, noting that the Tribunal expected to issue its final award as soon as possible after the substitute payment was received.

205. On 6 April 2020, the Claimants made a payment of EUR 100,000 to the PCA, representing their substitute payment of the Respondents' share of the supplementary deposit requested by the Tribunal on 18 January 2020.

III. PARTIES' SUBMISSIONS

A. CLAIMANTS' SUBMISSIONS

206. In this arbitration, the Claimants filed *inter alia* the following submissions:

(i) Request for Arbitration, dated 15 January 2018;
(ii) Statement of Claim, dated 6 July 2018, as amended on 9 July 2018;
(iii) Application for Security for Costs, dated 24 October 2018;
(iv) Statement of Defense to Counterclaim, dated 18 January 2019;
(v) Statement of Reply, dated 13 June 2019;
(vi) Claimants' Reply Submission on Assignment, dated 11 July 2019;
(vii) Claimants' Rejoinder Submission on Assignment, dated 8 August 2019;
(viii) Claimants' Application for a Partial Award on the Reimbursement of Advance of Costs, dated 18 October 2019;
(ix) Claimants' Submission on Costs, dated 31 January 2020; and
(x) Claimants' Response to Submission on Costs, dated 14 February 2020.

207. The Claimants' submissions were accompanied *inter alia* by:

(i) factual exhibits C-1 to C-398, and CDR-1 to CDR-8;
(ii) legal authorities CLA-1 to CLA-234;
(iii) witness statements of:
  a. Mr Artem Sanishvili, dated 29 June 2018 ("**CWS-1**");
  b. Mr Mehmet Arif Yukler, dated 4 July 2018 ("**CWS-2**");
  c. Mr David Tvalabeishvili, dated 5 July 2018 ("**CWS-3**");
  d. Ms Mariam Valishvili, dated 5 July 2018 ("**CWS-4**");
  e. Mr Giorgi Tatishvili, dated 6 July 2018 ("**CWS-5**");
  f. Mr Aleksandre Abaiadze, dated 6 July 2018 ("**CWS-6**")
  g. Mr Artem Sanishvili (second), dated 18 January 2019 ("**CWS-7**");
  h. Mr Giorgi Tatishvili (second), dated 18 January 2019 ("**CWS-8**");
  i. Mr David Tvalabeishvili (second), dated 18 January 2019 ("**CWS-9**");
  j. Mr Aleksandre Abaiadze (second), dated 18 January 2019 ("**CWS-10**");
  k. Ms Mariam Valishvili (second), dated 18 January 2019 ("**CWS-11**");
  l. Mr Mehmet Arif Yukler (second), dated 11 June 2019 ("**CWS-12**");
  m. Mr Artem Sanishvili (third), dated 12 June 2019 ("**CWS-13**");
  n. Mr David Tvalabeishvili (third), dated 11 June 2019 ("**CWS-14**");
  o. Ms Mariam Valishvili (third), dated 11 June 2019 ("**CWS-15**");
  p. Mr Giorgi Tatishvili (third), dated 11 June 2019 ("**CWS-16**"); and
  q. Mr Aleksandre Abaiadze (third), dated 11 June 2019 ("**CWS-17**"); and
(iv) expert reports of:
  a. Gaffney, Cline & Associates, dated 6 July 2018 ("**CER-1**");
  b. Walter Bratic, dated 22 October 2018 ("**CER-2**");
  c. Hans Dahlberg Kolga, dated 24 October 2018 ("**CER-3**")
  d. Wallace B. Jefferson, dated 17 January 2019 ("**CER-4**");
  e. Prof Dr Rolf Knieper, dated 17 January 2019 ("**CER-5**");
  f. Jeffrey Aldrich, dated 18 January 2019 ("**CER-6**");
  g. Walter Bratic (second), dated 18 January 2019 ("**CER-7**");
  h. Prof Dr Rolf Knieper (second), dated 6 June 2019 ("**CER-8**");
  i. Wallace B. Jefferson (second), dated 6 June 2019 ("**CER-9**");
  j. Gaffney, Cline & Associates (second), dated 11 June 2019 ("**CER-10**"); and
  k. Jeffrey Aldrich (second), dated 12 June 2019 ("**CER-11**").

B. RESPONDENTS' SUBMISSIONS

208. In this arbitration, the Respondents filed *inter alia* the following submissions:

(i) Response, dated 16 February 2018;
(ii) Statement of Defense and Counterclaim, dated 14 September 2018;
(iii) Response to the Claimants' Application for Security for Costs, dated 14 November 2018;
(iv) Respondent 1's Submission on Assignment, dated 27 June 2019;
(v) Respondent 1's Amended Submission on Assignment, dated 1 July 2019;
(vi) Respondent 1's Reply Submission on Assignment, dated 25 July 2019;
(vii) Rejoinder Submission on Claims, dated 8 August 2019;
(viii) Respondents' Post-Hearing Brief, dated 20 January 2020;
(xi) Respondents' Submission on Costs, dated 7 February 2020; and
(xii) Respondents' Response to Submission on Costs, dated 14 February 2020.

209. The Respondents' submissions were accompanied *inter alia* by:

(i) factual exhibits R-1 to R-111;
(ii) legal authorities RLA-1 to RLA-71;
(iii) witness statements of:

a. Mr Steve C. Nicandros, dated 14 September 2018 (“**RWS-1**”);
b. Mr Zaza Mamulaishvili, dated 14 September 2018 (“**RWS-2**”);
c. Mr Giorgi Zabakhidze, dated 14 September 2018 (“**RWS-3**”);
d. Mr Giorgi Kalandarishvili, dated 13 September 2018 (“**RWS-4**”); and
e. Mr Giorgi Kalandarishvili (second), dated 14 November 2019 (“**RWS-5**”);

(iv) expert reports of:

a. Paul Dee Patterson, Moyes & Co., dated 14 September 2018 (“**RER-1**”); and
b. David Leathers, dated 14 November 2018 (“**RER-2**”).

IV. PARTIES’ REQUESTS FOR RELIEF

A. CLAIMANTS’ REQUEST FOR RELIEF

210. In their Statement of Reply, the Claimants requested the Tribunal to:

1) DECLARE that the purported assignment of Frontera Resources Georgia Corporation’s interest in the PSC to Frontera Resources US LLC is null and void pursuant to Article 27.1 of the PSC;

2) To the extent Request No. 1 is granted, DECLARE that Frontera Resources Georgia Corporation breached Article 27 of the PSC by purporting to assign (within the meaning of Article 27.1 of the PSC) its interest in the PSC to Frontera Resources US LLC;

3) DECLARE that Frontera Resources Georgia Corporation breached Article 6.1(b) of the PSC by failing on 14 November 2017 to relinquish the area outside the Development Area as defined in Article 1.30 of the PSC and formed as a result of Amendment no. 2;

4) ORDER Frontera Resources Georgia Corporation to immediately relinquish to Claimants the area outside the Development Area as defined in Article 1.30 of the PSC and formed as a result of Amendment no. 2;

5) ORDER Frontera Resources Georgia Corporation to deliver to Claimants all work product and relevant data with respect to the areas required to have been relinquished, including studies, reports, surveys and other data and documents prepared or produced with respect thereto;

6) DECLARE that the breaches of the PSC by Frontera Resources Georgia Corporation – namely the failure to relinquish, the failure to share Petroleum, the failure to submit a “work plan,” and (to the extent Requests Nos. 1 and 2 are granted) purporting to assign its interest in the PSC in violation of Article 27 of the PSC – each in and of itself, and/or taken together, amount to a material breach pursuant to Article 30.2 of the PSC;

7) AWARD damages resulting from the breach of Article 6.1(b) of the PSC by failing to relinquish territory required to be conveyed, in an amount to be determined, but no less than interest at a rate of LIBOR plus 4% stemming from the delay of receiving an upfront payment from another investor in the amount of at least USD 4.9 million from 1 January 2019 at the latest, payable to LEPL State Agency of Oil and Gas;

8) ORDER Frontera Resources Georgia Corporation to provide an accounting with respect to amounts of Available Crude Oil and Available Natural Gas lifted on a month by month basis, from the initiation of the PSC to the date of the final award and the monthly amount received from the sale of such Available Crude Oil and Available Gas, on a month by month basis during such period;

9) AWARD to JSC Georgian Oil and Gas Corporation damages in the amount of 51% of the aggregate amount of revenue obtained from the sale of Available Crude Oil and Available Natural Gas lifted or obtained under or pursuant to the PSC since its initiation, in an amount to be determined, but no less than USD 31.2 million;

10) In the alternative to Request No. 9, AWARD to JSC Georgian Oil and Gas Corporation damages in the amount corresponding to a minimum of 51% of 20% (since November 2012) and 40% (since November 2016), respectively, of the aggregate amount of revenue obtained by Frontera from the sale of Available Crude Oil and Available Natural Gas lifted or obtained under or pursuant to the PSC since November 2012, in an amount to be determined, but no less than USD 2.5 million;

11) In the further alternative to Request No. 9, AWARD damages to JSC Georgian Oil and Gas Corporation as a result of Frontera Resources Georgia Corporation's failure to pay the amount of GEL 752,389.09 as a Tax Advance to JSC Georgian Oil and Gas Corporation pursuant to Article 17.8 PSC;

12) ORDER Frontera Resources Georgia Corporation to pay interest (LIBOR plus 4%) pursuant to Article 31.6 of the PSC on all amounts ordered to be paid to Claimants from the date of each breach until the date on which the award with respect thereto is satisfied;

13) ORDER Frontera Resources Georgia Corporation to bear all costs of the arbitration, including all legal fees (including in-house counsel costs, external counsel costs and consultant costs), costs for arbitrators, and experts, as well as other disbursements incurred by Claimants to the extent authorized by the PSC, the UNCITRAL Rules and/or the applicable law, and AWARD such costs to Claimants; and

14) AWARD Claimants such other and further relief the Arbitral Tribunal deems just and proper.[9]

211. The Claimants' above-mentioned requests will be referred to as **Requests for Relief No. 1 to 14**.

212. The Claimants' Requests for Relief No. 1 and 2 relate to the Assignment Issue, dealt with in Section V.D below. In relation to the Assignment Issue, the Claimants also made the following requests for relief in their Rejoinder Submission on Assignment, the Claimants requested the Tribunal to:

1) DECLARE as soon as feasible and by separate award that the Purported Assignment is null and void pursuant to Article 27.1 of the PSC;

2) To the extent Request No. 1 is granted, DECLARE (as part of such separate award or in the final award) that Frontera Resources Georgia Corporation breached Article 27 of the PSC by purporting to assign (within the meaning of Article 27.1 of the PSC) its interest in the PSC to Frontera Resources US LLC, and that such breach is "material" (within the meaning of Article 30.2 of the PSC);

[…]

5) AWARD Claimants such other and further relief the Arbitral Tribunal deems just and proper.[10]

213. The Claimants' Requests for Relief No. 3 and 4 relate to the Claimants' claim that Respondent 1 failed to relinquish certain areas in Block XII (the "**Relinquishment Claim**") and is dealt with in Section V.E below.

214. The Claimants' Request for Relief No. 5 is connected to the Relinquishment Claim and, provided the Tribunal grants the Relinquishment Claim, requests that Respondent 1 be ordered to deliver

9 Reply, ¶ 369 (citations omitted).

10 CRSA, ¶ 34.

to the Claimants work product and relevant data with respect to the areas required to have been relinquished (the "**Work Product Claim**"). It is dealt with in Section V.F below.

215. The Claimants' Request for Relief No. 7 is also connected to the Relinquishment Claim and, provided the Tribunal grants the Relinquishment Claim, requests that the Tribunal awards damages resulting from Respondent 1's failure to relinquish certain areas in Block XII (the "**Non-Relinquishment Damage Claim**"). This claim is the subject of Section V.G below.

216. The Claimants' Request for Relief No. 6 relates to the Claimants' request for a declaration that Respondent 1 materially breached the PSC (the "**Material Breach Declaration Claim**"). This is dealt with in Section V.H below.

217. The Claimants' Request for Relief No. 8 has been withdrawn during the Rescheduled Evidentiary Hearing and will be dealt with in Section V.C.4 below.

218. The Claimants' Requests for Relief No. 9 to 10 concern the Claimants' claims for damages based on Respondent 1's alleged failure to share petroleum with Claimant 1 (the "**Failure to Share Petroleum Damage Claim**"). This claim is dealt with in Section V.I below.

219. The Claimants' Requests for Relief No. 11 concerns the Claimants' claims in relation to tax advances paid by the Claimants (the "**Tax Advance Claim**"). This claim is dealt with in Section V.J below.

220. The Claimants' Requests for Relief No. 12 and 13 relate to interest and costs and are dealt with in Sections V.K and V.L below. In relation to costs, in their Submission on Costs, the Claimants further requested the Tribunal to:

> 1) ORDER Frontera Resources Georgia Corporation and Frontera Resources US LLC jointly and severally to pay all costs incurred by Claimants in relation to Claimants' Claims, including costs and expenses of arbitrators, all legal fees and expenses (in-house counsel costs, external counsel costs, consultant costs), experts' costs and expenses, fees and expenses of fact witnesses and any additional costs in the amount of USD 4,295,661.40 and EUR 709,972.93;
>
> 2) ORDER Frontera Resources Georgia Corporation and Frontera Resources US LLC jointly and severally to pay all costs incurred by Claimants in relation to Respondents' counterclaims, including costs and expenses of arbitrators, all legal fees and expenses (in-house counsel costs, external counsel costs, consultant costs), experts' costs and expenses, fees and expenses of fact witnesses and any additional costs in the amount of USD 2,474,787.78 and EUR 19,507.28, and interest on the aforementioned amounts at the rate of LIBOR plus 4% as of the date of the award until final payment;
>
> 3) ORDER Resources Georgia Corporation and Frontera Resources US LLC jointly and severally to pay interest on the aforementioned amounts at the rate of LIBOR plus 4% as of the date of the Award until full payment;
>
> 4) AWARD Claimants such other and further relief as the Arbitral Tribunal deems just and appropriate.[11]

221. Furthermore, in their Application for a Partial Award on Advance on Costs, the Claimants requested the Tribunal to issue a partial award:

> a. Declaring that Respondents breached their obligations under the PSC and the Terms of Appointment to make the requested advance payment;

[11] Claimants' Submission on Costs, ¶ 100.

b. Ordering Respondents to jointly and severally reimburse the amount of the Substitute Deposit (in the amount of EUR 150,000) paid by Claimants;

c. In the alternative to b. supra: Ordering, by way of an interim award, that Respondents jointly and severally reimburse Claimants for the Substitute Deposit (in the amount of EUR 150,000) as an interim measure of protection;

d. Ordering Respondents to jointly and severally pay interest at the rate of LIBOR plus 4% pursuant to Article 31.6 of the PSC on the Substitute Deposit (in the amount of EUR 150,000) paid by Claimants from 27 September 2019 until full payment;

e. Ordering Respondents to jointly and severally bear all costs in connection with this Application, including all legal fees (including in-house counsel costs, external counsel costs and consultant costs), all costs for arbitrators and the PCA, as well as other disbursements incurred by Claimants to the extent authorized by the PSC, the UNCITRAL Rules and/or the applicable law, and awarding such costs to Claimants; and

f. Awarding Claimants such other and further relief the Arbitral Tribunal deems just and proper.[12]

222. During the Rescheduled Evidentiary Hearing, however, the Claimants "withdr[e]w the[ir] request that the Tribunal issue an interim final award" with respect to "[the reimbursement of] the advance on costs," which would "still be sought as part of the overall costs application."[13] Given that the Claimants have withdrawn their Application for a Partial Award on Advance on Costs, the Tribunal therefore need not deal with the application any further.

223. The Claimants also reserved their right to further add, amend, expand, supplement, specify and modify their claims and submissions, including the relief sought.[14]

B. RESPONDENTS' REQUEST FOR RELIEF

224. The Respondents, in the Statement of Defense and Counterclaim submitted by Respondent 1, requested the Tribunal to:

(a) Dismiss Claimants' claims in their entirety.

(b) Declare that Frontera Resources' costs and expenses for the Calendar Years 2006 and 2007 are recoverable costs and expenses under PSC Article 11;

(c) Declare that "Finance Costs" are recoverable costs and expenses under PSC Article 11;

(d) Order that GOGC and the State Agency (jointly and severally) have breached the PSC (including but not limited to Articles 7.7; 9.1; 9.2; 9.4(c); 9.5; 11.5; 11.6; 14.1; 17.9; 13.1; 3.8; 17.9; 17.25(h); 25.9);

(e) Order that GOGC and the State Agency (jointly and severally) to pay to Frontera Resources the amounts specified below (relating to the heads of claim listed).

12 Claimants' Application for Reimbursement of Advance on Costs, ¶ 34 (emphases omitted).

13 Hearing Transcript, Day 2, 133:11-16, 133:22-23.

14 Reply, ¶ 370; Rejoinder, ¶¶ 34-35 (citations omitted); Claimants' Submission on Costs, ¶ 101.

Head of Claim	Amount
Lost Profits to Frontera Resources from Claimants' obstructions of Frontera Resources' operations including breaches of the PSC as specified above	USD 3,514,720,642.00
Taxes (VAT and Excise Tax) incurred by Frontera Resources due to Claimants' breach of Articles 3.8, 17.3, 17.9, 17.25(h)	USD 3,583,681.00
Legal Costs incurred by Frontera Resources in Assuring Land Access to Block XII	USD 74,000.00
Less Amount due under the Mineral Tax	[USD 287,963.00 converted from GEL 752,389.09]
Total amount claimed not less than	USD 3,518,090,360.00

(f) Order Claimants (jointly and severally) to pay all of Frontera Resources' costs in connection with the arbitration, including but not limited to:

(i) all administrative costs and venue costs of the arbitration;

(ii) the fees and/or expenses of the Tribunal; and

(iii) the costs of experts, consultants, witnesses and legal costs which Frontera Resources incurs.

(g) Award interest on the sums payable to Frontera Resources at the rate specified in PSC Article 31.6 or at a rate to be determined by the Tribunal.

(h) Award such other relief/damages/interest to Frontera Resources as may be claimed and which the Tribunal deems appropriate.[15]

225. In their Post-Hearing Brief, the Respondents reiterated their position that they have not breached any provision of the PSC.[16]

226. The Respondents above-mentioned requests will be referred to as **Requests for Relief No. (a) to (h)**.

227. The Respondents' Request for Relief No. (a) relates to the Claimants' claims and is dealt with in the relevant Sections V.E to V.I below.

228. The Respondents' Requests for Relief No. (b) to (e) concern Respondent 1's counterclaims which have been withdrawn, as set out in Section V.C.3 below.

229. The Respondents' Requests for Relief No. (g) and (h) deal with interest and costs, which are addressed in Sections V.K and V.L below. In their Submission on Costs, the Respondents sought

15 SoD, ¶ 344.

16 Respondents' Post-Hearing Brief, at 2.

a total of US$ 2,638,369.72, comprising US$ 2,354,890.65 in legal fees and expenses, and US$ 283,479.07 in expert witnesses' fees and expenses.[17]

230. Furthermore, with respect to the Assignment Issue, the Respondents, in the Reply Submission on Assignment submitted by Respondent 1, requested:

> that any consideration by the Tribunal about whether the Assignment constituted a material breach of the PSC be reserved until the Tribunal's Final Award, if still necessary. In addition, Respondent respectfully requests that the Counterclaim be withdrawn, without prejudice in any way to FRUS' ability to refile, but that FRUS be ordered to reimburse Claimants for any expenses related to work on the Counterclaim that cannot be used in a separate arbitration. In the alternative, if the Tribunal is inclined to rule on the Counterclaim in this action for some reason, Respondent respectfully requests that FRUS be the sole party to that Counterclaim and that it be granted an additional forty-five (45) days from the date of this determination to submit a Reply in Support of the Counterclaim along with expert reports and other evidence.[18]

231. The Assignment Issue is dealt with in Section V.D below.

V. TRIBUNAL'S DECISION

232. The following sections first address the (A) relevant factual background to the Parties' dispute; as well as the Parties' positions and the Tribunal's decision with respect to (B) the rules applicable to the interpretation of the PSC. The Tribunal then deals with (C) some preliminary and procedural issues, before turning to its decision on (D) the Assignment Issue; (E) the Relinquishment Claim; (F) the Work Product Claim; (G) the Non-Relinquishment Damage Claim; (H) the Material Breach Declaration Claim; (I) the Failure to Share Petroleum Damage Claim; (J) the Tax Advance Claim; (K) interest; and (L) costs.

A. FACTUAL BACKGROUND[19]

1. Conclusion of the PSC

233. On 25 June 1997, the Ministry of Fuel and Energy of Georgia, the State Company Georgian Oil and Respondent 1 entered into the PSC for the exploration and exploitation of oil and gas in Block XII, an area of 5,062 square kilometres.[20] Thereafter, on 16 April 1999, Claimant 2 succeeded the Ministry of Fuel and Energy of Georgia and became a party to the PSC.[21] On 27 May 2008, the State Company Georgian Oil assigned all its rights and obligations under the PSC to Claimant 1, and the latter became a party to the PSC.[22] The mineral licence for Block XII was

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17 Respondents' Submission on Costs, at 1.

18 RRSA, at 5.

19 This section sets out some of the facts that constitute the framework for the present dispute. It is not an exhaustive summary of all facts, and further relevant facts are discussed in the subsequent sections.

20 PSC (**Exhibit C-1**); Chronology of Non-Disputed Facts, No. 1.

21 Amendment No. 1, Recital (**Exhibit C-2**) ("WHEREAS, the Georgian Law on Oil and Gas was enacted April 16, 1999 as amended and created the State Agency in its capacity as sovereign representative of the State"); Chronology of Non-Disputed Facts, No. 5.

22 Amendment No. 2, Recital (**Exhibit C-3**) ("WHEREAS, on May 27, 2008 Georgian Oil and GOGC entered into the Assignment Agreement pursuant to which Georgian Oil assigned all its rights and obligations under the Contract to GOGC"); Assignment Agreement between JSC Teleti Oil Company

issued on 14 November 1997,[23] and, in accordance with Article 1.36 of the PSC, the effective date of the PSC was fixed to that date.[24]

234. Under the PSC, the Contract Area was divided into an exploitation area, which refers to "those volumes of rock that contain discoveries that were made before the execution of" the PSC (the "**Exploitation Area**")[25] and the remainder of the Contract Area. Under the original terms of the PSC, a development area was defined as "all or any part of the Contract Area specified in an approved Development Plan containing a Commercial Discovery, except those parts defined as Exploitation Areas" (the "**Development Area**").[26]

235. The PSC comprised two exploration phases: an initial exploration phase to last seven years and due to end on 14 November 2004 (the "**Initial Exploration Phase**"), and a secondary exploration phase of three years, due to end on 14 November 2007 (the "**Secondary Exploration Phase**").[27] By the end of the Initial Exploration Phase, Respondent 1 was to relinquish at least 50% of the Contract Area that is outside a Development Area, and by the end of the Secondary Exploration Phase it was to relinquish 100% of the original Contract Area outside of any Development Area.[28]

236. The PSC stipulated that a coordination committee was to be formed, comprising six members, half of which were to be appointed by Respondent 1 as its representatives, and the remainder by Claimant 1 (the "**Coordination Committee**").[29] The Coordination Committee was to meet once every quarter and was responsible for the overall supervision and direction of the petroleum operations in Block XII.[30]

2. Amendments to the PSC

237. On 29 August 2003, the Parties concluded amendment no. 1 to the PSC (the "**Amendment No. 1**"). Pursuant to Amendment No. 1, the Secondary Exploration Phase was extended from three years to eight years, with its end date changed to 14 November 2012. Amendment No. 1 also eliminated Respondent 1's obligation to relinquish "at least (50%) of that part of the original Contract Area that is outside of any Development area, not later than the end of the initial exploration phase" pursuant to Article 6.1(a) of the PSC.[31]

238. On 15 July 2009, the Parties amended the PSC again by concluding amendment no. 2 (the "**Amendment No. 2**"). Pursuant to Amendment No. 2, the Secondary Exploration Phase was extended once more from eight years under Amendment No. 1 to thirteen years, with a new end

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(formerly the Statement Company Georgian Oil) and GOGC, dated 27 May 2008 (**Exhibit C-4**); Chronology of Non-Disputed Facts, No. 10, 19.

[23] First Nicandros Witness Statement, ¶ 46 (**Exhibit RWS-1**); Chronology of Non-Disputed Facts, No. 4.

[24] PSC, Art. 1.43 (**Exhibit C-1**); Chronology of Non-Disputed Facts, No. 4.

[25] PSC, Art. 1.40 (**Exhibit C-1**).

[26] PSC, Art. 1.30 (**Exhibit C-1**).

[27] PSC, Art. 5.1 (**Exhibit C-1**); Chronology of Non-Disputed Facts, No. 8.

[28] PSC, Art. 6.1 (**Exhibit C-1**).

[29] PSC, Art. 7.2 (**Exhibit C-1**).

[30] PSC, Arts. 7.1, 7.4 (**Exhibit C-1**).

[31] Amendment No. 1, at 2 (**Exhibit C-2**); Chronology of Non-Disputed Facts, No. 7.

date of 14 November 2017.[32] Amendment No. 2 provided for the automatic formation of Development Areas on the Exploitation Areas and the Mtsarekhevi Field.[33] Thus, the former Exploitation Areas and the Mtsarekhevi Field became Development Areas automatically at the conclusion of Amendment No. 2 (the "**Exploitation/Development Area**"). Further, it stipulated that the Exploitation/Development Area so created was not to be subject to Article 9 of the PSC.[34] Amendment No. 2 also stipulated that Respondent 1 was to submit a "work plan" for the Exploitation/Development Area, and amended the cost recovery provisions of Article 11.5.[35]

3. Submission of a Work Plan for the Exploitation/Development Area

239. On 8 November 2012, Respondent 1 submitted certain materials for consideration at the Coordination Committee meeting.[36] On 19 July 2013, Claimant 1 sent a letter to Respondent 1 in which it noted that Respondent 1 had not submitted a development and operation plan for the Exploitation/Development Area.[37] Thereafter, the Parties exchanged correspondence in which they disagreed as to Respondent 1's obligations to provide a work plan for the development and operation of the Exploitation/Development Area, in particular whether the document submitted to the Coordination Committee on 8 November 2012 satisfied these obligations.[38]

240. On 25 November 2013, Claimant 1 wrote to Respondent 1 attaching a draft amendment no. 3 to the PSC, which provided certain specifications as to the required development and operation plan.[39] The Parties exchanged comments as to the contents and signing of amendment no. 3,[40] but failed to agree on a final version.

4. Respondent 1's Request for an Additional Extension of the Secondary Exploration Phase

241. On 10 August 2016, Respondent 1 requested a further five-year extension of the Secondary Exploration Phase in exchange for which it listed four proposals, including that "10% of the oil

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[32] Amendment No. 2, Section 1 (**Exhibit C-3**); Chronology of Non-Disputed Facts, No. 24.

[33] Amendment No. 2, Section 3 (**Exhibit C-3**); Chronology of Non-Disputed Facts, No. 24.

[34] Amendment No. 2, Section 3 (**Exhibit C-3**); Chronology of Non-Disputed Facts, No. 24.

[35] Amendment No. 2, Sections 3 and 4 (**Exhibit C-3**); Chronology of Non-Disputed Facts, No. 24.

[36] Letter from V. Ghlonti (Frontera) to GOGC-appointed Coordination Committee members dated 8 November 2012 (**Exhibit C-37**); Chronology of Non-Disputed Facts, No. 66.

[37] Letter from L. Gogodze (GOGC) to Z. Mamulaishvili (Frontera), dated 19 July 2013 (**Exhibit C-19**); Chronology of Non-Disputed Facts, No. 77.

[38] *See e.g.*, Letter from D. Tvalabeishvili (GOGC) and G. Tatishvili (State Agency) to S. Nicandros (Frontera), dated 16 September 2013 (**Exhibit C-34**); Letter from E. Williamson (Frontera) to D. Tvalabeishvili (GOGC) and G. Tatishvili (State Agency), dated 1 October 2013 (**Exhibit C-36**); Chronology of Non-Disputed Facts, No. 80, 82.

[39] Email from L. Gogodze (GOGC) to L. Bakhutashvili (Frontera) attaching Draft Amendment No 3 dated 25 November 2013 (**Exhibit R-20**); Chronology of Non-Disputed Facts, No. 95.

[40] *See e.g.*, Email from L. Bakhutashvili (Frontera) to L. Gogodze (GOGC) with attachment dated 21 December 2013 (**Exhibit R-22**); Email from L. Bakhutashvili (Frontera) to M. Valishvili (Ministry of Energy of Georgia), dated 20 January 2014 (**Exhibit R-26**) Chronology of Non-Disputed Facts, No. 101, 106, 108, 109.

and natural gas produced on the 'Development Area' will be transferred to the Georgian Oil and Gas Corporation."[41]

242. Subsequently, the Parties exchanged letters on Respondent 1's request and its consideration (*i.e.*, the four proposals),[42] and on 16 September 2016, Claimant 1 wrote to Respondent 1 requesting that it provide an "independently prepared investment and work plan" specifying exploration activities that were to be taken in the proposed period of extension, as well as "complete details of all financial resources for undertaking various activities in the five-year period," in order to be able to "properly consider" the request for extension.[43]

243. On 24 January 2017, Respondent 1 submitted a document titled "Block 12 Petroleum and Gas Exploration 5-year Work Program (2017-2022)" (the "**Exploration Work Program**") in support of a request for a further extension of the Secondary Exploration Phase by five years.[44]

244. In the weeks that followed, the Parties corresponded about the submission of the Exploration Work Program and disagreed as to the sufficiency of information provided therein.[45]

5. Respondent 1's Declaration of Commercial Feasibility

245. On 28 February 2017, Respondent 1 sent a letter to Claimant 1, stating that it had concluded that the "commercial [p]roduction from the Contract Area is feasible" within the meaning of Article 9.1 of the PSC (the "**Declaration of Commercial Feasibility**").[46] At the same time, Respondent 1 also submitted a study program to be approved by the Coordination Committee, stating that this submission was made in accordance with Article 9.2 of the PSC (the "**Study Program**").[47] The Study Program contemplated a study area that covered the entire Contract Area, and operations that would be conducted over a five-year period commencing on 3 April 2017.[48]

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[41] E-mail communication between Z. Mamulaishvili (Frontera) and M. Valishvili (Ministry of Energy), dated 10-15 August 2016 (**Exhibit C-46**); Chronology of Non-Disputed Facts, No. 205.

[42] Letter from Z. Mamulaishvili (Frontera) to M. Valishvili (Ministry of Energy of Georgia) with attachment, dated 6 September 2016 (**Exhibit R-74**); Letter from Z. Mamulaishvili (Frontera) to M. Valishvili (Ministry of Energy), dated 25 August 2016 (**Exhibit C-118**); Email from Z. Mamulaishvili (Frontera) to S. Nicandros (Frontera), L. Bakhutashvili (Frontera) with attachment, dated 8 September 2016 (**Exhibit R-76**); Letter from M. Valishvili (Ministry of Energy) to Z. Mamulaishvili (Frontera), dated 8 September 2016 (**Exhibit C-119**); Chronology of Non-Disputed Facts, No. 208, 209, 210.

[43] E-mail from D. Tvalabeishvili (GOGC) to Z. Mamulaishvili (Frontera), dated 16 September 2016 (**Exhibit C-49**); Chronology of Non-Disputed Facts, No. 211.

[44] Block 12 Petroleum and Gas Exploration 5-year Work Program (2017-2022), dated 24 January 2017 (**Exhibit C-55**); Chronology of Non-Disputed Facts, No. 238.

[45] *See e.g.*, Letter from S. Nicandros (Frontera) to D. Tvalabeishvili (GOGC), dated 10 February 2017 (**Exhibit C-58**); Letter from S. Nicandros (Frontera) to D. Tvalabeishvili (GOGC), dated 15 February 2017 (**Exhibit C-60**); Letter from G. Bakhtadze (GOGC) to G. Kalandarishvili (Frontera), dated 6 February 2017 (**Exhibit C-182**); Chronology of Non-Disputed Facts, No. 240-241, 243-247.

[46] Letter from S. Nicandros (Frontera) to D. Tvalabeishvili (GOGC), dated 28 February 2017 (**Exhibit C-7**); Chronology of Non-Disputed Facts, No. 249.

[47] Frontera's Study Program, dated 28 February 2017 (**Exhibit C-8**); Chronology of Non-Disputed Facts, No. 249.

[48] Frontera's Study Program, dated 28 February 2017, at 10-14 (**Exhibit C-8**).

246. On 29 March 2017, the Coordination Committee members appointed by Claimant 1 sent a letter to those appointed by Respondent 1, containing their comments on the Study Program.[49] On 30 March 2017, Respondent 1's members of the Coordination Committee also presented their comments on the Study Program.[50] At the Coordination Committee meeting of 30 March 2017, the members appointed by Respondent 1 approved the Study Program as submitted.[51]

247. On 3 April 2017, Respondent 1 wrote to Claimant 1 conveying its understanding that following the 30 March 2017 meeting, Respondent 1's "proposal prevailed pursuant to Article 7.7 and, consequently, the Study Program was approved and has come into effect."[52] The letter set the commencement date of the Study Program at 3 April 2017.

248. In the same letter, Respondent 1 provided a written declaration "in accordance with Article 9.4(c) of the PSA […] that Commercial Production will be conditional on the outcome of the work that the Contractor commits to carry out under the Study Program within the Study Area" ("**Declaration under Article 9.4(c)**").[53] As a result of its Declaration under Article 9.4(c) of the PSC, Respondent 1 continued, it "shall not be obligated to relinquish the relevant Study Area pending the completion of further work committed under the Study Program," and "the relinquishment provisions of Article 6 of the PSA do not apply to the Study Area pending completion of the works mandated by the Study Program."[54]

249. On 13 April 2017, Claimant 1 wrote to Respondent 1 noting, *inter alia*, that its Declaration of Commercial Feasibility did not meet the requirements of Section 9.1 of the PSC, that the Study Program had not been duly considered by the Coordination Committee and was therefore not in effect, and accordingly, that Respondent 1 would be required to relinquish the relevant portions of the Contract Area on or before 14 November 2017 in accordance with Article 6 of the PSC.[55] In the following months, Respondent 1 and Claimant 1 continued to hold meetings and exchange correspondence, in which they maintained their respective objections on the above issues.[56]

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[49] Letter from GOGC-appointed Coordination Committee members to Frontera-appointed Coordination Committee members dated 29 March 2017, at 1 *et seq*. (**Exhibit C-68**); Chronology of Non-Disputed Facts, No. 262.

[50] Letter from Frontera-appointed Coordination Committee members to GOGC-appointed Coordination Committee members dated 30 March 2017, at 1 *et seq*. (**Exhibit C-69**); Chronology of Non-Disputed Facts, No. 263.

[51] Coordination Committee meeting minutes dated 30 March 2017, at 13 (**Exhibit C-70**); Transcript of the recording of the Coordination Committee meeting dated 30 March 2017 (**Exhibit C-71**); Chronology of Non-Disputed Facts, No. 264.

[52] Letter from S. Nicandros (Frontera) to D. Tvalabeishvili (GOGC), dated 3 April 2017, at 1 (**Exhibit C-72**); Chronology of Non-Disputed Facts, No. 265.

[53] Letter from S. Nicandros (Frontera) to D. Tvalabeishvili (GOGC), dated 3 April 2017, at 1 (**Exhibit C-72**); Chronology of Non-Disputed Facts, No. 265.

[54] Letter from S. Nicandros (Frontera) to D. Tvalabeishvili (GOGC), dated 3 April 2017, at 2 (**Exhibit C-72**); Chronology of Non-Disputed Facts, No. 265.

[55] Letter from D. Tvalabeishvili (GOGC) to S. Nicandros (Frontera), dated 13 April 2017, at 2 (**Exhibit C-111**); Chronology of Non-Disputed Facts, No. 268.

[56] *See e.g.*, Minutes of the meeting of 26 June 2017 (Exhibit C-112); Letter from D. Tvalabeishvili (GOGC) to S. Nicandros (Frontera), dated 13 April 2017, at 2 (**Exhibit R-92**); Letter from D. Tvalabeishvili (GOGC) to Z. Mamulaishvili (Frontera), dated 17 August 2017 (**Exhibit C-75**); Letter from Z. Mamulaishvili (Frontera) to D. Tvalabeishvili (GOGC), dated 5 September 2017 (**Exhibit C-73**); Letter

250. On 16 November 2017, Claimant 1 and Claimant 2 each sent a letter to Respondent 1 notifying that they considered Respondent 1 to be in material breach of its obligation to relinquish by 14 November 2017 certain areas outside the Exploitation/Development Area in accordance with Article 6.1(b) of the PSC.[57] Both letters further notified Respondent 1 of the Claimants' intent to arbitrate their claims under Article 31.3 of the PSC.

251. On 15 January 2018, the Claimants filed their Request for Arbitration and commenced the present arbitration.

6. Claimants' Alleged Interference with the Respondents' Operations on Block XII

252. Concurrently, the Respondents allege that since 2010, when Respondent 1 "was finding non-associated natural gas in the Contract Area," the Claimants have engaged in "a systematic and intentional campaign to disrupt [Respondent 1's] progress" in developing Block XII and expanding its gas operations.[58]

253. In particular, the Respondents contend that Claimant 1 baselessly denied the Respondents any recovery of over US$88 million in costs and expenses they incurred in 2006 and 2007, despite the fact that they had submitted the relevant work programs and budgets to the Coordination Committee as required under Article 10.3 of the PSC.[59]

254. The Respondents further submit that Claimant 1 consistently obstructed their gas operations, especially after Respondent 1 discovered significant accumulations of natural gas in 2012. At a Coordination Committee meeting on 28 June 2012, for example, despite the Respondents having experienced a "gas blowout" from a well in the Mtsarekhevi field and taken measurements that indicated the "existence of significant gas reserves in III horizon," Claimant 1 refused to approve the gas project and pipeline, or issue any related permits for the project to go forward.[60] Instead, by the end of the meeting, Claimant 1 conditionally approved the pipeline subject to further information from the Respondents.[61] In subsequent Coordination Committee meetings, the Respondents continued to furnish further information to Claimant 1 and push forward the gas pipeline project, while Claimant 1 continued to delay its approval.[62]

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from D. Tvalabeishvili (GOGC) to Z. Mamulaishvili (Frontera), dated 25 September 2017 (**Exhibit C-76**); Letter from Z. Mamulaishvili (Frontera) to D. Tvalabeishvili (GOGC) and G. Tatishvili (State Agency), dated 10 November 2017 (**Exhibit C-83**); Minutes of the meeting of 15 November 2017 (**Exhibit C-113**); Chronology of Non-Disputed Facts, No. 273, 278, 282, 287, 288.

57 Letter from David Tvalabeishvili (GOGC) to Zaza Mamulaishvili (Frontera), dated 16 November 2017 (**Exhibit C-5**); Letter from D. Tvalabeishvili (GOGC) and G. Tatishvili (State Agency) to Z. Mamulaishvili (Frontera), dated 16 November 2017 (**Exhibit C-77**); Chronology of Non-Disputed Facts, No. 289, 290.

58 SoD, ¶¶ 194-195.

59 SoD, ¶¶ 201-205; First Kalandarishvili Witness Statement, ¶¶ 21-23 (**Exhibit RWS-4**).

60 Minutes of Coordination Committee Meeting dated 28 June 2012, at 3 (**Exhibit R-12**); Chronology of Non-Disputed Facts, No. 57.

61 Minutes of Coordination Committee Meeting dated 28 June 2012, at 3 (**Exhibit R-12**); Chronology of Non-Disputed Facts, No. 57.

62 *See e.g.*, Minutes of Coordination Committee Meeting dated 26 July 2012, at 2-3 (**Exhibit R-14**); Minutes of Coordination Committee Meeting dated 10 April 2013, at 4 (**Exhibit C-20**); Minutes of Coordination

255. Despite Claimant 1's obstruction, Respondent 1 alleges that it finally inaugurated its gas pilot project in June 2014. Referring to various newspaper articles, social media posts, and online publications,[63] the Respondents claim, however, that at this point the Claimants then "embarked on a campaign to discredit [Respondent 1's] gas operations."[64]

256. In addition, in 2015, just after Respondent 1 allegedly began transporting gas through the national pipeline, the Georgian state threatened to cancel Respondent 1's gas transportation license for failure to meet new reporting requirements.[65] According to the Respondents, these new "reporting requirements" were a mere "pretext for the State to continue to question the 'reserves' [Respondent 1] was using for the pilot project."[66] At the same time, the Respondents claim that the Claimants introduced a scheme designed to create artificial losses that would make gas production and sale uncommercial.[67]

257. The Respondents allege that all these actions undertaken by the Georgian State of which the Claimants are a part, as well as the Claimants' wrongful notices of material breach, failure to enact the tax exemptions in the PSC, and wrongful exclusion of finance costs from the cost recovery pool, were all aimed at interfering in the Respondents' operations in Block XII.[68] The Claimants deny the Respondents' allegations in their entirety.[69]

B. Relevant Legal Standard

258. This Section (1) sets out some of the most relevant provisions of the PSC, as well as (2) the applicable rules of interpretation.

1. Relevant Provisions of the PSC

259. Article 1 on "Definitions" provides in relevant part:

> 1.2 An "Affiliated Company" or "Affiliate" means:
>
> (a) with respect to a Contractor Party a company, corporation, partnership or other legal entity:
>
> (i) in which a Contractor Party owns directly or indirectly more than fifty percent (50%) of the shares, voting rights or otherwise has the right to establish management policy; or
>
> (ii) in which at least fifty percent (50%) of the shares or voting rights are owned directly or indirectly by a company or other legal entity, which owns directly or

Committee Meeting dated 30 December 2013-14 January 2014, at 2-4 (**Exhibit R-24**); Chronology of Non-Disputed Facts, No. 60, 72, 104.

[63] Table of Media Publications dated 7 July 2014 (**Exhibit R-43**).

[64] SoD, ¶ 223.

[65] Letter from G. Tatishvili (State Agency) to G. Zabakhidze (Frontera), dated 11 March 2015 (**Exhibit C-187**); Letter from Gas Transportation Company to Frontera dated 7 September 2015 (**Exhibit R-50**); Chronology of Non-Disputed Facts, No. 158, 166-1678.

[66] SoD, ¶ 229.

[67] Letter from Gas Transportation Company to Frontera dated 7 September 2015 (**Exhibit R-50**).

