

ICSID Case No. ARB/20/51

WORTH CAPITAL HOLDINGS 27 LLC
Claimant

versus

THE REPUBLIC OF PERU
Respondent

Memorial

25 March 2022

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1. This Memorial is submitted on behalf of Worth Capital Holdings 27 LLC (“Worth Capital”) against the Republic of Peru in accordance with the Arbitration Rules of the International Centre for Settlement of Investment Disputes and the Tribunal’s Procedural Order No. 1 dated 30 September 2021, as amended on 11 March 2022.

2. In accordance with Procedural Order No. 1, Worth Capital is submitting to the Tribunal secretary by e-mail electronic copies of this pleading, the accompanying witness statements and expert reports and the indexes of all supporting documentation attached to the pleading and expert reports. Worth Capital will submit further electronic and hard copies of the submission to the Tribunal secretary, the Tribunal members and the Respondent, as the case may be, in the formats and according to the methods specified in paragraph 13 of Procedural Order No. 1. This Memorial will be accompanied by 187 fact exhibits and 104 legal authorities.¹

I. INTRODUCTION

3. Peru’s breaches of its obligations in this case arise out of the conduct of Petroperú S.A., Peru’s State-owned oil company, PERUPETRO S.A., the holder of Peru’s sovereign rights over hydrocarbons, and the Ministry of Energy and Mines (the “MINEM”) toward Worth Capital’s investment, Maple Gas Corporation Del Peru S.R.L. (“Maple Gas”), during the presidency of Pedro Pablo Kuczynski.

4. Maple Gas had been successfully operating in the Ucayali department, a remote region in the Amazon jungle, for more than twenty years, and it had a history of profitable operations. Maple Gas had the exploration, operation, and extraction rights to a number of local oil fields, and it operated the Pucallpa Refinery, which was the only refinery in the southern Amazon region. The Pucallpa Refinery was the primary supplier of refined products such as gasoline, diesel, and jet fuel to the city of Pucallpa and the rest of the Ucayali region.

5. Mr. Kuczynski, who was a powerful lobbyist, former Minister of Energy and Mines and Minister of Economy and Finance, former Prime Minister, and President of Peru from 2016 to 2018, had a very public dispute with Blue Oil Trading Ltd (“Blue Oil”) and the founder of Blue Oil, Matias Rojas, who were among the shareholders who took over Maple Gas in October 2015 (referred to collectively below as the “Blue Oil Investment Group”).

6. Both as President and in his prior governmental roles, Mr. Kuczynski had a history of political interference in the governance and decision-making of Petroperú and PERUPETRO. Among other examples, Mr. Kuczynski blocked appointments to Petroperú that were politically inconvenient for him and has been repeatedly criticized for approving licenses issued by PERUPETRO for oil concessions without any public bidding process, including where he was linked to the party involved. This interference was facilitated by the control the government exercises over both State-owned entities through the composition of their governing bodies, and also reflects the historical practice in Peru of inappropriate governmental influence over decisions by Petroperú and PERUPETRO. Mr. Kuczynski was ultimately forced out of office in the face of accusations of corruption and remains under house arrest.

¹ Unless otherwise indicated, all references to Exhibits C-0001 to C-0043 are from the Notice of Arbitration. In addition, unless otherwise indicated, all emphasis is added.

7. Petroperú, the State-owned oil company, plays a special role, based in the Peruvian Constitution, as a supplier of last resort when private companies are unable to supply a certain market with oil or related products like diesel. In this case, after the Blue Oil Investment Group acquired Maple Gas, Petroperú began to abuse this mandate to block Maple Gas's access to local feedstock and ultimately to take over the Pucallpa Refinery, which it had leased to Maple Gas. At the same time, Petroperú began to take aggressive steps to demand that Maple Gas let it use the Pucallpa Refinery for its own storage of refined products to sell in the Ucayali region. It also undercut Maple Gas's prices for refined products. Petroperú's conduct made no sense commercially or operationally, and appeared designed to drive Maple Gas out of business. None of these actions were consistent with Petroperú's mandate as the supplier of last resort.

8. Specifically, Petroperú repeatedly intervened in Maple Gas's efforts to purchase crude oil from CEPSA Peruana S.A.C., the Peruvian subsidiary of the Spanish company Compañía Española de Petróleos S.A.U. (collectively "CEPSA"), to use as feedstock for the Pucallpa Refinery. By December 2015, Maple Gas and CEPSA had reached agreement on the proposed terms of a supply contract for the Pucallpa Refinery. Petroperú, however, stepped in and entered into a series of contracts to acquire effectively all of CEPSA's crude, even though Maple Gas was ready and willing to buy CEPSA's crude at a higher price than Petroperú.