[68] SoD, ¶¶ 232-249.

[69] SoDC, ¶¶ 5-6.

indirectly more than fifty percent (50%) of the shares, voting rights or otherwise has the right to establish management policy of a Contractor Party;

(b) with respect to the State and Georgian Oil, any legal entity controlled by the State or Georgian Oil, respectively, or operating under their collective management. For the purposes of this part of the definition, the term to "control" (including the related terms "controlled" or "operates under collective management") shall mean with respect to any entity, having the right to carry out direct or indirect supervision of such entity or to define a general scope of its activity based on holding the shares entitled to vote, other form of ownership, or on any other grounds.

[…]

1.8 "Available Crude Oil" means Crude Oil produced and saved from the Contract Area and not used in Petroleum Operations in accordance with Article 11.3.

1.9 "'Available Natural Gas" means Natural Gas produced and saved from the Contract Area and not used in Petroleum Operations in accordance with Article 11 .3.

[…]

1.14 "Commercial Discovery" means a discovery of Petroleum that the Contractor in its sole discretion in accordance with the provisions of Article 9 commits itself to develop and produce under the terms of the Contract.

1.15 "Commercial Production" means regular and continuous production of Petroleum from a Development Area in such quantities (taking into account any other relevant factors) as are worthy of commercial development.

[…]

1.19 "Contractor" means the Contractor Parties, their assignees and successors, as provided herein.

1.20 "Coordination Committee" means the committee composed of representatives of all Parties constituted in accordance with Article 7.

1.21 "Cost Recovery Petroleum" means Cost Recovery Crude Oil and Cost Recovery Natural Gas.

1.22 "Cost Recovery Crude Oil" is defined as set forth in Article 11.5.

1.23 "Cost Recovery Natural Gas" is defined as set forth in Article 11 .5.

1.24 "Costs and Expenses" comprise the Exploration Expenditures, Development Expenditures, Operation Expenses, and Drilling Costs, together with Finance Costs, whether directly or indirectly incurred by Contractor or the Operating Company.

1.25 "Crude Oil" means crude mineral oil, asphalt, ozokerite and all kinds of hydrocarbons whether in a solid liquid or mixed state at the wellhead or separator or which is obtained from Natural Gas through condensation or extraction.

[…]

1.30 "Development Area" means all or any part of the Contract Area specified in an approved Development Plan containing a Commercial Discovery, except those parts defined as Exploitation Areas.

1.31 "Development Expenditures" shall mean all costs and expenses for Development Operations, with the exception of Operation Expenses, whether directly or indirectly

incurred, including but not limited to training, administration, service, Finance Costs and related expenses.

1.32 "Development Plan" is the plan to be produced by Contractor in accordance with Article 9.6 following a declaration that Commercial Production may be established.

1.33 "Development" or "Development Operations" or "Development Work" means and includes any activities or operations associated with work to develop a portion of the Contract Area for production and subsequently to produce Petroleum and render it marketable for commercial sale, and shall include but not be limited to:

> (a) all the operations and activities under the Contract with respect to the drilling of wells, other than Exploration wells, the deepening, reworking, re-entry, plugging back, completing and equipping of such wells, together with the design, construction and installation of such equipment, pipeline or gathering lines, installations, production units and all other systems relating to such wells and related operations in connection with production and operation of such wells as may be necessary in conformity with sound oil field practices in the international Petroleum industry;
>
> (b) all operations and activities relating to the servicing and maintenance of pipelines, gathering lines, installations, production units and all related activities for the production and management of wells including the undertaking of re-pressurizing, recycling and other operations aimed at intensified recovery, enhanced production and oil recovery rate; and
>
> (c) procuring all necessary or desirable licenses, rights, permits, permissions, equipment, tools, personnel, materials, goods, vehicles, supplies, contractors, subcontractors, and other items.

1.34 "Discovery" means a well that the Contractor determines has encountered Petroleum which would justify Commercial Production.

[…]

1.40 "Exploitation Area" means those volumes of rock that contain discoveries that were made before the execution of this Agreement, and which are specifically delineated in Annex F.

1.41 "Exploration" or "Exploration Operations" means operations conducted under this Contract in connection with the exploration for previously undiscovered Petroleum, or the evaluation of discovered reserves which shall include geological, geophysical, aerial and (other survey) activities and any interpretation of data relating thereto as may be contained in Exploration Work Programs and Budgets, and the drilling of such shot holes, core holes, stratigraphic tests, Exploratory Wells for the discovery of Petroleum, Appraisal wells and other related operations, and procuring all necessary or desirable licenses, rights, permits, permissions, equipment, tools, personnel, materials, goods, vehicles, supplies, contractors, subcontractors, and other items.

1.42 "Exploration Expenditures" shall mean all costs and expenses for Exploration Operations whether directly or indirectly incurred including but not limited to training, administration, service, Finance Costs and related expenses and overhead and study costs.

1.43 "Exploration Phases" are the Initial Exploration Phase and the Secondary Exploration Phase identified in Article 5.1.

1.44 "Exploratory Well" means any well drilled with the objective of confirming a· structure or geologic trap in which Petroleum capable of Commercial Production in significant quantities has not been previously discovered.

[…]

> 1.55 "Measurement Point" means the location specified in an approved Development Plan where the Petroleum is metered and delivered to the Parties.
>
> […]
>
> 1.65 "Operating Company" means Frontera Eastern Georgia Ltd., a society of limited responsibility to be organized pursuant to the charter attached to this Contract as Annex G under Article 44 of the Law of Georgia on Entrepreneurs, No. 577-16 dated 28 October 1994, as it may be amended, in its capacity as the licensee of the State pursuant to the authority set out in the Mineral License.
>
> 1.66 "Operation Expenses" shall mean those costs incurred in day-to-day Petroleum Operations, in or in relation to the Contract Area, whether directly or indirectly incurred including but not limited to all costs, expenses and expenditures associated with the Production, processing, transportation, export and sale of Petroleum, training, administration, service, Finance Costs, Tax Advances, payments for abandonment and site restoration in accordance with Article 9.8, insurance costs in accordance with Article 23 and related expenses.
>
> […]
>
> 1.68 "Petroleum" means Crude Oil and Natural Gas.
>
> 1.69 "Petroleum Operations" means the Exploration Operations, the Development Operations, and Production Operations, and other activities related thereto carried out pursuant to this Contract, including but not limited to procuring all necessary or desirable licenses, rights, permits, permissions, equipment, tools, personnel, materials, goods, vehicles, supplies, contractors, subcontractors, and other items, and including work and negotiations relating to the Contract Area or this Contract before the Effective Date.
>
> […]
>
> 1.72 "Profit Natural Gas" is defined as set forth in Article 11.10.
>
> 1.73 "Profit Oil" is defined as set forth in Article 11.10.
>
> […]
>
> 1.81 "Study Area" is the part of the Contract Area which will be defined in a Study Program.
>
> 1.82 "Study Program" shall mean the program to be produced by the Contractor and carried out by the Operating Company in accordance with Article 9 following the conclusion that Commercial Production is feasible.
>
> […]
>
> 1.91 "Work Program" and "Work Program and Budget" shall mean any work program and work program and Budget to be submitted to the Coordination Committee by the Contractor in accordance with the provisions of Article 10 and which shall set out the proposed Petroleum Operations to be carried out in the Contract Area together with the associated Budget as the case may be.

260. Article 3 regarding the "Scope of Contract and General Provisions" provides in relevant part:

> 3.6 This Contract defines the Parties' rights and obligations, governs their mutual relations and the governance of the Operating Company, establishes the rules and methods for the Exploration, Development, Production, and sharing of Petroleum between them, and establishes the rules and methods for the separate project of the Refinery Study. The entire

interests, rights and obligations of each of the Parties under this Contract shall be solely governed by the provisions of this Contract, the Charter of the Operating Company, and the Mineral License […].

3.7 During the period in which this Contract is in force, all Available Crude Oil and Available Natural Gas resulting from Petroleum Operations, will be shared between Georgian Oil and Contractor in accordance with the provision of Article 11.

261. Article 5 regarding the "Contract Term" provides in relevant part:

5.1 This Contract will have a term that expires 25 Contract Years after the Effective Date. The term of this Contract shall include an "Initial Exploration Phase" of seven Contract Years after the Effective Date, divided into four subphases of 18 months, 18 months, two years and two years, respectively. This will be followed immediately by a "Secondary Exploration Phase" of three Contract Years. The Contractor will have the option to terminate the Parties' rights under the Contract at the conclusion of each of the phases or subphases and at any time after the end of the Secondary Exploration Phase. One or more Development Areas may be formed within the Contract Area from time to time during the Exploration Phases.

262. Article 5.1 was subsequently amendment by Amendment No. 1 as follows:

1. The third sentence of Article 5.1 which reads "This will be followed by a "Secondary Exploration Phase" of three Contract Years." Shall be replaced with "This will be followed by a "Secondary Exploration Phase" of eight Contract Years."

263. Article 5.1 was then further amended by Section 1 of Amendment No. 2 as follows:

The third sentence of Article 5.1 of the Contract which reads "*This will be followed by a "Secondary Exploration Phase" of eight Contract Years.*" Shall be replaced with "*This will be followed by a "Secondary Exploration Phase" of thirteen (13) Contract Years.*"

264. Article 6 regarding "Relinquishments" provides in relevant part:

6.1 Subject to Article 6.2, and unless the Parties agree otherwise, Contractor shall select and relinquish portions of the Contract Area as follows

(a) at least fifty percent (50%) of that part of the original Contract Area that is outside of any Development area, not later than the end of the initial exploration phase; and

(b) 100% of the original Contract Area that is outside of any Development Area as of the end of the secondary exploration phase.

265. Pursuant to Amendment No. 1, Article 6.1 was then amended as follows:

2. Article 6.1 Paragraph (a) shall be deleted in its entirety.

266. Article 7 on the "Coordination Committee" provides in relevant part:

7.1 For the purpose of providing the overall supervision and direction of and ensuring the performance of the Petroleum Operations, Georgian Oil and Contractor shall establish a Coordination Committee within forty-five (45) days of the Effective Date.

7.2 The Coordination Committee shall comprise a total of six members. Georgian Oil shall appoint three representatives and Contractor shall appoint three representatives to form the Coordination Committee. Georgian Oil and Contractor shall each designate one of its representatives its chief representative. All the aforesaid representatives shall have the right to attend and present their views at meetings of the Coordination Committee. Each representative shall have the right to appoint an alternate who shall be entitled to attend all meetings of the Coordination Committee but who shall have no vote except in the absence of the representative for whom he is the alternate. When a decision is to be made on any

proposal, the chief representative from each Party shall be the spokesman on behalf of such Party.

[…]

7.4 A regular meeting of the Coordination Committee shall be held at least once a Calendar Quarter. The secretary to be designated pursuant to Article 7.9 shall be responsible for calling such regular meetings of the Coordination Committee and shall do so at the request of the chairman by sending a notice to the Parties. Other meetings, if necessary, may be held at any time at the request of Georgian Oil or Contractor. In each case the secretary shall give the Parties at least 30 days notice (or such shorter period as the Parties may agree) of the proposed meeting date, the time and location of the meeting.

[…]

7.6 Decisions of the Coordination Committee shall be made by unanimous decision of the representatives present and entitled to vote. Each representative will have one vote. All decisions made unanimously shall be deemed as formal decisions and shall be conclusive and equally binding upon the Parties.

7.7 Georgian Oil and Contractor shall endeavor to reach agreement on all matters presented to the Coordination Committee, however, if these Parties fail to reach agreement on any matter during a meeting of the Coordination Committee then following discussion and after the Contractor has provided full reasons for its proposal the Contractor's proposal shall prevail. In the event that on any matter other than Petroleum Operations during the Exploration Phases the Parties are unable to reach agreement and the Contractor is insisting that its proposal shall prevail, if Georgian Oil is reasonably of the view that a proposal would result in serious depletion of a field or reservoir resulting in either permanent damage to that field or reservoir or materially reduced recovery of Petroleum over the life of the field or reservoir then the matter will be referred to an independent expert appointed by the Contractor and Georgian Oil whose decision on the matter shall be final and binding, but the implementation of Contractor's proposal shall not be delayed longer than 30 days pending the decision of the independent expert. The costs of the expert shall be met by the Parties equally and shall be recoverable as Costs and Expenses.

267. Article 9 which sets out the "Procedure For Determination of Commerciality And Approval of Development Plans" provides in relevant part:

9.1 If, at any time Contractor concludes that Commercial Production (or significant additional Commercial Production if Commercial Production has previously been established) from the Contract Area is feasible, it shall notify Georgian Oil within five (5) days of reaching such a conclusion.

9.2 Within forty-five (45) days of receipt of such notice, Contractor shall in the first instance present to the Coordination Committee for approval a proposed Study Program which shall be deemed approved if no written objections are raised by any member of the Coordination Committee within thirty (30) days following receipt thereof. The proposed Study Program shall specify in reasonable detail the appraisal work including seismic, drilling of wells and studies to be carried out and the estimated time frame within which the Operating Company shall commence and complete the program.

9.3 Thereafter the Operating Company shall carry out the Study Program approved by the Coordination Committee. Within ninety (90) days after completion of such Study Program the Operating Company shall submit to the Coordination Committee a comprehensive evaluation report on the Study Program. Such evaluation report shall include, but not be limited to: geological conditions, such as structural configuration; physical properties and extent of reservoir rocks; pressure, volume and temperature analysis of the reservoir fluid; fluid characteristics, including gravity of liquid hydrocarbons, sulphur percentage, sediment and water percentage, and product yield pattern; Natural Gas

composition; production forecasts (per well and per Field); and estimates of recoverable reserves.

9.4 Together with the submission of the evaluation report by the Operating Company, or at any other time, the Contractor shall submit to the Coordination Committee a written declaration including one of the following statements […]

(c) that Commercial Production will be conditional on the outcome of further specified work that the Contractor commits to carry out under a further Exploration Work Program or Study Program in specified areas within or outside the relevant Study Area.

9.5 In the event the Contractor makes a declaration under Article 9.4(c) above, Contractor shall not be obligated to relinquish the relevant Study Area pending the completion of the further work committed under that Article, at which time the contractor shall advise the Coordination Committee of its conclusion as to whether or not there is in fact a new Commercial Discovery and the provisions of Article 9.4(a) or (b) shall be applied accordingly.

268. Article 11 on the "Allocation of Production, Recovery of Costs And Expenses, Production Sharing, and Right of Export" provides in relevant part:

11.4 Available Crude Oil and Available Natural Gas shall be measured at the applicable Measurement Point and allocated as set forth hereinafter.

11.5 Contractor (and, under the provisions of Article 27.8, Georgian Oil) shall be entitled to recover all Costs and Expenses incurred in respect of Petroleum Operations, after recovery of all Operation Expenses:

(a) from a maximum of 100% of all Calendar Year Available Crude Oil and Available Natural Gas from the Contract Area for Exploration Expenditures;

(b) from a maximum of up to 80% of all Calendar Year Available Crude Oil and Available Natural Gas from the Contract Area for Costs and Expenses (other than Operation Expenses and Exploration Expenditures) benefiting Development Areas outside of Exploitation Areas; and

(c) from a maximum of up to 60% of all Calendar Year Available Crude Oil and Available Natural Gas from the Contract Area for Costs and Expenses (other than Operation Expenses and Exploration Expenditures) benefiting Exploitation Areas;

("Cost Recovery Crude Oil" and "Cost Recovery Natural Gas," as the case may warrant). Recovery of Costs and Expenses shall be in a manner consistent with the Accounting Procedure and Article 11.6.

11.6 Costs and Expenses shall be recoverable from Cost Recovery Petroleum on a first in, first out basis (i.e. Costs and Expenses incurred will be recovered according to the date they were incurred, earliest first). Recovery of Costs and Expenses will commence as soon as Cost Recovery Petroleum is available.

[…]

11.10 Following recovery of Costs and Expenses from Cost Recovery Petroleum in accordance with the provisions of this Article 11, the remaining Petroleum including any portion of Cost Recovery Petroleum not required for recovery of Costs and Expenses […] shall be allocated between [Claimant 1] and the Contractor in the following proportions, over each Calendar Year:

(a) Georgian Oil Share: 51%
(b) Contractor Share: 49%

269. Article 11.5 was then amended by Section 4 of Amendment No. 2 as follows:

> As of the fifteenth anniversary of the date the Contract was entered into, Article 11.5 of the Contract shall be deleted in its entirety, and the following new Article 11.5 shall be substituted in lieu thereof:
>
> 11.5 Contractor (and, under the provisions of Article 27.8, Georgian Oil) shall be entitled to recover all Costs and Expenses incurred in respect of Petroleum Operations
>
> > (a) after recovery of all Operation Expenses, from a maximum of 100% of all Calendar Year Available Crude Oil and Available Natural Gas from the Contract Area for Exploration Expenditures;
> >
> > (b) after recovery of all Operation Expenses, from a maximum of 80% of all Calendar Year Available Crude Oil and Available Natural Gas from the Contract Area for Costs and Expenses (other than Operation Expenses and Exploration Expenditures) benefiting Development Areas outside of Exploitation Areas;
> >
> > (c) from the fifteenth anniversary of the date the Contract was entered into and for four (4) Contract Years thereafter, in respect of the Exploitation Areas, which shall thereafter automatically be deemed also as approved Development Areas, from a maximum of 80% of all Calendar Year Available Crude Oil and Available Natural Gas from the Contract Area for Costs and Expenses benefitting such Exploitation Areas;
> >
> > (d) from the nineteenth anniversary of the date the Contract was entered into and for four (4) Contract Years thereafter, in respect of the Exploitation Areas, which shall thereafter automatically be deemed also as approved Development Areas, from a maximum of 60% of all Calendar Year Available Crude Oil and Available Natural Gas from the Contract Area for Costs and Expenses benefitting such Exploitation Areas.
>
> ("Cost Recovery Crude Oil" and "Cost Recovery Natural Gas," as the case may warrant). Recovery of Costs and Expenses shall be in a manner consistent with the Accounting Procedure and Article 11.6

270. Article 22 regarding "Ownership of Assets" provides in relevant part:

> 22.2 Whenever Contractor relinquishes any part of the Contract Area, all moveable property located within the portion of the Contract Area so relinquished may be removed to any part of the Contract Area that has been retained for use in Petroleum Operations.

271. Article 27 on "Assignments And Guarantees" provides in relevant part:

> 27.1 No assignment mortgage or charge or other encumbrance shall be made by a Party of its rights, obligations and interests arising under this Contract other than in accordance with the provisions of this Article 27. Any purported assignment made in breach of the provisions of this Article 27 shall be null and void.
>
> 27.2 A Contractor Party may assign all of part of its rights, obligations and interests arising from this Contract to a Third Party provided that any such Third Party:
>
> > (a) has the technical and financial ability to perform the obligations to be assumed by it under the Contract; and
> >
> > (b) as to the interest assigned to it, accepts and assumes all of the terms and conditions of the Contract.
>
> Any such assignment shall be subject to the prior written consent of the State (which may be represented by Georgian Oil for so long as the State has any interest in Georgian Oil) which consent shall not be unreasonably withheld or delayed. If within thirty (30) days following notification of an intended assignment accompanied by a copy of the deed of

assignment and related documentation the State has not given its decision such assignment shall be deemed to have been approved by the State.

27.3 A Contractor Party may assign all or part of its rights, obligations and interests arising. From this Contract to another Contractor Party or to an Affiliate without the prior consent of the State or Georgian Oil provided that the Contractor gives notice of the assignment to Georgian Oil and that any such Affiliate:

(a) has the technical and financial ability to perform the obligations to be assumed by it under the Contract; and

(b) as to the interest assigned to it, accepts and assumes all of the terms and conditions of the Contract.

272. Article 30 regarding "Termination and Breach" provides in relevant part:

30.2 Without prejudice to the provisions stipulated in Article 30.1 above, this Contract may only be terminated by the State by giving ninety (90) days advance written notice thereof to all Parties, when and only if a material breach of Contract is alleged to have been committed by Contractor and, provided that conclusive evidence thereof has been found by prior arbitration as stipulated in Article 31. For the purposes of this Article, a material breach means a fundamental breach which, if not cured, is tantamount to the frustration of the entire Contract either as a result of the unequivocal refusal to perform contractual obligations or as a result of conduct which has destroyed the commercial purpose of this Contract.

273. Article 31 on "Dispute Resolution" provides in relevant part:

31.6 Each Party shall pay the costs of its own arbitrator and the costs of the third arbitrator in equal shares, and any costs imposed by the Rules shall be shared equally by the Parties. Notwithstanding the above, the arbitrators may, however, award costs (including reasonable legal fees) to the prevailing Party from the losing Party. In the event that monetary damages are awarded, the award shall include interest from the date of the breach or other violation to the date when the award is paid in full. The rate of interest shall be LIBOR plus 4% over the period from the date of the breach or other violation to the date the award is paid in full. Each Party waives any and all requirements or any national law relating to notice of a demand for interest or damage for the loss of the use of funds.

[…]

31.8 Any arbitration tribunal constituted pursuant to this Contract shall apply the provisions of this Contract as supplemented and interpreted by general principles of the laws of Georgia, the United States of America and the State of Texas as are in force on the Effective Date.

274. Finally, Section 3 of Amendment No. 2 provides:

Section 3. Automatic Formation of Development Area on Exploitation Areas. Notwithstanding anything to the contrary contained in the Contract, the Parties agree that, promptly on the occurrence of the fifteenth anniversary of the date on which the Contract was entered into, a Development Area shall automatically be deemed to have been approved and formed on the Exploitation Areas. For the avoidance of any doubt, such Development Area shall not be subject to requirements set out in Article 9 of the Contract; provided however that, on the occurrence of the fifteenth anniversary of the date on which the Contract was entered into, Contractor shall submit to the Coordination Committee a work plan detailing Contractor's proposals for development and operation of Development Area created hereunder. Coordination Committee shall not unreasonably withhold or delay approval of such work plan, and it shall be deemed approved as submitted if no written objections are presented thereto by any member of the Coordination Committee within thirty (30) days of receipt.

2. Applicable Rules of Interpretation

(a) Overview

275. The Parties agree that, in accordance with Article 31.8 of the PSC, the Tribunal should apply the terms of the PSC in the first instance in resolving any dispute about the PSC.[70] Nevertheless, the Parties disagree as to whether there is ambiguity in this provision and the PSC more generally, such that the Tribunal may consider industry practice and extrinsic evidence when interpreting the PSC.

276. The Claimants submit that the Tribunal should "(i) apply the provisions of the PSC, (ii) generally accepted international petroleum industry practice and standards […], and (iii) general principles of the laws of Georgia, the United States of America and the State of Texas."[71] To the extent that common principles may not be ascertained, the Claimants submit that the Tribunal should "apply the law with the closest connection to the PSC – which is Georgian law."[72]

277. The Respondents, by contrast, submit that the Tribunal must only apply the provisions of the PSC, which represents the full and final expression of the Parties' intent.[73] The Respondents consider that since the plain language of the PSC's provisions is unambiguous, no extrinsic evidence may be introduced to create ambiguity, and both extrinsic evidence and industry practice are therefore irrelevant.[74]

(b) Claimants' Position

278. The Claimants submit that under both Georgian and Texas law, the rules of contract interpretation are the same and require the parties' true intentions as expressed in the contract to be ascertained.[75] In this regard, both legal regimes look at the terms of the contract as the starting point, but if and to the extent these terms are deemed ambiguous, the Claimants submit, they allow for further elements to be taken into account, including the context of the overall contract, all surrounding circumstances, the ultimate consequences intended by the Parties, traditions and usages of trade, and good faith.[76]

279. Specifically with respect to the PSC, the Claimants argue that extrinsic evidence may be appropriately considered because it contains wording that may be considered ambiguous without further interpretation, including in the provision at the centre of this dispute – Article 9 of the PSC.[77] Contrary to the Respondents' contention, the Claimants maintain that extrinsic evidence is not excluded by Article 3.6 of the PSC, which makes it an "integrated contract."[78] This is

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[70] SoC, ¶ 12; Reply, ¶ 10; SoD, ¶ 80.

[71] Reply, ¶ 10. *See also* Reply, ¶¶ 10-60.

[72] Reply, ¶ 10.

[73] SoD, ¶¶ 80-82.

[74] SoD, ¶¶ 85-96.

[75] Reply, ¶ 19.

[76] *See* Reply, ¶¶ 24-37.

[77] Reply, ¶¶ 39-41.

[78] Reply, ¶¶ 43-46.

because the concept of "integrated contracts" does not exist under Georgian law, and in any event, Article 3.6 neither limits the method of interpretation of the PSC provisions, nor precludes the application of the relevant Georgian laws on contract interpretation.[79] The Claimants also disagree that extrinsic evidence may not be admitted to interpret integrated contracts under Texas law. Rather, the Claimants point out, Texas law merely prohibits proof of an alleged separate oral agreement that contradicts a written integration contract – it does not exclude aids to the interpretation of the contract.[80]

280. The Claimants also submit that the Tribunal must have regard to the applicable industry practice when interpreting the PSC.[81] In support of this claim, the Claimants point to Article 33.3 of the UNCITRAL Rules, which provide that the tribunal "shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction."[82] In addition, the Claimants argue that the PSC expressly provides for and incorporates industry practice to guide interpretation, including in Articles 3.3, 8.2, 9.6, 9.8, 11.11, 11.15, 15.3, and 23.1 of the PSC.[83] Contrary to the Respondents' contention that the obligation to conduct petroleum operations in line with industry practice applies only to the operating company, and not to Respondent 1, the Claimants note that several provisions in the PSC directly apply to Respondent 1 itself.[84] Even those that refer to the operating company, the Claimants argue, are also relevant to Respondent 1 to the extent they assist with the interpretation of the PSC.[85]

281. The Claimants also reject the Respondents' argument that industry practice is excluded by Article 3.6 of the PSC because it establishes that the PSC is fully integrated, and that therefore "the language of the contract alone may fully provide the parameters of the parties' duties under the contract."[86] In the Claimants' view, the Respondents "conflate[] the concepts of ambiguity and integration," and maintain that under both Georgian and Texas law, industry practice may be considered whenever one is interpreting a contract with ambiguous terms, such as the PSC.[87]

282. In any event, the Claimants note that the interpretation of the PSC would not change even if extrinsic evidence or industry practice was not admissible, and as such, the Respondents' objections are irrelevant.[88]

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[79] Reply, ¶ 44.

[80] Reply, ¶ 45, *referring to* Second Expert Report of Wallace B. Jefferson, dated 6 June 2019, ¶¶ 18-19 (**Exhibit CER-9**); *West v. Quintanilla*, No. 17-0454, 2019 WL 1495093, at 5 (Tex. April 5, 2019) (**Exhibit CLA-208**).

[81] *See* SoC, ¶¶ 14-15; Reply, ¶¶ 48-60.

[82] SoC, ¶ 14; Reply, ¶ 49, *citing* UNCITRAL Rules, Art. 33(3) (**Exhibit CLA-1**).

[83] SoC, ¶¶ 19-21, *referring to* Art. 2.4 GCC (**Exhibit CLA-8**); Art. 339 GCC (**Exhibit CLA-9**). *See also, BP Am. Prod. Co. v. Zaffirini*, 419 S.W.3d 485, 497 (Tex. App. 2013) (**Exhibit CLA-5**); *Fischer v. CTMI, L.L.C.*, 479 S.W.3d 231, 239-40 (Tex. 2016) (**Exhibit CLA-10**).

[84] Reply, ¶ 53, *referring to* PSC, Arts. 1.33(a), 9.8, 11.3, 11.11, 11.15, 15.3, 16.2(d) 23.1 (**Exhibit C-1**).

[85] Reply, ¶ 54.

[86] SoD, ¶ 89.

[87] Reply, ¶¶ 58-60.

[88] Reply, ¶¶ 46-47.

(c) Respondents' Position

283. The Respondents submit that, in accordance with Article 31.8, the PSC should be interpreted based on the text of its provisions, which contain the full and final expression of the Parties' intent.[89] The Respondents reject the Claimants' approach, which in their view, fails to consider the actual terms and provisions of the PSC and erroneously focuses largely on industry practice, which is not admissible in this case, and in any event, is irrelevant.[90]

284. The Respondents agree with the Claimants that the "Tribunal's duty when interpreting the PSC is to ascertain the Parties' intentions as they have been expressed in the Contract."[91] Unlike the Claimants however, the Respondents do not agree that extrinsic evidence or industry practice may be considered when interpreting its provisions.

285. According to the Respondents, under both Texas and Georgian law when "a document appears to be a complete agreement in the comprehensiveness and reasonable specificity of its terms, it is taken to be the final expression of the Parties' intent (a so-called 'integrated' contract)."[92] Here, the Respondents point out, Article 3.6 of the PSC, is a clause which is enforceable under both Texas and Georgian law[93] and clearly demonstrates the Parties' intent for the contract to be fully integrated,[94] and to be bound explicitly and exclusively by the terms of the PSC.[95]

286. Accordingly, the Respondents submit, since the PSC is fully integrated and unambiguous, it should be enforced as written, and extrinsic or parol evidence, such as the witness statements that the Claimants introduced to explain the intent of various provisions of the PSC, cannot be introduced to produce an ambiguity.[96] In any event, the Respondents argue that extrinsic evidence of a Party's subjective intent, such as witness statements regarding contract negotiations, is irrelevant to an unambiguous contract, whether under Texas or Georgian law.[97]

287. Similarly, the Respondents reject the Claimants' contention that industry practice should take precedence in the present case pursuant to Texas and Georgian law, and maintains instead that it is irrelevant to the interpretation of the PSC. As an initial matter, the Respondents note that no

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[89] SoD, ¶¶ 80-81.

[90] SoD, ¶¶ 10-15.

[91] SoD, ¶ 80.

[92] SoD, ¶¶ 81-82, *referring to Hubacek v. Ennis State Bank*, 317 S.W.2d 30,33 (Tex. 1958) (**Exhibit RLA-3**); Commentary of Civil Code of Georgia (Five Books), Publishing House – "Samartali," 2002; Editorial Collegiate: Lado Chanturia (Chief Editor), Zurab Akhvlediani (Designated Secretary), Besarion Zoidze and Sergo Jorbenadze, Book III, Article 337, at 155-156 (**Exhibit RLA-17**).

[93] SoD, ¶ 83, *referring to* Contract Law (Textbook for Law Schools), Publishing House – "Meridiani," year 2014; Editor: Giorgi Jugheli, Section II.6.c, at 100 (**Exhibit RLA-21**); *First Nat'l Bank in First Nat. Bank in Dallas v. Walker*, 544 S.W.2d 778, 783-784 (Tex. Civ. App. – Dallas 1976, no writ) (**Exhibit RLA-4**).

[94] SoD, ¶ 20.

[95] SoD, ¶ 83.

[96] SoD, ¶¶ 85-87, *referring to Heritage Res, Inc. v. NationasBank*, 939 S.W.2d 118, 121 (Tex. 1996) (**Exhibit RLA-13**); *Crozier v. Horne Children Maint. & Educ. Tr.*, 597 S.W.2d 418, 422, 424 (Tex. App. – San Antonio 1980, writ ref'd n.r.e.) (**Exhibit RLA-5**); *Sun Oil Co. (Delaware) v. Madeley*, 626 S.W.2d 726, 731 (Tex. 1981) (**Exhibit RLA-7**).

[97] SoD, ¶¶ 88-89, *referring to Sun Oil Co. (Delaware) v. Madeley*, 626 S.W.2d 726, 731 (Tex. 1981) (**Exhibit RLA-7**); Contract Law (Textbook for Law Schools), Publishing House – "Meridiani," year 2014; Editor: Giorgi Jugheli, Section II.6.c, at 110 (**Exhibit RLA-21**).

provision of the PSC requires any party to the PSC to abide by industry practice.[98] In addition, the Texas court of appeals decision on which the Claimants rely, *BP Am. Prod. Co. v. Zaffirini*, has been recognised as "out of step and a 'plainly significant extension'" of controlling Texas precedent on the use of industry practice.[99] They thus submit that controlling Texas precedent clearly excludes the consideration of such prior negotiations in integrated contracts. The Respondents also point out that the other case cited by the Claimants, *Fischer v CTMI*, does not support their position as the court there merely reiterated the rule that when language in a contract is ambiguous or indefinite, the course of dealing between the parties may be considered.[100] With respect to Georgian law, the Respondents argue that the Claimants have not provided any legal authority to support their contention that industry practice must take precedence over the actual words of the PSC.[101]

(d) Tribunal's Analysis

288. The Tribunal considers, and the Parties agree,[102] that in resolving any dispute, it should apply the provisions and terms of the PSC in the first instance. This approach is supported by Article 31.8 of the PSC, which provides:

> Any arbitration tribunal constituted pursuant to this Contract shall apply the provisions of this Contract as supplemented and interpreted by general principles of the laws of Georgia, the United States of America and the State of Texas as are in force on the Effective Date.[103]

289. Similarly, Article 3.6 of the PSC specifies, in relevant part, that:

> ***This Contract defines the Parties' rights and obligations***, governs their mutual relations and the governance of the Operating Company, establishes the rules and methods for the Exploration, Development, Production, and sharing of Petroleum between them, and establishes the rules and methods for the separate project of the Refinery Study. ***The entire interests, rights and obligations of each of the Parties under this Contract shall be solely governed by the provisions of this Contract***, the Charter of the Operating Company, and the Mineral License…[104]

290. However, in instances where the terms of the PSC are unclear, interpretation by the Tribunal is required. In this regard, the Parties agree that pursuant to Article 31.8 of the PSC, the Contract should be interpreted by applying "general principles of laws of Georgia, the United States of America and the State of Texas as are in force on the Effective Date."[105]

291. In this context, the Tribunal understands "general principles of the laws" in accordance with Article 31.8 of the PSC to refer to the relevant legal standards that are common to both Texas

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[98] SoD, ¶ 11.

[99] SoD, ¶ 93, *referring to Lind v. Int'l Paper Co.*, No. A-13-CV-249-DAE, 2014 WL 4187128, at *7 (W.D. Tex. Aug. 21, 2014), report and recommendation adopted, No. AU-13-CV-249-DAE, 2014 WL 12167641 (W.D. Tex. Sept. 8, 2014) (applying substantive Texas law) (**Exhibit RLA-22**).

[100] *Fischer v. CTMI L.L.C.*, 479 S.W.3d 231, 239-40 (Tex. 2016) (**Exhibit RLA-27**).

[101] SoD, ¶ 95.

[102] SoD, ¶ 20; Reply, ¶ 10.

[103] PSC (**Exhibit C-1**).

[104] PSC (**Exhibit C-1**) (emphases added).

[105] PSC (**Exhibit C-1**); SoD, ¶ 80; Reply, ¶ 10.

and Georgian law. The Tribunal notes that US Federal law is not relevant for the purposes of contract interpretation, as corroborated by the Parties' submissions, which refer exclusively to Georgian and Texas law.[106]

292. The Tribunal observes, and the Parties agree,[107] that Georgian and Texas law follow similar principles with regard to contract interpretation. Under Georgian and Texas law, the primary objective when interpreting a contract is to ascertain the parties' real intentions.[108] Any interpretation begins with the plain language of the provision[109] and looks at the contract as whole rather than to the provisions in an isolated fashion.[110]

293. If the terms of the contract are ambiguous, as the Tribunal considers certain terms of the PSC to be in this case, other elements may be taken into account to interpret those terms and ascertain their meaning. This includes the circumstances of the execution of the contract and the context of the parties' relation, pursuant to Georgian and Texas law.[111] In this regard, the Tribunal observes that while the Respondents rightly argue that under Texas law extrinsic evidence is not admissible when the terms of the contract are unambiguous, they do not make the same argument with respect to situations where the terms of the contract are ambiguous, and in fact acknowledge that facts and circumstances surrounding the execution of the contract can be used to determine whether a term is ambiguous and as "an aid in the construction of the contract's language."[112]

294. The Parties disagree as to whether and how industry practice may also be taken into account in interpreting the terms of the PSC. The Claimants submit that generally accepted international petroleum industry practice and standards are to be applied before Georgian and Texas law pursuant to Article 33.3 of the UNCITRAL Rules and the terms of the PSC.[113] The Respondents assert that industry practice is irrelevant in this dispute because the terms of the PSC are unambiguous, and that in any event such practice cannot override Georgian and Texas law.[114]

295. In the Tribunal's view, however, the Parties' debate is a sterile one; it cannot be disputed that industry practice and standards are one possible interpretative aid in situations where the terms of the contract are unclear. This approach has been adopted both under Texas law[115] and

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[106] SoD, ¶ 81; Reply, ¶ 18.

[107] SoD, ¶ 81; Reply, ¶ 18.

[108] *See* SoD, ¶ 80; Reply, ¶ 19; Expert Report of Wallace B. Jefferson, dated 17 January 2019, ¶ 19 (**Exhibit CER-4**); Expert Report of Prof. Dr Rolf Knieper, dated 17 January 2019, ¶ 24 (**Exhibit CER-5**); Second Expert Report of Wallace B. Jefferson, dated 6 June 2019, ¶ 9 (**Exhibit CER-9**); Second Expert Report of Prof. Dr Rolf Knieper, dated 6 June 2019, ¶ 11 (**Exhibit CER-8**).

[109] *See* SoD, ¶¶ 81-82; Reply, ¶ 21; Second Expert Report of Wallace B. Jefferson, dated 6 June 2019, ¶ 13 (**Exhibit CER-9**).

[110] *See* SoD, ¶ 84; Reply, ¶ 27; Expert Report of Wallace B. Jefferson, dated 17 January 2019, ¶ 19 (**Exhibit CER-4**); Second Expert Report of Prof. Dr Rolf Knieper, dated 6 June 2019, ¶¶ 17-18 (**Exhibit CER-8**); Second Expert Report of Wallace B. Jefferson, dated 6 June 2019, ¶ 10 (**Exhibit CER-9**).

[111] SoD, ¶ 86; Reply, ¶¶ 11, 28-29.

[112] SoD, ¶ 86.

[113] Reply, ¶ 10.

[114] SoD, ¶¶ 93, 95.

[115] Second Expert Report of Wallace B. Jefferson, dated 6 June 2019, ¶¶ 21-25 (**Exhibit CER-9**).

Georgian law, pursuant to Article 339 of the Georgian Civil Code (the "**GCC**"), which provides that "[w]hen determining the rights and duties of the parties to a contract, account may be taken of the traditions and usages of the trade."[116] Accordingly, the Tribunal shall apply international petroleum industry practices and standards when interpreting the ambiguous terms of the PSC pursuant to Georgian and Texas law principles.

C. PROCEDURAL AND PRELIMINARY MATTERS

296. In this section, the Tribunal will (1) first set out that is has jurisdiction to hear the dispute before it; and then deal with a number of outstanding procedural and preliminary matters, *i.e.*, (2) the Claimants' Application to Strike the Respondents' Witness Statements and Expert Report; (3) the Withdrawal of the Counterclaims Issue; and (4) Claimants' withdrawal of their Request for Relief No. 8.

1. Tribunal's Jurisdiction

297. As recalled above, this dispute concerns claims brought by the Claimants alleging various breaches of the PSC.[117] In accordance with Article 31.1 of the PSC therefore, a dispute that pertains to "the validity, construction, enforceability, or breach of this Contract" has arisen between the Claimants and the Respondents, and thus squarely falls within the ambit of the arbitration clause contained therein.[118]

298. On 16 November and 12 December 2017, Claimant 1 and Claimant 2, respectively, sent Respondent 1 notices of intent to arbitrate this dispute pursuant to Article 31.3 of the PSC.[119] On 15 January 2018, the Claimants initiated arbitration against Respondent 1 by submitting their Request for Arbitration to the Secretary-General of the PCA.[120] In their Request for Arbitration, the Claimants appointed Prof Dr Voser as the first arbitrator.[121] In accordance with Article 31.1 of the PSC therefore, the Claimants have "provid[ed] thirty 30 days prior written notice to the other Party of intent to arbitrate, […] [by] submitting a request for arbitration to the Secretary General of the Permanent Court of Arbitration in the Hague, as provided in the Rules, and appointing an arbitrator who shall be identified in said request."[122]

299. Accordingly, the Tribunal is satisfied, and in any event the Parties do not dispute, that it has jurisdiction over this dispute under the arbitration agreement as set out in Article 31 of the PSC.[123]

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116 Art. 339 GCC (**Exhibit CLA-170**). *See also* Second Expert Report of Prof. Dr Rolf Knieper, dated 6 June 2019, ¶ 22 (**Exhibit CER-8**).

117 *See supra* ¶¶ 6, 8; Section IV.

118 PSC, Art. 31.1 (**Exhibit C-1**).

119 *See* Letter from David Tvalabeishvili (GOGC) to Zaza Mamulaishvili (Frontera), dated 16 November 2017 (**Exhibit C-5**); Letter from G. Tatishvili (State Agency) to Z. Mamulaishvili (Frontera), dated 12 December 2017 (**Exhibit C-6**); Chronology of Non-Disputed Facts, No. 289, 292.

120 *See supra* ¶ 11.

121 *See supra* ¶ 12.

122 PSC, Art. 31.3 (**Exhibit C-1**).

123 *See supra* ¶¶ 9-10.

2. Claimants' Application to Strike the Respondents' Witness Statements and Expert Report

300. As detailed above, on 26 November 2019, the Claimants made an Application to Strike the Respondents' Witness Statements and Expert Report and, on 9 December 2019, the Respondents commented on the application.[124]

301. According to the Claimants, the Application to Strike the Respondents' Witness Statements and Expert Report is brought in accordance with paragraphs 4.9 and 5.3 of Procedural Order No. 1, on the basis that the Respondents failed to summon their fact and expert witnesses to testify at the Rescheduled Evidentiary Hearing, and failed to provide a valid reason for such failure.[125] The Respondents argue that granting the Claimants' application would be unfair and in violation of their due process rights because it is only as a result of the Claimants' actions that the Respondents' ability to participate in the arbitration and present their witnesses has been "suffocated."[126]

302. The Tribunal recalls that paragraph 4.9 of Procedural Order No. 1 provides that "[i]f a witness who has been called to testify by the Tribunal or the other Party does not appear to testify at the hearing, the witness's testimony shall be stricken from the record, unless the Tribunal determines that a valid reason has been provided for failing to appear," and that the same provision applies to expert witnesses by virtue of paragraph 5.3.

303. The Tribunal notes that the Respondents' witnesses and expert have been called to testify at the Rescheduled Evidentiary Hearing.[127] Despite this and several reminders from the Tribunal,[128] the Respondents failed to summon their fact and expert witnesses to testify at the Rescheduled Evidentiary Hearing. On 30 November 2019, shortly before the Rescheduled Evidentiary Hearing was due to begin, the Respondents informed the Tribunal that it would "not be possible for [the Respondents'] expert witnesses to attend the upcoming hearing."[129] The Respondents noted that "employee witnesses that we had planned to attend are also not able to do so as they are no longer in our employ and have been pressured not to participate."[130] The Respondents further noted that Mr Nicandros and Mr Mamulaishvili had "also taken the decision that [they would] not be able to attend due to the overall pressures that are currently placed upon our business as a result of the State's actions."[131] Among other things, the Respondents noted that they had reached this decision because of the "significant challenges [the Respondents face] as a result of the 'soft expropriation' that Claimants have conducted against [their] business in

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124 *See supra* ¶¶ 154, 168.

125 E-mail from Claimants to the Tribunal, dated 26 November 2019; E-mail from Claimants to the Tribunal, dated 1 December 2019; E-mail from Claimants to the Tribunal, dated 2 December 2019; E-mail from Claimants to the Tribunal, dated 4 December 2019; E-mail from Claimants to the Tribunal, dated 5 December 2019.

126 E-mail from Mr Steve Nicandros to the Tribunal, dated 9 December 2019.

127 Procedural Order No. 11, dated 16 October 2019, ¶¶ 4.2.1, 4.2.3, 4.3.2.

128 *See supra* ¶¶ 143, 149, 152, 155.

129 E-mail from Mr Steve Nicandros to the Tribunal, dated 30 November 2019.

130 E-mail from Mr Steve Nicandros to the Tribunal, dated 30 November 2019.

131 E-mail from Mr Steve Nicandros to the Tribunal, dated 30 November 2019.

Georgia with the current arbitration proceeding, as well as with associated actions of in-country duress."[132]

304. The Tribunal finds that the Respondents have not provided a "valid reason" pursuant to paragraph 4.9 of Procedural Order No. 1 for failing to present their fact and expert witnesses for cross-examination at the Rescheduled Evidentiary Hearing. In particular, the Respondents have not provided evidence of the "pressures" or "challenges" the Respondents allegedly face, including regarding the allegation that the present arbitration could constitute a "soft expropriation" of the Respondents' business. In any event, the Respondents have failed to explain how any of these alleged facts would explain that they could not summon their witnesses and expert to testify at the Rescheduled Evidentiary Hearing.

305. Notwithstanding the above, the Tribunal also recalls that in accordance with Article 15 of the UNCITRAL Rules, it "may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case." This authority, in the Tribunal's view, includes the authority to amend the procedural rules set by the Tribunal which govern this proceeding where appropriate.

306. In this case, and in consideration of the equality of the Parties and their due process rights, the Tribunal does not consider it appropriate to strike the Respondents' witness statements and expert report from the record. At the same time, the Tribunal recognizes that neither it nor the Claimants have been able to test this evidence by means of examination at the Rescheduled Evidentiary Hearing. Accordingly, in these circumstances, the Tribunal has reviewed the Respondents' witness statements and expert report and, noting that the witnesses and expert have not been tendered for examination, has decided to accept such testimony but give it the evidentiary weight that it deserves and may bear in those circumstances.

3. Withdrawal of Respondent 1' Counterclaims

307. As set out above, on 14 September 2018, in the Statement of Defense and Counterclaim, Respondent 1 had initially filed counterclaims, including for damages for the alleged breach of the PSC by the Claimants, for an amount to be determined by no less than US$ 3,518,090,360.00.[133] Subsequently, on 22 May 2019, Respondent 1 sought to withdraw the counterclaims made in the Statement of Defense and Counterclaim on a "without prejudice basis."[134]

308. The Claimants initially objected to the withdrawal without prejudice of Respondent 1's counterclaims on the basis of Section 28 of the Swedish Arbitration Act. Section 28 of the Swedish Arbitration Act provides that "[w]here a party withdraws a claim, the arbitrators shall dismiss that part of the dispute, unless the opposing party requests that the arbitrators rule on the claim."[135]

[132] E-mail from Mr Steve Nicandros to the Tribunal, dated 30 November 2019.

[133] SoD, ¶ 344.

[134] Letter from Respondent 1 to the Tribunal, dated 22 May 2019; RSA, at 1-2; RRSA, at 5.

[135] Swedish Arbitration Act, Section 28 (**Exhibit CLA-28**).

309. The Parties therefore exchanged several rounds of submissions on the Withdrawal of Counterclaims Issue, as detailed above.[136] Eventually, at the Rescheduled Evidentiary Hearing, the Claimants confirmed that they no longer objected to the withdrawal without prejudice of Respondent 1's counterclaims. They stated that they "withdr[e]w [their] opposition to the application of the Respondents to withdraw their counterclaim, […] under the condition that the costs for the counterclaim are imposed on the counterclaimant."[137]

310. In light of Section 28 of the Swedish Arbitration Act, and given that the Claimants do not oppose the withdrawal without prejudice of Respondent 1's counterclaims anymore, the Tribunal dismisses without prejudice the counterclaims as set out in the Respondents' Statement of Defense and Counterclaim, at Requests for Relief No. (b) to (e).

311. For the avoidance of doubt, the Tribunal has however taken into account the facts and arguments presented in the Respondents' Statement of Defense and Counterclaim as part of the counterclaims to the extent they are relevant for the issues decided in the present award, including in particular for the Claimants' claims.

4. Withdrawal of the Claimants' Request for Relief No. 8

312. At the Rescheduled Evidentiary Hearing, the Claimants withdrew their Request for Relief No. 8.[138] They explained that they were withdrawing this request because they considered there to be "enough evidence in the record to justify an award of damages,"[139] especially given that the Respondents have not contested the Claimants' estimates of the amount of sales revenues received and even recognized them as a "nearly perfect calculation."[140]

313. The Respondents have not objected to the withdrawal of Claimants' Request for Relief No. 8.

314. Pursuant to Section 28 of the Swedish Arbitration Act referred to above,[141] the Tribunal dismisses Claimants' Request for Relief No. 8.

D. ASSIGNMENT ISSUE

315. In this section the Tribunal will address the Assignment Issue, *i.e.*, whether Respondent 1's Purported Assignment of all of its rights under the PSC to Respondent 2 complied with the requirements of Article 27.3 of the PSC, and is therefore valid.

316. With regard to the Assignment Issue, the Respondents submit that pursuant to the Assignment Agreement, Respondent 1 had assigned all of its interest in the PSC to Respondent 2 in accordance with Article 27.3 of the PSC, and therefore that Respondent 2 should replace Respondent 1 in this arbitration.[142] Nevertheless, in the Amendment to the Terms of

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136 *See supra* ¶¶ 88, 92-94.

137 Hearing Transcript, Day 2, 130:14-16, 131:8-9, 131:12-13, 133:24-134:6.

138 Reply, ¶ 369(8).

139 Hearing Transcript, Day 1, 42:8-42:10.

140 SoD, ¶ 341.

141 *See supra* ¶ 308.

142 Letter from Respondent 1 to the Tribunal, dated 24 April 2019, at 1, 3; RSA, at 5-6.

Appointment, Respondent 1 agreed to have Respondent 2 join as a co-respondent to this proceeding.[143]

317. The Claimants submit that the Respondents have failed to show either that the Purported Assignment includes Respondent 1's interest in the PSC and its rights and interest in this arbitration, or that the Purported Assignment complies with the PSC.[144] As such, the Claimants request that the Tribunal declare the Purported Assignment to be null and void.[145]

318. The Tribunal will set out (1) the Respondents' and (2) the Claimants' respective positions in more detail, before (3) deciding on the Assignment Issue.

1. Respondents' Position

319. As a preliminary matter, the Respondents consider that in light of the Parties' agreement to join Respondent 2 as a co-Respondent in these proceedings, the question of the validity of the Purported Assignment is "now moot."[146] Nevertheless, should the Tribunal decide to rule on this issue, the Respondents submit that (i) the terms of the Assignment Agreement directly address this arbitration; and (ii) Article 27.3 of the PSC is "unambiguous, and clearly allows the assignment."[147]

320. First, contrary to the Claimants' allegation, the Respondents submit that Article 3 of the Assignment Agreement "expressly provides for an assignment by [Respondent 1], and an assumption by [Respondent 2], of the entirety […] of [Respondent 1's] 'Participating Interest;' in the PSC […] and the farmout area subject to the PSC."[148] In the Respondents' view, if Respondent 2 had not intended to take on all of Respondent 1's obligations under the PSC, it would have included a specific exclusion of liability, which it had not done.[149] In fact, the Respondents note that Respondent 2's assumption of any "litigation or *arbitration proceedings*," as stated in Section 6.8 of the Assignment Agreement, was included specifically to ensure that Respondent 2 preserved all of Respondent 1's rights in the present arbitration.[150]

321. Second, according to the Respondents, the Tribunal must "look to the written expression of the PSC to glean its meaning, not to Claimants' desired interpretation," and "[i]f a contract is not ambiguous, it must be enforced as written, without considering parol evidence for the purpose of creating an ambiguity or giving the contract 'a meaning different from that which its language imports.'"[151]

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143 RSA, at 1, 8; CSA, ¶¶ 5, 45-47.

144 CSA, ¶ 4.

145 CSA, ¶ 54.

146 RRSA, at 1.

147 RRSA, at 1-3.

148 RRSA, at 3.

149 RRSA, at 3.

150 RRSA, at 3 (emphasis added).

151 RSA, at 3, *citing Gilbert Tex. Constr., L.P. v. Underwriters at Lloyd's London,* 327 S.W.3d 118, 126 (Tex. 2010); *referring to Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.,* 341 S.W.3d 323, 333 (Tex.

322. Pursuant to these interpretative principles, the Respondents submit that the question of whether Respondent 1 can make an assignment to its affiliate Respondent 2 is determined by the Respondents, not by the Claimants, and that accordingly the Claimants are "not free to object to or invalidate [Respondent 1]'s assignment to [Respondent 2] based upon Claimants' prospective view that [Respondent 2] lacks the ability to perform."[152] This is because, the Respondents point out, unlike Article 27.2 of the PSC which pertains to assignments to third parties, Article 27.3 of the PSC does not provide the State with any veto authority over assignments to affiliates.[153] Indeed, the Respondents note, Article 27.3 of the PSC expressly provides that the Respondents can make the assignment "without the prior consent of the State."[154]

323. In accordance with this reading of the PSC, therefore, the Respondents submit that they determined under Article 27.3 of the PSC that Respondent 2 does have the "technical and financial ability" to perform the obligations that Respondent 1 previously performed.[155] This is because Respondent 2 assumed Respondent 1's 50% interest in the operating company, and therefore Respondent 2 has "all of the technical and financial resources previously held by the Respondent," and "[a]ll material contracts and arrangements necessary for full and proper performance of the PSC […] [remain] entirely unaffected."[156] Moreover, the Respondents argue that FRC, as the parent company, "is and remains the source of all operational expertise and financial resources on which PSC success has always relied," Respondent 2 has assumed Respondent 1's debt to FRC in connection with the PSC, and Respondent 2 has agreed to indemnify Respondent 1 from and against all obligations existing or arising under the PSC.[157] Under these new circumstances, the Respondents consider the Claimants to be "beneficiaries of a far-better-than-market assumption and indemnity by an assuming party possessing any and all of the contractual capabilities, as well as introducing improved financial prospects, to outperform under the PSC."[158]

324. Finally, the Respondents clarified that FRCC's liquidation will not have any implications for this proceeding.[159] The Respondents stated that the directors of FRCC received a notification that a voluntary liquidation of FRCC had commenced on 1 May 2019, owing to the fact that FRCC's shares were pledged to secure amounts which FIC owed to Outrider Master Fund ("**OMF**").[160] FTI Consulting ("**FTI**") officers would serve as the Joint Voluntary Liquidators ("**JVLs**") to liquidate FRCC's assets.[161] Since FRCC is a holding company whose only asset is Respondent

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2011); *Matagorda Cty. Hosp. Dist. v. Burwell*, 189 S.W.3d 738, 740 (Tex. 2006); *David J. Sacks, P.C. v. Haden*, 266 S.W.3d 447, 450 (Tex. 2008).

152 RSA, at 4.

153 RSA, at 4, *referring to* PSC, Art. 27.2 (**Exhibit C-1**); Article 27.2 notes "[a]ny such assignment shall be subject to the prior written consent of the State."

154 PSC, Art. 27.3 (**Exhibit C-1**).

155 RSA, at 4; RRSA, at 2.

156 RSA, at 4, 6.

157 RSA, at 5-6.

158 RSA, at 6.

159 RSA, at 6-8.

160 RSA, at 6.

161 Letter from FTI Consulting to Frontera International Corporation, dated 3 May 2019 (**Exhibit R-105**).

1's stock, the JVLs *could*, as a consequence of their control over FRCC, replace Respondent 1's board of directors and management, especially as Respondent 1's only assets are its claim in this arbitration and 5% royalty in any oil produced by FRUS.[162] The Respondents insist however, that the JVLs will neither interfere in Respondent 1's management nor become involved in this proceeding because in the case of an unfavourable outcome, the JVLs could be liable for claims of negligence to both FRC and OMF.[163] Moreover, OMF does not have sufficient funds to credibly indemnify the JVLs and FTI.[164] It is for these reasons that the JVLs made clear to Respondent 1's former counsel that "the directors of [Respondent 1] continue to be responsible for managing [Respondent 1's] affairs, including all matters in relation to the arbitration."[165]

2. Claimants' Position

325. The Claimants submit that the Respondents has failed to show either that the Purported Assignment includes Respondent 1's interest in the PSC and its rights and interest in this arbitration, or that the Purported Assignment complies with the PSC.[166] Consequently, the Claimants request the Tribunal to declare that the Purposed Assignment is null and void pursuant to Article 27.1 of the PSC.[167]

326. First, the Claimants contend that the Respondents failed to show that Respondent 1's interest in the PSC and its rights and obligations at issue in this arbitration were actually transferred to Respondent 2 under the Assignment Agreement.[168] The Claimants point out that the Assignment Agreement neither specifically mentions this arbitration nor references the claims or counterclaims at issue.[169] According to the Claimants, the Assignment Agreement, and more specifically Article 6.8 thereof, "does not provide for a broad assignment of any and all obligations and rights under the PSC, but only for a very limited assignment with an unclear scope and effect."[170]

327. Second, the Claimants submit that the Purported Assignment did not satisfy the requirements of Article 27.3 of the PSC.[171] According to the Claimants, the plain terms of Article 27.3 of the PSC provide that Respondent 1 may only assign its rights in the PSC without the consent of the Claimants if *inter alia* the assignee is an "Affiliate" within the meaning of Article 1.2(a) of the PSC, and the assignee has both the technical and financial ability to perform the obligations to

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162 RSA, at 7.

163 RSA, at 8, *referring to* E-mail from David Griffin to Levan Bakhutashvili dated 1 June 2019 (**Exhibit R-106**).

164 RSA, at 7.

165 RSA, at 8.

166 CSA, ¶ 4.

167 CSA, ¶ 54(1) (2).

168 CSA, ¶¶ 6-8; CRSA, ¶¶ 17-18.

169 CSA, ¶ 8; CRSA, ¶ 17.

170 CSA, ¶¶ 7-8, *referring to* Farmout Agreement between Frontera and FRUS dated 13 April 2019 (**Exhibit C-192**). *See also* CRSA, ¶ 18.

171 CSA, ¶ 35.

be assumed by it under the PSC.[172] In the Claimants' view, this reading is "corroborated by a systematic interpretation of the PSC" because, Article 27 of the PSC, which sets forth the rules applicable to the assignment of rights, makes clear that "(i) as a rule, there shall be no assignment, (ii) exceptionally, assignments are allowed only under the narrow circumstances set forth in Article 27 of the PSC, and (iii) any purported assignment not in full compliance with the PSC is null and void."[173] Moreover, contrary to the Respondents' contention, the Claimants maintain that the Respondents do not have the discretion to determine whether the assignee has the required capabilities. Rather, "[t]he requirement for technical and financial capabilities is one of objective fact, requiring proof,"[174] and the burden of such proof, as the Tribunal has recognized, falls on the Respondent.[175] Indeed, the Claimants point out, if the Respondents could exercise such discretion under the PSC, it would render the conditions in Article 27.3 meaningless, since they "could simply declare, without investigation or consideration, that the requirements were met."[176]

328. Applying their interpretation to the facts, the Claimants contend that the Purported Assignment is invalid because the Respondents have failed to discharge their burden of proof in demonstrating Respondent 2's technical and financial ability to perform the obligations under the PSC.[177] Specifically, the Claimants point out that while Respondent 2 has undertaken to perform any obligations arising in connection with the PSC, this does not mean that it actually has the capability to do so.[178] In fact, the Claimants allege, notwithstanding the Tribunal's direct questioning, Respondent 1 has not presented any evidence demonstrating that Respondent 2 has the financial or technical capabilities to perform the Contractor's obligations under the PSC; sufficient capital to pay Respondent 1's loan obligations; or qualified personnel to appraise and manage the production of oil and gas.[179]

329. In addition, the Claimants reject the Respondents' reliance on FRC's (*i.e.*, the parent company's) technical and financial capabilities as evidence.[180] In the Claimants' view, the PSC requires that the assignee itself possess the requisite capabilities. Yet, in Article 5.2(c) of the Assignment Agreement, Respondent 2 only "represents and warrants [that] […] individually or *in conjunction with its parent company, Frontera Resources Corporation*, has the financial and technical ability to perform the obligations" under the PSC.[181]

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[172] CSA, ¶¶ 12-13, *quoting* PSC, Art. 27.3 (**Exhibit C-1**); Hearing Transcript, Day 1, 43:7-13.

[173] CSA, ¶ 19.

[174] CSA, ¶ 20. *See also* CRSA, ¶ 9.

[175] Hearing Transcript, Day 1, 43:18-23, *referring to* Procedural Order No. 9, dated 25 September 2019, ¶ 17.

[176] CRSA, ¶ 12

[177] CSA, ¶ 19, *relying on* PSC, Art. 27.3 (**Exhibit C-1**); Hearing Transcript, Day 1, 44:20-25, 45:1-5.

[178] CSA, ¶ 24.

[179] CSA, ¶¶ 25-27; CRSA, ¶¶ 5, 7, 11; Hearing Transcript, Day 1, 43:14-18.

[180] CSA, ¶ 28.

[181] CSA, ¶¶ 29-30. *See also* CSA, ¶¶ 31-36.

330. Moreover, contrary to the Respondents' claim, the Claimants submit that it is not sufficient that Respondent 2 has the same technical and financial ability as Respondent 1.[182] As an initial matter, Article 27.3 of the PSC requires that the assignee, Respondent 2, itself have the technical and financial ability to perform the PSC, independently of whether Respondent 1 now has or ever had such ability.[183] Even if Respondent 2 indeed did have the same abilities that Respondent 1 had when the Claimants entered into the PSC and commenced this arbitration, the Claimants submit that "would be equally inadequate to meet the requirements of Article 27.3 of the PSC" because Respondent 1 has "proven for 20+ years that it is not capable of commercial production or even making a discovery."[184]

331. For these reasons, the Claimants submit that the Tribunal should declare the Purported Assignment null and void pursuant to Article 27.1 of the PSC.[185]

3. Tribunal's Analysis

332. As a preliminary matter, the Tribunal does not consider that the Parties' agreement to join FRUS as Respondent 2 to this arbitration, as provided for in the Amendment to Terms of Appointment, makes the Assignment Issue moot. The Amendment to Terms of Appointment specifically provides that "Respondent 2 is being added […] to share in the defense against any claim asserted by Claimants […] and in relation to the issue of the validity of the Purported Assignment […]."[186] The Amendment to Terms of Appointment further provide that "[t]he Claimants contest the validity of the Purported Assignment"[187] and that "[t]he Initial Parties and […] Respondent 2 agree that this arbitration will proceed pursuant to the Procedural Timetable as set out in Procedural Order No. 7."[188] It follows therefrom that the Assignment Issue, *i.e.*, the validity of the Purported Assignment, is still to be decided in this award and this in accordance with Procedural Order No. 7.

333. Concerning the validity of the Purported Assignment, the Tribunal recalls that on 13 April 2019, Respondent 1 entered into the Assignment Agreement with Respondent 2, pursuant to which the former purported to assign all of its rights under the PSC to the latter.[189] The Parties disagree as to whether the Assignment Agreement complied with the terms of the PSC, and accordingly, whether it is valid.

334. The relevant starting point for the Tribunal's analysis of the validity of the Purported Assignment is Article 27.1 of the PSC, which provides as follows:

> No assignment mortgage or charge or other encumbrance shall be made by a Party of its rights, obligations and interests arising under this Contract other than in accordance with the

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182 CRSA, ¶ 13.

183 CRSA, ¶ 13.

184 CRSA, ¶ 16.

185 CRSA, ¶ 54(1)-(3).

186 Amendment to Terms of Appointment, ¶ 8.

187 Amendment to Terms of Appointment, ¶ 2.

188 Amendment to Terms of Appointment, ¶ 9.

189 Farmout Agreement between Frontera and FRUS, dated 13 April 2019 (**Exhibit C-192**).

> provisions of this Article 27. Any purported assignment made in breach of the provisions of this Article 27 shall be null and void.[190]

335. Article 27 of the PSC distinguishes two possible scenarios for assignments under the PSC. On the one hand, assignments to a "Third Party" under Article 27.2 of the PSC require, among other things, the "consent of the State."[191] On the other hand, such consent is not required for assignments to an "Affiliate" under Article 27.3 of the PSC.[192]

336. It is undisputed between the Parties that the assignee, Respondent 2, is a limited liability company wholly-owned by FRC, which also indirectly and wholly owns Respondent 1.[193] Accordingly, the Tribunal is satisfied that Respondent 2 is an "Affiliate" of Respondent 1 for the purposes of Article 27.3 of the PSC. Indeed, Article 1.2(a)(ii) of the PSC defines "Affiliate" as a company "in which at least fifty percent (50%) of the shares or voting rights are owned directly or indirectly by a company or other legal entity, which owns directly or indirectly more than fifty percent (50%) of the shares, voting rights or otherwise has the right to establish management policy of a Contractor Party."[194]

337. Therefore, since the Purported Assignment concerns an assignment of rights under the PSC by a party to the PSC to an Affiliate, Article 27.3 of the PSC governs the terms by which such an assignment would be valid. Article 27.3 provides as follows:

> 27.3 A Contractor Party may assign all or part of its rights, obligations and interests arising. From this Contract to another Contractor Party or to an Affiliate without the prior consent of the State or Georgian Oil provided that the Contractor gives notice of the assignment to Georgian Oil and that any such Affiliate:
>
> (a) has the technical and financial ability to perform the obligations to be assumed by it under the Contract; and
>
> (b) as to the interest assigned to it, accepts and assumes all of the terms and conditions of the Contract.

338. Based on the terms of this provision, Respondent 1 may validly assign its rights under the PSC to Respondent 2 if (i) Respondent 1 gives notice of the assignment to Claimant 1; (ii) Respondent 2 "has the technical and financial ability to perform the obligations to be assumed by it under the contract;" and (iii) Respondent 2 "accepts and assumes all of the terms and conditions of the [PSC]" in respect of the interest it has been assigned.

339. With respect to the first requirement, the Tribunal notes that on 15 April 2019, Respondent 1 sent a letter to Claimant 1 providing "notice pursuant to Article 27 of the PSC that on April 13, 2019, Contactor [*sic*] assigned 100% of its interest in the PSC and the corresponding ownership interest in the Operating Company to [Respondent 2], a Texas limited liability company, an Affiliate of

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190 PSC, Art. 27.1 (**Exhibit C-1**).

191 PSC, Art. 27.2 (**Exhibit C-1**).

192 PSC, Art. 27.3 (**Exhibit C-1**).

193 *See* Letter from the Respondent to the Tribunal, dated 30 April 2019, Enclosure 2 (Comparative Corporate Structure of Frontera Resources Georgia Corporation and Frontera Resources US LLC); and Enclosure 3 (Notarized Frontera Resources US LLC Limited Liability Company Agreement).

194 PSC, Art. 1.2(a)(ii) (**Exhibit C-1**).

Contractor and a wholly-owned subsidiary of [FRC]."[195] The Tribunal is therefore satisfied that the notice requirement of Article 27.3 has been fulfilled.

340. With respect to the second requirement, the Claimants contend that the Respondents have the burden of objectively demonstrating on the basis of relevant evidence that Respondent 2 has the necessary technical and financial ability to perform the obligations it is assuming under the PSC.[196] The Respondents, however, maintain that they retain the discretion to determine whether Respondent 2 has the necessary capabilities, and that the Claimants are "not free to object to or invalidate [Respondent 1's] assignment to [Respondent 2] based upon Claimants' prospective view that [Respondent 2] lacks the ability to perform."[197]

341. As the Tribunal has previously found, the burden is on the Respondents to demonstrate, pursuant to Article 27.3 of the PSC, that Respondent 2 has "the technical and financial ability to perform the obligations to be assumed by it under the [PSC]."[198] In the Tribunal's view, if the Respondents were, as they contend, only required to make their own determination and declare that Respondent 2 has the required ability, it would render this requirement meaningless and create the risk of a situation the provision is designed precisely to avoid – *i.e.*, where Respondent 1 is allowed, without the Claimants' consent, to assign its interests under the PSC to an Affiliate that is unable to perform its assumed obligations under the PSC.

342. In their submissions, the Respondents assert that they have "made the determination" that Respondent 2 has the financial and technical ability to perform the obligations assigned to it under the PSC on the basis that Respondent 2 has all of the financial and technical resources previously held by Respondent 1, including the same access to capital through its parent FRC, and the same access to technical expertise and management in Frontera's group.[199] The Respondents additionally rely on the terms of the Assignment Agreement in support of their determination, noting that Respondent 2 has undertaken to assume Respondent 1's debt to FRC in connection with the PSC, indemnify Respondent 1 from and against all obligations existing or arising under the PSC, and complete a minimum US$50 million work program.[200]

343. In the Tribunal's view, the Respondents' above-mentioned assertions do not objectively prove that Respondent 2 has financial and technical resources to perform any purportedly assigned obligations under the PSC. As evidenced by the Parties' dispute over the Claimants' claims in this proceeding, it is not clear, for example, whether Respondent 1 itself had the financial and technical ability to perform its obligations under the PSC in the first place, much less Respondent 2. In addition, the mere fact that Respondent 2 has undertaken certain obligations under the Assignment Agreement does not prove that it has the ability to fulfil those obligations, one way or another, much less that it would also translate to the conclusion that it had the ability to perform any assumed obligations under the PSC.

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[195] Letter from Respondent 1 to the Tribunal, dated 24 April 2019, Enclosure 1 (Letter to GOGC, dated 15 April 2019).

[196] CRSA, ¶ 22.

[197] RSA, at 4.

[198] Procedural Order No. 9, dated 25 September 2019, ¶ 17.

[199] Letter from Respondent 1 to the Tribunal, dated 30 April 2019, at 2-3; RSA, at 6; RRSA, at 2.

[200] RSA, at 5-6; Letter from Respondent 1 to the Tribunal, dated 30 April 2019, at 2.

344. For the above reasons, the Tribunal considers that the Respondents have failed to meet their burden of proof in demonstrating that Respondent 2 "has the technical and financial ability to perform the obligations to be assumed by it under the contract" and accordingly finds that the Purported Assignment was made in breach of Article 27.3 of the PSC and therefore is null and void pursuant to Article 27.1 of the PSC.

E. RELINQUISHMENT CLAIM

1. Overview

345. In this section the Tribunal will address the Claimants' Relinquishment Claim, as set out in the Claimants' Requests for Relief No. 3 and 4, *i.e.*, the Claimants' claim that Respondent 1 failed to relinquish certain areas in Block XII.[201]

346. The Claimants submit that Respondent 1 is obligated to relinquish its rights in the territories of Block XII located outside the Exploitation/Development Area at the end of the Secondary Exploration Phase, in accordance with Article 6.1(b) of the PSC.[202] Article 6.1 provides, in relevant part:

> 6.1 Subject to Article 6.2, and unless the Parties agree otherwise, Contractor shall select and relinquish portions of the Contract Area as follows: [...]
>
> (b) 100% of the original Contract Area that is outside of any Development Area as of the end of the secondary exploration phase.

347. The Claimants note that it is undisputed that the Secondary Exploration Phase ended on 14 November 2017, and that by that time Respondent 1 failed to relinquish the area outside the Exploitation/Development Area despite the Claimants' requests.[203]

348. The Respondents, on the other hand, submit that Respondent 1 is not obliged to relinquish these rights because it has validly invoked an exception under Article 9.5 of the PSC, having made the Declaration of Commercial Feasibility and Declaration under Article 9.4(c).[204] Article 9.5 provides:

> 9.5 In the event the Contractor makes a declaration under Article 9.4(c) above, Contractor shall not be obligated to relinquish the relevant Study Area pending the completion of the further work committed under that Article, at which time the contractor shall advise the Coordination Committee of its conclusion as to whether or not there is in fact a new Commercial Discovery and the provisions of Article 9.4(a) or (b) shall be applied accordingly.

349. In response, the Claimants maintain that Respondent 1 is not entitled to rely on Article 9.5 because it failed to comply with the pre-conditions under Articles 9.1, 9.2, 9.3, and 9.4(c), which provide in relevant part:

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201 Reply, ¶¶ 369(3), 369(4).

202 SoC, ¶ 154; Hearing Transcript, Day 1, 21:7-13.

203 SoC, ¶ 156, *referring to* Letter from GOGC to Frontera dated 17 August 2017, at 2 (**Exhibit C-75**); Letter from D. Tvalabeishvili (GOGC) to Z. Mamulaishvili (Frontera), dated 25 September 2017, at 1 (**Exhibit C-76**); Letter from D. Tvalabeishvili (GOGC) and G. Tatishvili (State Agency) to Z. Mamulaishvili (Frontera), dated 16 November 2017, at 1-2 (**Exhibit C-77**).

204 SoD, ¶¶ 293-301.

> 9.1 If, at any time Contractor concludes that Commercial Production (or significant additional Commercial Production if Commercial Production has previously been established) from the Contract Area is feasible, it shall notify Georgian Oil within five (5) days of reaching such a conclusion.
>
> 9.2 Within forty-five (45) days of receipt of such notice, Contractor shall in the first instance present to the Coordination Committee for approval a proposed Study Program which shall be deemed approved if no written objections are raised by any member of the Coordination Committee within thirty (30) days following receipt thereof. The proposed Study Program shall specify in reasonable detail the appraisal work including seismic, drilling of wells and studies to be carried out and the estimated time frame within which the Operating Company shall commence and complete the program.
>
> 9.3 Thereafter the Operating Company shall carry out the Study Program approved by the Coordination Committee. Within ninety (90) days after completion of such Study Program the Operating Company shall submit to the Coordination Committee a comprehensive evaluation report on the Study Program. Such evaluation report shall include, but not be limited to: geological conditions, such as structural configuration; physical properties and extent of reservoir rocks; pressure, volume and temperature analysis of the reservoir fluid; fluid characteristics, including gravity of liquid hydrocarbons, sulphur percentage, sediment and water percentage, and product yield pattern; Natural Gas composition; production forecasts (per well and per Field); and estimates of recoverable reserves.
>
> 9.4 Together with the submission of the evaluation report by the Operating Company, or at any other time, the Contractor shall submit to the Coordination Committee a written declaration including one of the following statements:
> […]
> (c) that Commercial Production will be conditional on the outcome of further specified work that the Contractor commits to carry out under a further Exploration Work Program or Study Program in specified areas within or outside the relevant Study Area.

350. Specifically, the Claimants argue that Respondent 1 may not rely on Article 9.5 of the PSC to avoid its relinquishment obligation because (i) its Declaration of Commercial Feasibility did not comply with Article 9.1 of the PSC; (ii) its Study Program is invalid and contrary to the terms of Article 9.2 of the PSC; and (iii) its Declaration under Article 9.4(c) of the PSC was improper.[205] Accordingly, the Claimants submit that Respondent 1 failed to relinquish the territories of Block XII outside the Exploitation/Development Area pursuant to Article 6.1(b) of the PSC.[206]

351. The Respondents reject the Claimants' foregoing allegations.[207] The following sections address the Parties' arguments with respect to each issue in turn.

2. Whether the Declaration of Commercial Feasibility Complied with Article 9.1 of the PSC

(a) Claimants' Position

352. As detailed below, the Claimants submit that Respondent 1's Declaration of Commercial Feasibility did not comply with Article 9.1 of the PSC because (i) a conclusion of commercial feasibility requires a rational decision based on a technical / geological and commercial foundation, including a discovery; (ii) the Respondents have not shown that Respondent 1 concluded that commercial production is feasible; (iii) in any event, Respondent 1 did not have

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205 SoC, ¶¶ 153-286.

206 SoC, ¶¶ 289-290.

207 SoD, ¶¶ 99-193, 293-301.

any technical / geological and commercial basis including, for example, a discovery, to reach such a conclusion; and (iv) the Respondents' reliance on Block XII as a "basin centered oil and gas play" ("**BCP**") is unsupported and irrelevant.

353. ***First***, the Claimants assert that a declaration of commercial feasibility under Article 9.1 of the PSC "sets in motion the system of Article 9, which is the 'procedure for determination of commerciality and approval of development plans'" and that therefore, any conclusion underlying such a declaration requires a rational decision based on a technical / geological and commercial foundation, including a Discovery as defined in the PSC.[208]

354. According to the Claimants, this interpretation is supported by the plain terms of Article 9.1 of the PSC, read in conjunction with Articles 1.15, 1.34, and 1.14 of the PSC, which define the terms "**Commercial Production,**" "**Discovery,**" and "**Commercial Discovery,**" respectively.[209] These definitions, the Claimants argue, indicate that "the existence of a Discovery is required in order to assess and determine whether Commercial Production is feasible" because it "is the Discovery, and the resultant accumulation of Petroleum that is the subject of such a determination."[210] Similarly, Articles 1.14, 9.2, 9.5, and 9.6, all address appraisal and development works and studies to be carried out after a declaration of commercial feasibility, and which would not be relevant or possible without the pre-existence of a Discovery.[211] Moreover, the Claimants point out, this interpretation is confirmed by industry practice, as described in the 2007 Petroleum Resources Management System (the "**PRMS 2007**"), which makes clear that appraisal activities can only be performed with regard to a specific discovery within a specified area.[212] In addition, Mr Mehmet Arif Yukler, who drafted Article 9 on behalf of Respondent 1, confirms in a witness statement submitted by the Claimants that the Parties intended for a Discovery to be required before a declaration of feasibility under Article 9.1 could be made.[213]

355. The Claimants additionally reject as baseless the Respondents' interpretation of Article 9.1 of the PSC, namely that Respondent 1 has the sole technical discretion to determine when and if Commercial Production is feasible.[214] If the Respondents were correct in this interpretation, the Claimants point out, they could unilaterally trigger the procedures under Article 9 of the PSC at any point in time, whether or not there is anything that could possibly be appraised, developed or produced, *i.e.*, without any Discovery. In the Claimants' view, this is inconsistent with the PSC, industry practice, and the concept of good faith.[215] Further, to grant Respondent 1 unfettered discretion would constitute an abuse of the Claimants' rights, in contravention of Georgian and Texas law.[216] Moreover, the Claimants submit that there is no textual basis in Article 9.1 to

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208 SoC, ¶¶ 164-197; Reply, ¶¶ 72-73; Hearing Transcript, Day 1, 23:12-19.

209 SoC, ¶ 173.

210 SoC, ¶ 177; Hearing Transcript, Day 2, 73:5-9.

211 SoC, ¶¶ 179-189; Hearing Transcript, Day 1, 27:1-10.

212 SoC, ¶¶ 190-193, *referring to* Petroleum Resources Management System 2007, at 6 (**Exhibit C-10**).

213 SoC, ¶¶ 196, 197, *referring to* First Yukler Witness Statement, ¶ 36 (**Exhibit CWS-2**).

214 Reply, ¶¶ 74-77, *referring to* SoD, ¶¶ 17(c), 45, 146 *et seq*; Hearing Transcript, Day 1, 22:12-25, 23:1-11.

215 SoC, ¶¶ 170-171; Reply, ¶¶ 92-102.

216 Reply, ¶ 106.

justify the Respondents' position that Respondent 1 has unfettered technical discretion.[217] To the contrary, the fact that Article 9.1 requires the Contractor to "conclude" that Commercial Production is feasible implies that any declaration of feasibility must be based on geological facts and considerations and the commercial assessment of such data.[218]

356. Similarly, the Claimants disagree with the Respondents' claim that a declaration of commercial feasibility is not conditioned on the occurrence of a Discovery, because that term is not found in the Article, and that instead, the real purpose of Articles 9.1, 9.2, and 9.4(c) of the PSC is to confirm whether there is a Discovery or Commercial Discovery under the contract.[219] This assertion, the Claimants submit, ignores Article 9.5 which requires the Contractor, after making a declaration of commercial feasibility under Article 9.1, to "advise […] as to whether or not there is in fact a new Commercial Discovery."[220] Given that a conclusion as to whether there is a Commercial Discovery can only happen if a Discovery formed the basis of a declaration of feasibility under Article 9.1, was appraised under Article 9.2, and was the subject of further works under Article 9.4(c), the Claimants submit that the Respondents' interpretation is contrary to the overall context of the PSC.[221]

357. ***Second***, the Claimants submit that while Respondent 1 *declared* that Commercial Production is feasible, it has not shown, in accordance with Article 9.1 of the PSC, that it *concluded* that Commercial Production is indeed feasible on the basis of a substantive and documented analysis five days prior to making the declaration.[222] In fact, the Claimants point out, despite their specific request for relevant information, the Respondents have not produced any documentary evidence demonstrating the underlying assumptions and considerations on which such a declaration was made.[223] This lack of evidence, in the Claimants' view, is "rather amazing, given that the conclusion that Commercial Production is feasible – in particular throughout the entire Contract Area […] is not something to be done in passing or just through 'discussions.'"[224]

358. Moreover, the Claimants note, the Respondents have not asserted that Respondent 1 concluded that Commercial Production is feasible five days prior to the issuance of its Declaration of Commercial Feasibility, as required under Article 9.1 of the PSC.[225] In fact, according to the Claimants, the timing of the declaration, the fact that Respondent 1 had not in the preceding period once mentioned to the Claimants or addressed any ongoing analysis of commercial feasibility, the lack of documentary evidence thereof, and the striking resemblance between the 24 January 2017 Exploration Work Program and the 17 February 2017 Study Program, suggests that "there was no such conclusion" and that Respondent 1 was "running out of time, [and] simply

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217 Reply, ¶ 104.

218 Reply, ¶¶ 67-70.

219 Reply, ¶¶ 75-77, *referring to* SoD, ¶¶ 151, 164; Hearing Transcript, Day 1, 27:4-10.

220 Reply, ¶¶ 80-81.

221 Reply, ¶¶ 78-91.

222 Reply, ¶¶ 109-124.

223 Reply, ¶ 113, *referring to* Claimants' Document Request No. 1(b).

224 Reply, ¶ 114.

225 Reply, ¶ 118; Hearing Transcript, Day 1, 19:14-16.

declared commercial feasibility after it had realized the Claimants would not readily grant the extension."[226]

359. ***Third***, and in any event, the Claimants submit that Respondent 1 did not have any technical / geological and commercial basis including, for example, a Discovery, to *conclude* that commercial production is feasible.

360. Indeed, the Claimants point out, Respondent 1 has never claimed the existence of any Discovery outside the Exploitation/Development Area within the meaning of the PSC,[227] and in fact has admitted that its Declaration of Commercial Feasibility was not based on a Discovery.[228] Instead, the Respondents dispute the Claimants' insistence on the term "Discovery" and rely instead on "multiple 'discoveries'" of petroleum as the basis for the Declaration of Commercial Feasibility.[229] The Respondents' submission, however, is in the Claimants' view contrary to the terms of the PSC and industry practice.[230]

361. In any event, the Claimants submit, Respondent 1 did not, as the Respondents claim, make "multiple 'discoveries'" of petroleum because none of the alleged "events" qualify as "Discoveries" under the PSC, and the Respondents' allegations regarding these events are "irrelevant, factually incorrect, and/or unsubstantiated."[231] In particular, the Claimants note, the Respondents failed to demonstrate how any of the events would result in "significant amounts of production," or that such production could reach the level of Commercial Production.[232] Similarly, the Claimants argue that the Respondents have failed to demonstrate how these events would qualify as *new* "Discoveries" within the meaning of the PSC.[233] Moreover, while the Respondents repeatedly refer to significant amounts of production in the Exploitation/Development Area, the Claimants point out that the only areas relevant for a finding of significant amounts of production for purposes of a declaration under Article 9.1 are those outside the Exploitation/Development Area.[234]

362. In addition, the Claimants reject the Respondents' claim that Respondent 1 had undertaken "substantial Exploration Operations" which allegedly uncovered a series of "key ingredients" that justify a conclusion that Commercial Production is feasible.[235] As an initial matter, the Claimants point out, pursuant to Section 3 of Amendment No. 2, the only relevant exploration efforts are those outside the Exploitation/Development Area and, other than drilling a single dry

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[226] Reply, ¶¶ 119-124 (emphasis in original). *See also* Hearing Transcript, Day 1, 21:14-25, 22:1-11.

[227] SoC, ¶¶ 198-201, 205-206; Reply, ¶¶ 125, 131-132; Hearing Transcript, Day 1, 23:17-23.

[228] SoC, ¶¶ 198, 200, *referring to* Letter from Akin Gump to Hogan Lovells dated 8 December 2017, at 3 (**Exhibit C-80**); Response, at 5.

[229] Reply, ¶¶ 126, 131,

[230] Reply, ¶¶ 131-140, *referring to* Petroleum Resources Management System 2007, at 6 (**Exhibit C-10**); Expert Report of Gaffney, Cline & Associates, dated 6 July 2018 ("First GCA Report"), ¶¶ 74-78 (**Exhibit CER-1**); Second Expert Report of Gaffney, Cline & Associates, dated 11 June 2019 ("Second GCA Report"), ¶ 48 (**Exhibit CER-10**).

[231] Reply, ¶ 141.

[232] *See* Reply, ¶¶ 143, 145, 147, 149; Hearing Transcript, Day 1, 24:4-6.