9. Petroperú's conduct was particularly inexplicable because to supply the Ucayali region with refined products from feedstock purchased from CEPSA, Petroperú shipped crude from CEPSA nearly 1,000 kilometers to its refinery in Iquitos by river barge, which could take a week. Once refined, Petroperú then had to ship the refined products by river barge back to the Ucayali region, which could take another week. These operations were not profitable, and also led to fuel shortages and environmental risks, among other problems, which resulted in demonstrations in the Ucayali region. Petroperú's former President publicly stated that ***“[i]t would be logical if part of Cepsa's crude that Petroperú buys would stay in Pucallpa and that Cepsa make a deal directly with Maple, but this is not happening.”***

10. After the Blue Oil Investment Group acquired Maple Gas, Petroperú also began making demands for storage services under the Pucallpa Refinery Lease Agreement that it knew were unjustified. Petroperú threatened that, if Maple Gas did not agree with its demands, Petroperú ***“will take back the refinery and the problem would be over.”*** Petroperú also began telling other companies that it was about to terminate the Pucallpa Refinery Lease Agreement, which undermined Maple Gas's relationships with its suppliers.

11. In April 2016, Maple Gas identified the possibility of taking over the license for exploration and production of Block 126, a nearby oil concession, from the current licenseholder, which was in financial difficulties. Block 126 had enormous potential for Maple Gas. It would be able to both supply the Pucallpa Refinery and potentially yield significant additional quantities of crude. Maple Gas would also benefit from the synergies resulting from owning both the source of the feedstock and the refinery for that feedstock.

12. As it considered the possibility of obtaining the license to Block 126, the Blue Oil Investment Group also discussed the possibility of a new investment from Worth Capital, which is owned by Charles Holzer, a prominent U.S. investor. The possibility of investing in Maple Gas was attractive, particularly given the potential to acquire the license to Block 126.

Eventually, concerned that Petroperú was going to continue to block Maple Gas's access to feedstock as long as it was involved, the Blue Oil Investment Group agreed to sell its interest in Maple Gas to Worth Capital. The Blue Oil Investment Group was concerned that Maple Gas would not be able to move forward with its business while Mr. Kuczynski was President, but there was no reason for Petroperú or others in the government to continue the aggressive conduct once the Blue Oil Investment Group no longer owned Maple Gas.

13. When Maple Gas informed the MINEM and PERUPETRO that it was looking for a new investor, both encouraged Maple Gas's plans to obtain the Block 126 License. CEPSA also indicated to Maple Gas that it would consider entering into a long-term supply contract for the Pucallpa Refinery after Maple Gas changed ownership.

14. PERUPETRO's subsequent conduct initially was consistent with this expectation. After Worth Capital invested in Maple Gas in November 2016, PERUPETRO worked closely with Maple Gas on the transfer, and ultimately approved all the requirements for the transfer of that license to Maple Gas. During this process, PERUPETRO's General Manager recognized that "Maple Gas was the only viable option to save the Block 126 License Agreement."

15. As part of the transfer approval process, PERUPETRO qualified Maple Gas to operate Block 126. This included a review of Maple Gas's "legal, technical, economic and financial capacity." Among other documents, Maple Gas submitted its unaudited 2015 and 2016 financial statements to PERUPETRO in June 2017. In July 2017, PERUPETRO requested, and Maple Gas provided, audited versions of those same financial statements. Maple Gas also agreed with PERUPETRO on the work program Maple Gas would conduct in Block 126 after the transfer of the license, and undertook to provide a performance bond in support of its contractual commitments.

16. In late October 2017, Maple Gas signed the new license and was assured by PERUPETRO's management that it would be approved by its Directorate in a matter of days. The timing was particularly important because the existing license-holder would be forced to relinquish the Block 126 License by 20 December 2017 if the transfer were not approved.

17. However, without any explanation, PERUPETRO's Directorate failed to approve the license. Maple Gas began to hear rumors that the Directorate was not going to approve the Block 126 License because it was concerned about being criticized for failing to call the existing license-holder's performance bond. This made no sense, including because Maple Gas had committed to providing its own performance bond as part of the transfer. Maple Gas also heard that PERUPETRO's Directorate had not approved the transfer of the Block 126 License to Maple Gas for "political" reasons.

18. Maple Gas urgently sought an explanation from both PERUPETRO and the MINEM, but never received one. Then – without any notice or opportunity for Maple Gas to respond – PERUPETRO suddenly reversed its previously issued approval of Maple Gas's qualification to operate that concession. It did so on the obviously pretextual basis that it had somehow looked at Maple Gas's *2014 and 2015* financial statements, as opposed to the *2015 and 2016* financial statements that Maple Gas had sent to PERUPETRO twice during the transfer approval process. It also purported to rely on guidelines that had been superseded, and were no longer applicable.

19. PERUPETRO's nullification decision was both contrary to the law and plainly designed to provide an after-the-fact basis for blocking the transfer following the political decision not to approve the license. Indeed, PERUPETRO's own General Manager subsequently admitted to Maple Gas that ***"the decision was beyond his control because it was a top-down directive."*** That same General Manager subsequently rejected Maple Gas's appeal of the nullification decision on the circular logic that that ***"it made no sense"*** to consider Maple Gas's appeal because the existing license-holder had in the meantime relinquished the Block 126 License. This entire process was an abuse of PERUPETRO's role as the licensor of oil field development.

20. PERUPETRO's sudden reversal was catastrophic for Maple Gas because it meant that the Pucallpa Refinery was starved of feedstock and needed to suspend its refining operations. Although PERUPETRO had encouraged Maple Gas to acquire the Block 126 License in 2016 and 2017, Petroperú had subsequently renewed its efforts to prevent Maple Gas from acquiring feedstock for the Pucallpa Refinery. In 2017, Petroperú had entered into a new long-term contract with CEPESA for effectively all of its production, again at prices lower than Maple Gas was willing to pay for the same crude. This meant that Maple Gas had no prospect of obtaining a sufficient supply of feedstock from CEPESA for most of 2018. When Maple Gas pressed CEPESA for an explanation, CEPESA said that Petroperú was ***"the State"*** and that CEPESA's ***"strategy was to have an alliance with the company of the State."***

21. In the meantime, Petroperú had also intervened in Maple Gas's relationship with Aguaytía Energy del Peru S.R.L. ("Aguaytía Energy"), which operated a nearby gas field and had been sending its natural gasoline to Maple Gas for years through a pipeline to the Pucallpa Refinery to use as feedstock. Petroperú offered to purchase all of Aguaytía Energy's natural gasoline at a substantially higher price than the price Maple Gas had been paying. This price had no commercial basis, but was high enough that it allowed Aguaytía Energy to build storage and dispatch facilities in order to supply Petroperú.

22. Like with CEPESA's crude, Petroperú faced significant logistical challenges in refining Aguaytía Energy's natural gasoline. It had to load barrels of natural gasoline onto tanker trucks and then those tanker trucks needed to drive nearly 800 kilometers to Petroperú's Conchán refinery near Lima, which required the tanker trucks to cross the Andes. If, as the supplier of last resort, Petroperú shipped refined products back to the Ucayali region from Conchán, tanker trucks had to make the return 800-kilometer trip over the Andes. This was much more expensive, slow, and environmentally risky than using the 16-kilometer pipeline between Aguaytía Energy and the Pucallpa Refinery. Nevertheless, in July 2017, Aguaytía Energy cut off supplies to Maple Gas and began selling all of its natural gasoline to Petroperú. As with Petroperú's intervention with CEPESA, its intervention with Aguaytía Energy did not make sense commercially and was contrary to its subsidiary role as the supplier of last resort.

23. As a result of Petroperú's, PERUPETRO's and the MINEM's conduct, Maple Gas was left without sufficient feedstock and was forced to suspend refining operations at the Pucallpa Refinery in late December 2017.

24. This led to protests in the Ucayali region in early 2018, and widespread criticism of Petroperú's conduct and its consequences for the Pucallpa Refinery. In response, the MINEM and Petroperú began publicly and falsely disparaging Maple Gas, and Petroperú publicly

threatened legal action that would terminate the lease for the Pucallpa Refinery. These combined actions prevented Maple Gas from obtaining any new sources of revenue. Thus, by the end of Mr. Kuczynski's presidency, Maple Gas's business had been destroyed, and Maple Gas was eventually forced into bankruptcy.

25. Through this series of actions, Peru has breached its obligations under the United States-Peru Free Trade Agreement ("U.S.-Peru TPA" or "Treaty"). It has breached its obligation to accord Worth Capital's investment in Maple Gas the minimum standard of treatment ("MST") under customary international law through Petroperú's, PERUPETRO's and the MINEM's arbitrary, abusive, pretextual and bad faith conduct.

26. Among other wrongful actions, Petroperú and the MINEM targeted Maple Gas and, combined with PERUPETRO's unjustified failure to approve the Block 126 License transfer, ultimately succeeded in cutting off its access to sufficient feedstock to continue to operate the Pucallpa Refinery. The executive branch ultimately controls Petroperú, PERUPETRO, and the MINEM, and the close coordination of their actions in late 2017 and early 2018 reflects a deliberate attack on Maple Gas. By February 2018, the impact of these combined measures had effectively crippled Maple Gas's business. Such willful targeting of a foreign investment constitutes bad faith and is a breach of the MST. In any event, the conduct of Petroperú, PERUPETRO, and the MINEM was arbitrary, pretextual and in bad faith, and violated due process. As such, that conduct was fundamentally incompatible with Peru's obligation to accord the MST to Worth Capital's investment.