[233] *See* Reply, ¶¶ 141-150; Hearing Transcript, Day 1, 24:2-4.

[234] Reply, ¶¶ 143, 147, 149; Hearing Transcript, Day 1, 24:6-9.

[235] Reply, ¶ 151.

well, Respondent 1 conducted all of its "substantial Exploration Operations" in the Exploitation/Development Area.[236] Furthermore, the Claimants submit, the Respondents have failed to show any professional analysis, whether technical or commercial, demonstrating that the alleged "key ingredients" on which they base their conclusion (*i.e.*, reduced drilling costs, improved well completion techniques, cost-effective stimulation and the stable production of oil and gas),[237] justify a conclusion of commercial feasibility,[238] nor have they produced documentary evidence substantiating these key ingredients.[239]

363. ***Fourth***, the Claimants submit that the Respondents' argument that Block XII is a BCP is unsupported and, in any event, irrelevant to support any declaration of commercial feasibility under Article 9.1. This is because, the Claimants allege, the Respondents have failed to provide any documentary evidence, expert report, or witness statement substantiating the alleged determination that Block XII is a BCP.[240] In fact, in the Claimants' view, contemporaneous evidence shows that at all times prior to the declaration, and up until October 2018, Respondent 1 understood Block XII as a "conventional resource," and that the claim of Block XII as a BCP was developed for the purposes of this arbitration.[241] For example, the Claimants note, the Study Program makes no reference to Block XII as a BCP, nor was it mentioned in the minutes of the Coordination Committee and technical sub-committee meetings.[242]

364. In any event, the Claimants and their expert assert that the Respondents have failed to demonstrate that Block XII does in fact meet the criteria of a BCP, namely that there is (i) a regionally pervasive (saturated) hydrocarbon accumulation throughout the Block; (ii) the presence of abnormal pressures throughout the Block; (iii) a lack of downdip water contact; and (iv) low permeability of the so-called Eldari and Gareji formations.[243]

365. As to (i), the Claimants' expert found that the oil and gas "shows" on which the Respondents rely for their claim that there is a regionally pervasive accumulation, were in fact based on the Soviet drillings, and that there was "no evidence that the down-dip and basinal areas have continuous oil or gas saturation and ignores data demonstrating the existence of water saturations instead of gas saturations."[244] As to the remaining criteria, the Claimants argue that the Respondents have similarly provided insufficient evidence to substantiate their assertions.[245] In addition, the Claimants argue that Respondent 1 failed to examine a sufficient sampling of Block XII to determine that the entire area is a BCP.[246] Finally, the Claimants also reject as irrelevant the

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[236] Reply, ¶¶ 156-162.

[237] Reply, ¶¶ 167, 171, 175, 178.

[238] Reply, ¶¶ 129, 172-174.

[239] Reply, ¶¶ 114-117, 169-170, 175-177, 178.

[240] Reply, ¶¶ 189-197; Hearing Transcript, Day 1, 25:17-25.

[241] Reply, ¶¶ 198-199; Hearing Transcript, Day 1, 24:5-22, 25:6-16; 68:2-10.

[242] Reply, ¶ 198.

[243] Reply, ¶ 200; Hearing Transcript, Day 2, 70:3-7.

[244] Reply, ¶¶ 202-204, *referring to* Second Expert Report of Jeffrey Aldrich, dated 12 June 2019 ("Second Aldrich Report"), ¶¶ 77 *et seq*. (**Exhibit CER-11**).

[245] Reply, ¶¶ 205-214.

[246] Reply, ¶¶ 215-217.

Respondents' assertion that there are a number of analogous oil and gas BCPs which have the same characteristics as Block XII, particularly since these are neither proper analogous reservoirs nor do they provide any reference from which Block XII could be determined as a BCP.[247]

(b) Respondents' Position

366. The Respondents reject the Claimants' allegation that the Declaration of Commercial Feasibility did not comply with Article 9.1 of the PSC, on the basis that (i) Article 9 of the PSC is not conditioned on the occurrence of a "Discovery;" (ii) Respondent 1 conducted substantial Exploration Operations under the PSC, and concluded that Block XII is a BCP; (iii) Block XII contains multiple "discoveries" of petroleum within the meaning of the PSC; and (iv) Commercial Production is feasible on Block XII.

367. ***First***, the Respondents submit that, contrary to the Claimants' claims, Article 9 of the PSC is not conditioned on the occurrence of a "Discovery."[248] Indeed, the Respondents observe, Article 9.1 of the PSC contains neither the word "discovery" nor the defined term "Discovery" and "for the fact that Claimants rely so heavily on the concept, it is strange that they do not define 'discovery' in their brief."[249] Instead, the Respondents take the view that Article 9 of the PSC provides for a specific mechanism to determine commerciality, which is to be driven solely by Respondent 1 as the Contractor, including with respect to concluding that Commercial Production is feasible under Article 9.1 of the PSC.[250] The Respondents argue that the purpose of Articles 9.1 and 9.2, and the ultimate declaration under Article 9.4(a), is to confirm that the Commercial Production previously notified under Article 9.1 is in fact feasible, and that there is a Discovery or a Commercial Discovery under the PSC.[251] In the Respondents' view, a Contractor that makes a declaration under Article 9.1 of the PSC "is not yet able to '*determine*' if a well […] '*would justify* Commercial Production' […] [and that the] entire point of the Study Program and the accompanying appraisal work is to make that very determination."[252] Further, the Respondents note that the Claimants rely on Mr Yukler's statement to examine the intent behind Article 9. However, they note that as confirmed by their witnesses, Mr Yukler was not involved in the drafting at all.[253]

368. ***Second***, as a factual matter, the Respondents dispute the Claimants' claim that they failed to fulfil their obligations under the PSC and make a commercially viable Discovery within the period specified for exploration. To the contrary, the Respondents submit that since 1997, they have invested in excess of US$460 million and conducted substantial Exploration Operations in Block XII, and further concluded that Block XII is a BCP.[254]

247 Reply, ¶¶ 218-219, *referring to* Second Aldrich Report, ¶¶ 106 *et seq.* (**Exhibit CER-11**).

248 *See* SoD, ¶¶ 146-154.

249 SoD, ¶ 148.

250 SoD, ¶ 144.

251 SoD, ¶ 151.

252 SoD, ¶ 151 (emphasis in original).

253 SoD, ¶ 153 *referring to* First Nicandros Witness Statement, ¶ 29 (**Exhibit RWS-1**).

254 SoD, ¶¶ 105, 123, 126, *referring to* First Kalandarishvili Witness Statement, ¶ 7 (**Exhibit RWS-4**).

369. The Respondents point out that even though under the PSC Respondent 1 was only expected to invest approximately US$20.38 million for the first ten years, it actually invested US$23 million in the first three years, and US$193 million in the first ten years (1997 to 2007), during which it "devoted massive efforts to Exploration works."[255] According to the Respondents, these works included conducting "significant 3D and 2D seismic surveys," drilling the first modern era exploration well in Block XII, evaluating 2,000 km of Soviet area geophysical data which it would reprocess to extract new interpretations and create new maps, and eventually conducting a major drilling campaign, including the drilling of 56 exploratory wells.[256] In this regard, the Respondents reject as false the Claimants' claim that Respondent 1 had only drilled one, as opposed to 56, exploration well in 19 years.[257] To the extent that the Claimants have excluded the wells that were drilled in the Exploitation Area, the Respondents submit that this contradicts the terms of the PSC, which explicitly links Exploratory Wells with "Commercial Production in significant quantities" which has not previously been discovered.[258] Furthermore, the Respondents argue that the Exploitation Areas are explicitly limited by horizon depths, and that Respondent 1 was drilling well beyond those limitations contained in Annex F of the PSC.[259]

370. According to the Respondents, these exploration works revealed, in particular, that 90% of Block XII is covered in a low permeability but oil saturated geological formation called the Eldari formation, from which "massive amounts of oil" could be unlocked through fracking and drilling.[260] As a result, the Respondents state that by 2010 Respondent 1 had confirmed sustainable oil production and was working on optimizing the Commercial Production calculation.[261]

371. Optimizing and establishing Commercial Production, however, was made more complicated by the fact that Block XII was a BCP, and therefore required more refined drilling, completion, and stimulation techniques that in turn required further exploration works.[262] In fact, the Respondents note, because of the differences compared to conventional oil plays, some production sharing agreements where the geology is known to contain a potential BCP, will explicitly provide for an appraisal phase (over some number of years) which sits between the exploration and development phases.[263] Relying on the report of their expert Mr Dee Patterson, the Respondents contend that Block XII is a BCP petroleum system because all the main characteristics of such a system are present, including abnormal pressures, low permeability, continuous hydrocarbon

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[255] SoD, ¶¶ 110-111, *referring to* PSC, Annex D (**Exhibit C-1**); First Nicandros Witness Statement, ¶ 57 (**Exhibit RWS-1**); First Mamulaishvili Witness Statement, ¶ 48 (**Exhibit RWS-2**).

[256] SoD, ¶¶ 111-112, 117, *referring to* First Nicandros Witness Statement, ¶ 57 (**Exhibit RWS-1**); First Mamulaishvili Witness Statement, ¶¶ 41-48 (**Exhibit RWS-2**); Expert Report of Paul Dee Patterson, Moyes & Co., dated 14 September 2018 ("First Patterson Report"), ¶ 55 (**Exhibit RER-1**).

[257] SoD, ¶¶ 116-117, *referring to* SoC, ¶ 3.

[258] SoD, ¶ 120.

[259] SoD, ¶ 155 *referring to* First Mamulaishvili Witness Statement, ¶ 100 (**Exhibit RWS-2**).

[260] SoD, ¶ 113.

[261] SoD, ¶ 114.

[262] SoD, ¶ 140.

[263] SoD, ¶ 133, First Patterson Report, ¶¶ 20 (**Exhibit RER-1**).

saturation, and undefined hydrocarbon / water contacts.[264] Mr Patterson further notes that a number of analogous oil and gas BCPs share the same characteristics as Block XII.[265] As such, because Block XII is a BCP, the Respondents explain, Respondent 1 still needs, and is continuing, to carry out more exploration operations, including fracking and drilling, in order to determine the right formula for achieving commerciality in Block XII.[266]

372. ***Third***, the Respondents submit that they have in fact established that Block XII contains multiple "discoveries" of petroleum.[267] As an initial matter, the Respondents allege that the Claimants have deliberately failed to point to any common definition of "discovery" and, as a result, incorrectly implied that a discovery requires the actual drilling of wells. To the contrary, the Respondents note, the Claimants' expert's own glossary of terms makes clear that drilling wells is not the only way to achieve "discovered" petroleum and, as its own expert Mr Patterson explains, a discovery can also refer to "discovering a known accumulation by actual evidence […] from at least one well that penetrates the accumulation to have demonstrated a 'significant' quantity of potentially moveable hydrocarbons."[268]

373. Consistent with this definition, the Respondents point out that Respondent 1 has confirmed the existence of previous discoveries that were made during the Soviet era, but which did not produce significant amounts of hydrocarbons, and further demonstrated that significant amounts of production can be obtained from within the Exploitation/Development Area.[269] In addition, the Respondents claim that Respondent 1 made other new discoveries for the first time on Block XII, including petroleum outside of the Exploitation/Development Area, significant other amounts of petroleum across nearly 90% of the block in the Eldari formation, and significant amounts of natural gas across nearly half of Block XII, called the South Kakheti Gas Complex.[270]

374. ***Fourth***, the Respondents explain that following the significant exploration operations conducted on Block XII, the decision to issue the Declaration of Commercial Feasibility on 28 February 2017 was based on four key factors.[271] Specifically, the factors are that Respondent 1 had reduced its drilling costs, improved its well completion techniques, developed cost-effective stimulation through fracking, and achieved the stable production of oil and gas.[272] In addition, the Respondents note that despite the Claimants' "feigned surprise" at the Declaration of Commercial Feasibility, Respondent 1 had explained the progress and steps leading up to this declaration to the State, not just in the Coordination Committee and technical sub-committee meetings, but also in other meetings with representatives of the Claimants.[273]

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[264] SoD, ¶ 129 *referring to* First Patterson Report, ¶¶ 12 (**Exhibit RER-1**).

[265] First Patterson Report, ¶¶ 131-140 (**Exhibit RER-1**).

[266] SoD, ¶ 141, *referring* to 2012 Work Program, at 4 (**Exhibit R-10**).

[267] SoD, ¶ 155.

[268] SoD, ¶ 155, *referring to* GCA Report, Appendix 12, at 4 (**Exhibit CER-1**); First Patterson Report, ¶ 22 (**Exhibit RER-1**).

[269] SoD, ¶ 157.

[270] SoD, ¶ 158.

[271] Letter from S. Nicandros (Frontera) to D. Tvalabeishvili (GOGC), dated 28 February 2017 (**Exhibit C-7**).

[272] SoD, ¶ 159.

[273] SoD, ¶ 160 *referring to* First Mamulaishvili Witness Statement, ¶ 121 (**Exhibit RWS-2**).

3. Whether the Study Program Was Valid and Consistent with Article 9.2 of the PSC

(a) Claimants' Position

375. The Claimants state that the Study Program which Respondent 1 submitted pursuant to Article 9.2 of the PSC was invalid and contrary to the terms of this provision because (i) Respondent 1 lacked a valid basis for promulgating the Study Program; (ii) the Study Program does not meet under other minimum requirements under the PSC and industry practice; and (iii) the Study Program is not being carried out. Moreover, contrary to the Respondents' assertion, the Claimants maintain that they are authorized to challenge the validity of the Study Program.[274]

376. ***First***, the Claimants argue that the Study Program lacked any basis because Respondent 1 "had not concluded based on [any] rational technical / geological and commercial basis that Commercial Production is feasible."[275] As an initial matter, the Claimants submit, since Respondent 1 did not make any Discovery outside the Exploitation/Development Area, there was nothing to appraise in the Study Program.[276] Moreover, the Claimants argue, the reliance on "geological formations" in the Study Program, such as the Eldari and Gareji formations, is "pure speculation, geologically incorrect, and cannot substitute for a Discovery as the basis for concluding that Commercial Production is feasible."[277] According to the Claimants and their expert, a geological formation has no relation to the Discovery of petroleum accumulations, which can only be technically established through the successful drilling of exploratory wells.[278]

377. In addition, the Claimants contend that the Respondents have not demonstrated that the entire Block XII has the same subsurface configuration, or whether and how far the Eldari formation spreads, and accordingly whether there are actual petroleum accumulations outside the Exploitation/Development Area.[279] In fact, according to the Claimants' expert and witnesses, it is highly unlikely that an entire geological rock formation classifies as a reservoir, or that petroleum accumulations are spread uniformly throughout the reservoir.[280] Furthermore, the Claimants note, even if there are petroleum accumulations outside the Exploitation/Development Area, and that they are sufficiently deep and thick to contain reservoirs, the Respondents have not shown that the reservoirs have the necessary qualities to allow petroleum to accumulate, or that the accumulations are movable and commercially producible.[281] The Claimants submit that

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[274] SoC, ¶¶ 222-266; Reply, ¶¶ 220-255.

[275] SoC, ¶¶ 222-224; Reply, ¶ 220; First GCA Report, ¶¶ 111 *et seq.* (**Exhibit CER-1**); Hearing Transcript, Day 1, 26:7-14.

[276] SoC, ¶¶ 222-223.

[277] SoC, ¶ 226; Hearing Transcript, Day 2, 74:2-14.

[278] SoC, ¶ 227; Hearing Transcript, Day 2, 74:15-25, 75:1-2.

[279] SoC, ¶¶ 231-234.

[280] SoC, ¶¶ 229-239, *referring to* First GCA Report, ¶¶ 144-146 (**Exhibit CER-1**); First Sanishvili Witness Statement, ¶¶ 36, 40 (**Exhibit CWS-1**); First Yukler Witness Statement, ¶¶ 64-68 (**Exhibit CWS-2**).

[281] SoC, ¶¶ 236-238, *referring to* First GCA Report, ¶¶ 148, 150-152 (**Exhibit CER-1**); First Sanishvili Witness Statement, ¶¶ 29 *et seq.* (**Exhibit CWS-1**); First Yukler Witness Statement, ¶¶ 58 *et seq.* (**Exhibit CWS-2**).

to determine the presence of petroleum accumulations Respondent 1 would need to undertake sufficient exploration works, including drilling exploratory wells, which it has not done.[282]

378. Moreover, the Claimants maintain that Respondent 1's failure to make a Discovery and conducting appraisal works "is not avoided by [its] baseless reliance on its allegation that Block XII is a BCP."[283] This is because Respondent 1 did not prepare the Study Program on the basis that Block XII is a BCP, as demonstrated by the fact that it does not include a single reference to an unconventional BCP, the overview and works foreseen do not identify any objective of appraising a BCP, and other sections do not attempt to qualify the Eldari or Gareji formations as a BCP.[284]

379. ***Second***, and in any event, the Claimants submit that the Study Program does not meet other minimum requirements of an appraisal program under the PSC and industry practice. In particular, the Study Program does not specify appraisal works in "reasonable detail," proposes an implementation period that is unreasonably long, and improperly delineates the entire Contract Area as the study area.[285]

380. Based on a plain reading of Article 9.2 of the PSC,[286] and consistent with industry practice,[287] the Claimants contend that the "minimum objective requirements of a proper [s]tudy [p]rogram" include appraisal works specified in reasonable detail and an estimated time frame for the commencement and completion of the study program. Even the Respondents' own expert and witness, the Claimants point out, do not dispute that the Study Program should have contained appraisal works.[288]

381. However, the Claimants allege, the proposed works in the Study Program were generalised exploratory works rather than appraisal works addressing commerciality in reasonable detail,[289] and that it "lacks the very basis of such a study / appraisal program – a Discovery which could be appraised."[290] Despite the fact that the Respondents' expert Mr Patterson concludes that the Study Program "proposes technical sound appraisal work to be conduct," the Claimants maintain that this conclusion is unsubstantiated by any analysis of the document or its proposed works.[291] In fact, the Claimants point out, Mr Patterson appears to "admit that the 'Study Program' sets out [e]xploration works and not appraisal works" because he constantly refers to drilling exploratory

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282 First Sanishvili Witness Statement, ¶¶ 39 *et seq.* (**Exhibit CWS-1**); First Yukler Witness Statement, ¶ 67 (**Exhibit CWS-2**); First GCA Report, ¶ 150 (**Exhibit CER-1**).

283 Reply, ¶ 222.

284 Reply, ¶ 224, *referring to* Second GCA Report, ¶ 117 (**Exhibit CER-10**); Second Aldrich Report, ¶¶ 113 *et seq*. (**Exhibit CER-11**); Frontera's Study Program, dated 28 February 2017, at 3 *et seq*. (**Exhibit C-8**).

285 *See* SoC, ¶¶ 239-266; Reply, ¶¶ 255-251.

286 SoC, ¶ 242.

287 SoC, ¶¶ 243-246, *referring to* Petroleum Resources Management System 2007, at 25 (**Exhibit C-10**); First GCA Report, ¶¶ 34, 102-103, 118 (**Exhibit CER-1**).

288 Reply, ¶ 229, *referring to* First Nicandros Witness Statement, ¶ 88 (**Exhibit RWS-1**); First Patterson Report, ¶ 30 (**Exhibit RER-1**).

289 SoC, ¶ 257.

290 SoC, ¶ 248, *referring to* First GCA Report, ¶ 154 (**Exhibit CER-1**). *See also* Reply, ¶ 230.

291 Reply, ¶¶ 227-228, *referring to* First Patterson Report, ¶¶ 17, 145(b) (**Exhibit RER-1**); Second Aldrich Report, ¶ 111 (**Exhibit CER-11**).

and not appraisal wells, and his summaries of "appraisal works" are actually works from the Exploration Work Program.[292] In fact, the Claimants point out, a comparison of activity proposed in the Study Program and the Exploration Work Program Respondent 1 submitted on 24 January 2017 reveals both documents to be substantially the same,[293] and Respondent 1's own executives, in discussions with Claimant 1 have admitted that the Study Program is a reconstituted version of the Exploration Work Program.[294]

382. The Claimants further argue that simply claiming that Block XII is a BCP would not alter the requirements of a study program under the PSC, nor does it alter the force or applicability of the Claimants' argument as regards the Study Program.[295] This is because the works foreseen in the Study Program are also not appropriate to appraise a BCP because it fails to identify any objective of trying to appraise a BCP, and to qualify the Eldari or the Gareji formations as a BCP.[296] According to the Claimants' expert, the Study Program also fails to identify the appropriate appraisal activities for assessing a BCP, and why the proposed works would qualify as such appraisal works.[297] Indeed, the Claimants and their expert point out, the Study Program only proposes the drilling of six wells which are unlikely to be sufficient for appraising a purported BCP which spreads over more than 5,000 square kilometres, and only analyses six structural fields and 21 structural prospects, all of which are conventional.[298]

383. In addition, the Claimants contend that the period of implementation of the Study Program is unreasonably long and basically coincides with the extension of the Secondary Exploration Phase (to April 2022) that Respondent 1 had been seeking.[299] While the Claimants acknowledge that Article 9 of the PSC does not prescribe any time limits, they also note that Article 16.2(iii), which concerns the specific appraisal of non-associated natural gas, provides that the Contractor should not take more than one year to complete an appraisal program after submission of the discovery report.[300] They also claim that one to three years is the industry practice in contrast to the Respondents' claim that it is five years, because the latter timeframe only applies in situations where there is a discovered recoverable volume which is commercially producible.[301] The Claimants also reject the Respondents' contention that a five-year period is warranted because Block XII is a BCP as unsubstantiated.[302] According to the Claimants' expert, however, a five-year appraisal program would only be appropriate if it matched with appropriate appraisal works

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[292] Reply, ¶ 233, *referring to* First Patterson Report, ¶¶ 94-97 (**Exhibit RER-1**).

[293] SoC, ¶¶ 252-255; Reply, ¶ 232.

[294] SoC, ¶ 255 *referring to* First Tvalabeishvili Witness Statement, ¶ 69 (**Exhibit CWS-3**); First Abaiadze Witness Statement, ¶ 67 (**Exhibit CWS-6**).

[295] Reply, ¶¶ 221-223.

[296] Reply, ¶ 241, *referring to* Second Aldrich Report, ¶ 113 (**Exhibit CER-11**); Frontera's Study Program, dated 28 February 2017, at 4-14 (**Exhibit C-8**).

[297] Reply, ¶ 240, *referring to* Second Aldrich Report, ¶ 111 (**Exhibit CER-11**).

[298] Reply, ¶ 241, *referring to* Second Aldrich Report, ¶¶ 13, 114, 118 (**Exhibit CER-11**).

[299] SoC, ¶ 259, *referring to* Frontera's Study Program, dated 28 February 2017, at 10 (**Exhibit C-8**).

[300] SoC, ¶¶ 259-260.

[301] SoC, ¶¶ 263-264.

[302] Reply, ¶¶ 242-246.

to assess a BCP, but this is absent from the Study Program.[303] The Claimants similarly reject the Respondents' claim that the five-year period is warranted because of the complexity of the geology in the Eldari and Gareji formations.[304] Among other things, the Claimants note that Respondent 1 has shown no intent to appraise the Gareji formation as a BCP.

384. The Claimants also consider the Respondents to have improperly and inappropriately designated the entire Contract Area as the study area, because it does not relate to a specific Discovery, and in any event, a declaration of commercial feasibility cannot have been made and could not be appraised regarding the entire Contract Area. The Claimants further reject the Respondents' expert's claim that this designation is appropriate because it is a BCP, and because the Eldari reservoir makes up more than 90% of Block XII and has the potential to be productive throughout the block at multiple intervals.[305] This is because, the Claimants point out, Mr Patterson improperly relies on the incorrect conclusion that a hydrocarbon "show" is the equivalent of oil and/or gas saturation and fails to document a single BCP within Block XII.[306] Indeed, in the Claimants' view, the Respondents only did so because they "wished to circumvent the relinquishment obligation."[307]

385. In response to the Respondents' contention that Claimants were deliberately trying to block the Respondents' operations by objecting to the Study Program, the Claimants contend that they are fully entitled to challenge a proposed study program under the PSC notwithstanding Respondent 1's right to overrule any such objection under Article 7.7.[308] In any event, the Claimants maintain that Respondent 1 may only exercise its rights under Article 7.7 with respect to a study program that complies with the terms of the PSC, and that any exercise of rights with the purpose and intent to unilaterally extend the term under the PSC would constitute an abuse of rights and violate the duty to cooperate under the PSC.[309]

386. ***Third***, the Claimants reject as untrue the Respondents' claim that Respondent 1 is currently completing the alleged appraisal works specified in the Study Program.[310] The Respondents, the Claimants note, have not provided any evidence Respondent 1 undertook any significant activities outside the Exploitation/Development Area, have only undertaken efforts related to establishing Commercial Production of crude oil and not within the Exploitation/Development Area, and even admitted that Respondent 1 was "nowhere near being in a position to assess commerciality, and that such assessment has not even started."[311] In addition, the Claimants note, Respondent1 has failed to drill any of the new wells or side tracks in accordance with either the 2018 or 2019 Work Program and Budget.[312] Indeed, the Claimants allege, Respondent 1's chief

[303] Reply, ¶ 245, *referring to* Second Aldrich Report, ¶ 143 (**Exhibit CER-11**).

[304] Reply, ¶ 246.

[305] Reply, ¶¶ 248-250, *referring to* SoC, ¶ 177; First Patterson Report, ¶ 141 (**Exhibit CER-11**).

[306] Reply, ¶ 250, *referring to* Second Aldrich Report, ¶ 141 (**Exhibit CER-11**).

[307] SoC, ¶ 266.

[308] Reply, ¶¶ 253-254.

[309] Reply, ¶¶ 253-255.

[310] Reply, ¶ 252; E-mail from the Claimants to the Tribunal, dated 29 January 2020.

[311] Reply, ¶ 252, *referring to* Second Aldrich Report, ¶ 144 (**Exhibit CER-11**).

[312] Reply, ¶ 252.

geologist himself admitted during the last meeting of the technical sub-committee that no drilling operations have been conducted so far in either new or existing wells under the 2019 program.[313] While the Respondents in their Post-Hearing Brief claim to have submitted evidence regarding the drilling of four new wells under the Study Program, the Claimants maintain that it is irrelevant because the evidence pertains only to old wells that had been drilled within the Taribani Field and the Exploitation/Development Area.[314]

(b) Respondents' Position

387. While the Respondents agree that the purpose of the Study Program is to specify the appraisal work to be undertaken in order to be able to make a declaration under Article 9.4(a) that Commercial Production is feasible in Block XII, they maintain, contrary to the Claimants' submission, that the Study Program is valid and consistent with the terms of Article 9.2 of the PSC.[315] This is because (i) the Study Program was approved by the Coordination Committee, and the PSC does not provide an avenue for the Claimants to challenge the Study Program outside of the Coordination Committee; (ii) the appraisal work conducted by Respondent 1 is aimed at confirming commercial feasibility, (iii) the Claimants' criticisms of the Study Program are weak and unsupported; and (iv) Respondent 1 is completing the work contemplated in the Study Program.[316]

388. ***First***, the Respondents argue that the Study Program is valid because it was approved by the Coordination Committee.[317] In particular, the Respondents note, the technical sub-committee of the Coordination Committee reviewed the Study Program, Respondent 1 responded fully to the objections that Claimant 1 has raised regarding the Study Program, and on 30 March 2017, when the members of the Coordination Committee appointed by Claimant 1 refused to vote on the approval of the Study Program, the members of the Coordination Committee appointed by Respondent 1 voted and approved it pursuant to Article 7.7 of the PSC.[318] In the Respondents' view, the Claimants are not entitled to challenge Coordinate Committee decisions that were validly taken and accordingly, no other means exist for the Claimants to challenge the Study Program.[319]

389. ***Second***, the Respondents maintain that the Study Program complied with Article 9.2 as it provides for appraisal work and contains in detail the analysis which Respondent 1 had performed and would undertake over the next five years in order to move to Commercial Production.[320] In

313 Reply, ¶ 252, *referring to* Transcript of the Technical Sub-Committee Meeting dated 11 April 2019, at 5 (**Exhibit C-213**).

314 E-mail from the Claimants to the Tribunal, dated 29 January 2020, *referring to* Respondent's Post-Hearing Brief, at 7; Public Announcements regarding Work Performed in accordance with Study Program (2018) (**Exhibit R-111**).

315 SoD, ¶ 162.

316 SoD, ¶¶ 161-183.

317 SoD, ¶ 167.

318 SoD, ¶ 165, *referring to* Letter from Frontera-appointed Coordination Committee members to GOGC appointed Coordination Committee members dated 30 March 2017 (**Exhibit C-69**).

319 SoD, ¶ 170.

320 SoD, ¶ 171, *referring to* Frontera's Study Program, dated 28 February 2017, at 6-13 (**Exhibit C-8**); First Patterson Report, ¶ 145 (**Exhibit RER-1**).

this respect, contrary to the Claimants' contention, the Respondents argue that there is no requirement for a Discovery prior to making the Declaration of Commercial Feasibility as the purpose of the Declaration of Commercial Feasibility and the following Study Program is to determine whether there is a Discovery or a Commercial Discovery within the meaning of the PSC.[321]

390. ***Third***, the Respondents reject the Claimants' criticisms regarding the Study Program's reliance on geological formations, estimated time frame, and study area scope. As an initial matter, the Respondents note that prior to these proceedings, the Claimants had never alleged that the Study Program could not rely on geological formations.[322] Moreover, the Respondents note, the Claimants' expert's own glossary specifically provides that other than exploratory wells, "[l]og and/or core data may suffice for proof of existence of moveable petroleum if an analogous reservoir is available for comparison."[323] Consistent with this definition, the Respondents' expert Mr Patterson explains that there is an analogous reservoir available for comparison, which in this case "represents more than 90% of Block XII when speaking in terms of the Eldari reservoir."[324] With respect to the Claimants' criticism regarding the length of the Study Program, the Respondents note that the PSC does not define a period for appraisal activities, but leaves it open to a necessary period in relation to the field and appraisal work to be completed. In addition, the Respondents note that while the Claimants' expert concludes that a period of one to three years would be "common," he does not address what would be a reasonable period for appraisal work for "low perm oil plays" or BCPs.[325] The Respondents' expert Mr Patterson, however, has considered the specific geology and other data collected regarding Block XII and concludes that a five-year appraisal period is reasonable, "taking account of the vastness and complexity of the resource to be appraised," as well as the "difficult geological conditions of the Eldari and the Gareji."[326]

391. The Respondents also submit that Claimants' criticism of the whole area of Block XII being designated as the study area is particularly weak since the work being undertaken by Respondent 1 in the Study Program is precisely to delineate and appraise which portions of Block XII will be converted into Development Areas and which portions will be relinquished.[327]

392. ***Fourth***, the Respondents confirm that since the Coordination Committee's approval of the Study Program, Respondent 1 has been "completing the appraisal work specified in it."[328] This includes, *inter alia*, the drilling of four wells, complex interpretation of data, well testing, and the perforation and stimulation of zones.[329]

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[321] SoD, ¶ 164.

[322] SoD, ¶ 175.

[323] SoD, ¶ 176, *referring to* First GCA Report, Appendix 12, at 4 (**Exhibit CER-1**).

[324] SoD, ¶ 177, *referring to* First Patterson Report, ¶ 11 (**Exhibit RER-1**).

[325] SoD, ¶ 183, *referring to* SoC, ¶¶ 259-264; First GCA Report ¶ 35 (**Exhibit CER-1**).

[326] SoD, ¶ 181, *referring to* First Patterson Report, ¶¶ 20, 145 (**Exhibit RER-1**).

[327] SoD, ¶ 184.

[328] SoD, ¶ 191. *See also* Respondents' Post-Hearing Brief, at 7.

[329] SoD, ¶ 192; Respondents' Post-Hearing Brief, at 7, *referring to* Public Announcements regarding Work Performed in accordance with Study Program (2018) (**Exhibit R-111**).

4. Whether the Declaration under Article 9.4(c) Was Valid

(a) Claimants' Position

393. The Claimants submit that Respondent 1's Declaration under Article 9.4(c) of the PSC is invalid because it did not meet the minimum pre-conditions under the contract, namely, Respondent 1 must have validly complied with Articles 9.1 and 9.2 and submitted a further Exploration Work Program or further Study Program, and the initial Study Program referred to in Article 9.2 must at least have commenced.[330] The Claimants emphasize that their interpretation of these provisions is consistent with the applicable rules of contract interpretation, and is supported both by the plain text of Article 9.4(c), given the use of the word "further" twice,[331] and by a reading of Article 9 as a whole.[332]

394. The Claimants submit that for the reasons stated in Sections V.E.2(a) and V.E.3(a) above, Respondent 1 did not comply with Articles 9.1 and 9.2. In addition, the Claimants contend that Respondent 1 did not intend to carry out further works necessary to confirm whether Commercial Production was feasible, or submit a further study program or exploration work program, because the Respondents referred only to the same work proposed in the initial Study Program.[333] The Claimants further observe that, in any event, Respondent 1 had not commenced any works under the initial Study Program and therefore could not have determined whether any further work was necessary.[334] Thus, the Claimants argue that the Declaration under Article 9(4)(c) is invalid.

(b) Respondents' Position

395. The Respondents reject the Claimants' arguments and maintain that the Declaration is valid under Article 9.4(c) of the PSC.[335]

396. As an initial matter, the Respondents point out, the Claimants did not immediately challenge the Declaration under Article 9(4)(c) other than on grounds that the Notice and Study Program were not valid. The Claimants had not, until this arbitration, ever claimed that a further Study Program was required.[336] Moreover, in the Respondents' view, the Claimants' interpretation of Article 9.4(c) is erroneous and illogical, because Article 9.4(c) specifically allows Respondent 1 to file a declaration "at any other time" and nothing in the text as it stands requires two study programs.[337] In addition, the Respondents allege, and the Claimants have not disputed, that the text of Article 9.4 is unambiguous and cannot be re-interpreted.[338] If Respondent 1 needed to submit a further study program in order to be able to rely on Article 9.4(c), as argued by the

[330] SoC, ¶¶ 267-286; Reply, ¶¶ 256-266.

[331] Reply, ¶ 262.

[332] Reply, ¶¶ 259-263.

[333] SoC, ¶¶ 276-277.

[334] SoC, ¶ 278.

[335] SoD, ¶ 184-190.

[336] SoD, ¶ 186.

[337] SoD, ¶ 187.

[338] SoD, ¶ 188.

Claimants, then it would have expressly stated as such, and not have provided the option of submitting a declaration "at any other time."[339]

397. Moreover, the Respondents argue that it was entitled to submit the Declaration under Article 9.4(c) even on the Claimants' own case, namely that a reasonable time to complete the Study Program was one to three years. Assuming this was the case, the Respondents reason, after the Study Program was approved on 30 March 2017, the appraisal works to be conducted under the five-year Study Program would not have been completed before the relinquishment obligation under Article 6 was triggered, and accordingly, Respondent 1 would have had to file a declaration under Article 9.4(c) on 30 March 2020 in any event.[340]

5. Tribunal's Analysis

398. As detailed above, the Claimants submit that at the end of the Secondary Exploration Phase, which was extended to 14 November 2017 under Amendment No. 2 to the PSC,[341] Respondent 1 was obligated to relinquish the entirety of the Contract Area located outside the Exploitation/Development Area pursuant to Article 6.1(b) of the PSC.[342] The Respondents, in contrast, maintain that Respondent 1 is not subject to any relinquishment obligation because it made a Declaration of Commercial Feasibility under Article 9.1 and a Declaration under Article 9.4(c) of the PSC which, according to Article 9.5 of PSC, means that the "Contractor shall not be obligated to relinquish the relevant Study Area pending the completion of the further work."[343] In response, the Claimants allege that Respondent 1 failed to comply with Article 9.1 and other requirements in Article 9 of the PSC. The Respondents contend otherwise.

399. In the following sections, the Tribunal will address (a) the Parties' dispute regarding Article 9.1 of the PSC, followed by (b) the other requirements of Article 9.

(a) Whether Respondent 1 Complied with Article 9.1 of the PSC

400. In the Tribunal's view, the Parties' dispute with respect to whether Respondent 1 complied with Article 9.1 of the PSC turns, in essence, on their disagreement as to whether (i) the mechanism set out in Article 9 of the PSC, and in particular a declaration of commercial feasibility under Article 9.1, pre-supposes a discovery; (ii) Respondent 1 has indeed made any discovery (if so required); and (iii) Respondent 1 complied with the other requirements in Article 9. The Tribunal will deal with each issue in turn.

i. Whether a Discovery Is Required under Article 9.1 of the PSC

401. The Parties disagree as to whether a discovery is required in order to make a declaration under Article 9.1 of the PSC, which provides:

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339 SoD, ¶ 189.

340 SoD, ¶ 192, *referring to* Operation updates: Frontera Resources Corporation dated 19 July 2018 (**Exhibit R-100**).

341 PSC, Amendment No 2, Section 1 (**Exhibit C-3**).

342 SoC, ¶ 154; Reply, ¶ 369(4); Hearing Transcript, Day 1, 21:7-13.

343 SoD, ¶¶ 293-294.

> If, at any time Contractor concludes that Commercial Production (or significant additional Commercial Production if Commercial Production has previously been established) from the Contract Area is feasible, it shall notify Georgian Oil within five (5) days of reaching such a conclusion.

402. The Claimants argue that based on a textual and systematic interpretation of Article 9.1, read in conjunction with the other provisions in Article 9, as well as Articles 1.15, 1.34, and 1.14, which define the terms "Commercial Production," "Discovery," and "Commercial Discovery," respectively, a discovery is required before the Contractor can "conclude[] that Commercial Production […] from the Contract Area is feasible."[344] The Claimants further contend that this interpretation is confirmed by industry practice and standards,[345] and the Parties' common intentions as evidenced by Mr Yukler's testimony.[346]

403. The Respondents, on the other hand, argue that a discovery is not required before the Contractor can conclude that Commercial Production is feasible because Article 9.1 does not contain any reference to a discovery, whether as defined in Article 1.34 of the PSC or otherwise.[347] Moreover, the Respondents submit that since the definition of "Discovery" is explicitly linked to the development (as opposed to appraisal) phase under the PSC, a "Discovery" or "Commercial Discovery" only has to occur at a later stage, once the Contractor has in fact determined that the relevant well(s) would justify Commercial Production.[348]

404. For the following reasons, the Tribunal concludes that the mechanism set out in Article 9 of the PSC, and in particular a declaration of commercial feasibility under Article 9.1 of the PSC, pre-supposes a discovery.

405. According to Article 9.1 of the PSC, the Contractor may make a declaration thereunder if it "concludes that Commercial Production […] from the Contract Area is feasible." The term "Discovery" is defined in Article 1.34 of the PSC, which provides:

> "Discovery" means a well that the Contractor determines has encountered Petroleum which would justify Commercial Production.

406. Based on the plain terms of this definition of a "Discovery," as well as common sense, Commercial Production of petroleum is linked to, and indeed requires, a discovery thereof. For the same reasons, the determination of whether Commercial Production is feasible pre-supposes a discovery that enables that assessment to be made.

407. This interpretation is consistent with the context of Article 9.1 of the PSC, the first of 11 sub-provisions in Article 9, which governs according to its title the "Procedure For Determination of Commerciality and Approval of Development Plans." The purpose of Article 9.1 is to kick-off appraisal works according to the procedure in Article 9, which envisions *inter alia* the development of a study program for the conduct of appraisal works (Article 9.2), and the conduct and evaluation of said appraisal works (Article 9.3), for the purpose of reaching a decision as to

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344 SoC, ¶¶ 173-189; Reply, ¶ 70.

345 SoC, ¶¶ 190-195, *referring to* PRMS 2007, at 6 (**Exhibit C-10**); First GCA Report, ¶¶ 27-18, 113; Reply, ¶¶ 97-100, *referring to* First Patterson Report, ¶ 21 (**Exhibit CER-1**); Second GCA Report, ¶ 61 (**Exhibit CER-10**).

346 SoC, ¶¶ 196-197, *referring to* First Yukler Witness Statement, ¶ 36 (**Exhibit CWS-2**).

347 SoD, ¶ 146.

348 SoD, ¶¶ 149-152.

whether the discovery is indeed worth developing (Articles 9.4 to 9.6). The term "Appraisal" is defined in Article 1.5 of the PSC as "all works carried out by the Operating Company to evaluate and delineate the commercial character of a Discovery of Petroleum in the Contract Area." Accordingly, since the purpose of the "Appraisal" is to evaluate a "Discovery of Petroleum in the Contract Area," the procedure set out in Article 9 pre-supposes a discovery.

408. Industry standards and practice, as articulated by the Parties' experts, further confirm this interpretation. The First GCA Report, for example, describes a typical appraisal procedure as follows:

> Following a discovery of Petroleum, and an initial assessment that indicates it being potentially commercial (i.e., to have the potential for commercial production), the contractor notifies the state, and proceeds to the appraisal period. The purpose of appraisal is to confirm, through specific appraisal activities, that the Discovery is commercial.[349]

409. Mr Patterson, the Respondents' expert, similarly appears to confirm in his report that appraisal works pre-suppose a discovery, stating that "[i]f during the Exploration Phase a discovery of hydrocarbon is made, the discovery is appraised to determine commercial viability."[350]

410. In analysing the terms of the PSC, the Tribunal did not rely on Mr Yukler's testimony regarding the Parties' alleged mutual intention, in particular in light of the lack of clarity with respect to his role in drafting Article 9. While in his first witness statement, Mr Yukler states that he "had a direct role in drafting" Article 9,[351] he clarifies in his second witness statement that he "did not mean to say that [he] drafted, or redrafted the text of Article 9," but instead only "analysed the text of this provision very carefully, line by line."[352] The Tribunal further notes that the Respondents' witnesses contest the role that Mr Yukler claims to have played in the drafting of Article 9.[353]

411. Separately, the Tribunal considers inapposite the Respondents' arguments in support of the interpretation that Article 9.1 of the PSC does not pre-suppose a discovery.

412. The fact that Article 9.1 does not contain the word "discovery" or "Discovery" is, in the Tribunal's view, irrelevant. In accordance with the relevant principles under Georgian and Texas law,[354] the Tribunal is required to look at the contract as a whole, and not the provisions in an isolated fashion, when interpreting a contract. Therefore, the lack of the word "discovery" or "Discovery," whether as defined in Article 1.34 of the PSC or otherwise, is not of conclusive significance given that, for the reasons mentioned above, Article 9 as a whole makes such a requirement clear.