27. Peru also indirectly expropriated Worth Capital's investment in Maple Gas. As a result of Petroperú's, PERUPETRO's and the MINEM's actions, Worth Capital's investment has permanently lost essentially all of its value, and Worth Capital has lost the control, use and enjoyment of its investment. PERUPETRO's failure to approve the transfer of the Block 126 License also frustrated Worth Capital's reasonable investment-backed expectations. Despite assurances prior to Worth Capital's investment of PERUPETRO's and the MINEM's support for the transfer of the License, and concrete support for that transfer in the form of qualifying Maple Gas to operate Block 126 and agreeing and signing the modified License, PERUPETRO ultimately reversed course, with devastating consequences for Maple Gas's business. Petroperú's, PERUPETRO's and the MINEM's arbitrary, pretextual and abusive actions cannot be considered a legitimate exercise of governmental authority. They served no public purpose, and were accompanied by neither due process nor compensation.

28. Worth Capital is therefore entitled to full reparation for the damage caused by Peru's breaches of the Treaty. Worth Capital's experts – Compass Lexecon and Hidrocarburos Consulting – have calculated its losses as the fair market value of the Pucallpa Refinery and Block 126 as of 31 December 2017. This was the date on which Worth Capital's investment in Maple Gas had lost substantially all of its value due to Peru's unlawful acts. As of that date, Hidrocarburos calculated the fair market value of Block 126 at \$99 million, and Compass Lexecon calculated the fair market value of the Pucallpa Refinery at \$29.3 million. Accordingly, the minimum that Worth Capital claims in this arbitration is \$128.3 million, plus pre- and post-award interest.

29. The remainder of this Memorial is organized as follows: Part II describes the factual background of this dispute in greater detail. Part III addresses the basis for this Tribunal's jurisdiction. In Part IV, Worth Capital explains that Petroperú's and PERUPETRO's actions are attributable to Peru under international law and the Treaty. Part V addresses Peru's breach of its obligation to accord the MST to Worth Capital's investment in Maple Gas. In Part VI, Worth Capital describes Peru's unlawful expropriation of its investment in Maple Gas. Part VII addresses the substantial compensation to which Worth Capital is entitled for Peru's breaches of the Treaty. Part VIII contains Worth Capital's request for relief.

II. FACTUAL BACKGROUND

30. Between 2016 and 2018, during the presidency of Mr. Kuczynski, the Peruvian government took a series of actions that destroyed Maple Gas's business, and Worth Capital's investment in it. The background to Worth Capital's investment in Maple Gas and the conduct of the Peruvian government is described below.

A. Mr. Kuczynski Was Elected President in 2016, and Was Forced To Resign in 2018

31. Before he became President of Peru, Mr. Kuczynski was a powerful lobbyist, former Minister of Energy and Mines and Minister of Economy and Finance, former Prime Minister, and had also run Peru's Central Bank and was on the boards of a number of companies.² As described below, Mr. Kuczynski had a very public dispute with Blue Oil Trading Ltd ("Blue Oil") and the founder of Blue Oil, Matias Rojas, who were among the shareholders who took over Maple Gas in October 2015 (referred to collectively below as the "Blue Oil Investment Group").

32. Mr. Kuczynski ran for President in 2011 as the candidate for the Alliance for Great Change party.³ Although he did not win the election, his party won twelve congressional seats.⁴ After the election, Mr. Kuczynski and his party allied themselves with President Ollanta Humala to give Mr. Humala and his party control of the Congress.⁵

33. During Mr. Humala's presidency, Mr. Kuczynski successfully lobbied the government on behalf of various interests.⁶ In addition to his own connections, Mr. Kuczynski was a leading

² "¿Quién es Pedro Pablo Kuczynski," Noticias, teleSUR, dated 21 March 2018, Ex. C-0223.

³ "PPK: No es la mejor táctica buscar alianzas para la segunda vuelta," RPP Noticias, dated 3 April 2011, Ex. C-0111; "La campaña de PPK la ruta a Palacio de Gobierno," El Comercio Perú, dated 11 June 2016, Ex. C-0160; "Hoy se elige a candidatos en tres partidos con asistencia de la ONPE," Noticias Agencia Peruana de Noticias Andina, dated 20 December 2015, Ex. C-0142.

⁴ "Acta General de Proclamación de Resultados de la Elección de Congresistas de la República del año 2011," Jurado Nacional de Elecciones, dated 1 June 2011, at p. 68, Ex. C-0013.

⁵ "PPK: No es la mejor táctica buscar alianzas para la segunda vuelta," RPP Noticias, dated 3 April 2011, Ex. C-0111; "Alianza por el Gran Cambio apoyará para que Gana Perú presida nuevo Congreso," Agencia Peruana de Noticias Andina, dated 13 June 2011, Ex. C-0114.

⁶ "PPK Y NADINE ¿Business unen a Nadine y PPK?," Matacholo, dated 6 October 2015, Ex. C-0134; "PPK reveló que asesoró a H2Olmos, proyecto de Odebrecht, Peru Gestión, dated 9 December 2017, Ex. C-0206; "Susana Villarán: Así fue como PPK apoyó la campaña contra la revocatoria," Política - Lucidez.pe, dated 22 November 2017, Ex. C-0202; "Susana Villarán: Así fue la campaña del NO para impedir la revocatoria," RPP Noticias, dated 14 May 2019, Ex. C-0246; "Caso Odebrecht: Castro implica a expresidente Kuczynski en caso Rutas de Lima," Huachos.com, dated 4 June 2020, Ex. C-0258; "Fiscal Pérez: PPK se habría beneficiado con US\$700 mil por sobrevaloración en Rutas de Lima," Peru Gestión, dated 6 March 2020, Ex. C-0256; M. Álvarez, "Caso Westfield: Fiscalía amplía investigación a PPK y Gerardo Sepúlveda," El Comercio Perú, dated 10 June 2020, Ex. C-0259; "Odebrecht: José Miguel Castro implica a expresidente Kuczynski en caso Rutas de Lima," Agencia Peruana de Noticias Andina, dated 3 June 2020, Ex. C-0257; M. Sifuentes, "K.O. P.P.K.: Caída Pública y Vida Secreta de Pedro Pablo Kuczynski" Planeta Perú, dated 2019, at p. 320, Ex. C-0236.

candidate to be the next President, and was rumored to have formed a “pact” with President Humala and his wife.⁷ This gave him substantial influence.⁸

34. In April 2015, Mr. Kuczynski declared his candidacy for the presidency.⁹ On 13 November 2015, Mr. Humala called for a general election to be held in April 2016.¹⁰ On 20 December 2015, Mr. Kuczynski, who is often referred to by his initials PPK, was formally selected as the presidential candidate of his new political party, “Peruanos por el Kambio” (“PPK”).¹¹

35. After a first round of voting in April 2016,¹² there was a run-off election between Mr. Kuczynski and Keiko Fujimori in June 2016. Mr. Kuczynski was declared the winner later in June.¹³ On 28 July 2016, Mr. Kuczynski was sworn in as President.¹⁴

36. As described in more detail below, Mr. Kuczynski was subsequently accused of corruption as part of the “Odebrecht” case.¹⁵ An investigation involving companies related to

⁷ Mr. Kuczynski is reported to have reached an agreement agreed to protect the interests of the Humalas. M. Sifuentes, “K.O. P.P.K.: Caída Pública y Vida Secreta de Pedro Pablo Kuczynski,” Planeta Perú, dated 2019, at pp. 22-24, 344-345, Ex. C-0236; “PPK Y NADINE ¿Business unen a Nadine y PPK?,” Matacholo, dated 6 October 2015, Ex. C-0134; “Pedro Pablo Kuczynski pactó con la ‘pareja presidencial,’” Expreso, dated 19 January 2020, Ex. C-0254.

⁸ “Peru’s Pedro Pablo Kuczynski leads Fujimori in poll for runoff,” Peru Reportes, dated 18 April 2016, Ex. C-0151; “Kuczynski aventaja a Fujimori en Perú,” ABC Color, dated 24 April 2016, Ex. C-0152; “PPK reveló que asesoró a H2Olmos, proyecto de Odebrecht, Peru Gestión, dated 9 December 2017, Ex. C-0206; “De presidente de la República a detenido por el caso Odebrecht, así fue la caída de PPK,” RPP Noticias, 19 April 2019, Ex. C-0243; “Caso Odebrecht: Castro implica a expresidente Kuczynski en caso,” Rutas de Lima, dated 4 June 2020, Ex. C-0258; “Fiscal Pérez: PPK se habría beneficiado con US\$700 mil por sobrevaloración en Rutas de Lima,” Peru Gestión, dated 6 March 2020, Ex. C-0256; M. Álvarez, “Caso Westfield: Fiscalía amplía investigación a PPK y Gerardo Sepúlveda,” El Comercio Perú, dated 10 June 2020, Ex. C-0259; “Odebrecht: José Miguel Castro implica a expresidente Kuczynski en caso Rutas de Lima,” Agencia Peruana de Noticias Andina, dated 3 June 2020, Ex. C-0257; M. Sifuentes, “K.O. P.P.K.: Caída Pública y Vida Secreta de Pedro Pablo Kuczynski” Planeta Perú, dated 2019, at p. 320, Ex. C-0236; “Susana Villarán: Así fue como PPK apoyó la campaña contra la revocatoria,” Política - Lucidez.pe, dated 22 November 2017, Ex. C-0202; “Susana Villarán: Así fue la campaña del NO para impedir la revocatoria,” RPP Noticias, dated 14 May 2019, Ex. C-0246.