413. The Tribunal is similarly unconvinced by the Respondents' argument that a "Discovery" is linked to the development phase, and is therefore not required for a declaration under Article 9.1 of the

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[349] First GCA Report, ¶ 30 (**Exhibit CER-1**). *See also* Second GCA Report, ¶¶ 58-61 (**Exhibit CER-10**).

[350] First Patterson Report, ¶ 21 (**Exhibit RER-1**).

[351] First Yukler Witness Statement, ¶ 22 (**Exhibit CWS-2**).

[352] Second Yukler Witness Statement, ¶ 27 (**Exhibit CWS-12**).

[353] First Nicandros Witness Statement, ¶¶ 31-32 (**Exhibit RWS-1**); First Mamulaishvili Witness Statement, ¶¶ 29-30 (**Exhibit RWS-2**).

[354] *See supra* ¶ 292.

PSC, which occurs in the preceding appraisal phase. According to the Respondents, because the definition of "Discovery" in Article 1.34 of the PSC refers to "Commercial Production," which in turn is defined in Article 1.15 with reference to "production of Petroleum from a Development Area," a Discovery must be linked to a Development Area. This argument, however, overlooks the fact that the term "Discovery" is defined in the PSC as a "well that the Contractor determines has encountered Petroleum which ***would*** justify Commercial Production."[355] The use of the word "would" indicates that a "Discovery" exists as long as Commercial Production is a possibility in the future. Indeed, the procedure laid out in Article 9 of the PSC foresees two scenarios, one in which a "Discovery" is appraised, found commercial, and becomes the basis for Commercial Production in a Development Area, and another in which a "Discovery" is appraised, found *not* to be commercial, and does not become the basis for Commercial Production.[356] The procedure thus recognizes that, at the time of the discovery, no such Commercial Production is as yet guaranteed.

414. For the sake of completeness, the Tribunal notes that while one could have a theoretical debate as to whether Article 9.1 pre-supposes a "Discovery" as defined in Article 1.34 of the PSC, or a "discovery" as understood more generally under industry standards and practice, as discussed below,[357] it is of the view that these definitions do not substantially differ, and thus that the debate is moot.

ii. Whether Respondent 1 Made a Discovery

415. Having determined that the mechanism set out in Article 9 of the PSC, and in particular the declaration of commercial feasibility under Article 9.1, pre-supposes a discovery, the Tribunal must now determine whether Respondent 1 has indeed made such a discovery. In order to do so, the Tribunal must (i) define the term "discovery;" (ii) determine the required location of the discovery, and in particular whether, for the purposes of Article 9, the discovery must be located outside of the Exploitation/Development Area; and (iii) assess whether the Respondents have provided sufficient evidence of such a discovery.

(a) Definition of Discovery

416. The Parties disagree as to the definition of a discovery. The Claimants submit that a discovery under the PSC which is in line with the industry standard as set out in the PRMS 2007, requires the drilling of "one or several exploratory wells [that] establish[] through testing, sampling, and/or logging the existence of a significant quantity of potentially moveable hydrocarbons."[358] The Respondents contend, in contrast, that drilling exploratory wells is not the only way to achieve a discovery, and that, notably when unconventional resources such as BCPs are involved,

355 PSC, Art. 1.34 (**Exhibit C-1**) (emphasis added).

356 *See* PSC, Art. 9.4 (**Exhibit C-1**).

357 *See infra* ¶¶ 417-422.

358 Reply, ¶ 136, *citing* PRMS 2007, at 6 (**Exhibit C-10**). *See also* First GCA Report, ¶ 74 (**Exhibit CER-1**); Second GCA Report, ¶ 47 (**Exhibit CER-10**).

the use of log and/or core data from the subject reservoir in addition to comparisons with analogous reservoirs may suffice as "proof of the existence of moveable petroleum."[359]

417. The Tribunal notes that both the PSC and industry standards require a well to be drilled for a discovery to occur. Article 1.34 of the PSC defines the term "Discovery" as a "***well that*** the Contractor determines ***has encountered Petroleum*** which would justify Commercial Production."[360] Similarly, both the PRMS 2007 and the more recent 2018 version thereof (the "**PRMS 2018**") provide that a discovery is determined to exist when "***one or several exploratory wells*** have established through testing, sampling, and/or logging the existence of a significant quantity of potentially moveable hydrocarbons."[361] In order to establish a "known accumulation," PRMS 2007 further states it "must have been ***discovered, that is, penetrated by a well*** that has established through testing, sampling, or logging the existence of a significant quantity of recoverable hydrocarbons."[362] The Respondents' expert Mr Patterson similarly acknowledges that the drilling of an exploratory well that encounters hydrocarbons is necessary for there to be a discovery, and states under the "general industry definition," a "'discovery' is discovering a known accumulation by actual evidence (testing, sampling and/or logging) from ***at least one well that penetrates the accumulation*** […]."[363]

418. The Respondents submit, however, that the drilling of a well is not the only way to achieve a discovery, and that log and/or core data from the subject reservoir and comparisons with analogous reservoirs, such as those identified by Mr Patterson in his expert report with respect to BCPs,[364] could similarly suffice as proof of the existence of moveable petroleum.[365]

419. In the Tribunal's view, the fact that log and/or core data as well as comparisons with analogous reservoirs may be used to corroborate a discovery does not change the conclusion that, regardless of whether the resource is conventional or unconventional, a discovery requires the drilling of a well in the first instance. This is because, as the Claimants' expert Dr Wright testified, in order to obtain log and/or core data from the subject reservoir, a well must first be drilled.[366] For the same reason, while log and/or core data from an analogous reservoir might replace a successful flow test or sampling from a subject well, there must already exist some log and/or core data from the subject well to allow for a comparison with the analogous data, and this again requires the drilling of a well.[367] As Dr Wright notes, "[t]he analogue provides you with additional,

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359 SoD, ¶¶ 155-156, *referring to* First GCA Report, Appendix 12, at 4 (**Exhibit CER-1**); First Patterson Report, ¶ 22 (**Exhibit RER-1**).

360 PSC, Art. 1.34 (**Exhibit C-1**) (emphases added).

361 PRMS 2007, at 6, ¶ 2.1.1 (**Exhibit C-10**) (emphases added); PRMS 2018, at 6, ¶ 2.1.1 (**Exhibit C-209**) ("a discovery exists when one or more exploratory wells have established through testing, sampling, and/or logging the existence of a significant quantity of potentially recoverable hydrocarbons and thus have established a known accumulation").

362 PRMS 2007, at 38 (**Exhibit C-10**).

363 First Patterson Report, ¶ 22 (**Exhibit RER-1**) (emphasis added).

364 First Patterson Report, ¶¶ 122-140 (**Exhibit RER-1**). *See also* SoD, ¶¶ 135-139.

365 SoD, ¶ 156.

366 Hearing Transcript, Day 2, 97:14-16.

367 Hearing Transcript, Day 2, 83:15-86:25, 89:7-90:22.

supplementary confidence […] [and] are often used not as a shortcut, but as a way of giving us additional confidence in the interpretation of the data gathered in the [subject] well."[368]

420. Dr Wright's testimony is corroborated by the PRMS 2018, which provides that only in situations in which there is an "absence of a flow test or sampling, [and] the discovery determination requires confidence in the presence of hydrocarbons and evidence of producibility" can such a determination "be ***supported*** by suitable producing analogs."[369]

421. Similarly, the Respondents and their expert Mr Patterson appear to acknowledge that exploratory wells must be drilled even when unconventional resources such as BCPs are involved, and that the main difference in the exploration process is that after drilling the well, "additional steps are necessary before reaching the decision to commercially develop the field or trend."[370] For example, referring to unconventional resources such as BCPs, Mr Patterson explains in his report that "[b]ecause of low permeability, it is usually not immediately obvious ***when a well is drilled*** that encounters hydrocarbons that it will be a discovery. It usually takes additional study, seismic, geologic studies to integrate logs, core data and additional depositional modeling ***along with drilling*** and completing multiple delineation wells to make a determination."[371] In fact, he notes, "[m]ultiple exploration ***wells are usually necessary***."[372]

422. For the above-mentioned reasons, the Tribunal finds that a discovery pursuant to Article 1.34 of the PSC, and as confirmed by industry standards, requires at a minimum one "well that the Contractor determines has encountered Petroleum."[373] While the Tribunal does not exclude that testing, sampling, and/or logging may be used to establish the quantity of potentially recoverable hydrocarbons, it does not replace the requirement of the existence of one or more exploratory wells to make a discovery.

(b) Location of Discovery

423. It is undisputed that the PSC initially defined an Exploitation Area which comprised five fields in which discoveries had been made previously during the Soviet era in Georgia. Those fields are delineated in Annex F of the PSC, with precise geographical and depth limitations or "horizons" as follows:

(i) Mirzani field, with a horizon of 16;

(ii) Taribani field, with a horizon of 18;

(iii) Patara-Shiraki field, with a horizon of 12;

(iv) Nazarlebi field, with a horizon of 12; and

368 Hearing Transcript, Day 2, 84:9-17.

368 Hearing Transcript, Day 2, 84:9-10, 84:15-17.

369 PRMS 2018, at 6, ¶ 2.1.1 (**Exhibit C-209**) (emphasis added).

370 First Patterson Report, ¶ 113 (**Exhibit RER-1**).

371 First Patterson Report, ¶ 103 (**Exhibit RER-1**) (emphasis added).

372 First Patterson Report, ¶ 114 (**Exhibit RER-1**) (emphasis added).

373 PSC, Art. 1.34 (**Exhibit C-1**).

(v) Bayda field, with a horizon of 12.[374]

424. It is also undisputed that the Amendment No. 2 to the PSC created the Exploitation/Development Area by transforming the Exploitation Area into a Development Area, adding to the five previous fields, one additional field (Mtsarekhevi).[375] Section 3 of Amendment No. 2 provides:

> **Section 3. Automatic Formation of Development Area on Exploitation Areas.** Notwithstanding anything to the contrary contained in the Contract, the Parties agree that, promptly on the occurrence of the fifteenth anniversary of the date on which the Contract was entered into, ***a Development Area shall automatically be deemed to have been approved and formed on the Exploitation Areas. For the avoidance of any doubt, such Development Area shall not be subject to requirements set out in Article 9 of the Contract;*** provided however that, on the occurrence of the fifteenth anniversary of the date on which the Contract was entered into, Contractor shall submit to the Coordination Committee a work plan detailing Contractor's proposals for development and operation of Development Area created hereunder. Coordination Committee shall not unreasonably withhold or delay approval of such work plan, and it shall be deemed approved as submitted if no written objections are presented thereto by any member of the Coordination Committee within thirty (30) days of receipt.[376]

425. Pursuant to this provision, Article 9 does not apply to the Exploitation/Development Area. This, again, is undisputed between the Parties,[377] and explicitly acknowledged by the Respondents both in contemporaneous correspondence and in their submissions.[378]

426. Article 9 can therefore only apply to (new) discoveries outside the Exploitation/Development Area and, correspondingly, does not apply to the pre-existing discoveries inside the Exploitation/Development Area. Indeed, given that Article 9 sets out the appraisal works and procedure for the creation of a Development Area, as noted above,[379] it would be illogical to apply this Article to an area that has already been designated as such.

427. Accordingly, for the purposes of Article 9, the Tribunal finds that the Respondents must establish the existence of a discovery outside the Exploitation/Development Area.

(c) Evidence of Discovery

428. The Tribunal will now proceed to examine the evidence before it and determine whether the Respondents have established the existence of a discovery which, as concluded above, (i) requires

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374 PSC, Art. 1.40, Annex F (**Exhibit C-1**); SoC, ¶ 63; SoD, ¶¶ 119, 121.

375 SoC, ¶ 63; SoD, ¶¶ 317, 321.

376 PSC, Amendment No. 2, Section 3 (**Exhibit C-3**) (emphasis added).

377 Reply, ¶ 153.

378 *See* Letter from G. Zabakhidze (Frontera) to K. Kokolashvili (GOGC), dated 9 July 2014, at 2 (**Exhibit C-81**) ("Under Amendment #2 to the Contract, the provisions of Article 9 of the Contract do not apply to gas produced in Mtsarekhevi Gas Complex"); Letter from L. Bakhutashvili (Frontera) to D. Tvalabeishvili (GOGC), dated 25 June 2015, at 1 (**Exhibit C-82**) ("Amendment #2 specifically states that the Development Area created thereunder shall not be subject to the requirements of Article 9 of the PSA which sets forth procedures for determination of commerciality and approval of development plans"); SoD, ¶¶ 317, 328.

379 *See supra* ¶ 407.

the existence of one or more exploratory wells that have encountered hydrocarbons; and (ii) must be located outside the Exploitation/Development Area.

429. The Respondents submit that Respondent 1 has made the following "multiple" discoveries:

(i) discoveries made during the Soviet era;[380]

(ii) production of petroleum from the Exploitation/Development Area;[381]

(iii) discoveries outside the Exploitation/Development Area (*e.g.*, from zones 12 to 15, 18 to 19, and 23 to 25 in the Taribani field);[382]

(iv) discovery of petroleum "across nearly 90% of the block in the Eldari formation;"[383] and

(v) discovery of natural gas "across nearly half of Block XII" in the South Kakheti Gas Complex.[384]

430. With respect to the alleged discoveries in (i) and (ii), the Tribunal notes that, by the Respondents' own admission,[385] they are located within the Exploitation/Development Area and therefore do not qualify as new discoveries and cannot be taken into account under Article 9.[386]

431. Regarding the alleged discoveries that were made "outside the Exploitation/ Development Area" under point (iii), the Respondents have only identified, and provided evidence concerning, zones 12 to 15, 18 to 19, and 23 to 25 in the Taribani field.[387] Thus, while the Respondents appear to allege the existence of other zones within this category,[388] the Tribunal shall assume, in the absence of further evidence, that they only refer to those in the Taribani field.

432. According to Annex F of the PSC, as detailed above, the depth limitation for the Taribani field is set at horizon or zone 18.[389] Thus, zones 12, 13, 14, 15, and 18 of the Taribani field are located within the Exploitation/Development Area and do not qualify as new discoveries.

433. As to zones 19, 23, 24, and 25 of the Taribani field, the only substantiating evidence provided by the Respondents is Mr Zabakhidze's testimony, which addresses zone 19 only, and not zones 23, 24, or 25.[390] In his witness statement, Mr Zabakhidze explains that "Niko-1 was also side-tracked so that Horizon XIX was perforated" and cites to the 2016 work program and budget as

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380 SoD, ¶ 157, *referring to* First Nicandros Witness Statement, ¶ 46 (**Exhibit RWS-1**); First Mamulaishvili Witness Statement, ¶ 15 (**Exhibit RWS-2**).

381 SoD, ¶ 158(a), *referring to* First Mamulaishvili Witness Statement, ¶ 45 (**Exhibit RWS-2**).

382 SoD, ¶ 158(b), *referring to* First Zabakhidze Witness Statement, ¶ 84 (**Exhibit RWS-3**).

383 SoD, ¶ 158(c), *referring to* First Zabakhidze Witness Statement, ¶ 59 (**Exhibit RWS-3**).

384 SoD, ¶ 158(d).

385 SoD, ¶¶ 157, 158(a).

386 *See supra* ¶ 427.

387 *See* SoD, fn. 199.

388 SoD, ¶ 158(b) (citing the Taribani field zones as an "example" of "other discoveries of petroleum outside the Exploitation Areas").

389 PSC, Annex F (**Exhibit C-1**) ("TARIBANI: TO THE BASE OF HORIZON #18 IN THE SHRAKIAN FORMATION").

390 *See* SoD, fn. 199.

support.[391] It is not clear to the Tribunal, however, how the 2016 work program and budget, in turn, provides any evidence of a discovery in zone 19 of the Taribani field. As an initial matter, it defies logic that a 2016 work program and budget should provide the basis for a discovery that was supposed to have been made in 2017 when Respondent 1 made its Declaration of Commercial Feasibility. Moreover, while page nine of the 2016 work program and budget, to which Mr Zabakhidze cites in his witness statement, mentions zone 19, it in fact states that "sidetracking and Fracking of Hor-XIX were ***postpone[d]*** according to the results."[392]

434. Regarding the alleged discovery described in (iv) of petroleum "across nearly 90% of the block in the Eldari formation," the Respondents again rely only on Mr Zabakhidze's testimony as evidence.[393] Mr Zabakhidze, in turn, quotes from the 2014 work plan and budget, which lists certain conclusions reached by Respondent 1 as a result of their activities and explorations in Block XII.[394] Again, however, it is not clear to the Tribunal how the 2014 work program and budget, in turn, provides any evidence of a discovery in the Eldari formation. First, it is unclear how the 2014 work program and budget should provide the basis for a discovery that was supposed to have been made in 2017. In addition, page 39 of the 2014 work program and budget, to which Mr Zabakhidze cites in his witness statement, merely states that "Taribani presents an analogue of 90% of Block XII."[395] Even assuming that the Respondents obtained suitable analogue data from the Taribani field, this does not prove the existence of hydrocarbons throughout 90% of Block XII. As discussed above, while analogous reservoirs might be used to corroborate and further assess discoveries, the establishment of a discovery still requires the drilling of wells that encounter hydrocarbons,[396] and the Respondents have not established that any such wells have been drilled outside the Exploitation/Development Area.

435. Finally, with respect to the alleged discovery in the so-called South Kakheti Gas Complex described in (v), the Respondents have failed to cite any evidence to support this assertion.[397]

436. Therefore, having assessed the various points (i) to (v) cited by the Respondents as "multiple discoveries," the Tribunal is unconvinced that the Respondents' submissions refer to evidence for the existence of a discovery outside the Exploitation/Development Area. Nevertheless, for the sake of utmost completeness, the Tribunal continues to assess whether any such evidence has been presented elsewhere by the Respondents' expert or witnesses.

437. The Respondents' expert Mr Patterson similarly fails to provide evidence of any discovery made outside the Exploitation/Development Area. Mr Patterson lists Respondent 1's exploratory well in his expert report as follows:[398]

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[391] First Zabakhidze Witness Statement, ¶ 84, fn. 142 (**Exhibit RWS-3**).

[392] 2016 Work Program and Budget, at 9 (**Exhibit R-54**) (emphasis added).

[393] *See* SoD, fn. 200.

[394] First Zabakhidze Witness Statement, ¶ 59, fn. 93 (**Exhibit RWS-3**).

[395] 2014 Work Program and Budget, at 39 (**Exhibit R-18**).

[396] *See supra* ¶ 422.

[397] *See* SoD, ¶ 158(d).

[398] First Patterson Report, ¶ 55, Figure 3 (**Exhibit RER-1**).

Frontera Exploratory Wells				
##	Name	Depth, m	Exploratory (Y/N)	Zone
1	Niko1	3419.0	Y	25 (Eldari, B)
2	Dino-2 v	1758.0	Y	5 (Eldari A)
	Dino-2 v	2710.0	Y	16 (Eldari B)
	Dino-2 h	3040.0	Y	15 (Eldari A)
	Dino-2 ST	2700.0	Y	15 (Eldari A)
3	T-45	2401.0	Y	11 (Eldari A)
	T-45 D	2700.0	Y	15 (Eldari A)
4	Mir-SH1	1512.0	Y	4 (Eldari A)
5	Mir-SH2	1247.0	Y	4 (Eldari A)
6	Mir-SH5	1123.0	Y	4 (Eldari A)
7	Lloyd-1	3035.0	Y	Middle Eocene
	Lloyd-1 ST-1	2593.0	Y	Upper Eocene
	Lloyd-1 ST-2	2632.0	Y	Middle Eocene
	Lloyd-1 ST-3	2670.0	Y	Middle Eocene
	Lloyd-1 ST-4	2668.0	Y	Middle Eocene
8	Mtsarekhevi12	368.0	Y	Gareji
9	Mtsarekhevi13	392.0	Y	Gareji
10	Mtsarekhevi14	368.0	Y	Gareji
11	Mtsarekhevi15	341.0	Y	Gareji
12	Mtsarekhevi16	338.5	Y	Gareji
13	Mtsarekhevi17	360.0	Y	Gareji
14	Mtsarekhevi18	358.0	Y	Gareji
15	Mtsarekhevi19	374.0	Y	Gareji
16	Mtsarekhevi20	357.0	Y	Gareji
17	Mtsarekhevi21	336.0	Y	Gareji
18	Mtsarekhevi22	360.0	Y	Gareji
19	Mtsarekhevi23	369.0	Y	Gareji
20	Mtsarekhevi24	340.0	Y	Gareji
21	Mtsarekhevi25	355.0	Y	Gareji
22	Mtsarekhevi26	340.0	Y	Gareji
23	Mtsarekhevi27	330.0	Y	Gareji
24	Mtsarekhevi28	341.0	Y	Gareji
25	Mtsarekhevi29	365.0	Y	Gareji
26	Mtsarekhevi31	352.0	Y	Gareji
27	Mtsarekhevi32	370.0	Y	Gareji
28	Mtsarekhevi32a	367.0	Y	Gareji
29	Mtsarekhevi33	418.0	Y	Gareji
30	Mtsarekhevi34	337.0	Y	Gareji

31	Mtsarekhevi35	400.0	Y	Gareji
32	Mtsarekhevi37	358.0	Y	Gareji
33	Mtsarekhevi41	350.0	Y	Gareji
34	PSUSh-1	100.0	Y	4 (Eldari A)
35	PSUSh-2	100.0	Y	4 (Eldari A)
36	PSUSh-3	100.0	Y	4 (Eldari A)
37	PSUSh-4	100.0	Y	3 (Eldari A)
38	PSUSh-5	100.0	Y	4 (Eldari A)
39	PSUSh-6	100.0	Y	4 (Eldari A)
40	PSUSh-7	100.0	Y	4 (Eldari A)
41	PSUSh-8	100.0	Y	Pliocene
42	PSUSh-10	100.0	Y	4 (Eldari A)
43	PSUSh-14	100.0	Y	Pliocene
44	PSUSh-15	100.0	Y	Pliocene
45	PSUSh-23	100.0	Y	4 (Eldari A)
46	PSUSh-27	100.0	Y	4 (Eldari A)
47	PSUSh-28	100.0	Y	4 (Eldari A)
48	PSUSh-30	100.0	Y	4 (Eldari A)
49	PSUSh-31	100.0	Y	4 (Eldari A)
50	PSUSh-35	100.0	Y	4 (Eldari A)
51	PSUSh Core	62.0	Y	4 (Eldari A)
52	Na USh 1	100.0	Y	4 (Eldari A)
53	Na USh 2	100.0	Y	4 (Eldari A)
54	Na USh 3	50.0	Y	4 (Eldari A)
55	Na USh 4	50.0	Y	4 (Eldari A)
56	Na USh 5	50.0	Y	4 (Eldari A)
57	Na USh 6	50.0	Y	4 (Eldari A)
58	Na Ush Core	75.0	Y	4 (Eldari A)

438. With the exception of two wells, all the exploratory wells, as listed in of Mr Patterson's expert report, are located within the Exploitation/Development Area. With respect to geographical limitations, wells 1, 2, and 4 are located in the Taribani field, wells 5 to 7 are located in the Mirzaani field, wells 8 to 33 are located in the Mtsarekhevi field,[399] wells 34 to 51 are located in the Patara Shiraqi field, and wells 52 to 58 are located in the Nazarlebi field.[400] In addition, with respect to depth limitations, all the wells are located within the horizon zones of each field,[401] with the exception of wells 1 and 3.

439. Turning now to the two exceptions (wells 1 and 3), well 1 or Niko-1 is located in the Taribani field but has been drilled to a horizon (zone 25) that is below the horizon limitation (zone 18) specified in Annex F.[402] To the extent that the Niko-1 well extends beyond the depth or horizon

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[399] The Tribunal notes that the Mtsarekhevi field has no horizon or depth limitation.

[400] *See* Detailed Chart of Frontera's Drillings and Underlying Documentation (**Exhibit C-203**).

[401] Wells 2, 4 and 5 have been drilled to horizons of 16, 4, and 4 respectively, all of which are within the Taribani horizon limitation of 18. Wells 5 to 7, and 34 to 58 have all been drilled to a maximum horizon of 4, which is well within the Mirzaani, Patara Shiraki, and Nazarlebi horizon limitations of 16, 12, and 12 respectively. *See* Detailed Chart of Frontera's Drillings and Underlying Documentation (**Exhibit C-203**).

[402] Second GCA Report, ¶ 76 (**Exhibit CER-10**); *compare* PSC, Annex F (**Exhibit C-1**) *with* First Patterson Report, ¶ 55, Figure 3 (**Exhibit RER-1**).

limitation of the Taribani field, it is indeed located outside the Exploitation/Development Area. However, the Respondents have not provided any evidence that the Niko-1 well has encountered sufficient moveable hydrocarbons at this subsurface level.[403] In particular, Mr Patterson states that while initial testing at horizons 22 to 25 in the Niko-1 well resulted in an "initially daily oil flow of 190 bbl," "[p]roduction quickly ceased […] as a sand plug originated downhole."[404] Well 3 or Lloyd-1 is located in the Kebedi field outside the Exploitation/Development Area, but it is undisputed that this well did not encounter any hydrocarbons.[405] Accordingly, none of the wells listed in Mr Patterson's expert report provide evidence of discoveries made outside the Exploitation/Development Area.

440. In his expert report, Mr Patterson further states that the South Kakheti Gas Complex, which "includes the Taribani and Mtsarekhevi Gas Complexes," "shows the characteristics of a Basin Centered Gas Play in the Gareji Formation."[406] He goes on to state that, while "[t]he gas resource potential for the entirety of the South Kakheti Gas Complex has not been evaluated at this time," a report by Netherland, Sewell & Associations ("**NSA**") concludes that the Taribani and Mtsarekhevi Gas Complexes possess 3.2 and 5.8 Tcf recoverable gas in place, respectively.[407] The purpose of the NSA Report, however, is to "estimate the ***undiscovered*** original gas-in-place."[408] As such, the Tribunal does not consider the NSA report's conclusions valid proof of any ***discovered*** hydrocarbons in those sections of the South Kakheti Gas Complex, much less the gas complex in its entirety.

441. Neither have the Respondents' witnesses provided evidence of any discovery made outside the Exploitation/Development Area. In his witness statement, Mr Mamulaishvili only refers to wells within the Exploitation/Development Area, such as the Dino-2 and T-45, or the Niko-1 well which, for the reasons stated above, do not provide sufficient evidence of a discovery.[409] Similarly, Mr Nicandros in his witness statement either refers to the same Dino-2, T-45, and Niko-1 wells, or makes unsupported statements regarding discoveries of gas in Block XII.[410] Indeed, while Mr Nicandros claims that Respondent 1 "found vast quantities of Non-associated Natural Gas," he does not refer to any contemporaneous or other documents that would confirm this discovery.[411]

442. The Tribunal further notes that the Respondents' case centres largely around their claim that Block XII is a BCP and an unconventional resource, and that therefore, conducting exploration operations, obtaining evidence of a discovery, and achieving commercial production is a more

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403 *See* First Patterson Report, ¶ 55, Figure 3 (**Exhibit RER-1**).

404 First Patterson Report, ¶ 67 (**Exhibit RER-1**).

405 *See* Detailed Chart of Frontera's Drillings and Underlying Documentation (**Exhibit C-203**); First Sanishvili Witness Statement, ¶ 27 (**Exhibit CWS-1**); Third Sanishvili Witness Statement, ¶ 12 (**Exhibit CWS-13**).

406 First Patterson Report, ¶¶ 81 *et seq*. (**Exhibit RER-1**).

407 First Patterson Report, ¶ 85 (**Exhibit RER-1**).

408 First GCA Report, Appendix 5, at 1 (**Exhibit CER-1**) (emphasis added).

409 First Mamulaishvili Witness Statement, ¶ 122 (**Exhibit RWS-2**).

410 First Nicandros Witness Statement, ¶¶ 82, 84. (**Exhibit RWS-1**).

411 First Nicandros Witness Statement, ¶ 84 (**Exhibit RWS-1**).

complicated process that "constitutes much more than simply drilling Exploratory Wells."[412] Even assuming that Block XII is indeed a BCP as the Respondents claim, however, the Tribunal has found no evidence establishing the existence of such an unconventional resource. As noted above, even in the case of an unconventional resource, industry standards and practice require that a well must first be drilled and data collected therefrom, before a discovery can be achieved.[413] Based on the Tribunal's review of the above evidence, no such wells have been drilled. The Tribunal has also not found any other evidence in the file that establishes a discovery outside the Exploitation/Development Area.

443. Accordingly, the Tribunal finds that the Respondents have not provided sufficient evidence demonstrating that Respondent 1 made a discovery outside the Exploitation/Development Area, as required under Article 9. Absent such discovery, the Tribunal finds that Respondent 1's Declaration of Commercial Feasibility is not valid under Article 9.1 of the PSC.

444. Finally, for the avoidance of doubt, in reaching the above-mentioned conclusion the Tribunal has taken into account the Respondents' arguments regarding the Claimants' alleged obstruction as a possible defense arguments against the Claimants' claims,[414] but finds that none of the Respondents' arguments change the above conclusion. In particular, the Tribunal is not satisfied that the Respondents have provided sufficient proof for their allegations that the Claimants consistently obstructed their gas operations after 2012, including by delaying the approval for a gas pipeline. In any event, and more importantly, even assuming the Respondents' allegations were correct, the Respondents have not established how this would result in a different conclusion under Article 9.1 of the PSC. However, in reaching its decision, the Tribunal has taken into account the Respondents' objections to the credibility of Mr Artem Sanishvili, Ms Mariam Valishvili, and Mr Mehmet Arif Yukler as witnesses[415] and has accorded them only the evidentiary weight that is appropriate.

(b) Whether Respondent 1 Complied with the Other Requirements of Article 9 of the PSC

445. In any event, and irrespective of the above, the Tribunal finds that Respondent 1 has not complied with the other Article 9 requirements necessary to avoid its relinquishment obligation, namely (i) the submission of a valid study program consistent with the terms of Article 9.2; and (ii) a valid declaration made under Article 9.4(c) of the PSC.

446. The Claimants argue that the Study Program submitted by Respondent 1 on 28 February 2017 is invalid and contrary to the terms of Article 9.2 of the PSC because it lacks a valid basis, does not meet other minimum requirements of an appraisal program under the PSC and industry practice, and is not being carried out.[416] The Claimants also submit that they are authorized to challenge the validity of the Study Program.[417] The Respondents, on the other hand, argue that the Study

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[412] *See* SoD, ¶ 107.

[413] *See supra* ¶ 421.

[414] *See supra* ¶¶ 252-257.

[415] Respondents' Post-Hearing Brief, at 6-7.

[416] SoC, ¶¶ 220-266; Reply, ¶¶ 225-255. *See also supra* Section V.E.3(a).

[417] Reply, ¶¶ 253-255. *See also supra* Section V.E.3(a).

Program was approved by the Coordination Committee, and that the PSC does not authorize the Claimants to challenge the content of the Study Program once such approval is obtained.[418] The Respondents also maintain the appraisal work in the Study Program is aimed at confirming that Commercial Production is feasible, and that the Claimants' criticisms are "weak and unsupported."[419]

447. The Claimants further argue that the Declaration under Article 9.4(c) of the PSC was improper because Respondent 1 had not complied with Articles 9.1 and 9.2 of the PSC, had not submitted a further exploration work program or further study program specifying further works necessary for concluding whether Commercial Production is feasible, and had not commenced any work under the original Study Program.[420] The Respondents maintain that the Declaration under Article 9.4(c) was valid because the plain terms of the PSC do not require Respondent 1 to submit a further study program or exploration work program before filing a declaration under Article 9.4(c), and Respondent 1 is currently completing the appraisal work specified in the Study Program.[421]

448. The Tribunal begins its analysis by observing that the mechanism by which a discovery is appraised under Article 9 of the PSC contemplates the following chronological procedure:

- The Contractor makes a declaration that Commercial Production is feasible from a discovery within five days of reaching such a conclusion (Article 9.1);
- Within a further 45 days, the Contractor is to submit a study program that "shall specify in reasonable detail the appraisal work including seismic, drilling of wells and studies to be carried out and the estimated time frame within which the Operating Company shall commence and complete the program" (Article 9.2);
- The Contractor carries out the study program, and within 90 days of the completion of said study program, submits a comprehensive evaluation report on the study program (Article 9.3);
- Together with the submission of the evaluation report, "or at any other time," the Contractor chooses one out of three possible options provided in Article 9.4 regarding the outcome of the works done under the study program (Article 9.4);
- If the Contractor determines that it needs to carry out further specified work in order to determine whether Commercial Production is feasible, it will submit an evaluation report on the study program, and "commits to carry out under a further Exploration Work Program or Study Program in specified areas within or outside the relevant Study Area" (Article 9.4(c)).

449. The procedure followed by Respondent 1 in this case was as follows:

- On 28 February 2017, Respondent 1 filed its Declaration of Commercial Feasibility under Article 9.1 of the PSC stating that it had concluded "that the Commercial Production from the Contract Area is feasible;"[422]

418 SoD, ¶¶ 165-170. *See also supra* Section V.E.3(b).

419 SoD, ¶¶ 171-183. *See also supra* Section V.E.3(b).

420 SoC, ¶¶ 267-286; Reply, ¶¶ 252, 256-266. *See also supra* Section V.E.4(a).

421 SoD, ¶¶ 184-193. *See also supra* Section V.E.4(b).

422 Letter from S. Nicandros (Frontera) to D. Tvalabeishvili (GOGC), dated 28 February 2017 (**Exhibit C-7**).

- On the same day, along with the Declaration of Commercial Feasibility, Respondent 1 submitted its Study Program to the Coordination Committee for approval, pursuant to Article 9.2 of the PSC;[423]
- On 3 April 2017, the same day on which the Study Program was due to commence, Respondent 1 submitted its Declaration under Article 9.4(c) stating that "Commercial Production will be conditional on the outcome of the work that the Contract commits to carry out under the Study Program within the Study Area;"[424]
- In the same letter, Respondents 1 asserted that the Declaration under Article 9.4(c) triggered the application of Article 9.5, and that therefore, Respondent 1's obligation to relinquish territory to the Claimants is suspended pending the completion of the further work specified in the Study Program.[425]

450. Respondent 1 notably never submitted an evaluation report according to Article 9.4. Article 9.4 of the PSC provides that a declaration thereunder may be made "with the submission of the evaluation report by the Operating Company, or at any other time."[426] The phrase "any other time," in the Tribunal's interpretation, gives the Contractor the flexibility to make a declaration under Article 9.4 of the PSC any time after the Study Program has commenced, but before its completion and the issuance of the evaluation report. The Tribunal emphasizes, however, that even if the Contractor does not have to submit its Article 9.4 declaration together with the evaluation report, it must have gathered some information from the works conducted according to the study program to determine whether Commercial Production is feasible or not, or whether "further" works are needed to make such a determination.

451. By submitting its declaration under Article 9.4(c) at a time when the Study Program had not even started, let alone been evaluated, Respondent 1 was not, and could not have been, in a position to make any determination that "further" works under Article 9.4(c) would be necessary to determine whether Commercial Production is feasible.

452. Moreover, by making a declaration under Article 9.4(c) of the PSC, Respondent 1 represented that "Commercial Production will be conditional on the outcome of further specified work that the Contractor commits to carry out under a further Exploration Work Program or Study Program in specified areas within or outside the relevant Study Area."[427] Yet, the Tribunal has found no evidence on file of any such further "Exploration Work Program" or "Study Program" outlining the "further specified work" that Respondent 1 was committing to carry out.

453. For the sake of completeness, the Tribunal similarly finds unconvincing the Respondents' argument that the PSC does not authorize the Claimants to challenge the content of the Study Program once it has, as in this case, been approved by the Coordination Committee.[428] While Article 7.7 of the PSC provides that "the Contractor's proposal shall prevail" in the event of a disagreement between the Parties, it does not, in the Tribunal's view, give the Respondents

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[423] Letter from S. Nicandros (Frontera) to D. Tvalabeishvili (GOGC), dated 28 February 2017 (**Exhibit C-7**); Frontera's Study Program, dated 28 February 2017 (**Exhibit C-8**).

[424] Letter from S. Nicandros (Frontera) to D. Tvalabeishvili (GOGC), dated 3 April 2017 (**Exhibit C-72**).

[425] Letter from S. Nicandros (Frontera) to D. Tvalabeishvili (GOGC), dated 3 April 2017 (**Exhibit C-72**).

[426] PSC, Art. 9.4 (**Exhibit C-1**).

[427] PSC, Art. 9.4 (**Exhibit C-1**).

[428] SoD, ¶¶ 165-170. *See also supra* Section V.E.3(b).

unfettered discretion to adopt decisions and actions that are in violation of their obligations under the PSC. In any event, regardless of whether the Study Program was valid under the terms of Article 9.2 of the PSC, for the reasons stated above, the Tribunal does not consider Respondent 1 to have made a valid declaration under Article 9.4(c).

454. Based on the above, therefore, the Tribunal considers that Respondent 1 has failed to comply with the terms of Article 9.4 of the PSC, and in particular, failed to make a valid declaration under Article 9.4(c) of the PSC.

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455. For the reasons set out in the preceding sections, the Tribunal finds that Respondent 1 has failed to comply with Articles 9.1 and 9.4 of the PSC, and therefore is obliged to relinquish the territories in Block XII located outside the Exploitation/Development Area, in accordance with Article 6.1(b) of the PSC.

F. WORK PRODUCT CLAIM

456. In this section, the Tribunal addresses the Claimants' Work Product Claim, as set out in Claimants' Request No. 5, *i.e.,* the Claimants' request that Respondent 1 be ordered "to deliver [] all work product and relevant data with respect to the areas required to have been relinquished including studies, reports, surveys and other data and documents prepared or produced with respect thereto."[429]

457. As an initial matter, the Tribunal notes that the Claimants failed in their written submissions to provide any legal basis or to formulate any argument in support of this request for relief. Indeed, the Claimants referred only briefly in their Statement of Claim to Respondent 1's obligation to deliver work product and other data with respect to the areas to have been relinquished as part of its obligation to relinquish the area outside the Exploitation/Development Area.[430]

458. After this question was put directly to the Claimants both prior to[431] and during the Evidentiary Hearing, the Claimants acknowledged that this point had not been addressed in their written submissions and subsequently referred to Articles 13.2, 22.1 and 22.2 of the PSC as the legal bases for their claim.[432]

459. In the Tribunal's view, none of these belatedly cited provisions provide a valid basis for the Claimants' Work Product Claim. Article 13 of the PSC on the "Ancillary Rights of the Contractor and Operating Company" sets out, as its title states, the Contractor's and Operating Company's and not the Claimants' rights and therefore cannot form the legal basis for the Claimants' request for relief. In addition, the Claimants have failed to explain why Article 22.1 and 22.2 of the PSC, which relate to the ownership of fixed and moveable assets, should apply to work product and relevant data. To the contrary, the plain terms of Article 22.2 of the PSC suggest that this provision does not apply to data since it provides that:

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[429] Reply, ¶ 369(5).

[430] SoC, ¶ 290.

[431] Letter from the Tribunal to the Parties, dated 6 November 2019, Annex A, Question 4.

[432] Hearing Transcript, Day 2, 58:12-59:19.

> Whenever Contractor relinquishes any part of the Contract Area, all moveable property located within the portion of the Contract Area so relinquished may be removed to any part of the Contract Area that has been retained for use in Petroleum Operations.[433]

460. Accordingly, for the reasons stated above, the Tribunal dismisses the Claimants' request that Respondent 1 be ordered "to deliver to Claimants all work product and relevant data with respect to the areas required to have been relinquished, including studies, reports, surveys and other data and documents prepared or produced with respect thereto."

G. NON-RELINQUISHMENT DAMAGE CLAIM

461. In this section, the Tribunal addresses the Claimants' Non-Relinquishment Damage Claim, as set out in Claimants' Request No. 7, *i.e.,* the Claimants' request that the Tribunal award damages resulting from Respondents 1's failure to relinquish certain areas in Block XII.[434]

1. Claimants' Position

462. The Claimants submit that Respondent is liable for damages arising from its failure to relinquish territory.[435] The Claimants allege that, had Respondent 1 timely relinquished the Contract Area outside the Exploitation/Development Area, which includes almost 99% of the Contract Area, the Claimants would have announced a new tender by mid-January 2018 for the development of that area, determined a successor Contractor by mid-June 2018 and by end of 2018, received upfront payments from another investor or investors.[436] The Claimants estimate the upfront payment with respect to a new contract on this territory to be in excess of US$4.9 million, as calculated by Mr Giorgi Tatishvili, the head of the State Agency, based on Respondent 1's own estimation of the prospective resources present in the Contract Area outside the Exploitation/Development Area, *i.e.,* 140 million tons.[437] Accordingly, the Claimants estimate that the damages they suffered as a result of Respondent 1's failure to relinquish territory would be equal to the value of being deprived of this payment from 1 January 2019.[438]

463. While the Respondents dispute the credibility of Mr Tatishvili's upfront payment estimate, the Claimants note that (i) the evidence provided by the Respondents to dispute his testimony relates to license areas VIA, VIB, and XIV, all of which were tendered out in 2017, not in 2018 or 2019 as the Respondents claim; (ii) in any event, Blocks VIA, VIB, and XIV were all successfully tendered out and the upfront payments duly paid by the respectively contractors;[439] and (iii) Mr Tatishvili's testimony, that the State received competitive bids and an upfront payment of several

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[433] PSC, Art. 22.2 (**Exhibit C-1**).

[434] Reply, ¶ 368(7).

[435] SoC, ¶ 386; Reply, ¶¶ 357-358.

[436] SoC, ¶¶ 388-390; *relying on* First Tatishvili Witness Statement, ¶ 90 (**Exhibit CWS-5**).

[437] SoC, ¶¶ 391-394 *relying on* First Tatishvili Witness Statement, ¶ 89, fn. 7 (**Exhibit CWS-5**).

[438] Hearing Transcript, Day 1, 40:20-23.