⁹ “Kuczynski será aclamado candidato presidencial por PPK,” Agencia Peruana de Noticias Andina, dated 6 May 2015, Ex. C-0131.

¹⁰ “Ollanta Humala convoca a elecciones generales para el 2016,” El Comercio Perú, dated 13 November 2015, Ex. C-0138.

¹¹ R. Hernández Sánchez, “Peruanos por el Kambio: hitos del ascenso y la caída del partido de gobierno,” El Comercio Perú, dated 7 February 2019 (On 14 October 2014, Peruanos por el Kambio was called Perú+. Later in February 2015, it changed its name to Peruanos por el Kambio), Ex. C-0239.

¹² The first round of voting was on 10 April 2016 and the second round was on 5 June 2016. On 10 June 2016, Ms. Fujimori recognized Mr. Kuczynski as the winner of the election.

¹³ On 10 June 2016, Ms. Fujimori recognized Mr. Kuczynski as the winner of the election. See “Elecciones en Perú Keiko Fujimori acepta la victoria de Pedro Pablo Kuczynski,” BBC News Mundo, dated 10 June 2016, Ex. C-0159. See also “JNE oficializa resultados de segunda vuelta electoral 2016,” Agencia Peruana de Noticias Andina, dated 1 July 2016, Ex. C-0161.

¹⁴ “Kuczynski toma posesión como presidente de Perú,” Reuters, dated 28 July 2016, Ex. C-0162.

¹⁵ “Peruvian judge orders arrest of ex-President Kuczynski in bribery probe,” Reuters, dated 10 April 2019, Ex. C-0242; “Kuczynski y el caso Odebrecht seis momentos claves,” Agencia Peruana de Noticias Andina, dated 19 April 2019, Ex. C-0244.

Mr. Kuczynski began in December 2017,¹⁶ and other allegations were made against him in the following months. Mr. Kuczynski resigned from the presidency on 21 March 2018,¹⁷ before the Congress held a vote to impeach him.¹⁸ Mr. Kuczynski has been in pretrial detention since 10 April 2019 as a result of the investigation of corruption and money laundering allegations against him.¹⁹

B. Mr. Kuczynski Had a Long History of Conflict with Blue Oil and Mr. Rojas

37. Before he became President, Mr. Kuczynski had a long history of conflict with Blue Oil and Mr. Rojas, and that hostility had become particularly acute – and public – by 2015, when Mr. Kuczynski began his new presidential campaign and Blue Oil, Mr. Rojas and other investors acquired Maple Gas.

38. In 2003 and 2004, Mr. Kuczynski served as a financial advisor to Hunt Oil. Hunt Oil had been unable to make progress in its attempt to acquire the license to Block 56, an oil and gas concession in the Ucayali Basin.²⁰ On 16 February 2004, Mr. Kuczynski became the Minister of Economy. Five months later, in an extraordinary meeting, PERUPETRO’s Directorate approved the concession of Block 56 to the Camisea Consortium, in which Hunt Oil holds a 25.2% interest,²¹ without a public bidding process. Mr. Kuczynski then signed the Supreme Decree that granted the license to Block 56 to the Camisea Consortium.²² The Peruvian Office of the Comptroller General (“Comptroller General”) later found indicia of corruption with regard to the grant of Block 56 to the Consortium.²³

39. Between 2011 and 2012, Blue Oil had a dispute with the Camisea Consortium about the shipment of gas condensate for export. Hunt Oil, which was again being advised by Mr. Kuczynski, took the most hostile position against Blue Oil during the dispute. The Consortium eventually agreed to settle the dispute by making a payment to Blue Oil, but the settlement was opposed by Hunt Oil.²⁴

¹⁶ “*Kuczynski y el caso Odebrecht: seis momentos claves*,” Agencia Peruana de Noticias Andina, dated 19 April 2019, Ex. C-0244.

¹⁷ “*Pedro Pablo Kuczynski renuncia a la presidencia del Perú*,” The New York Times, dated 21 March 2018, Ex. C-0224.

¹⁸ “*Los 5 escándalos que provocaron la caída de PPK en Perú*,” BBC News, dated 21 March 2018, Ex. C-0227; “*Renuncia de PPK: quién es Martín Vizcarra, el exministro al que el fujimorismo acusó de corrupción y al que convirtió en presidente de Perú*,” BBC News, dated 21 March 2018, Ex. C-0225.