[439] E-mail from the Claimants to the Tribunal, dated 29 January 2020, *referring to* Block VIA Signature Bonus Payment Order, dated 14 April 2018 (**Exhibit C-224**); Block VIB Signature Bonus Payment Order, dated 14 April 2018 (**Exhibit C-225**).

million dollars, pertained to Block X, the block nearest to Block XII, and was in relation to a tender conducted in 2008, not in 2018 or 2019.[440]

464. The Claimants reject the Respondents' claim that there is no recoverable loss because the Claimant could re-tender Block XII and receive their upfront payment in the event that the Tribunal finds in favour of the Claimants.[441] The Claimants clarify, however, that they are not seeking the upfront payment as such, but the damages arising out of the *delay* in receiving the upfront payment.[442]

2. Respondents' Position

465. The Respondents deny the Claimants' Non-Relinquishment Damage Claim.[443] The Respondents submit that as a result of the arbitration, Claimants' claims for relinquishment will be dismissed, in which case Claimants have no reason to expect an upfront payment from a re-tender.[444] Even if Respondent 1 was required to relinquish the area, the Respondents argue, the "Claimants can [then] re-tender Block XII and will receive their upfront payment [and so] [t]here is no recoverable loss."[445]

466. The Respondents also dispute the Claimants' claim that any upfront payment with respect to a new contract for Block XII would be in excess of US$4.9 million. According to the Respondents, such amounts have not been offered in any recently referenced tenders by the State. For example, the 2018 tender yielded no bidders that were publicly disclosed, and the 2019 tender requested upfront payments only in the hundreds of thousands of dollars and it has not been demonstrated that any company ever paid these sums.[446]

3. Tribunal's Analysis

467. The Claimants request the Tribunal to "[award] damages from the breach of Article 6.1(b) of the PSC by failing to relinquish territory required to be conveyed, in an amount to be determined, but no less than interest at a rate of LIBOR plus 4% stemming from the delay of receiving an upfront payment from another investor in the amount of at least US$4.9 million from 1 January 2019 at the latest, payable to LEPL State Agency of Oil and Gas."[447] In particular, the Claimants allege, based solely on Mr Tatishvili's testimony, that they would have been able to tender the relinquished portions of Block XII and receive an upfront payment of US$4.9 million from an

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440 E-mail from the Claimants to the Tribunal, dated 29 January 2020, *referring to* Bid Submission Form, dated 14 July 2008, Deutsche Bank Standby letter of Credit, dated 27 August 2008, and Letter from State Agency to the Treasury Service of the Ministry of Finance of Georgia, dated 3 March 2009 (**Exhibit C-223**).

441 Reply, ¶ 360, *referring to* SoD, ¶ 339.

442 Reply, ¶ 361; Hearing Transcript, Day 1, 40:23-25, 41:1-3.

443 SoD, ¶¶ 337-338, 344(e).

444 SoD, ¶ 339.

445 SoD, ¶ 339.

446 Respondents' Post-Hearing Brief, at 6, *referring to* 2017 Tender Documents for Blocks XIV, VIB, and VIA published by the State Agency (**Exhibit R-109**).

447 Reply, ¶ 369(7).

interested investor.[448] The Claimants have not further substantiated the amount claimed. The Respondents reject the Claimants' claim for damages on the basis that they did not suffer any recoverable losses.[449]

468. The Tribunal finds that the Claimants have not sufficiently established the amount of damages claimed. In any event, even if the Tribunal were to assume that Mr Tatishvili's calculations are correct, the amount provided would only be an estimate of the upfront payment that would be requested by the State. In the Tribunal's view, there is no evidence, much less assurance, that any investor would be interested in bidding for the relinquished territories in Block XII (*i.e.*, the territories outside the Exploitation/Development Area). This is so in particular because those territories in Block XII have been the subject of (unsuccessful) exploration activities for many years. Furthermore, it is uncertain whether any third party would be interested in bidding for Block XII while, simultaneously, Respondent 1 is also operating from the same Block XII in the Exploitation/Development Area. Indeed, during the Rescheduled Evidentiary Hearing, Mr Tatishvili testified that the State has never tendered a project for exploration partly already under development by another contractor.[450] Under these circumstances, the Tribunal finds that the damages claimed by the Claimants remain purely speculative.

469. Furthermore, the Tribunal is not satisfied that the Claimants have, in accordance with Texas and Georgian law, sufficiently established the causality between Respondent 1's failure to relinquish the relevant territories of Block XII and the claimed damages. As explained by the Claimants' expert Dr Rolf Knieper, Article 412 GCC provides for a restrictive approach with respect to defining causality between a breach and the resulting damage.[451] Similarly, under Texas law the alleged damages must be foreseeable and directly traceable to and resulting from the breach.[452] Yet, in the Tribunal's view, the Claimants have not established in their submissions the elements necessary to ascertain the causality between Respondent 1's failure to relinquish and the damages sought.

470. Therefore, the Tribunal dismisses the Claimants' claim for damages based on Respondent 1's breach of Article 6.1(b), for failure to relinquish territories outside the Exploitation/Development Area in Block XII.

H. MATERIAL BREACH DECLARATION CLAIM

471. In this section, the Tribunal addresses the Claimants' Material Breach Declaration Claim, as set out in Claimants' Request No. 6, *i.e.,* the request for a declaration that Respondent 1 materially breached the PSC.[453]

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448 SoC, ¶¶ 392-393, *referring to* Tatishvili Witness Statement, ¶¶ 88-90 (**Exhibit CWS-5**).

449 SoD, ¶ 339.

450 Hearing Transcript, Day 1, 124:22-125:1 (Tatishvili).

451 Expert Report of Prof. Dr Rolf Knieper, dated 17 January 2019, ¶¶ 40-58 (**Exhibit CER-5**).

452 SoDC, ¶ 32, *referring to Gotch v. Gotch*, 416 S.W.3d 633, 638 (Tex. App. – Houston [14th Dist.] 2013, no pet.) (**Exhibit CLA-71**); Expert Report of Wallace B. Jefferson, dated 17 January 2019, at ¶¶ 30 *et seq.* (**Exhibit CER-4**).

453 Reply, ¶ 368(6).

472. The Claimants submit that Respondent 1 breached various provisions of the PSC, and that these breaches constituted material breaches within the meaning of Article 30.2 of the PSC, which provides:

> For the purposes of this Article, a material breach means a fundamental breach which, if not cured, is tantamount to the frustration of the entire Contract either as a result of the unequivocal refusal to perform contractual obligations or as a result of conduct which has destroyed the commercial purpose of this Contract.

473. Specifically, the Claimants allege that Respondent 1 materially breached (i) Article 6.1(b) of the PSC by failing to relinquish territories outside the Exploitation/Development Area;[454] (ii) Section 3 of Amendment No. 2 by failing to submit a "work plan;"[455] (iii) Article 27.3 of the PSC by purporting to assign its rights and obligations under the PSC to Respondent 2 without fulfilling the terms under that provision;[456] and (iv) Article 11.5 of the PSC by failing to share any petroleum, as defined in the PSC, with Claimant 1, and refusing to follow the applicable cost recovery procedure.[457] The Respondents, by contrast, reject all the Claimants' claims and maintain that the Claimants have failed to discharge their burden of proof in demonstrating any breach of the PSC, let alone a material breach as defined in Article 30.2 of the PSC.[458]

1. Whether Respondent 1 Materially Breached Article 6.1(b) of the PSC by Failing to Relinquish Territories outside the Exploitation/Development Area

(a) Claimants' Position

474. The Claimants, for the reasons set out in Section V.E above, submit that Respondent 1 was obligated to relinquish the area outside the Exploitation/Development Area at the end of the Secondary Exploration Phase on 14 November 2017, and to hand over all existing work product with respect to these areas to Claimant 1.[459] By failing to do so, the Claimants submit that Respondent 1 breached Article 6.1(b), and that this constituted a material breach within the meaning of Article 30.2 of the PSC.[460]

475. The Claimants argue that this constituted a material breach because, in accordance with Article 30.2, the entire PSC was frustrated both as a result of Respondent 1's unequivocal refusal to perform, and of its conduct which has destroyed the commercial purpose of the PSC.[461]

476. According to the Claimants, the purpose of the PSC is to grant an exclusive right, for a defined period of time to develop resources in Block XII, and that if Respondent 1 failed in this

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454 SoC, ¶¶ 289-300; Reply, ¶¶ 269-275.

455 SoC, ¶¶ 357-383; Reply, ¶¶ 337-354.

456 Reply, ¶¶ 355-356. Given that the Claimants' submissions on this point are only two paragraphs, the Tribunal does not summarize them any further in the following sections, but addresses them in Section H.4(b)(iii) below.

457 SoC, ¶¶ 301-356; Reply, ¶¶ 276-336.

458 SoD, ¶¶ 289-335.

459 SoC, ¶ 290; Reply, ¶¶ 270, 272.

460 Hearing Transcript, Day 1, 34:6-9, 18-25, 35:1.

461 SoC, ¶ 294; Hearing Transcript, Day 1, 34:18-22.

endeavour, the provision for relinquishment of rights was essential to allow the State to then license those territories out to other contractors, and ensure that national resources were effectively used and their economic benefit maximised.[462] The Claimants submit that Respondent 1's failure to relinquish almost 99% of the Contract Area constituted not only a refusal to perform, but also constituted conduct that destroyed the commercial purpose of the PSC, because it "deprive[d] the State of its rights of ownership and utilization of its national resources, and the opportunity to tender these areas to another investor."[463] In fact, the Claimants allege, Respondent 1 "acting in bad faith, concocted a series of actions based on its misinterpretation and improper invocation of Articles 9.1, 9.2, 9.4 and 9.5 of the PSC to create a pretext for refusing to honor its relinquishment obligation."[464]

477. The Claimants dismiss the Respondents' allegation that the Claimants had failed to "engage at any length with the definition of Material Breach contained in the PSC."[465] While the Respondents claim that a "material breach cannot be a technical breach," the Claimants note that the Respondents failed to define either what would constitute a "technical breach" or a sufficiently "material" breach for that matter, and maintained that Respondent 1's refusal to relinquish 99% of the Contract Area is a material breach of the PSC.[466]

(b) Respondents' Position

478. As detailed in Section V.E above, the Respondents deny that Respondent 1 has breached Article 6.1(b) of the PSC by failing to relinquish any territory in Block XII. In the Respondents' view, far from refusing to perform their contractual obligations, Respondent 1 acted in accordance with Articles 9.1, 9.2, and 9.4(c) of the PSC, and that accordingly, pursuant to Article 9.5 of the PSC, it is not obligated to relinquish any territory in Block XII.[467] Moreover, the Respondents maintain that they have not destroyed the commercial purpose of the PSC, but rather, by explicitly informing the Claimants that commercial production was feasible, Respondent 1 has told the State that it can create enormous value to its benefit.[468]

479. In addition, the Respondents submit that the PSC "sets an extremely high bar for the State to claim a material breach of contract" and that a "material breach cannot be a technical breach."[469] On this basis, the Respondents maintain that Respondent 1 has not committed any material breach of the PSC because its conduct "has always been to achieve, not to 'destroy' the commercial purposes of the contract" and it has always performed its contractual obligations.[470]

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[462] SoC, ¶ 293, First GCA Report, ¶¶ 37, 55, 180 **(Exhibit CER-1)**; Reply, ¶ 274.

[463] SoC, ¶¶ 296-300; Reply, ¶ 274;

[464] SoC, ¶ 298; Reply, ¶ 272.

[465] Reply, ¶¶ 273-274.

[466] Reply, ¶ 275, *referring to* SoD, ¶ 290.

[467] SoD, ¶¶ 292-294, 297-301.

[468] SoD, ¶ 296

[469] SoD, ¶ 290.

[470] SoD, ¶ 291.

2. Whether Respondent 1 Materially Breached the PSC by Failing to Submit a Work Plan Pursuant to Section 3 of Amendment 2 of the PSC

(a) Claimants' Position

480. The Claimants submit that Respondent 1 has materially breached the PSC by failing to submit a work plan detailing proposals for the development and operation of the Exploitation/Development Area, as required under Section 3 of Amendment No. 2 of the PSC.[471]

481. According to the Claimants, the requirement to submit a "work plan" was inserted in the amendment in lieu of the requirement in Article 9.7 of the PSC, which required the Contractor to submit a development plan "detail[ing] […] [a] proposal for Development and operation of the Development Area."[472] As a result, the Claimants submit, the Parties understood that any "work plan" would have to provide the same level of detail and information as a development plan, and this is evidenced by the Respondents' own contemporaneous documents and description of the purpose of the work plan.[473]

482. The Claimants argue that Respondent 1, despite repeated requests, did not submit such a work plan as required. Only when served with a formal notice of material breach, did Respondent 1 state that it had already submitted a work plan to the Coordination Committee on 8 November 2012.[474] The belated nature of this submission, the Claimants assert, demonstrates that even in Respondent 1's mind it was never meant to constitute a "'work plan' for the purpose of Section 3 of Amendment No. 2, but was the annual work program and budget for 2013, which [it was] separately obligated to present under Article 10.3 of the PSC."[475] Annual work programs and budgets however, simply address works for the following years and not the rationale or basis of such works, as stated in Article 10.3. Development plans, on the other hand, the Claimants submit, are supposed to include the strategic vision and planning for the future development of the entire field.[476] Accordingly, in the Claimants' view, Respondent 1 never submitted a "work plan" as required under the PSC.

483. Respondent 1's failure to submit a work plan, the Claimants argue, constitutes a material breach of the PSC because in order to be assured of the Contractor's plans for the development of the relevant areas and to maximize the State's profit from the production, it is crucial for any State to receive a detailed plan for development and production.[477] This is, in the Claimants' view, important to ensure the timely, efficient, rational and thorough enhancement of the exploration

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[471] SoC, ¶¶ 378-383; Reply, ¶¶ 337-354.

[472] Reply, ¶ 340.

[473] SoC, ¶ 364, *referring to* Letter from V. Ghlonti (Frontera) to GOGC-appointed Coordination Committee members, dated 9 September 2013 attaching Coordinating Board Meeting, September 2013, at 3 (**Exhibit C-31**); Reply, ¶¶ 338-340.

[474] SoC, ¶ 368, *referring to* Coordination Committee meeting minutes, dated 17 September 2013, at 2 (**Exhibit C-35**); Letter from E. Williamson (Frontera) to D. Tvalabeishvili (GOGC) and G. Tatishvili (State Agency), dated 1 October 2013, at 2 (**Exhibit C-36**).

[475] SoC, ¶¶ 369-371. *See also* Reply, ¶ 342.

[476] SoC, ¶ 372 *referring to* First GCA Report, ¶ 40 (**Exhibit CER-1**).

[477] SoC, ¶ 380.

of state-owned natural resources, the underlying objective of the PSC.[478] The Claimants submit that Respondent 1 refused to submit a work plan and instead of submitting it with delay, later erroneously argued that it had already done so. As a result, the Claimants submit that Respondent 1 materially breached the PSC.

(b) Respondents' Position

484. Contrary to the Claimants' contention, the Respondents maintain that Respondent 1 did submit a "work plan" in accordance with its obligations under the PSC, and that in any event, such a breach would not constitute a material breach under the contract.[479]

485. The Respondents agree with the Claimants that the purpose of the work plan is to provide a detailed plan for operation and development of the newly established Exploitation/Development Area.[480] However, the Respondents also emphasize that the wording of Section 3 of Amendment No. 2 in its entirety suggests that the Parties agreed that Article 9 does not apply to the Exploitation/Development Area created thereunder or the work plan.[481]

486. In accordance with their obligations under the PSC, therefore, the Respondents maintain that on 8 November 2012, Respondent 1 submitted a work plan in compliance with Section 3 of Amendment No. 2, and that it only informed the Claimants then because until 10 April 2013, the work plan had not been discussed between the Parties.[482] While the Claimants allege that the work plan does not fulfil the requirements of Amendment No. 2 because it was not a development plan, the Respondents maintain that the requirements of Article 9, including that of a development plan, explicitly no longer applied under Amendment No. 2.[483] Moreover, the Respondents note, even though Respondent 1 had asked the Claimants on several occasions to clarify what they considered missing from the work plan, the Claimants never provided a response.[484]

487. In any event, the Respondents point out, the Claimants let Respondent 1 continue its operations under the PSC for five years after they issued their formal notice of breach in this regard, thereby demonstrating that the non-submission of a work plan could not have been, as they claim, "tantamount to the frustration of the entire Contract" and a material breach of the PSC.[485]

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[478] SoC, ¶ 381.

[479] SoD, ¶¶ 326-335.

[480] SoD, ¶ 328.

[481] SoD, ¶ 328.

[482] 2013 Work Program, dated November 2012 (**Exhibit R-16**).

[483] SoD, ¶ 331, *referring to* Letter from L. Gogodze (GOGC) to V. Ghlonti (Frontera), dated 2 May 2013 (**Exhibit C-32**); Letter from L. Gogodze (GOGC) to Z. Mamulaishvili (Frontera), dated 17 May 2013 (**Exhibit C-33**); Letter from GOGC (David Tvalabeishvili) to State Agency (Gorgi Tatishvili) to Frontera Resources (Steve Nicandros), dated 16 September 2013 (**Exhibit C-34**).

[484] SoD, ¶ 333.

[485] SoD, ¶ 334, *referring to* SoC, ¶ 383.

3. Whether Respondent 1 Materially Breached the PSC by Failing to Share Petroleum

(a) Claimants' Position

488. The Claimants submit that Respondent 1 has materially breached the PSC by failing to allocate and share any petroleum with Claimant 1.[486] According to the Claimants, Respondent 1 was under an obligation to share petroleum under the PSC because (i) it failed to apply the contractually agreed cost recovery procedure, is thus not entitled to recover any costs and expenses as defined in Article 1.24 of the PSC (the "**Costs and Expenses**") and therefore all available crude oil and natural gas as defined in Articles 1.7 and 1.8 of the PSC (the "**Available Crude Oil and Natural Gas**") is to be shared in accordance with Article 11.10 of the PSC; and (ii) in any event, Respondent 1's maximum recovery of Costs and Expenses was capped at 80% / 60%" under Articles 11.5(c) and 11.5(d) of the PSC.[487]

489. The Claimants explain that under the PSC, Respondent 1 is under a general obligation to share with Claimant 1 all Available Crude Oil and Available Natural Gas resulting from the petroleum operations pursuant to Article 3.7 of the PSC, subject to its entitlement to first recover certain Costs and Expenses relating to such petroleum operations under the conditions and procedure specified in Article 11 of the PSC.[488] In particular, pursuant to Article 11.10 of the PSC, after a deduction of eligible Costs and Expenses, Claimant 1 is to receive 51% of the so-called profit oil and profit natural gas (the "**Profit Oil and Profit Natural Gas**").[489] "Costs and Expenses," in turn, are defined as "the Exploration Expenditures, Development Expenditures, Operation Expenses, and Drilling Costs, together with Finance Costs, whether directly or indirectly incurred by Contractor or the Operating Company."[490]

490. In order to be entitled to recover any Costs and Expenses, the Claimants note, Respondent 1 must fulfil certain contractually agreed preconditions set out in Article 11 of the PSC.[491] Specifically, the Claimants allege that Respondent 1 must (i) maintain itemized books and accounts of all Costs and Expenses according to Article 11.1, and Article 6.2 of Annex B, of the PSC; (ii) ensure that Costs and Expenses are properly calculated on the basis of the books and accounts maintained under (i), and on a "first in, first out" ("**FIFO**") basis according to Articles 11.5 and 11.6 of the PSC; and (iii) measure all Available Crude Oil and Natural Gas at a measurement point, which is defined as the "location specific in an approved Development Plan where the petroleum is metered and delivered to the Parties" (the "**Measurement Point**")[492] Without following such procedures, the Claimants argue, the cost recovery mechanism cannot be applied, because it would be impossible to determine which Costs and Expenses are to be recovered under

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486 SoC, ¶¶ 301-356; Reply, ¶¶ 276-336; Hearing Transcript, Day 1, 39:10-12, 24-25, 40:1-3.

487 SoC, ¶ 301.

488 SoC, ¶¶ 303-305.

489 SoC, ¶¶ 303-305.

490 PSC, Art. 1.24 (**Exhibit C-1**).

491 SoC, ¶¶ 308-333.

492 SoC, ¶ 309.

which recovery scheme *i.e.*, whether they are to be recovered from 100% of Available Crude Oil and Natural Gas, capped at 80%, or capped at 60%.[493]

491. The Claimants submit that Respondent 1 has failed to fulfil all three of these obligations. First, Respondent 1 failed to substantiate any cost claim based on itemized Costs and Expenses accounts, despite Claimant 1's repeated requests.[494] Although Claimant 1 did audit Respondent 1's books and records, the Claimants maintain that they were not sufficient because, as the Respondents admit, these books do not categorize costs into the categories required under the PSC, such as exploration expenditures, operation expenses, etc. as defined in Articles 1.42 and 1.66 respectively (the "**Exploration Expenditures**" and "**Operation Expenses**")[495] In this regard, the Respondents argue that such categorization is not necessary because the operations are still in the exploration phase, and therefore Respondent 1 has "not incurred any other costs than Exploration Expenditures."[496] However, the Claimants point out, Respondent 1 has produced, transported, and sold petroleum from Block XII, thus it is "inconceivable and simply wrong" to argue that it has incurred "no Operation Expenses."[497]

492. Second, the Claimants further argue that, despite repeated reminders,[498] Respondent 1 has failed to demonstrate that it used the FIFO method in applying Costs and Expenses for recovery.[499] Third, despite repeated requests, Respondent 1 never established a Measurement Point.[500] In this regard, the Claimants reject the Respondents' claim that Respondent 1 was not required to do so, and maintain that this requirement is explicitly set forth in Article 11.4 and several other provisions of the PSC.[501]

493. Accordingly, because Respondent 1 has failed to fulfil these preconditions and to submit a valid claim for the recovery of eligible Costs and Expenses under Article 11.5 of the PSC, all Available

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[493] SoC, ¶¶ 318-319, *referring to* Tvalabeishvili Witness Statement, ¶ 16 (**Exhibit CWS-3**); Abaiadze Witness Statement, ¶ 28 (**Exhibit CWS-6**); Tatishvili Witness Statement, ¶ 35 (**Exhibit CWS-5**).

[494] SoC, ¶¶ 336-338, *referring to* Letter from A. Khetaguri (GOGC) to Z. Mamulaishvili (Frontera), dated 8 August 2007 (**Exhibit C-27**); Minutes of the Coordination Committee Meeting dated 10 April 2013, at 6 (**Exhibit C-20**); Letter from K. Kokolashvili (GOGC) to Z. Mamulaishvili (Frontera), dated 17 January 2017, at 1-2 (**Exhibit C-21**); Letter from K. Kokolashvili (GOGC) to Z. Mamulaishvili (Frontera), dated 25 April 2017, at 1 (**Exhibit C-22**); Letter from K. Kokolashvili (GOGC) to Z. Mamulaishvili (Frontera), dated 17 July 2017, at 1 (**Exhibit C-23**); Letter from K. Kokolashvili (GOGC) to Z. Mamulaishvili (Frontera), dated 17 October 2017, at 1 (**Exhibit C-24**); Letter from D. Tvalabeishvili (GOGC) to Z. Mamulaishvili (Frontera), dated 13 April 2018, at 1-2 (**Exhibit C-25**); Letter from GOGC-appointed Coordination Committee members to Frontera-appointed Coordination Committee members dated 16 April 2018, at 2-3 (**Exhibit C-26**). *See also* Reply, ¶ 286.

[495] Reply, ¶¶ 287-289.

[496] Reply, ¶ 289, *referring to* First Kalandarishvili Witness Statement, ¶ 13 (**Exhibit RWS-4**); SoD, ¶ 317.

[497] Reply, ¶ 289, *referring to* SoD, ¶ 317.

[498] SoC, ¶¶ 342-343, *referring to* Letter from K. Kokolashvili (GOGC) to Z. Mamulaishvili (Frontera), dated 17 January 2017, at 1-2 (**Exhibit C-21**); Letter from K. Kokolashvili (GOGC) to Z. Mamulaishvili (Frontera), dated 25 April 2017, at 1 (**Exhibit C-22**); Letter from K. Kokolashvili (GOGC) to Z. Mamulaishvili (Frontera), dated 17 July 2017, at 1 (**Exhibit C-23**); Letter from K. Kokolashvili (GOGC) to Z. Mamulaishvili (Frontera), dated 17 October 2017, at 1 (**Exhibit C-24**).

[499] SoC, ¶¶ 342-343; Reply, ¶ 291.

[500] SoC, ¶¶ 344-345; Reply, ¶ 294.

[501] Reply, ¶¶ 294-298.

Crude Oil and Natural Gas becomes Profit Oil and Profit Natural Gas and has to be shared between the Parties under Article 11.10 of the PSC.[502]

494. In any event, even if Respondent 1 had complied with the cost recovery procedure, the Claimants submit that it has "ignored the requirement that [its] maximum recovery of Costs and Expenses is capped at 80% / 60%" under Articles 11.5(c) and 11.5(d) of the PSC, as amended.[503] According to these provisions of the PSC, the Claimants allege, Respondent 1 was "after 2012, required to share 20% of all produced oil and natural gas with GOGC, and 40% after 2016, respectively."[504]

495. As further detailed below,[505] the Respondents dispute this claim and argue that Article 11.5(a) of the PSC, which allowed 100% recovery of Costs and Expenses, applies instead because (i) Articles 11.5(c) and 11.5(d) do not apply to Costs and Expenses on the whole Contract Area, while Article 11.5(a) does; (ii) Exploration Expenditures are to be recovered first under Amendment No. 2; and (iii) Article 11.5(c) applies to Costs and Expenses benefitting the Exploitation Area and which were incurred from 2012 and after.[506]

496. The Claimants reject this interpretation of the PSC as erroneous.[507] This is because following the amendment of Articles 11.5(c) and (d) in Amendment No. 2, these provisions became *leges speciales* and thus prevail over Article 11.5(a) of the PSC, such that, after 2012, only Exploration Expenditures outside the Exploration Area are recoverable under Article 11.5(a).[508] The Claimants also consider the Respondents' interpretation of Article 11.5(a) to be flawed because expenses falling under this Article are to be prioritised, and recovered first. The Claimants highlight that the only prioritisation was found in the original wording of Article 11.5, which prioritised Operation Expenses, but such priority was removed in relation to those Operation Expenses benefitting the Exploitation Areas in the amended language.[509] The only hierarchy in this respect, the Claimants submit, is under the FIFO principle.[510] The Claimants also reject the Respondents' interpretation that Amendment No. 2 only applies to costs incurred as of November 2012, because the plain language of Section 4 of the Amendment states that on 14 November 2012, the old cost recovery mechanism will be completely replaced by the new mechanism, which would have to be applied for any costs not yet recovered on that date, including those incurred prior to 14 November 2012.[511]

497. Notwithstanding these obligations, the Claimants note that Respondent1 has failed to share any petroleum with Claimant 1 to date, and therefore have breached the terms of the PSC. Moreover, the Claimants submit that this constitutes a material breach of the PSC because it meant that the

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502 SoC, ¶¶ 306-307.

503 SoC, ¶ 348.

504 SoC, ¶ 348.

505 *See infra* ¶ 502.

506 Reply, ¶ 299, *referring to* SoD, ¶¶ 306, 308, 309.

507 SoC, ¶ 349.

508 Reply, ¶¶ 301-307.

509 Reply, ¶¶ 314-315.

510 Reply, ¶¶ 318-320.

511 Reply, ¶¶ 328-329.

Claimants did not benefit at all under the PSC, thereby destroying the commercial purpose of the contract. While the Respondents argue the commercial purpose of the PSC was not destroyed because the amounts due to the Respondents exceed those owed to the Claimants under Article 11,[512] the Claimants maintain that it is both irrelevant and inaccurate.[513]

(b) Respondents' Position

498. The Respondents deny that Respondent 1 is obligated to share any Profit Oil and Profit Natural Gas with Claimant 1 under the PSC, because it both complied with the relevant cost recovery procedure and was entitled to recover 100% of their Exploration Expenditures under Article 11.5(a) of the PSC.[514] In any event, the Respondents maintain that the non-sharing of petroleum would not constitute a material breach of the PSC.[515]

499. First, the Respondents submit that Respondent 1 has maintained itemized books and accounts of all costs and expenses and that, Claimant 1 has audited Respondent 1's books since 2008 and verified each invoice held by it.[516] In this regard, the Respondents refute any testimony to the contrary that was provided by the Claimants' witnesses at the Rescheduled Evidentiary Hearing, and point to correspondence demonstrating that audits were conducted prior to 2009, and that Respondent 1 did submit cost recovery reports to the Claimants.[517]

500. Moreover, because Respondent 1's operations are still in the exploration phase, it has only incurred Exploration Expenses to date, and there was therefore no need to categorize expenses.[518] In addition, the Respondents claim that Respondent 1 has been following the FIFO method to recover the Exploration Costs that it has incurred since 2001, and that it has recovered US$63 million of such costs to date.[519]

501. With respect to the establishment of a Measurement Point, the Respondents submit that there is no provision in the PSC which requires Respondent 1 to do so.[520] Furthermore, the PSC defines a Measurement Point with reference to a "Development Plan," but since the Exploitation/Development Area was only created with Amendment No. 2, which explicitly

[512] Reply, ¶ 334.

[513] Reply, ¶ 335.

[514] SoD, ¶¶ 302-323.

[515] SoD, ¶¶ 324-325.

[516] SoD, ¶ 321, *referring to* First Kalandarishvili Witness Statement, ¶¶ 8, 15, 16(e) (**Exhibit RWS-4**); Respondents' Post-Hearing Brief, at 6.

[517] Respondents' Post-Hearing Brief, at 6, *referring to* Letter from G. Kalandarishvili (Frontera) to D. Tvalabeishvili (GOGC), dated 12 February 2016 (**Exhibit R-57**/**R-108**); Letter from G. Kalandarishvili (Frontera) to D. Tvalabeishvili (GOGC), dated 14 March 2016 (**Exhibit R-62**/**R-108**); Letter from G. Kalandarishvili (Frontera) to D. Tvalabeishvili (GOGC), dated 11 May 2016 (**Exhibit R-68**/**R-108**); Letter from G. Kalandarishvili (Frontera) to D. Tvalabeishvili (GOGC), dated 12 August 2016 (**Exhibit R-73**/**R-108**); Letter from G. Kalandarishvili (Frontera) to D. Tvalabeishvili (GOGC), dated 1 February 2017 (**Exhibit R-83/R-108**); Letter from D. Tvalabeishvili (GOGC) to Z. Mamulaishvili, dated 28 December 2019 (**Exhibit R-108**).

[518] SoD, ¶ 317.

[519] SoD, ¶ 318.

[520] SoD, ¶ 320.

excludes the requirement to submit a development plan under Article 9, no such plan exist and accordingly also no Measurement Point.[521] In any event, the Respondents argue, whether or not such a Measurement Point was ever established makes no practical difference because the Claimants have always been informed about the amount of crude oil produced, as well as its quality, sales price etc.[522] In particular, the Respondents submit that Respondent 1 "provided detailed reports on monthly oil and gas production that articulated how measurement was conducted" and that the "State Customs Authority, State Railway Authority and internationally recognized cargo survey companies have each provided independent verification of crude quantities and sales price related to crude oil sales" while the "metering of gas volumes takes place at the connection to the State-owned gas pipeline from [the Respondents'] operations."[523] The Respondents further claim that all these documents have been "readily available since 1997."[524]

502. Second, contrary to the Claimants' claims, the Respondents argue that the maximum recovery of Costs and Expenses was not capped at 80% / 60% under Articles 11.5(c) and 11.5(d) of the PSC. Rather, under Article 11.5(a) of the PSC, Respondent 1 was entitled to recover Exploration Expenditures first, and from 100% of all Available Crude Oil and Natural Gas.[525] According to the Respondents, Articles 11.5(a) and 11.5(b) which, unlike Articles 11.5(c) and 11.5(d), are not expressly restricted to Costs and Expenses benefitting the Exploitation Area, apply without restriction to any contractual area.[526]

503. In addition, the Respondents argue that Amendment No. 2 provides for Exploration Expenditures to be recovered first.[527] According to the Respondents, because Exploration Expenditures are the only expenditures which can be recovered from 100% of "all" Available Crude Oil and Natural Gas, if there was no priority for Exploration Expenditures, then such expenditures, by definition, would not be recovered from 100% of all Available Crude Oil and Natural Gas and would, illogically, have to be recovered from other sources.[528] In any event, even if all Costs and Expenses were captured under Articles 11.5(c) and 11.5(d), it would be irrelevant in the Respondents' view. This is because Article 11.6 of the PSC provides for Costs and Expenses to be recovered on a FIFO basis, thus, until all previously incurred costs are recovered, no profit sharing can take place for 2012.[529]

504. Finally, even if Respondent 1 had an obligation to share petroleum with Claimant 1, the failure to do so cannot constitute a material breach under the PSC simply because the amounts allegedly

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[521] PSC, Amendment No 2, Section 3 (**Exhibit C-3**).

[522] SoD, ¶ 322 *referring to* First Kalandarishvili Witness Statement, ¶¶ 15-19 (**RWS-4**). *See also* Respondents' Post-Hearing Brief, at 7.

[523] Respondents' Post-Hearing Brief, at 7.

[524] Respondents' Post-Hearing Brief, at 7.

[525] SoD, ¶ 310.

[526] SoD, ¶¶ 306-308.

[527] SoD, ¶ 311.

[528] SoD, ¶ 311.

[529] SoD, ¶ 314.

due would be worth less than the monies owed to the Respondents by the Claimants under the counterclaims.[530]

4. Tribunal's Analysis

505. As detailed above,[531] the Claimants submit that Respondent 1 materially breached (i) Article 6.1(b) of the PSC by failing to relinquish territories outside the Exploitation/Development Area; (ii) Section 3 of Amendment No. 2 of the PSC by failing to submit a "work plan;" (iii) Article 27.3 of the PSC by purporting to assign its rights and obligations under the PSC to Respondent 2 without fulfilling the terms under that provision; and (iv) Article 11.5 of the PSC by failing to share any petroleum, as defined in the PSC, with Claimant 1, and refusing to follow the applicable cost recovery procedure.[532] As also detailed above, the Respondents reject all the Claimants' claims.[533]

506. In the following sections, the Tribunal will first address (a) the definition of material breach in the PSC, and then determine (b) whether the requirements of material breach have been fulfilled in the present case with regard to each of the above-mentioned alleged breaches of the PSC by Respondent 1.

(a) Definition of Material Breach

507. Article 30.2 of the PSC, which is found in Article 30 on "Termination and Breach," expressly defines "material breach" as follows:

> [A] material breach means a fundamental breach which, if not cured, is tantamount to the frustration of the entire Contract either as a result of the unequivocal refusal to perform contractual obligations or as a result of conduct which has destroyed the commercial purpose of this Contract.[534]

508. As a preliminary matter, the Tribunal notes that beyond this provision in the PSC, the Parties have not referred any to Georgian or Texas law principles that might apply with respect to the definition of material breach.

509. The Tribunal further notes that the Parties do not appear to have addressed in their submissions any notice requirement under the PSC for material breach, or expressly addressed any obligation on the part of the non-breaching party to provide the breaching party with a cure period. This is despite the fact that in a letter to Respondent 1 dated 16 September 2013 and with a subject line "Notice of Material Breach," the Claimants allege that Respondent 1 had "materially breached the Contract" by failing to submit a work plan in accordance with Amendment No. 2 and "is not entitled to any ***cure period*** with respect to such material breach."[535] While the Respondents refer

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[530] SoD, ¶ 325.

[531] *See supra* ¶¶ 472-473.

[532] Reply, ¶ 369(6).

[533] *See supra* ¶ 473.

[534] PSC, Art. 30.2 (**Exhibit C-1**).

[535] Letter from D. Tvalabeishvili (GOGC) and G. Tatishvili (State Agency) to S. Nicandros (Frontera), dated 16 September 2013, at 2 (**Exhibit C-34**) (emphasis added).

to this in their Statement of Defense, and dispute it as being contrary to the terms of the PSC,[536] and an example of bad faith on the part of the Claimants,[537] they do not expressly engage with the issue of a cure period. During the Evidentiary Hearing, while the Tribunal did not find any witness testimony to be particularly helpful in elucidating the parameters of any notice or cure period requirement under the PSC,[538] the Claimants' counsel expressly submitted that there were no such requirements.[539]

510. The Tribunal observes that the plain terms of Article 30.2 of the PSC do not expressly refer to any requirements either for the non-breaching party to give notice of the material breach or to provide the breaching party with a cure period. The phrase "if not cured" in Article 30.2, however, indicates that a breach can only amount to a material breach if the breaching party was aware that the other party considered the said breach as material, and had some opportunity to cure it. This interpretation, in the Tribunal's view, is sensible particularly in light of the severe consequences of a material breach finding under the PSC, namely the termination of the PSC by the non-breaching party.

(b) Respondent 1's Alleged Material Breaches

511. The Tribunal will now turn to address the question of whether each of Respondent 1's alleged breaches of the PSC amount to material breaches within the meaning of Article 30.2 of the PSC.

i. Failure to Relinquish Territories

512. As discussed above in Section V.E above, the Tribunal finds that Respondent 1 has breached Article 6.1 of the PSC by failing to relinquish the territories in the Contract Area outside the Exploitation/Development Area.[540] However, the question remains whether this breach amounts to a material breach pursuant to Article 30.2 of the PSC.

513. As detailed above,[541] the Claimants argue that Respondent 1's failure to relinquish territories outside the Exploitation/Development Area amounts to a material breach of the PSC.[542] According to the Claimants, the entire PSC was frustrated as a result of Respondent 1's unequivocal refusal to perform their contractual obligations, and of their conduct which has destroyed the commercial purpose of the PSC.[543] As also detailed above,[544] the Respondents reject this argument and contend that the alleged failure to relinquish territories cannot amount

[536] SoD, ¶¶ 235, 332.

[537] SoD, fn. 79.

[538] *See* Hearing Transcript, Day 1, 55:24-58:5, 66:5-16.

[539] *See* Hearing Transcript, Day 2, 28:5-29:13, 31:4-11.

[540] *See supra* ¶ 455.

[541] *See supra* Section V.H.1(a).

[542] Reply, ¶ 369(6).

[543] SoC, ¶ 294; Hearing Transcript, Day 1, 34:18-22. *See also supra* Section V.H.1(a).

[544] *See supra* Section V.H.1(b).

to a material breach because they were not under any obligation to relinquish any territory of Block XII in the first instance.[545]

514. On 16 November 2017, two days after the deadline for Respondent 1 to relinquish the relevant territories in Block XII under Article 6.1(b) of the PSC, the Claimants sent two separate letters to the Respondents, one alleging that they had breached the PSC by failing to relinquish[546] and one stating that such breach was a material breach.[547]

515. While Respondent 1 was in breach of Article 6.1 of the PSC at the time, namely two days after it was due to relinquish the relevant territories, this breach, in the Tribunal's view, did not amount yet to a material breach within the meaning of Article 30.2 of the PSC. At the time, in particular, Respondent 1 had not demonstrated an "unequivocal refusal to perform contractual obligations" that would be "tantamount to the frustration of the entire Contract" under Article 30.2[548] However, in the more than two years that have elapsed since 16 November 2017, Respondent 1 has consistently refused to relinquish the relevant territories, arguing in these proceedings that it was under no obligation to do so.[549] Respondent 1 was thus well aware of its breach since the notice of 16 November 2017 and had ample time to cure it. Accordingly, the Tribunal is satisfied that Respondent 1's "unequivocal refusal to perform [its] contractual obligations" is beyond doubt

516. The Tribunal is also satisfied that such refusal "is tantamount to the frustration of the entire Contract" pursuant to Article 30.2 of the PSC. The Contractor's obligation under Article 6 of the PSC to relinquish parts or the entire Contract Area at the end of a defined period is, in the Tribunal's view, a core obligation under the PSC. As the preamble to the PSC provides, while Respondent 1 has been granted the right to conduct petroleum operations in Block XII "to promote the development of hydrocarbon resources in Georgia" over a fixed period of time, "all Petroleum resources within the territory and under the internal waters, territorial sea, and continental shelf of Georgia are owned by the State."[550] Consistent with this general understanding concerning the allocation of rights and obligations with respect to the development of Block XII, one of the key terms of the PSC is that if the Contractor fails to successfully explore or exploit certain parts of the Contract Area within a reasonable period of time, the right to those territories revert back to the State.[551] In this context, by failing to relinquish the territories outside the Exploitation/Development Area, Respondent 1 has deprived the Claimants of their rights to utilize their national resources and, for instance, the opportunity to tender these areas to another investor.

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545 SoD, ¶¶ 292-293. *See also supra* Section V.H.1(b).

546 Letter from D. Tvalabeishvili (GOGC) and G. Tatishvili (State Agency) to Z. Mamulaishvili (Frontera), dated 16 November 2017, at 2 (**Exhibit C-77**).

547 Letter from D. Tvalabeishvili (GOGC) to Z. Mamulaishvili (Frontera), dated 16 November 2017, at 1 (**Exhibit C-5**).

548 PSC, Art. 30.2 (**Exhibit C-1**).

549 SoD, ¶¶ 293-301. *See also* Letter from Akin Gump to Hogan Lovells, dated 8 December 2017 (**Exhibit C-80**).

550 PSC, Preamble, at 1 (**Exhibit C-1**).

551 PSC, Art. 6.1 (**Exhibit C-1**).

517. The Tribunal therefore finds that Respondent 1 is in material breach of the PSC within the meaning of Article 30.2, by failing to relinquish the territories outside the Exploitation/ Development Area.

ii. Failure to Submit a Work Plan

518. As detailed above,[552] the Claimants claim that Respondent 1 materially breached the PSC by failing to submit a work plan detailing proposals for the development and operation of the Exploitation/ Development Area in accordance with Section 3 of Amendment No. 2. While they acknowledge that Article 9 of the PSC does not apply to the Exploitation/Development Area, the Claimants maintain that the requirement to submit a work plan was inserted into Amendment No. 2 in lieu of the requirement under Article 9.7 of the PSC to submit a Development Plan.[553] Accordingly, the work plan had the same objective, and should have had the same content, as the Development Plan described in Article 9.7.[554] The Claimants contend that Respondent 1 not only failed to submit a work plan meeting these requirements, but it also belatedly, and after receiving the notice of breach, fabricated the claim that the work plan that it submitted to the Coordination Committee on 8 November 2012 constituted the work plan under Section 3 of Amendment No. 2.[555] While the Respondents accept that Respondent 1 has an obligation to submit a "work plan" under Section 3 of Amendment No. 2 of the PSC,[556] they contend, as detailed above,[557] that this obligation has been satisfied by the work plan submitted to the Coordination Committee on 8 November 2012.[558]

519. Section 3 of Amendment No. 2 of the PSC provides, in its relevant part:

> For the avoidance of any doubt, such Development Area shall not be subject to requirements set out in Article 9 of the Contract; ***provided however that, on the occurrence of the fifteenth anniversary of the date on which the Contract was entered into, Contractor shall submit to the Coordination Committee a work plan detailing Contractor's proposals for development and operation of Development Area created hereunder***. Coordination Committee shall not unreasonably withhold or delay approval of such work plan, and it shall be deemed approved as submitted if no written objections are presented thereto by any member of the Coordination Committee within thirty (30) days of receipt.[559]

520. The Tribunal recalls the following chronology of events. On 8 November 2012, six days prior to the deadline of the PSC's fifteenth anniversary referred to in Section 3 (*i.e.*, 14 November 2012), Respondent 1 submitted a work plan to the Claimants.[560] At the time and in the months

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552 *See supra* Section V.H.2(a).

553 Reply, ¶ 340.

554 SoC, ¶ 364; Reply, ¶¶ 338-340.

555 SoC, ¶ 368, *referring to* Coordination Committee Meeting Minutes, dated 17 September 2013, at 2 (**Exhibit C-35**); Letter from E. Williamson (Frontera) to D. Tvalabeishvili (GOGC) and G. Tatishvili (State Agency), dated 1 October 2013, at 2 (**Exhibit C-36**).

556 SoD, ¶ 327.

557 *See supra* Section V.H.2(b).

558 2013 Work Program, dated November 2012 (**Exhibit R-16**); SoD, ¶ 329.

559 Amendment No. 2 to the PSC, dated 29 August 2003 (**Exhibit C-3**) (emphasis added).

560 Letter from L. Gogodze (GOGC) to Z. Mamulaishvili (Frontera), dated 17 December 2012 (**Exhibit C-16**); 2013 Work Program, dated November 2012 (**Exhibit R-16**).

that followed, the Claimants did not raise any complaint with Respondent 1 alleging that it had failed to submit the work plan required by Section 3 of Amendment No. 2.[561]

521. Indeed, the first time this issue appears to have been discussed between the Parties was six months later, during the Coordination Committee Meeting held on 10 April 2013. As reflected in the minutes of this meeting under the heading "Review and approval of the Development and Operation plan of the 'Development Area,'"[562] and corroborated by the Claimants' witness Mr Abaiadze who attended that meeting, the Parties discussed the work plan that Respondent 1 had submitted on 8 November 2012.[563] Mr Abaiadze testified that during this meeting, he explained to Respondent 1 that the work plan under Section 3 of Amendment No. 2 should "actually reflect[] the current or future development operations being planned."[564] Mr Abaiadze further confirmed that the participants concluded their discussion of the matter at the meeting by agreeing that the technical subcommittee would be asked to look further into the issue.[565]

522. On 9 September 2013, Mr Ghlonti, Respondent 1's Coordination Committee member, sent the Coordination Committee members appointed by Claimant 1 a letter and a presentation to be discussed at the next Coordination Committee Meeting on 17 September 2013.[566] In that presentation, Respondent 1 noted as follows:

> Based on discussions, conducted during the last Coordination board meeting in relation to the "Development Area" operation plan and taking into consideration recommendations, provided by Corporation, ***in the nearest future Frontera will provide the three-year "Development Area" operation plan***. The first five slides of mentioned plan are presented as an example of the Company's view of the plan's realization.[567]

523. Accordingly, at that time, it was understood that the Respondent would submit another document to meet the "work plan" requirement pursuant to Section 3 of Amendment No. 2 of the PSC, and that this point would be discussed further at the Coordination Committee Meeting scheduled for 17 September 2013. Nevertheless, on 16 September 2013, *i.e.,* one day before the scheduled discussion during the Coordination Committee meeting, the Claimants sent Respondent 1 a notice of material breach based on its failure to submit a work plan under Section 3 of Amendment No. 2 of the PSC.[568]

524. Having recalled the chronology, and based on these facts, the Tribunal finds as follows.

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561 Hearing Transcript, Day 2, 33:13-35:5.

562 Coordination Committee Meeting Minutes dated 10 April 2013, at 6-7 (**Exhibit C-20**).

563 Hearing Transcript, Day 1, 192:20-194:17.

564 Hearing Transcript, Day 1, 193:22-197:14

565 Coordination Committee Meeting Minutes dated 10 April 2013, at 7 (**Exhibit C-20**) ("RESOLVED: The Technical Subcommittee meeting to discuss the matter in greater detail"); Hearing Transcript, Day 2, 195:9-196:11.

566 Letter from V. Ghlonti (Frontera) to GOGC-appointed Coordination Committee members dated 9 September 2013 attaching Coordinating Board Meeting Presentation, September 2013 (**Exhibit C-31**).

567 Coordinating Board Meeting Presentation, September 2013, at 3 (**Exhibit C-31**) (emphasis added).

568 Letter from D. Tvalabeishvili (GOGC) and G. Tatishvili (State Agency) to S. Nicandros (Frontera), dated 16 September 2013 (**Exhibit C-34**).

525. First, the Tribunal finds that Respondent 1's 8 November 2012 work plan does not constitute a work plan within the meaning of Section 3 of Amendment No. 2 of the PSC. In particular, the letter, under cover of which the 8 November 2012 work plan was sent to the Claimants, specifically states that the document was sent "[p]ursuant to Article 10.3 of the PSC" and that it was "the Work Program and Budget for 2013" and not the work plan described in Section 3 of Amendment No. 2.[569] A "Work Program and Budget" under Article 10.3 is meant to "set out the proposed Petroleum Operations to be carried out in the Contract Area,"[570] while the work plan under Section 3 of Amendment No. 2 "detail[s] [the] Contractor's proposals for development and operation of the Development Area."[571] In light of the largely different purposes of these two documents under the PSC, the Tribunal does not consider that the 2013 Work Program and Budget could have constituted the work plan for purposes of Section 3 of Amendment No. 2.

526. At the same time, the Tribunal does not agree with the Claimants' assertion that a work plan under Section 3 of Amendment No. 2 would have to cover all of the content listed in Article 9.7 of the PSC. Indeed, the Parties specifically agreed in Section 3 of Amendment No. 2 of the PSC that Article 9 would *not* apply to the Exploitation/Development Area.[572] Had the Parties wanted to make an exception for Article 9.7 of the PSC, they could and should have expressly stated so in the terms of Amendment No. 2.

527. Second, and in any event, while a breach may have occurred at the time the Claimants sent the notice on 16 September 2013, there was no material breach because Respondent 1 had demonstrated neither an "unequivocal refusal to perform contractual obligations" nor any "conduct which [would have] destroyed the commercial purpose of this Contract" pursuant to Article 30.2 of the PSC. To the contrary, the issue was deemed "resolved" at the Coordination Committee Meeting held on 10 April 2013,[573] Respondent 1 subsequently promised in its 9 September 2013 letter to submit the required work plan, and this issue was still to be discussed between the Parties at the Coordination Committee Meeting scheduled for the next day on 17 September 2013.[574]

528. In these circumstances, therefore, even if there may have been a breach of Section 3 of Amendment No. 2 of the PSC, the Tribunal is not satisfied that Respondent 1's failure to submit a work plan under Section 3 of Amendment No. 2 of the PSC amounts to a material breach pursuant to Article 30.2 of the PSC.

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569 Letter from V. Ghlonti (Frontera) to GOGC-appointed Coordination Committee members dated 8 November 2012 (**Exhibit C-37**).

570 PSC, Art. 1.91 (**Exhibit C-1**).

571 PSC, Amendment No. 2, Section 3 (**Exhibit C-3**).

572 PSC, Amendment No. 2, Section 3 (**Exhibit C-3**).

573 Minutes of the Coordination Committee Meeting dated 10 April 2013, at 7 (**Exhibit C-20**).

574 Letter from V. Ghlonti (Frontera) to GOGC-appointed Coordination Committee members dated 9 September 2013 attaching Coordinating Board Meeting Presentation, September 2013 (**Exhibit C-31**).

iii. Purported Assignment

529. As discussed in Section V.D.3 above, the Tribunal finds that Respondent 1 breached Article 27.3 of the PSC by purporting to assign its rights and obligations under the PSC to Respondent 2 without fulfilling the necessary requirements under the contract.[575]

530. In the Tribunal's view, however, this breach does not rise to the level of a material breach within the meaning of Article 30.2 of the PSC. In order to constitute a "fundamental" breach of the PSC, the breach must have been a key obligation under the contract related directly to the petroleum operations in Block XII itself. In the case of this particular breach, however, Respondent 1's purported assignment of its rights to Respondent 2 most directly impacts the relevant parties to the agreement and not any fundamental or key obligation pertaining to the petroleum operations.

531. Accordingly, the Tribunal finds that Respondent 1's breach of Article 27.3 of the PSC does not constitute a material breach within the meaning of Article 30.2 of the PSC because it is not of such "fundamental" nature such that "if not cured, is tantamount to the frustration of the entire Contract."

iv. Failure to Share Petroleum

532. As detailed above,[576] the Claimants first submit that Respondent 1 was not entitled to recover ***any*** Costs and Expenses from their petroleum operations because it failed to fulfil the pre-requisites for such recovery under the PSC, namely to maintain itemized books and accounts of all Costs and Expenses, to calculate Costs and Expenses for recovery on a FIFO basis, and to establish a Measurement Point at which all Available Crude Oil and Natural Gas would be measured.[577] Accordingly, the Claimants submit that Respondent 1 was under an obligation to share ***all*** Available Crude Oil and Natural Gas as Profit Oil and Profit Natural Gas between the Parties under Article 11.10 of the PSC. Further, and in the alternative, the Claimants submit that Respondent 1 had an obligation under Article 3.7 of the PSC to share petroleum with the State after a correct application of the cost recovery mechanism in Article 11.5 (as amended in Amendment No. 2), which would have led to a cap of 60% / 80% on the recovery of the Respondents' Costs and Expenses.[578] Moreover, the Claimants allege, because Respondent 1 systematically failed to comply with all of these obligations, it has committed a material breach of the provisions of the PSC.[579]

533. As also detailed above,[580] while the Respondents agree that Respondent 1 is subject to the cost recovery mechanism set out in Articles 3.7 and 11.5 of the PSC, they maintain that Respondent 1 is currently under no obligation to share petroleum with Claimant 1 because it is still recovering

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575 *See supra* ¶ 344.

576 *See supra* ¶¶ 488-489.

577 SoC, ¶¶ 308-345; Reply, ¶¶ 282-298. *See also supra* Section V.H.3(a).

578 SoC, ¶¶ 302-307; Reply, ¶¶ 299-331; Hearing Transcript, Day 1, 39:10-12, 24-25, 40:1-3. *See also supra* Section V.H.3(a).

579 SoC, ¶¶ 353-356; Reply, ¶¶ 332-336. *See also supra* Section V.H.3(a).

580 *See supra* ¶¶ 498-504.

Costs and Expenses (which currently exceed their revenues)[581] from 100% of Available Crude Oil and Natural Gas in accordance with Article 11.5(a) of the PSC.[582] In addition, the Respondents submit that Respondent 1 is entitled to recover these Costs and Expenses because it has maintained itemized books and accounts of all Costs and Expenses, applied the FIFO method, and, furthermore, was under no obligation to establish a Measurement Point until the later Development Phase.[583] In any event, the Respondents contend that the non-sharing of petroleum with Claimant 1 would not constitute a material breach under the PSC.[584]

534. In order to address the Parties' various submissions, the Tribunal will first (a) set out the basic principles for recovery of Costs and Expenses and the sharing of Profit Oil and Profit Natural Gas under the PSC. It will then address the Claimants' principal claim and assess whether (b) Respondent 1 had any obligation to share all Available Crude Oil and Natural Gas as Profit Oil and Profit Natural Gas under Article 11.10 because it allegedly failed to fulfil the pre-requisites for any cost recovery, namely, to establish a Measurement Point and to maintain itemized books. Finally, it will address the Claimants' alternative claim and consider (c) whether Respondent 1 breached Article 11.5 (as amended) by failing to correctly apply the set caps when recovering Costs and Expenses thereunder.

(a) Recovery of Costs and Expenses and Sharing of Profit Oil and Profit Natural Gas under the PSC

535. Pursuant to Article 3.7 of the PSC, the Parties are to share Available Crude Oil and Available Natural Gas according to the provisions of Article 11:

> During the period in which this Contract is in force, all Available Crude Oil and Available Natural Gas resulting from Petroleum Operations, will be shared between [Claimant 1] and Contractor in accordance with the provision of Article 11.

536. Article 11, in turn, deals according to its heading with "Allocation of Production, Recovery of Costs and Expenses, Production Sharing, and Right of Export." Among other things,

- Article 11.1 provides that the "Contractor and the Operating Company shall maintain itemized books and accounts of all Costs and Expenses in accordance with the Accounting Procedure;"

- Article 11.4 provides that "Available Crude Oil and Available Natural gas shall be measured at the applicable Measurement Point and allocated as set forth hereinafter;"

- Article 11.5 sets out the mechanism for the Contractor to recover Costs and Expenses; and

- Article 11.10 provides how, after the recovery of Costs and Expenses, the remaining petroleum is shared as Profit Oil and Profit Natural Gas between the Parties:

> Following recovery of Costs and Expenses from Cost Recovery Petroleum in accordance with the provisions of this Article 11, the remaining Petroleum including any portion of Cost Recovery Petroleum not required for recovery of Costs and Expenses (hereinafter referred

[581] SoD, ¶¶ 261 *et seq*.

[582] SoD, ¶¶ 302-314. *See also supra* Section V.H.3(b).

[583] SoD, ¶¶ 315-323. *See also supra* Section V.H.3(b).

[584] SoD, ¶¶ 324-325. *See also supra* Section V.H.3(b).

> to as "Profit Oil" or "Profit Gas") shall be allocated between [Claimant 1] and the Contractor in the following proportions, over each Calendar Year:
>
> (a) [Claimant 1] Share: 51%
> (b) Contractor Share: 49%

537. Accordingly, following the recovery of Costs and Expenses in accordance with Article 11, the remaining petroleum is to be shared between the Parties as Profit Oil and Profit Natural Gas in a 51-49 ratio pursuant to Article 11.10, with Claimant 1 receiving 51% of the Profit Oil and Profit Natural Gas and Respondent 1 receiving 49% thereof.

(b) Respondent 1's Alleged Failure to Share All Available Crude Oil and Natural Gas

538. As detailed above,[585] the Claimants submit that in order to recover any Costs and Expenses under the mechanism in Article 11.5, Respondent 1 was required to (i) maintain itemized books and accounts of such Costs and Expenses pursuant to Article 11.1;[586] and (ii) to establish a Measurement Point at which all Available Crude Oil and Natural Gas would be measured pursuant to Article 11.4 of the PSC.[587] In the Claimants' view, Respondent 1 failed to do either. The Claimants submit that, without proper itemization and Measurement Point, it would be impossible to determine the Available Crude Oil and Available Natural and which Costs and Expenses fell into which categories, and therefore, impossible to apply the cost recovery mechanism under Article 11.5.[588]

539. As also detailed above,[589] while the Respondents do not dispute the obligation to itemize books and records, they maintain that Respondent 1 has done so in full compliance with the PSC,[590] and argue that there is no requirement under the PSC to establish any Measurement Point until the Development Phase.[591]

540. As a preliminary matter, the Tribunal notes that the Claimants do not argue that the (alleged) failure to itemize books and accounts or establish a Measurement Point is, in and of itself, a material breach of the PSC. Rather, the Claimants argue that, because of that failure, the mechanism in Article 11.5 of the PSC for the recovery of Costs and Expenses is inapplicable, and, as a consequence, Respondent 1 would be under an obligation to share all Available Crude Oil and Natural Gas as Profit Oil and Profit Natural Gas between the Parties under Article 11.10 of the PSC.

541. The Tribunal is not satisfied that such a reading of Article 11 is correct. While both the itemization of books and accounts and a Measurement Point arguably are necessary to apply the cost recovery mechanism in Article 11.5, it does not follow from Article 11 (or other provision

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585 *See supra* ¶ 490.

586 SoC, ¶¶ 310-318, 336-340; Reply, ¶¶ 285-290.

587 SoC, ¶¶ 327-333, 344-345; Reply, ¶¶ 293-298.

588 SoC, ¶¶ 319, 340.

589 *See supra* ¶¶ 499, 501.

590 SoD, ¶¶ 316-317.

591 SoD, ¶¶ 320-321.

under the PSC) that a failure to do so would result automatically and immediately in the Contractor being prohibited from the recovery of ***any*** Costs and Expenses and therefore would necessarily have to share ***all*** Available Crude Oil and Natural Gas as Profit Oil and Profit Natural Gas with Claimant 1. Beyond the Claimants' simple assertion that this would be the case, the Tribunal has not been provided with any evidence or argument in this respect. The Tribunal is of the view that such a drastic consequence – *i.e.*, the Contractor 1 losing the right to recover any Costs and Expenses – would need to be clearly provided for in the Parties' agreement.

542. In these circumstances, the Tribunal does not need to decide whether in fact Respondent 1 failed to maintain itemized books and accounts of Costs and Expenses pursuant to Article 11.1 or whether it had an obligation to establish a Measurement Point under Article 11.4, since in any event the Claimants' alleged consequence (*i.e.*, Respondent 1's obligation to share all Available Crude Oil and Natural Gas) would not follow from such (alleged) failures.

543. Accordingly, the Tribunal proceeds to examine the Claimants' alternative argument, *i.e.*, that Respondent 1 did not apply correctly the caps set in the cost recovery mechanism of Article 11.5 of the PSC (as amended).

(c) Respondent 1's Alleged Failure to Correctly Apply the Cost Recovery Mechanism in Article 11.5 of the PSC

544. The Parties disagree on the application of the cost recovery mechanism in Article 11.5 of the PSC, as amended. According to the Claimants, Respondent 1's maximum recovery of Costs and Expenses from the Exploitation/Development Area is capped at 80% of all Available Crude Oil and Natural Gas as of 2012, and 60% as of 2016, pursuant to Articles 11.5(c) and 11.5(d), as amended. As such, Claimant 1 is guaranteed a revenue of 20% of all Available Crude Oil and Natural Gas from 2012 to 2015, and 40% from 2016 onwards.[592] According to the Respondents, Amendment No. 2 did not alter the priority given to the recovery of Exploration Expenditures, because under Article 11.5(a), as amended, all Exploration Expenditures can be recovered from a maximum of 100% of all Available Crude Oil and Natural Gas.[593] The Respondents further claim that since Respondent 1 is still recovering costs from 2001, which was before Amendment No. 2 became effective, pursuant to the FIFO principle under Article 11.6, and under the original version of Article 11.5, it is entitled to recover these costs first.[594]

545. The cost recovery mechanism of Article 11.5 of the PSC raises various questions, namely as to (i) which categories of Costs and Expenses are covered; (ii) whether it contains any priority for the recovery of certain categories of Costs and Expenses; and (iii) when the amended version of Article 11.5 starts to apply, taking into account in particular the FIFO principle. In order to be able to address these questions, the Tribunal considers it important to first (1) understand the original version of Article 11.5 of the PSC, before (2) assessing the amendments thereto under Section 4 of Amendment No. 2. Once the correct interpretation of Article 11.5 (as amended) is established, the Tribunal will address (3) whether the Respondent breached such provision by

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592 SoC, ¶¶ 348-352; Reply, ¶¶ 281, 299.

593 SoD, ¶¶ 310-312

594 SoD, ¶¶ 314, 318.

applying incorrect caps and thus failing to share the correct amount of Profit Oil and Profit Natural Gas with the Claimants.

1. *Original Version of Article 11.5 of the PSC*

546. While only addressed briefly and partially in their submissions, the Parties do not appear to disagree with respect to the interpretation of the original version of Article 11.5,[595] which provides:

> Contractor […] shall be entitled to recover all Costs and Expenses incurred in respect of Petroleum Operations, after recovery of all Operation Expenses:
>
> > (a) from a maximum of 100% of all Calendar Year Available Crude Oil and Available Natural Gas from the Contract Area for Exploration Expenditures;
> >
> > (b) from a maximum of up to 80% of all Calendar Year Available Crude Oil and Available Natural Gas from the Contract Area for Costs and Expenses (other than Operation Expenses and Exploration Expenditures) benefiting Development Areas outside of Exploitation Areas; and
> >
> > (c) from a maximum of up to 60% of all Calendar Year Available Crude Oil and Available Natural Gas from the Contract Area for Costs and Expenses (other than Operation Expenses and Exploration Expenditures) benefiting Exploitation Areas;
>
> ("Cost Recovery Crude Oil" and "Cost Recovery Natural Gas," as the case may warrant). Recovery of Costs and Expenses shall be in a manner consistent with the Accounting Procedure and Article 11.6.[596]

547. The original version of Article 11.5 of the PSC distinguishes four categories of Costs and Expenses:

(i) Operation Expenses as defined in Article 1.66 (*viz.* Article 11.5, chapeau);

(ii) Exploration Expenditures as defined in Article 1.42 (*viz.* Article 11.5(a));

(iii) Costs and Expenses other than those in categories (i) and (ii), and benefitting any Development Area outside the Exploitation Area (*viz.* Article 11.5 (b)); and

(iv) Costs and Expenses other than those in categories (i) and (ii), and benefitting any Exploitation Area (*viz.* Art 11.5 (c)).

548. The Parties also appear to agree that the original version of Article 11.5 of the PSC provided an order of priority for the recovery of different categories of Costs and Expenses:[597] ***First***, all Operation Expenses were to be recovered. This is based on the chapeau of Article 11.5, which states that the sub-provisions of that Article only applied "after recovery of all Operation Expenses." ***Second***, Exploration Expenditures were to be recovered under Article 11.5(a). ***Third***, Costs and Expenses other than Operation Expenses and Exploration Expenditures, which benefitted any Development Area outside the Exploitation Area, were to be recovered under Article 11.5(b). ***Finally***, Costs and Expenses other than Operation Expenses and Exploration Expenditures, which benefitted any Exploitation Area, were to be recovered under Article 11.5(c).

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595 SoC, ¶ 323, fn. 323; SoD, ¶ 310.

596 PSC, Art. 11.5 (**Exhibit C-1**).

597 SoC, ¶ 323, fn. 323; SoD, ¶ 310.

549. This order of priority, the Tribunal observes, results from the application of the different recovery caps for each category of Costs and Expenses. Article 11.5(a) provides for the recovery of Exploration Expenditures "from a maximum of 100% of all Calendar Year Available Crude Oil and Available Natural Gas," whereas Article 11.5(b) applies a cap of 80%, and Article 11.5(c) applies a cap of 60%.

550. In the Tribunal's view, it would be logically impossible that "all Calendar Year Available Crude Oil and Available Natural Gas" is at the same time used 100% for the recovery of certain Costs Expenses and 80% / 60% for the recovery of other Costs and Expenses. The only way that these different caps may be applied, therefore, is by giving an order of priority to the Costs and Expenses which are allowed to be recovered from 100%, 80%, etc. of the Available Crude Oil and Natural Gas. In other words, there is a cascade built into Article 11.5 so that Operation Expenses are recovered before Article 11.5(a) Costs and Expenses, which are recovered before Article 11.5(b) Costs and Expenses, which are recovered before Article 11.5(c) Costs and Expenses.

551. Applying the above mechanism, the Contractor could thus recover all Operation Expenses from all Available Crude Oil and Natural Gas, then the Exploration Expenditures from 100% of the ***remaining*** Available Crude Oil and Natural Gas, then the Costs and Expenses (other than Operation Expenses and Exploration Expenditures) benefitting any Development Area outside the Exploitation Area from 80% of the ***remaining*** Available Crude Oil and Natural Gas, and finally Costs and Expenses (other than Operation Expenses and Exploration Expenditures) benefitting the Exploitation Area from 60% of the ***remaining*** Available Crude Oil and Natural Gas.

552. This cascading priority provided under Articles 11.5(a), (b) and (c) is also consistent with Claimant 1's objective of incentivizing the Contractor to maximize its Exploration Expenditures, which were to be recovered (after Operation Expenses) as a priority over the other Costs and Expenses.[598]

553. Moreover, this interpretation and application of Article 11.5 did not seem to have raised any issues between the Parties at the time. The Respondents argue that Amendment No. 2 does not include any deletions or changes to the original Article 11.5(a), which prioritized the recovery of all Exploration Expenditures from 100% of all Available Crude Oil and Natural Gas (after the recovery of Operation Expenses), thereby implying that the Parties had no issues in this respect at the time.[599] Similarly, while the Claimants in their submissions seem to indicate that Article 11.5(a) has no priority,[600] their own witnesses testified at the Evidentiary Hearing that such priority was indeed built into the original version of Article 11.5.[601]

554. Consequently, the Tribunal finds that prior to the amendment of Article 11.5, Respondent 1 would be able to recover Exploration Expenditures from a maximum of 100% of all Available Crude Oil and Natural Gas (after the recovery of Operation Expenses) pursuant to Article 11.5(a), and this ***before*** the recovery of any other Costs and Expenses under Articles 11.5(b) and (c).

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598 *See* Hearing Transcript, Day 1, 158:4-16 (Valishvili).

599 SoD, ¶¶ 51-54, 310-312; First Mamulaishvili Witness Statement, ¶¶ 53-54 (**Exhibit RWS-2**).

600 SoC, ¶¶ 323 *et seq.*; Reply, ¶¶ 311 *et seq.*

601 *See* Hearing Transcript, Day 1, 72:20-74:3 (Tvalabeishvili); 146:18-147:17, 158:4-16 (Valishvili).

2. *Amendment of Article 11.5 of the PSC*

555. In 2009, the Parties amended and replaced Article 11.5 pursuant to Section 4 of Amendment No. 2 to the PSC, which provides:

> **Section 4. Amendment to Article 11.5 of the Contract.** As of the fifteenth anniversary of the date the Contract was entered into [25 June 2012], Article 11.5 of the Contract shall be deleted in its entirety, and the following new Article 11.5 shall be substituted in lieu thereof.
>
> 11.5 Contractor […] shall be entitled to recover all Costs and Expenses incurred in respect of Petroleum Operations:
>
> > (a) after recovery of all Operation Expenses, from a maximum of 100% of all Calendar Year Available Crude Oil and Available;
> >
> > (b) after recovery of all Operation Expenses, from a maximum of 80% of all Calendar Year Available Crude Oil and Available Natural Gas from the Contract Area for Costs and Expenses (other than Operation Expenses and Exploration Expenditures) benefiting Development Areas outside of Exploitation Areas;
> >
> > (c) from the fifteenth anniversary of the date the Contract was entered into and for four (4) Contract Years thereafter, in respect of the Exploitation Areas, which shall thereafter automatically be deemed also as approved Development Areas, from a maximum of 80% of all Calendar Year Available Crude Oil and Available Natural Gas from the Contract Area for Costs and Expenses benefitting such Exploitation Areas;
> >
> > (d) from the nineteenth anniversary of the date the Contract was entered into and for four (4) Contract Years thereafter, in respect of the Exploitation Areas, which shall thereafter automatically be deemed also as approved Development Areas, from a maximum of 60% of all Calendar Year Available Crude Oil and Available Natural Gas from the Contract Area for Costs and Expenses benefitting such Exploitation Areas;
>
> ("Cost Recovery Crude Oil" and "Cost Recovery Natural Gas," (as the case may warrant). Recovery of Costs and Expenses shall be in a manner consistent with the Accounting Procedure and Article 11.6.[602]

556. The Claimants argue that, by deleting the reference to "Operation Expenses" in the chapeau of Article 11.5, the Parties eliminated the priority previously given to the recovery of Operation Expenses.[603] In addition, by only adding the phrase "after recovery of all Operation Expenses" to the new Articles 11.5(a) and (b), but not (c) or (d), and deleting the reference to "other than Operation Expenses and Exploration Expenditures" from Article 11.5(c), the Parties changed the scope of Article 11.5(a) such that it only applied to Exploration Expenditures incurred outside the Exploitation Area.[604] The Claimants argue that these amendments were intended to guarantee Claimant 1 a minimum amount of revenue in the form of shared Crude Oil and Natural Gas, in

602 PSC, Amendment No. 2, Section 4 (**Exhibit C-3**).

603 Reply, ¶¶ 314-315.

604 Reply, ¶¶ 304-307, 314-315.

exchange for a second extension of the Secondary Exploration Phase sought by Respondent 1, and that the Parties shared a common understanding in this respect.[605]

557. The Respondents, however, submit that Amendment No. 2 did not amend Article 11.5(a) in any way and that therefore, Respondent 1 can continue to recover all Exploration Expenditures as it had previously been able to under the original version of Article 11.5. In particular, the Respondents note that the wording of Article 11.5(a) did not change after Amendment No. 2,[606] and that priority is still given to all Exploration Expenditures.[607] In any event, the Respondents contend that the FIFO principle under Article 11.6 continues to apply and therefore that Respondent 1 is entitled to recover all Costs and Expenses incurred prior to the effective date of Section 4 of Amendment No. 2 (*i.e.*, 14 November 2012) in accordance with the original version of Article 11.5, before the cost recovery mechanism under the new version can be applied.[608]

558. The Tribunal begins its analysis by noting that the Parties have amended the categories of Costs and Expenses under each sub-provision of Article 11.5. While under the original version the category of Costs and Expenses benefitting the Exploitation or Development Areas ***excluded*** Operation Expenses and Exploration Expenditures and were subject to the "recovery of all Operation Expenses" in the first instance, the new versions of Articles 11.5(c) and (d) neither exclude Operation Expenses and Exploration Expenditures nor were subject to the "recovery of all Operation Expenses." Accordingly, Articles 11.5(c) and (d) now apply to ***all*** Costs and Expenses benefitting the Exploitation/Development Area, including Operation Expenses and Exploration Expenditures. As a consequence, Article 11.5(a), which relates to Operation Expenses and Exploration Expenditures no longer includes those relating to the Exploitation/Development Area since they are already covered by Articles 11.5(c) and (d).

559. The Respondents' argument to the contrary, and in particular that Article 11.5(a) does not specifically exclude Exploration Expenditures from the Exploitation/Development Area, is unconvincing. First, as detailed above, under Georgian and Texas law the Tribunal may not interpret provisions in isolation, but must instead consider it in the context of the entire provision, and indeed the whole contract.[609] Second, the above-mentioned interpretation is the only one that gives any effect to the Parties' amendments to Article 11.5, namely the deletion of the exclusions in Articles 11.5(c) and (d).

560. This interpretation is further confirmed by the commercial context, in which the Claimants agreed to the extension of the Secondary Exploration Phase only in exchange for a certain consideration, namely that Claimant 1 would be guaranteed a share of the Available Crude Oil and Gas produced from the Exploitation/Development Area.[610]

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605 Reply, ¶¶ 308-309, 330-331; Valishvili Third Witness Statement, ¶ 7 (**Exhibit CWS-15**); Tatishvili Third Witness Statement, ¶ 7 (**Exhibit CWS-16**); Abaiadze Third Witness Statement, ¶ 6 (**Exhibit CWS-17**). *See also* Hearing Transcript, Day 1, 68:19-69:5 (Tvalabeishvili), 117:10-118:13, 135:6-137:4 (Valishvili).

606 SoD, ¶¶ 310-312.

607 SoD, ¶¶ 306-309.

608 SoD, ¶¶ 313-314, 318.

609 *See supra* ¶ 292.

610 *See* Hearing Transcript, Day 1, 117:10-118:13, 135:6-137:4 (Valishvili).

561. The Tribunal further notes that the Parties amended the order of priority for cost recovery. As previously observed, the Parties have moved the reference to Operation Expenses from the chapeau of Article 11.5, pursuant to which such expenses were recoverable prior to any others, to Articles 11.5(a) and 11.5(b) only. Hence, the recovery of Operation Expenses continues to take priority over the Costs and Expenses described in the new Articles 11.5(a) and (b), but no longer over those in the new Articles 11.5(c) and (d).

562. In the Tribunal's view, the Parties did not change, however, the entire structure of Article 11.5, which means that the basic mechanism of cascading priorities, as described above, still applies (*i.e.*, the Costs and Expenses in Article 11.5(a) have priority over those in Article 11.5(b), which have priority over those in Article 11.5(c), which have priority over those in Article 11.5(d)).

563. Accordingly, both Parties are incorrect in their interpretation of Article 11.5. The Claimants are incorrect to argue that Article 11.5(a) has no priority over the other sub-provisions of Article 11.5, and the Respondents are incorrect to argue that Operation Expenses continue to have priority over all other Costs and Expenses.

564. Turning to the question of when the amended version of Article 11.5 began to apply, the Parties made clear that "as of the fifteenth anniversary of the date of the Contract was entered into [*i.e.* 14 November 2012], Article 11.5 of the Contract shall be deleted in its entirety" and replaced by the new amended version.[611] The Parties further agreed that "the following new Article 11.5 shall be substituted in lieu" of the original version.[612] In accordance with the plain terms of Section 4 of Amendment No. 2 therefore, the Tribunal finds that the amended version of Article 11.5 applies as of 14 November 2012, and entirely replaces the original version of Article 11.5.

565. The FIFO principle under Article 11.6 of the PSC was not amended, and provides that "Costs and Expenses shall be recoverable from Cost Recovery Petroleum on a first in first out basis (*i.e.* Costs and Expenses incurred will be recovered according to the date they were incurred, earliest first)." The application of the FIFO principle, however, is not to undermine the Parties' clearly expressed intention to modify Article 11.5 as from 14 November 2012. Accordingly, the Tribunal finds that as from that date, the Costs and Expenses categories listed under each sub-provision of Article 11.5, and the order of priorities for recovery, change as indicated above, and that within those new categories and order of priorities, the FIFO principle continues to apply.

566. In summary, the Tribunal finds that the cost recovery mechanism under Article 11.5, as amended, applies as follows:

- Pursuant to Article 11.5(a), which has priority over the subsequent sub-provisions in Article 11.5, the Contractor is entitled to recover Operation Expenses and Exploration Expenditures other than those benefitting the Exploitation/Development Area from a maximum of 100% of all Available Crude Oil and Natural Gas per calendar year;
- Pursuant to Article 11.5(c), as from 14 November 2012 and until 13 November 2016, of the remaining Available Crude Oil and Natural Gas per calendar year,[613] 20% is to be shared as Profit Oil and Profit Natural Gas, and up to 80% may be used by the Contractor to cover all its Costs and Expenses benefitting the

611 PSC, Amendment No. 2, Section 4 (**Exhibit C-3**).

612 PSC, Amendment No. 2, Section 4 (**Exhibit C-3**).

613 Remaining after application of Article 11.5(a).

Exploitation/Development Area, including Operation Expenses and Exploration Expenditures;

- Pursuant to Article 11.5(d), as from 14 November 2016, of the remaining Available Crude Oil and Natural Gas per calendar year,[614] 40% is to be shared as Profit Oil and Profit Natural Gas, and up to 60% may be used by the Contractor to cover its Costs and Expenses benefitting the Exploitation/Development Area, including Operation Expenses and Exploration Expenditures;
- The Contractor's Costs and Expenses continue to be recovered in accordance with the FIFO principle, such that older costs and expenses are recovered first. However, as from 14 November 2012, the new version of Article 11.5, as outlined above, applies.
- As undisputed between the Parties, Article 11.5(b) is of no practical application at the moment, since there is no Development Area outside the Exploitation Area.

567. In practical terms, this means that Operation Expenses and Exploration Expenditures benefitting areas ***outside*** the Exploitation/Development Area can be recovered from up to 100% of all Available Crude Oil and Natural Gas, consistent with the Claimant 1's intention to continue to incentivise exploration of the rest of the Contract Area. Once these Operation Expenses and Exploration Expenditures benefitting areas outside the Exploitation/Development Area are recovered, from 14 November 2012 to 13 November 2016, 20% of the remaining Crude Oil and Natural Gas, if any, would be shared as Profit Oil and Profit Natural Gas, because the recovery of all Costs and Expenses that benefitted the Exploitation/Development Area would be capped at 80%. From 14 November 2016 onwards, once the Operation Expenses and Exploration Expenditures benefitting areas outside the Exploitation/Development Area are recovered, 40% of the remaining Crude Oil and Natural Gas, if any, would be shared as Profit Oil and Profit Natural Gas, because the recovery of all Costs and Expenses that benefitted the Exploitation/Development Area is capped at 40%.

3. Application of Article 11.5 of the PSC (as amended)

568. It follows from the above that in order to assess whether Respondent 1 breached its obligation to share petroleum under Articles 3.7 and 11.10 by failing to correctly recover their Costs and Expenses under Article 11.5 of the PSC, the Tribunal must first determine the amount of Operation Expenses and Exploration Expenditures incurred by Respondent 1 in areas outside the Exploitation/Development Area under Article 11.5(a), as amended. If there is Available Crude Oil and Natural Gas remaining after 100% of these Costs and Expenses are deducted, the Tribunal then has to determine the amount of Costs and Expenses benefitting the Exploitation/Development Area, which Respondent 1 would be entitled to recover with a cap of 60% / 80%, under Articles 11.5(c) or (d), respectively.

569. Accordingly, in order to accurately apply the cost recovery mechanism under Article 11.5, one would require information regarding (i) the categories of Costs and Expenses that have been incurred by Respondent 1; and (ii) whether or not these Costs and Expenses benefitted the Exploitation/Development Area or other areas.

570. The Tribunal, however, is not in possession of this information. In the absence of such information, it is not possible to determine whether Respondent 1 correctly applied Article 11.5 of the PSC. The Claimants have not submitted any such information regarding the various

[614] Remaining after the application of Articles 11.5(a) and (b).

categories of Costs and Expenses (or requested the Respondents to do so), such as would enable the Tribunal to calculate the various amounts indicated above. Rather, the Claimants wrongly assumed that sales revenues could provide a sufficient basis for those calculations.[615] However, as explained in detail above, Article 11.5 of the PSC (in the original and amended version) is not revenue-based but cost-based and therefore sale revenues cannot provide a sufficient basis for the determination of the cost recovery mechanism under Article 11.5.

571. In the Tribunal's view, it is ***plausible*** that most of Respondent 1's Costs and Expenses benefitted the Exploitation/Development Area, since it has been established that there was only limited exploration activity outside the Exploitation/Development Area,[616] and that Respondent 1's activities were mainly concentrated in that area. Therefore, it is equally ***plausible*** that Operation Expenses and Exploration Expenditures other than those benefitting the Exploitation/Development did not reach 100% of all Available Crude Oil and Available Nature Gas, and that the Claimants would be entitled to obtain a share of the remaining Available Crude Oil and Available Natural Gas under the provisions of Article 11.5 (c) and (d) of the PSC (as amended).

572. However, the Tribunal cannot reach a finding of breach based on mere plausibility. In the absence of relevant information, it cannot be excluded that Respondent 1 incurred Operation Expenses and Exploration Expenditures that benefitted areas outside the Exploitation/Development Area, and that these costs and expenses amount to or exceeded 100% of all Available Crude Oil and Natural Gas. In this case, as recognized by the Claimants' own witnesses, Respondent 1 would not be under any obligation to share any petroleum with Claimant 1.[617]

573. In sum, in these circumstances, the Tribunal is not satisfied that the Claimants have established Respondent 1's failure to correctly apply the cost recovery mechanism in Article 11.5 (as amended) and thus breached its obligation under Articles 3.7 and 11.10 of the PSC to share petroleum with Claimant 1.

* * * * * *

574. Therefore, in sum, the Tribunal finds that the Claimants failed to establish Respondent 1's breach to share petroleum with Claimant 1 under Articles 3.7 and 11.10 of the PSC.

I. FAILURE TO SHARE PETROLEUM DAMAGE CLAIM

575. In this section, the Tribunal addresses the Claimants' Failure to Share Petroleum Damage Claim, as set out in Claimants' Requests for Relief No. 9 to 10, *i.e.,* the Claimants' claims for damages based on Respondent 1's alleged failure to share petroleum with the Claimants.[618]

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615 *See supra* ¶ 312.

616 *See supra* ¶ 439.

617 *See* Hearing Transcript, Day 1, 73:20-74:3 (Tvalabeishvili), 158:3-159:13 (Valishvili).

618 Reply, ¶ 369(5).

576. The Claimants submit that Respondent 1 is liable for damages arising from their failure to follow the cost recovery procedure and share petroleum.[619] The Claimants submit that due to Respondent 1's failure, it owes the Claimants an amount to be determined but no less than US$32.8 million[620] (Request for Relief No. 9) or alternatively US$3.08 million (Request for Relief No. 10).[621]

577. The Respondents deny the Claimants' Failure to Share Petroleum Damage Claim.[622]

578. The Claimants' Failure to Share Petroleum Damage Claim is based on the prerequisite that Respondent 1 breached the PSC by failing to share petroleum with Claimant 1 because it either (i) was under an obligation to share all Available Crude Oil and Natural Gas between the Parties under Article 11.10 of the PSC; or (ii) misapplied the caps of Costs and Expenses recovery under Article 11.5 (as amended). The Tribunal found in the preceding section that such breach is not established and therefore, as a consequence, dismisses the Claimants' Failure to Share Petroleum Damage Claim accordingly.

J. TAX ADVANCE CLAIM

579. In this section, the Tribunal addresses the Claimants' Tax Advance Claim, as set out in Claimants' Requests for Relief No. 11, *i.e.,* the Claimants' claims for damages based on Respondent 1's alleged failure to pay a tax advance of GEL 752,389.09 pursuant to Article 17.8 of the PSC.[623]

580. In the alternative to their Failure to Share Petroleum Damage Claim, the Claimants submit that Respondent 1 was obligated, but failed, to pay the corresponding tax advance pursuant to Article 17.8 of the PSC, despite its explicit acknowledgement of the obligation.[624] The Claimants submit that under Article 17.8, Respondent 1 is liable to pay the tax advance to Claimant 1, if the amount of mineral use tax paid by Claimant 1 is greater than Claimant 1's share of the Profit Oil and Profit Natural Gas. In the present case, the Claimants submit that Claimant 1 received no Profit Oil and Profit Natural Gas, while from 2013 to 2017, Claimant 1 paid GEL 752,389.09 as mineral use tax on behalf of Respondent 1. Accordingly, they submit that Respondent 1 is obligated to pay the amount of GEL 752,389.09 as a tax advance to Claimant 1.[625]

581. The Respondents state that they never denied that the tax advance payment of GEL 752,389.09 was due,[626] but submit it is offset by the damages the Claimants owe to the Respondents under the counterclaims.[627]

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[619] SoC, ¶ 386; Reply, ¶¶ 357-358.