¹⁹ “*Peruvian judge orders arrest of ex-President Kuczynski in bribery probe*,” Reuters, dated 10 April 2019, Ex. C-0242.

²⁰ “*Informe.21: Pedro Pablo Kuczynski y su relación con Hunt Oil: ¿otra puerta giratoria*,” Peru21, dated 19 February 2018, Ex. C-0128. See also Extract from www.huntoil.com, at “Hunt Oil Company of Peru,” Ex. C-0266.

²¹ Extract from www.huntoil.com, at “Hunt Oil Company of Peru,” Ex. C-0266.

²² “*Informe.21: Pedro Pablo Kuczynski y su relación con Hunt Oil: ¿otra puerta giratoria*,” Peru21, dated 19 February 2018, Ex. C-0218.

²³ “*Informe.21: Pedro Pablo Kuczynski y su relación con Hunt Oil: ¿otra puerta giratoria*,” Peru21, dated 19 February 2018, Ex. C-0218. The Comptroller General is Peru’s highest fiscal control body. Its functions include supervising the legality of expenditure under the State Budget, public debt operations, and related activities performed by the institutions subject to its control. See 1993 Peruvian Constitution, at Article 82, Ex. C-0094.

²⁴ Witness Statement of Matias Rojas for Claimant’s Memorial-ENG, dated 25 March 2022 (“Rojas WS-ENG”), at para. 48.

40. Around the same time, on 30 June 2011, Pure Biofuels, a refined fuels terminal and distribution company, signed a storage contract with Blue Oil under which Blue Oil leased Pure Biofuels's terminal in Callao, Peru to store oil and to distribute it in the Peruvian domestic oil products market.²⁵ Later that year, in April 2012, Pegasus Capital Advisors, L.P. ("Pegasus"), a New York private equity firm advised by Mr. Kuczynski, agreed to invest in Pure Biofuels – on the condition that Pure Biofuels terminate its contract with Blue Oil because Pegasus wanted to use the terminal for other purposes.²⁶

41. At Pegasus's direction, in May 2012, Pure Biofuels sent a letter to Blue Oil terminating the storage contract.²⁷ One month later, in June 2012, Mr. Kuczynski became a Director of Pure Biofuels.²⁸ Pure Biofuels then commenced an arbitration under the Lima Chamber of Commerce rules, seeking, among other things, to terminate the storage contract with Blue Oil, as Pegasus had requested, as well as damages.²⁹ Blue Oil filed a counterclaim.

42. Two years later, in June 2014, the arbitral tribunal dismissed Pure Biofuels's claims. The tribunal held that Pure Biofuels had acted in bad faith and ordered it to pay approximately \$45 million to Blue Oil.³⁰ The award against Pure Biofuels was publicly described as the largest in the history of the Lima Chamber of Commerce.³¹

43. After Pure Biofuels lost the arbitration to Blue Oil, Mr. Kuczynski led Pure Biofuels's efforts to avoid paying the award.³² He was publicly seen as responsible for the loss in the arbitration and the company's refusal to comply with the award.³³

44. In 2015, Mr. Kuczynski's ongoing dispute with Blue Oil remained high profile and subject to significant public attention. Mr. Kuczynski's efforts to fight the arbitration award caused negative publicity for him, including, among other things, press reports suggesting that he was trying to use his connections to influence the courts to overturn the award.³⁴ Mr.

²⁵ See "*Fondo norteamericano asesorado por Kuczynski busca evadir pago por arbitraje de US\$45 millones*," *Diario Del País*, dated 18 March 2015, Ex. C-0126. See also Rojas WS-ENG, at para. 49-.

²⁶ See "*Fondo norteamericano asesorado por Kuczynski busca evadir pago por arbitraje de US\$45 millones*," *Diario Del País*, dated 18 March 2015, Ex. C-0126.

²⁷ Rojas WS-ENG, at para. 49; "*Fondo norteamericano asesorado por Kuczynski busca evadir pago por arbitraje de US\$45 millones*," *Diario Del País*, dated 18 March 2015, Ex. C-0126.

²⁸ "*Pure Biofuels del Perú, SAC appoints Pedro Pablo Kuczynski as Director*," *Business Wire*, dated 14 June 2012, Ex. C-0115.

²⁹ "*Fondo norteamericano asesorado por Kuczynski busca evadir pago por arbitraje de US\$45 millones*," *Diario Del País*, dated 18 March 2015, Ex. C-0126. See also Rojas WS-ENG, at para. 49.

³⁰ See Rojas WS-ENG, at para. 50. See also "*Fondo norteamericano asesorado por Kuczynski busca evadir pago por arbitraje de US\$45 millones*," *Diario Del País*, dated 18 March 2015, Ex. C-0126.