[620] SoC, ¶ 405; Hearing Transcript, Day 1, 41:13-15.

[621] SoC, ¶¶ 407-408, *relying on* Calculation of the value of petroleum owed by Frontera to the State (2012-2018) (**updated Exhibit C-123**).

[622] SoD, ¶ ¶ 336-338.

[623] Soc, ¶¶ 411-418; Reply ¶¶ 366-367.

[624] SoC, ¶¶ 411-412; Reply, ¶¶ 366-367.

[625] SoC, ¶¶ 415-418.

[626] SoD, ¶ 338.

[627] SoD, ¶¶ 337-338, 344(e).

582. The Tribunal notes that Article 17.8 of the PSC provides as follows:

> 17.8 If the total Profit Tax liability and Mineral Use Tax liability of the Contractor Parties paid and discharged by Georgian Oil is greater than the value of Georgian Oil's share of Profit Oil and Profit Natural Gas received by Georgian Oil, then the Contractor Parties shall advance to Georgian Oil and amount of money equal to the amount by which those Tax liabilities paid exceed that value ("Tax Advance"), and the Tax Advance, plus an amount equal to interest at LIBOR plus two percent from the date of the advance to the date of its recovery, shall be considered Operation expenses that the Contractor Parties are entitled to recover from, and Available Natural Gas and Available Crude Oil.

583. Given that the Respondents acknowledge the debt of GEL 752,389.09 to be paid as the tax advance under Article 17.8 of the PSC, and given that there are no counterclaims against which this can be set-off with (because the counterclaims have been withdrawn), the Tribunal grants the Claimants' Tax Advance Claim, as set out in Claimants' Requests for Relief No. 11. Accordingly, the Tribunal orders Respondent 1 to pay GEL 752,389.09 as a tax advance to Claimant 1 pursuant to Article 17.8 PSC.

K. INTEREST

1. Parties' Positions

584. The Claimants request that the Tribunal order the Respondents "to pay interest (LIBOR plus 4%) pursuant to Article 31.6 of the PSC on all amounts ordered to be paid to Claimants from the date of each breach until the date on which the award with respect thereto is satisfied."[628] In particular, if and to the extent that Claimant 1 is awarded damages relating to the mineral use tax, the Claimants contend that the Respondents are also liable for interest accrued thereon on the basis of Article 31.6 of the PSC.[629]

585. The Respondents have not made any particular arguments in response to the Claimants' interest claim, except to deny them in their entirety.[630]

2. Tribunal's Analysis

586. As detailed above, the Tribunal has dismissed the Claimants' Non-Relinquishment Damage Claim[631] and Failure to Share Petroleum Damage Claim.[632] The only monetary relief granted by the Tribunal relates to the Claimants' Tax Advance Claim.[633] The question is therefore whether the Claimants are entitled to interest in this regard.

587. Article 31.6 of the PSC provides, among other things, as follows:

> In the event that monetary damages are awarded, the award shall include interest from the date of the breach or other violation to the date when the award is paid in full. ***The rate of interest shall be LIBOR plus 4% over the period from the date of the breach or other***

628 Reply, ¶ 369 (citations omitted). *See also* SoC, ¶¶ 419-422.

629 SoC, ¶ 423.

630 SoD, ¶ 344(a).

631 *See supra* Section V.G.

632 *See supra* Section V.I.

633 *See supra* Section V.J.

> ***violation to the date the award is paid in full***. Each Party waives any and all requirements or any national law relating to notice of a demand for interest or damage for the loss of the use of funds.[634]

588. In light of Article 31.6 of the PSC, the Tribunal is satisfied that interest is due at the rate of LIBOR plus 4% as from the date when the tax advance was due until its full payment. However, the Tribunal has been provided with no information on when the tax advance was due. It is beyond doubt that the amount is due on the date of this award and, therefore, the Tribunal orders that interest will begin to accrue on that date.

L. COSTS

1. Claimants' Position

589. The Claimants submit that they are entitled to full reimbursement of their costs incurred in relation to their claims (*i.e.*, US$ 4,295,661.40 and EUR 709,972.93), as well as their costs incurred in relation to Respondent 1's counterclaims (*i.e.*, US$ 2,474,787.78 and EUR 19,507.28).[635] The Claimants also submit that the Respondents should be ordered "to pay interest on the aforementioned amounts at the rate of LIBOR plus 4% as of the date of the Award until full payment."[636]

(a) Costs Incurred in relation to Claims

590. With respect to the costs incurred in relation to their claims, the Claimants submit that should they prevail, they are entitled to reimbursement of such costs "on a full indemnity basis."[637] According to the Claimants, pursuant to Article 31.6 of the PSC and Article 40(1) of the UNCITRAL Rules, the Parties have explicitly agreed that the rule "costs follow the event" shall apply in this dispute. This is because, the Claimants note, Article 31.6 of the PSC provides that "the arbitrators may […] award costs (including reasonable legal fees to the prevailing Party from the losing Party," and Article 40(1) of the UNCITRAL Rules provides that "the costs of arbitration shall in principle be borne by the unsuccessful party."[638]

591. Moreover, while the Claimants acknowledge that the UNCITRAL Rules grant the Tribunal discretion with regard to the allocation of legal costs, they note that "there is broad consensus among the arbitral tribunals when applying Article 40(2) of the UNCITRAL Rules to apply the rule of 'the costs follow the event.'"[639] Similarly, the Claimants contend that under Swedish law,

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634 PSC, Art. 31.6 (**Exhibit C-1**) (emphasis added).

635 Claimants' Submission on Costs, ¶¶ 1-94, 100(1), 100(2).

636 Claimants' Submission on Costs, ¶ 100.

637 Claimants' Submission on Costs, ¶ 2.

638 Claimants' Submission on Costs, ¶¶ 3-4, *citing* PSC, Art. 31.6 (**Exhibit C-1**); UNCITRAL Rules, Art. 40(1) (**Exhibit CLA-1**).

639 Claimants' Submission on Costs, ¶¶ 5, 7, *citing Michael Bühler*, Basic Cost Allocation Principles, in "Costs," Global Arbitration Review, 29 November 2018 (**Exhibit CLA-225**); *Michael Bühler*, Awarding Costs in International Commercial Arbitration: An Overview, 2004 ASA Bulletin, Volume 22 No. 2, at 250 (**Exhibit CLA-228**).

if the parties have not agreed specifically on a rule governing the allocation of legal costs, the principle of "costs follow the event" is generally followed.[640]

592. To the extent that the Respondents prevail in relation to the Claimants' claims, the Claimants maintain that the Respondents "should still bear the costs resulting from Respondents' dilatory behavior in the arbitration proceedings."[641] This is because, the Claimants argue, the Tribunal must take into account the circumstances of the case when allocating costs,[642] and acknowledge the "general consensus among commentators that arbitral tribunals have wide discretion to impose sanctions on parties for their improper conduct of arbitration."[643]

593. In this case, the Claimants submit, the Respondents' "procedural conduct [. . .] caused substantial and unnecessary delays and extra costs on a number of occasions [which] justifies sanctioning and burdening Respondents with additional costs."[644] In particular, the Claimants point out that (i) the Purported Assignment caused significant additional work for the Claimants and the Tribunal including correspondence, the creation of two separate tracks for the proceedings, and two additional rounds of submissions; and (ii) the Respondents repeatedly failed to abide by the original procedural deadlines in the proceeding, including with respect to the document production phase and the Evidentiary Hearing.[645]

594. The Claimants therefore request the reimbursement of all costs incurred in relation to their claims, including (i) EUR 750,000 in arbitration costs, comprising also the substitute payment they made on behalf of the Respondents;[646] (ii) US$ 3,685,561.95 in legal fees and expenses; (iii) US$ 573,403.62 in expert witnesses' fees and expenses; (iv) EUR 22,569.48 and US$ 23,889.79 in fact witnesses' fees and expenses; (v) EUR 37,403.45[647] in Claimants' employees' costs and expenses; and (vi) US$ 12,806.04 in interpreters' and document translation costs. These costs amount to a total of EUR 709,972.93 and US$ 4,295,661.40, and are detailed as follows:[648]

Cost Category/Item	Amount (€)	Amount (US$)
Arbitration Costs		
Initial Deposit	€250,000.00	
Supplementary Deposit	€150,000.00	

[640] Claimants' Submission on Costs, ¶ 7, *referring to Bonde,* "Sweden," The European, Middle Eastern and African Arbitration Review, 2016 (**Exhibit CLA-226**); *Brocker/Löf*, in: Franke, Magnusson, Ragnwaldh, et al. (eds) on International Arbitration in Sweden: A Practitioner's Guide (2013), at 212, ¶ 236 (**Exhibit CLA-227**).

[641] Claimants' Submission on Costs, ¶ 9.

[642] Claimants' Submission on Costs, ¶ 10, *referring to* UNCITRAL Rules, Art. 40(2) (**Exhibit CLA-1**).

[643] Claimants' Submission on Costs, ¶ 10, *referring to Smit/Robinson*, Cost awards in international commercial arbitration: proposed guidelines for promoting time and cost efficiency, 20 American Review of International Arbitration (2009), at 278 (**Exhibit CLA-232**).

[644] Claimants' Submission on Costs, ¶¶ 10-11.

[645] Claimants' Submission on Costs, ¶¶ 12-20.

[646] The Claimants' Submission on Costs only refers to EUR 650,000 but since the Claimants' last submission, the Claimant has been asked to pay, and has paid, the substitute payment of the Respondents' share of the supplementary deposit requested by the Tribunal in the amount of EUR 100,000. *See supra* ¶¶ 205-206.

[647] While the Claimants have sought EUR 37,403.45 in costs for this category, the underlying figures amount to only EUR 37,403.42.

[648] *See* Claimants' Submission on Costs, ¶¶ 23-62.

Cost Category/Item	Amount (€)	Amount (US$)
Supplementary Deposit	€100,000.00	
Reimbursement of Respondents' Share	€250,000.00	
Sub-Total	**€750,000.00**	
Legal Fees and Expenses		
Hogan Lovells		US$ 3,589,330.28
Fees (without VAT)		*US$ 3,422,853.08*
Expenses (without VAT)		*US$ 166,477.20*
Radon Law Offices		US$ 43,391.67
BLC Law Office		US$ 21,211.43
Harneys Westwood and Riegels		US$ 31,628.57
Sub-Total		**US$ 3,685,561.95**
Expert Witnesses' Fees and Expenses		
Jonathan K. Westbury and Dr Stephen C. Wright of Gaffney, Cline & Associates		US$ 421,371.31
Chief Justice Wallace B. Jefferson		US$ 47,845.00
Jeffrey Aldrich of MHA Petroleum Consultants LLC		US$ 89,779.60
Prof Dr Rolf Knieper		US$ 10,761.34
George Jugeli		US$ 3,646.37
Sub-Total		**US$ 573,403.62**
Fact Witnesses' Costs and Expenses		
Yukler Mehmet Arif		US$ 23,889.79
Artem Sanishvili	€2,151.42	
David Tvalabeishvili	€3,474.85	
Aleksandre Abaiadze	€9,689.97	
Mariam Valishvili	€1,753.14	
Giorgi Tatishvili	€5,500.10	
Sub-Total	**€22,569.48**	**US$ 23,889.79**
Claimants' Employees Costs and Expenses		
Vazha Khidasheli	€17,208.86	
Soso Ghudushauri	€2,239.50	
David Oniani	€9,034.30	
Tornike Gotsiridze	€1,370.00	
Ilia Didberidze	€1,621.00	
Givi Bakhtadze	€2,650.34	
Omar Ogbaidze	€1,026.69	
Ekaterine Sisauri	€2,252.73	
Sub-Total	**€37,403.42**	
Interpreters' and Document Translation Costs		
Interpreters' Costs		US$ 4,429.20
Tariel Davitashvili		*US$ 3,135.78*
Ketevan Khachidze		*US$ 1,293.42*
Document Translation Costs		US$ 8,376.84
Sub-Total		**US$ 12,806.04**
Grand Total	**€709,972.90**	**US$ 4,295,661.40**

595. The Claimants submit that these costs were necessary and reasonable in light of the complexity of the matter, the need for numerous fact and expert witnesses, and the fact that the Respondents "employed dilatory tactics" and "disputed (albeit without substance and unsuccessfully) basically every fact asserted by Claimants."[649]

(b) Costs Incurred in relation to Counterclaims

596. The Claimants submit that they are entitled to all their reasonable costs incurred in relation to Respondent 1's counterclaims. The Claimants argue that this follows from the general rule that "costs follow the event," and the general rule under Swedish law that "if a party has withdrawn its claim, it shall reimburse the opposing party for all the relevant costs in relation to such claim."[650]

597. In this case, the Claimants point out, not only did Respondent 1 withdraw its counterclaims, it also acknowledged that it should "pay Claimants' reasonable costs in its defense of the Counterclaims."[651]

598. The Claimants therefore request the reimbursement of all costs incurred in relation to the counterclaims, including (i) US$ 1,932,757.41 in legal fees and expenses; (ii) US$ 535,072.38 in expert witnesses' fees and expenses; (iii) EUR 9,309.76 in fact witnesses' fees and expenses; (iv) EUR 10,197.52 in Claimants' employees' costs and expenses; and (v) US$ 6,957.99 in document translation costs. These costs amount to a total of EUR 19,507.28 and US$ 2,474,787.78, and are detailed as follows:[652]

Cost Category/Item	Amount (€)	Amount (US$)
Legal Fees and Expenses		
Hogan Lovells		US$ 1,886,366.50
Fees (without VAT)		*US$ 1,801,927.03*
Expenses (without VAT)		*US$ 84,439.47*
Radon Law Offices		US$ 18,232.50
BLC Law Office		US$ 28,158.41
Sub-Total		**US$ 1,932,757.41**
Expert Witnesses' Fees and Expenses		
Walter Bratic of Whitley Penn		US$ 232,312.00
Hans Dahlberg Kolga of Setterwalls Advokatbyrå		US$ 21,492.40
Wallace B. Jefferson of Alexander Dubose Jefferson & Townsend		US$ 40,519.65
Prof. Dr. Rolf Knieper		US$ 38,498.89
George Jugeli		US$ 7,590.00
Lali Lazarashvili[653]		US$ 0.00

649 Claimants' Submission on Costs, ¶¶ 32, 63-64.

650 Claimants' Submission on Costs, ¶ 65.

651 Claimants' Submission on Costs, ¶¶ 66-67, *citing* Letter from the Respondents to the Tribunal, dated 5 June 2019, ¶ 5.

652 *See* Claimants' Submission on Costs, ¶¶ 72-94.

653 Claimants' Submission on Costs, ¶ 81, refers to the involvement of expert Mrs Lali Lazarashvli and indicates that further details would be provided in section (vi). However, the relevant section (vi) relates

Cost Category/Item	Amount (€)	Amount (US$)
Jeffrey Aldrich of MHA Petroleum Consultants, Inc.		US$ 66,975.93
Jonathan K. Westbury and Dr Stephen C. Wright of Gaffney, Cline & Associates		US$ 127,683.51
Sub-Total		**US$ 535,072.38**
Fact Witnesses' Costs and Expenses		
David Tvalabeishvili	€704.83	
Aleksandre Abaiadze	€6,138.69	
Giorgi Tatishvili	€2,466.24	
Sub-Total	**€9,309.76**	
Claimants' Employees Costs and Expenses		
Vazha Khidasheli	€6,070.03	
Soso Ghudushauri	€1,245.58	
David Oniani	€2,190.68	
Givi Bakhtadze	€691.23	
Sub-Total	**€10,197.52**	
Document Translation Costs		
Document Translation Costs		US$ 6,957.99
Sub-Total		**US$ 6,957.99**
Grand Total	**€19,507.28**	**US$ 2,474,787.78**

599. The Claimants submit that these costs were necessary and reasonable, "in particular in light of the enormous figure" of the counterclaims.[654]

600. The Claimants also submit that pursuant to Section 42 of the Swedish Arbitration Act, "[t]he arbitrator's order [on costs] may also include interest, if a party has so requested."[655] In this regard, the Claimants argue that interest rate is determined by Article 31.6 of the PSC.[656]

601. The Respondents, in response, allege that since they have "been relegated to representing [them]selves in this matter, [they] are not able to provide expert analysis or specific comments related to Claimant[s'] hundreds of pages of cost submissions, all of which we[re] received yesterday in hard copy and digital form."[657] The Respondents nevertheless noted, *inter alia*, that "the total costs associated with the government of Georgia's initiated effort against our company appear to be quite excessive in our view and demonstrative of the intended crushing effect of the State's action."[658]

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to expert Mr Aldrich (Claimants' Submission on Costs, ¶ 90) and at no other point do the Claimants provide any details concerning Mrs Lali Lazarashvli.

654 Claimants' Submission on Costs, ¶¶ 95-96.

655 Claimants' Submission on Costs, ¶ 97, *referring to* Swedish Arbitration Act, Section 42 (**Exhibit CLA-28**).

656 Claimants' Submission on Costs, ¶ 98.

657 Respondents' Response to Submission on Costs.

658 Respondents' Response to Submission on Costs.

2. Respondents' Position

602. The Respondents request the Tribunal to "[o]rder Claimants (jointly and severally) to pay all of [their] costs in connection with the arbitration, including but not limited to: (i) all administrative costs and venue costs of the arbitration; (ii) the fees and/or expenses of the Tribunal; and (iii) the costs of experts, consultants, witnesses and legal costs which [the Respondents] incur[]."[659]

603. In their Submission on Costs, the Respondents sought a total of US$ 2,638,369.72, comprising US$ 2,354,890.65 in legal fees and expenses, and US$ 283,479.07 in expert witnesses' fees and expenses. The amounts are detailed as follows:[660]

Cost Category/Item	Amount (€)	Amount (US$)
Legal Fees and Expenses		
Akin Gump Strauss Hauer & Feld LLP		US$ 2,259,245.37
Taylor English Duma LLP		US$ 95,645.28
Sub-Total		**US$ 2,354,890.65**
Expert Witnesses' Fees and Expenses		
David Leathers of Alvarez & Marsal		US$ 95,645.50
Paul Dee Patterson of Moyes & Co.		US$ 187,833.57
Sub-Total		**US$ 283,479.07**
Grand Total		**US$ 2,638,369.72**

604. With respect to the above amounts, the Respondents noted that they only reflect "out-of-pocket costs for prior counsel and experts that we have incurred thus far," even though it "represents only a fraction of what this process has actually cost" them.[661] The Respondents further noted that "[i]f there are additional costs that should be included, such as management time or similar 'internal' costs, we would appreciate the opportunity to submit those as well."[662]

605. The Claimants, on the other hand, submit that the Tribunal should disregard the Respondents' Submission on Costs in its entirety because it (i) was submitted late; (ii) does not state the reasons for why the Claimants should bear any portion of the Respondents' alleged costs; and (iii) fails to substantiate the alleged costs claimed.[663]

606. The Claimants first contend that the Respondents' Submission on Costs was submitted late and should be disregarded. This is because the Respondents missed the initial deadline of 31 January 2020, and while the Tribunal ultimately granted the Respondents an extension to 7 February 2020, extensions technically may only be requested before the deadline expires under paragraph 1.3 of Procedural Order No. 1 and the Respondents failed to make any such request, whether before or after the expiry of the deadline.[664] Moreover, the Claimants contend that the

[659] SoD, ¶ 344(f).

[660] Respondents' Submission on Costs, at 1.

[661] E-mail from the Respondents to the PCA, dated 8 February 2020.

[662] E-mail from the Respondents to the PCA, dated 8 February 2020.

[663] Claimants' Response to Submission on Costs, ¶ 20.

[664] Claimants' Response to Submission on Costs, ¶¶ 1-2.

Respondents failed to meet the second deadline, and only submitted their Submission on Costs after midnight, Stockholm time, on 7 February 2020.[665] Thus, in accordance with the Tribunal's instructions in its 3 February 2020 e-mail and paragraph 1.2 of Procedural Order No. 1, the Respondents' Submission on Costs should be ignored.[666]

607. The Claimants also argue that the Respondents' Submission on Costs should be disregarded because it fails to "show how and why the costs should be allocated between the Parties," and does not provide any accounting of the alleged costs that would demonstrate that they were actually incurred, and more specifically, that they were incurred in relation to the claims in this arbitration.[667] With respect to the counterclaims in this arbitration, the Claimants maintain that it is undisputed that the Respondents should bear all costs in relation thereto, including their own.[668] Thus, since the Respondents have failed to distinguish the costs incurred in relation to the claims as opposed to the counterclaims, the Claimants submit that the "Respondents' entire cost claim should be deemed to relate to the Counterclaims and thus be excluded."[669]

3. Tribunal's Analysis

608. As a preliminary matter, the Tribunal decides not to disregard the Respondents' Submission on Costs, despite its being filed late. The delay was only a few hours, Respondents' Submission on Costs having been filed on 8 February 2020 instead of 7 February 2020, and the Tribunal is of the view that such technical delay should not result in the drastic consequence of disregarding the submission.

609. In the subsequent sections, the Tribunal (a) sets out the principles according to which it must decide the Parties' costs in this arbitration; (b) determines which Party bears the Tribunal's and PCA's costs; and (c) decides on the Parties' other costs, including legal fees.

(a) Relevant Legal Principles

610. The Swedish Arbitration Act, applicable to this arbitration with a seat in Sweden, grants discretion to the Tribunal when deciding on the Parties' costs, unless the Parties have agreed otherwise. According to Section 42 of the Swedish Arbitration Act:

> Unless otherwise agreed by the parties, the arbitrators may, upon request by a party, order the opposing party to pay compensation for the party's costs and determine the manner in which the compensation to the arbitrators shall be finally allocated between the parties. The arbitrators' order may also include interest, if a party has so requested.[670]

611. The Parties in the present matter have made a specific agreement regarding costs in the PSC. Article 31.6 of the PSC reads in relevant part:

> Each Party shall pay the costs of its own arbitrator and the costs of the third arbitrator, in equal shares, and any costs imposed by the Rules shall be shared equally by the Parties.

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[665] Claimants' Response to Submission on Costs, ¶ 4.

[666] Claimants' Response to Submission on Costs, ¶¶ 3-4.

[667] Claimants' Response to Submission on Costs, ¶¶ 9-14.

[668] Claimants' Response to Submission on Costs, ¶¶ 15-16.

[669] Claimants' Response to Submission on Costs, ¶¶ 17-19.

[670] Swedish Arbitration Act, Section 42 (**Exhibit CLA-28**).

> Notwithstanding the above, the arbitrators may, however award costs (including reasonable legal fees) to the prevailing Party from the losing Party.

612. The UNCITRAL Arbitration Rules also contain provisions regarding costs. Article 38 of the UNCITRAL Rules provides:

> The arbitral tribunal shall fix the costs of arbitration in its award. The term "costs" includes only:
> *(a)* The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 39;
> *(b)* The travel and other expenses incurred by the arbitrators;
> *(c)* The costs of expert advice and of other assistance required by the arbitral tribunal;
> *(d)* The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
> *(e)* The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
> *(f)* Any fees and expenses of the appointing authority as well as the expenses of the Secretary-General of the Permanent Court of Arbitration at The Hague.

613. Article 40 of the UNCITRAL Rules further details how these costs shall be borne by the Parties:

> 40.1 Except as provided in paragraph 2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
>
> 40.2 With respect to the costs of legal representation and assistance referred to in article 38, paragraph *(e)*, the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

614. In light of the above, the Tribunal is of the view that the starting point of its analysis must be the specific provisions on which the Parties agreed in Article 31.6 of the PSC. The first sentence states that "[e]ach Party shall pay the costs of its own arbitrator and the costs of the third arbitrator, in equal shares, and any costs imposed by the Rules shall be shared equally by the Parties." The second sentence goes on that "[n]otwithstanding the above, the arbitrators may, however award costs (including reasonable legal fees) to the prevailing Party from the losing Party." The relationship between the first and second sentence of Article 31.6 of the PSC is not straightforward.

615. On the one hand, one could understand the first sentence as the principle (that each Party bears its costs) and the second sentence as a possible exception (that the Tribunal may shift costs). This seems to be the Claimants' reading of Article 31.6 of the PSC.[671] However, this reading does not square easily with the terminology in Article 31.6. The use of the mandatory "shall" in the first sentence of Article 31.6 hints at the fact that this part of the provision does not allow any exceptions.

616. On the other hand, one could read the two sentences as relating to different categories of costs. The first sentence relates to the costs of the arbitrators and "any costs imposed by the Rules," for which the Parties have mandatorily agreed ("shall") on how they must be borne. The second sentence relates to all ***other*** costs, including reasonable legal fees, for which the Tribunal has

671 *See supra* ¶ 591.

discretion in allocating them and may decide to shift them "to the prevailing Party from the losing Party."

617. The Tribunal is of the opinion that it does not have to decide which of those readings of Article 31.6 of the PSC is the correct one. Even if it were to follow the former reading, which allows the Tribunal to depart from the principle set forth in the first sentence of Article 31.6, the Tribunal is unconvinced that such a departure is warranted in the case at hand. The Tribunal has not been provided with any explanation or reason why it should, even if it could, depart from the principle agreed by the Parties in Article 31.6's first sentence according to which "[e]ach Party shall pay the costs of its own arbitrator and the costs of the third arbitrator, in equal shares, and any costs imposed by the Rules shall be shared equally by the Parties." For the avoidance of doubt, the Tribunal has taken into account the withdrawal of the Counterclaims by Respondent 1 and finds that this does not warrant a different conclusion.

(b) Tribunal's and PCA's Costs

618. In application of the principles set out in the preceding section, the Tribunal finds that Article 31.6 of the PSC determines which Party must pay the Tribunal's costs. Pursuant to this provision, the Claimants are to bear the fees and expenses of Prof Voser as the co-arbitrator appointed by the Claimants; the Respondents are to bear the fees and expenses of Mr Bishop as the co-arbitrator appointed by the Respondents; and the Parties in equal shares are to bear the fees and expenses of Prof Scherer as the presiding arbitrator.

619. In this context, the obligation under Article 31.6 rests on both Claimants and both Respondents, respectively. For the Claimants and Respondent 1, this results from their signature of the PSC. For Respondent 2, this results from the Amendment to the Terms of Appointment which specifically provides that "[b]y signing the present Amendment to the Terms of Appointment, […] Respondent 2 agrees to be joined to the present arbitration and consents to all provisions in the Terms of Appointment" and "[i]n particular, […] Respondent 2 agrees to be bound, among other things, by […] the arbitration agreement and ***other provisions in Article 31*** of the PSC […]."[672]

620. Regarding the costs of the PCA as the arbitral institution, and other Tribunal expenses, including in respect of court reporting, hearing facilities, courier services, IT/AV support and others, one could consider whether they qualify as "costs imposed by the Rules" in the meaning of Article 31.6 (first sentence) of the PSC and thus should be borne in equal shares by the Parties. Irrespectively, however, even if that was not the case, the Tribunal finds that it may apply the broad discretion granted under Section 42 of the Swedish Arbitration Act as well as Article 40.1 of the UNCITRAL Rules. In application of these principles, the Tribunal finds that the costs of the PCA and the other Tribunal expenses should be borne in equal parts by the Parties.

621. Attached to this award, as Annex A, is the final financial statement put together by the PCA. Accordingly:

- Prof Voser's fees and expenses are EUR 215,719.86 in fees and EUR 6,333.59 in expenses, *i.e.*, a total of EUR 222,053.45, and are to be borne by the Claimants;

672 Amendment to Terms of Appointment, ¶ 7 (emphasis added).

- Mr Bishop's fees and expenses are EUR 168,415.00 in fees and EUR 36,684.61 in expenses, *i.e.*, a total of EUR 205,099.61, and are to be borne by the Respondents;
- Prof Scherer's fees and expenses are EUR 330,526.27 in fees, EUR 16,672.05 in VAT, and EUR 2,914.82 in expenses, *i.e.*, a total of EUR 350,113.14 and are to be borne by the Claimants at 50%, *i.e.*, EUR 175,056.57 and by the Respondents at 50%, *i.e.*, EUR 175,056.57;
- Other Tribunal expenses are EUR 55,380.40 and are to be borne by the Claimants at 50%, *i.e.*, EUR 27,690.20 and by the Respondents at 50%, *i.e.*, EUR 27,690.20; and
- PCA's fees and expenses are EUR 112,372.24 in fees and EUR 5,469.08 in expenses, *i.e.*, a total of EUR 117,841.32, and are to be borne by the Claimants at 50%, *i.e.*, EUR 58,920.66 and by the Respondents at 50%, *i.e.*, EUR 58,920.66.

622. In summary, the total costs of the Tribunal and the PCA amount to EUR 950,487.92.

623. The Tribunal recalls that the Parties have cumulatively paid EUR 1,000,000 in deposits requested by the Tribunal at the outset and during the course of the proceedings in the following shares:

- The Claimants have paid EUR 500,000, representing full payment of their share of the deposit;
- The Claimants have paid an additional EUR 250,000, representing their substitute payments of the Respondents' shares of the supplementary deposits requested by the Tribunal on 6 September 2019 and 30 March 2020, respectively; and
- The Respondents have paid EUR 250,000, representing partial payment of their share of the deposit.

624. Taking into account the Tribunal's aforementioned determinations, the Claimants have to bear EUR 483,720.88 (EUR 222,053.45 + EUR 175,056.57 + EUR 27,690.20 + EUR 58,920.66) and the Respondents have to bear EUR 466,767.04 (EUR 205,099.61 + EUR 175,056.57 + EUR 27,690.20 + EUR 58,920.66) of the Tribunal's and the PCA's costs.

625. Considering the shortfall between the Respondents' share of the Tribunal's and the PCA's costs and the Respondents' deposit payments, the Tribunal orders the Respondents to reimburse to the Claimants the amount of EUR 216,767.04 (EUR 466,767.04 - EUR 250,000).

626. Finally, the PCA is requested to reimburse the unexpended balance of the deposit of EUR 49,512.08 to the Claimants.

(c) Other Costs Including Parties' Legal Fees

627. Regarding the other categories of costs, including the Parties' reasonable legal fees, the Tribunal may award them "to the prevailing Party from the losing Party" pursuant to Article 31.6 (second sentence) of the PSC. The Tribunal's discretion is also confirmed by Article 40.2 of the UNCITRAL Rules which provides that "[w]ith respect to the costs of legal representation and assistance referred to in article 38, paragraph *(e)*, the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable."

628. In application of these provisions, the Tribunal decides that it is reasonable to apportion the Parties' other costs, including legal fees, and allocate them following the respective success of the Parties' claims (so-called "costs follow the event" principle). The Tribunal will look at the Claimants' claims and Respondent 1's counterclaims in turn.

i. Claimants' Claims

629. The Claimants were partially successful with their claims. As detailed above, the Tribunal granted the Claimants' claims in relation to the (i) Assignment Issue;[673] (ii) Relinquishment Claim;[674] (iii) Material Breach Declaration Claim;[675] and (iv) Tax Advance Claim.[676] To the contrary, the Tribunal dismissed the Claimants' (i) Work Product Claim; [677] (ii) Non-Relinquishment Damage Claim;[678] and (iii) Failure to Share Petroleum Damage Claim.[679] While numerically, the Claimants were successful with four out of their seven claims (*i.e.*, 57%), the Claimants' Relinquishment Claim is by far the most important of the Claimants' claims in the present case. This is clear from the portions of the Parties' pleadings and the Tribunal's present award dedicated to this claim. Taking into account this important weighting of the Relinquishment Claim, the Tribunal is of the opinion that the Claimants were successful with 70% of their claims.

630. The Claimants seek the reimbursement of EUR 709,972.93 and US$ 4,295,661.40 in relation to their claims, as detailed above, which includes (i) EUR 750,000 in arbitration costs, including the substitute payment they made on behalf of the Respondents; (ii) US$ 3,685,561.95 in legal fees and expenses; (iii) US$ 573,403.62 in expert witnesses' fees and expenses; (iv) EUR 22,569.48 and US$ 23,889.79 in fact witnesses' fees and expenses; (v) EUR 37,403.45 in Claimants' employees' costs and expenses; and (vi) US$ 12,806.04 in interpreters' and document translation costs.[680]

631. Having reviewed these categories of costs and underlying documentation, the Tribunal is satisfied that they are reasonable, with the following exceptions. First, EUR 750,000 in arbitration costs have already been dealt with as part of the Tribunal's and PCA's costs in the previous sections and therefore cannot be included here again. Second, the Tribunal finds that the US$ 17,500.00 of "consultancy fees" paid to the Claimants' witness Mr Yukler are not reasonable. The Tribunal has not been provided with the basis on which the Claimants' witness was paid for any "consultancy." Accordingly, the Tribunal decides that the Claimants should be reimbursed 70% of EUR 59,972.93 and US$ 4,278,161.40, *i.e.*, EUR 41,981.05 and US$ 2,994,712.98.

632. Conversely, the Respondents have been successful with 30% of their defences in relation to the Claimants' claims. As detailed above, the Respondents seek US$ 2,638,369.72, comprising US$ 2,354,890.65 in legal fees and expenses, and US$ 283,479.07 in expert witnesses' fees and expenses.[681] However, it is unclear which part of this overall amount has been dedicated to defending against the Claimants' claims and which part to establishing the Respondents'

[673] *See supra* Section V.D.

[674] *See supra* Section V.E.

[675] *See supra* Section V.H.

[676] *See supra* Section V.J.

[677] *See supra* Section V.F.

[678] *See supra* Section V.G.

[679] *See supra* Section V.I.

[680] *See supra* ¶ 594.

[681] *See supra* ¶ 603.

counterclaims. A significant portion of the Respondents' written pleadings were dedicated to the counterclaim. In light of this, the Tribunal finds that it is appropriate to assume that only half of the Respondents' costs (*i.e.,* 50%) were dedicated to defending against the Claimants' claims.

633. The amount of the Respondents' costs is reasonable. Accordingly, the Tribunal finds that the Respondents should be reimbursed 30% of US$ 1,319,184.86 (*i.e.,* 50% of US$ 2,638,369.72) *i.e.*, US$ 395,755.46.

634. As a result of the above, the Tribunal finds that the Respondents should reimburse EUR 41,981.05 and US$ 2,598,966.52 (*i.e.,* US$ 2,994,721.98 minus US$ 395,755.46) to the Claimants. The Claimants and the Respondents have requested that costs be borne "jointly and severally" by the other side[682] and neither Claimants nor Respondents have objected to the application of this principle. Accordingly, the Tribunal decides that the Respondents are jointly and severally liable to pay to the Claimants EUR 41,981.05 and US$ 2,598,966.52.

ii. Respondent 1's Counterclaims

635. As detailed above, Respondent 1 withdrew its counterclaims and the Tribunal has therefore dismissed them.[683] In these circumstances, in application of the above-mentioned "costs follow the event" principle, the Tribunal decides that Respondent 1 should bear the Claimants' costs in relation to the counterclaim. The Tribunal notes that Respondent 1 did accept this principle when it sought to withdraw the counterclaims,[684] and the Claimants accepted the withdrawal on this basis.[685]

636. Contrary to the Claimants' allegations, the obligation regarding the costs for the Respondents' counterclaim only rests on Respondent 1. This results from the Amendment to the Terms of Appointment which specifically provides that "Respondent 2 is being added solely to share in the defense against any claim asserted by Claimants […] and in relation to the issue of the validity of the Purported Assignment […]" whereas "[t]o the contrary, […] Respondent 2 is not added as counterclaimant for the counterclaim."[686] Given that Respondent 2 is not a counterclaimant for the counterclaim, it cannot be held liable for costs in relation thereto.

637. The Claimants seek the reimbursement of EUR 19,507.28 and US$ 2,474,787.78 in relation to the Respondents' counterclaim as detailed above, which includes (i) US$ 1,932,757.41 in legal fees and expenses; (ii) US$ 535,072.38 in expert witnesses' fees and expenses; (iii) EUR 9,309.76 in fact witnesses' fees and expenses; (iv) EUR 10,197.52 in Claimants' employees' costs and expenses; and (v) US$ 6,957.99 in document translation costs.[687]

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682 Claimants' Submission on Costs, ¶ 100; SoD, ¶ 344(f).

683 *See supra* ¶¶ 305-309.

684 Respondent's Letter, dated 5 June 2019, ¶ 5 ("the most appropriate course for the Tribunal is to dismiss the Counterclaims without prejudice as requested previously by Respondent, and ***order Respondent to pay Claimants' reasonable costs in its defense of the Counterclaims***.") (emphasis added).

685 Hearing Transcript, Day 2, 130:14-16, 131:8-9, 131:12-13, 133:24-134:6.

686 Amendment to Terms of Appointment, ¶ 8.

687 *See supra* ¶ 598.

638. Having reviewed these categories of costs and underlying documentation, the Tribunal is satisfied that they are reasonable. Accordingly, the Tribunal orders Respondent 1 to pay EUR 19,507.28 and US$ 2,474,787.78 to the Claimants.

(d) Interest on Costs

639. As detailed above, the Claimants also seek that the Respondents should be ordered "to pay interest on the aforementioned amounts at the rate of LIBOR plus 4% as of the date of the Award until full payment."[688] The Claimants do so referring to Section 42 of the Swedish Arbitration Act and Article 31.6 of the PSC.[689] The Respondent have not provided any particular comments on this point.

640. While the Tribunal is satisfied that it "may" order interest on the cost order pursuant Section 42 of the Swedish Arbitration Act, it finds that the Claimants' request for interest "at the rate of LIBOR plus 4%" on the basis of Article 31.6 of the PSC is ill-founded. Indeed, Article 31.6 of the PSC provides, among other things, as follows:

> ***In the event that monetary damages are awarded***, the award shall include interest from the date of the breach or other violation to the date when the award is paid in full. The rate of interest shall be LIBOR plus 4% over the period from the date of the breach or other violation to the date the award is paid in full. Each Party waives any and all requirements or any national law relating to notice of a demand for interest or damage for the loss of the use of funds.[690]

641. The Tribunal finds that the order of costs are not "monetary damages" and that, therefore, the Claimants have not provide any justification for the interest they request. In light of this, the Tribunal decides not to grant any interest on the costs order.

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688 Claimants' Submission on Costs, ¶ 100.

689 Claimants' Submission on Costs, ¶¶ 97-99.

690 PSC, Art. 31.6 (**Exhibit C-1**) (emphasis added).

VI. DISPOSITIF

642. For the reasons set out above, the Tribunal decides as follows:

a. Declares that the Purported Assignment was made in breach of Article 27.3 of the PSC and therefore is null and void pursuant to Article 27.1 of the PSC;

b. Declares that Respondent 1 breached Article 6.1 of the PSC by failing to relinquish the territories in Block XII located outside the Exploitation/Development Area (as delineated in Annex F of the PSC, and amended by Amendment No. 2);

c. Orders that Respondent 1 immediately relinquish the territories in Block XII located outside the Exploitation/Development Area (as delineated in Annex F of the PSC, and amended by Amendment No. 2);

d. Declares that Respondent 1 is in material breach of the PSC within the meaning of Article 30.2, by having failed to relinquish the territories outside the Exploitation/ Development Area (as delineated in Annex F of the PSC, and amended by Amendment No. 2);

e. Orders that Respondent 1 pay to Claimant 1 the amount of GEL 752,389.09 as a tax advance pursuant to Article 17.8 of the PSC;

f. Orders that Respondent 1 pay to Claimant 1 interest on the amount ordered at paragraph 642(e) at the rate of LIBOR plus 4% as from the date of this award;

g. Orders in relation to the costs of this arbitration that (i) the Respondents are jointly and severally liable to pay EUR 216,767.04 to the Claimants; (ii) the Respondents are jointly and severally liable to pay EUR 41,981.05 and US$ 2,598,966.52 to the Claimants; and (iii) Respondent 1 pay EUR 19,507.28 and US$ 2,474,787.78 to the Claimants; and

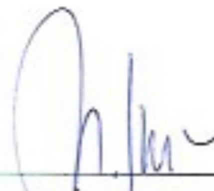
h. Dismisses any other claims and counterclaims.

Place of arbitration: Stockholm, Sweden

Signed, this 17th day of April 2020,

Professor Dr Nathalie Voser
Arbitrator

Mr R. Doak Bishop
Arbitrator



Professor Dr Maxi Scherer
Presiding Arbitrator

Statutory Notice to the Parties under the Swedish Arbitration Acts 1999 and 2019

Pursuant to Section 41 of the Swedish Arbitration Act 1999 as revised on 1 March 2019, any action by a Party against this Final Award regarding the payment of remuneration of any arbitrator shall be brought before the Stockholm District Court within two (2) months from the date when a Party received the Final Award.

PCA Case No. 2018-02
Annex A to Final Award - Statement of Account

	Total as at 17-04-20	Claimants' deposit	Respondents' deposit
Parties			
Deposits		250,000.00	250,000.00
Addidtional Deposit		250,000.00	
Additional deposit on behalf of the Respondent		250,000.00	
Total Deposits	**1,000,000.00**	**750,000.00**	**250,000.00**
Tribunal			
Mr. D. Bishop arbitrator's fees	168,415.00		168,415.00
Mr. D. Bishop expenses	36,684.61		36,684.61
Prof. Dr. M. Scherer arbitrator's fees	330,526.27	165,263.14	165,263.14
Prof. Dr. M. Scherer expenses	2,914.82	1,457.41	1,457.41
Prof. Dr. M. Scherer VAT	16,672.05	8,336.03	8,336.03
Prof. Dr. N. Voser arbitrator's fees	215,719.86	215,719.86	
Prof. Dr. N. Voser expenses	6,333.59	6,333.59	
	777,266.20	**397,110.02**	**380,156.18**
Other Tribunal Expenses			
Bank Costs	311.50	155.75	155.75
Catering expenses	301.66	150.83	150.83
Courier expenses	1,604.96	802.48	802.48
Court reporting	23,455.84	11,727.92	11,727.92
Currency translation variances	240.01	120.01	120.01
Hearing Facilities	26,527.35	13,263.68	13,263.68
IT/AV support	1,419.16	709.58	709.58
Printing and Supplies	752.04	376.02	376.02
Telecommunication	767.88	383.94	383.94
	55,380.40	27,690.20	27,690.20
Registry			
PCA expenses	5,469.08	2,734.54	2,734.54
PCA registry fees - billed	112,372.24	56,186.12	56,186.12
PCA unbilled fees thr 17/04/20	-	-	-
	117,841.32	**58,920.66**	**58,920.66**
Total EUR	**950,487.92**	**483,720.88**	**466,767.04**
Remaining deposit EUR	**49,512.08**	**266,279.12**	**-216,767.04**