³¹ "*Fondo norteamericano asesorado por Kuczynski busca evadir pago por arbitraje de US\$45 millones*," *Diario Del País*, dated 18 March 2015, Ex. C-0126.

³² One news report described Mr. Kuczynski as a "magician" for his efforts to use his influence with the government to try to annul the award in the Peruvian courts. See "*PPK estaría usando influencias para 'voltear' decisión arbitral*," *Gato Encerrado*, dated 23 March 2015, Ex. C-0127.

³³ See, e.g., "*Fondo norteamericano asesorado por Kuczynski busca evadir pago por arbitraje de US\$45 millones*," *Diario Del País*, dated 18 March 2015, Ex. C-0126; "*PPK estaría usando influencias para 'voltear' decisión arbitral*," *Gato Encerrado*, dated 23 March 2015, Ex. C-0127.

³⁴ See, e.g., "*PPK estaría usando influencias para 'voltear' decisión arbitral*," *Gato Encerrado*, dated 23 March 2015, Ex. C 0271. See also "*Último minuto: Embargo millonario a empresa de PPK en el callao*," *Gato Encerrado*, dated 27 April 2015, Ex. C-0130.

Kuczynski's attacks on Blue Oil and Mr. Rojas also turned personal.³⁵ Mr. Kuczynski and his associates pursued a campaign through the media to defame Mr. Rojas and tried to suggest he was a criminal.³⁶

45. The ongoing dispute, and the negative publicity it was causing him, was particularly embarrassing for Mr. Kuczynski as he prepared to run for President.³⁷ In late March 2015, after a press report revealed that some of the founders of Pure Biofuels were subject to criminal investigations and had criminal convictions,³⁸ Mr. Kuczynski was confronted with these allegations when he appeared on the television program "Agenda Política."³⁹

46. In April 2015, as described above, Mr. Kuczynski declared his candidacy for the presidency.⁴⁰ Shortly afterwards, in May 2015, Pure Biofuels settled the dispute with Blue Oil.⁴¹

47. As described below, after the Blue Oil Investment Group acquired Maple Gas, Petroperú launched a campaign against Maple Gas, which it justified as part of its mandate under Peruvian law as the supplier of last resort, seeking to block Maple Gas's access to feedstock for the Pucallpa Refinery. Petroperú also repeatedly threatened to take the Refinery from Maple Gas, and undercut Maple Gas's prices for refined products.

48. Moreover, after initially approving Maple Gas's proposed acquisition of a license to an oil concession that was critical to its business, PERUPETRO and the MINEM suddenly reversed course and, without justification, prevented that crucial acquisition from being completed. By the end of Mr. Kuczynski's presidency, Maple Gas had been destroyed by the arbitrary and unjustified actions taken by the Peruvian government, including through Petroperú and PERUPETRO.

³⁵ As Mr. Rojas describes in Witness Statement, one unfortunate consequence was that his daughter was forced to change schools after Mr. Kuczynski's daughter, who attended the same school, told other students that she was the daughter of a criminal. Rojas WS-ENG, at paras. 57-58.

³⁶ For example, after the names of all HSBC's clients in Switzerland, including Mr. Rojas, were leaked to the public in 2015, reports branding Mr. Rojas as a criminal appeared in the Peruvian press. See M. Salazar and A. Castro, "Perú: cuentas y nexos de un empresario evasivo," Convoca Perú, dated 20 September 2016, Ex. C-0164; L. Garcia Tellez, "Transfuguismo empresarial," IDL Reporteros, dated 8 February 2015, Ex. C-0125. Mr. Rojas later learned from Mr. Kuczynski's press relations manager that he planted the stories regarding HSBC. See Rojas WS-ENG, at para. 55. Mr. Rojas also discovered that an associate of Mr. Kuczynski linked to Pure Biofuels were sending defamatory stories about him to the press. See Rojas WS-ENG, at para. 56.

³⁷ See, e.g., "Kuczynski será aclamado candidato presidencial por PPK," Agencia Peruana de Noticias Andina, dated 6 May 2015, Ex. C-0131; "PPK estaría usando influencias para 'voltar' decisión arbitral," Gato Encerrado, dated 23 March 2015, Ex. C-0127. See also "Último minuto: Embargo millonario a empresa de PPK en el Callao," Gato Encerrado, dated 27 April 2015, Ex. C-0130.

³⁸ "PPK SAC," Hildebrant en sus trece, dated 27 March 2015, Ex. C-0128. See also Rojas WS-ENG, at para. 56.

³⁹ Transcript Interview of Pedro Pablo Kuczynski, Agenda Política, Canal N, dated 29 March 2015, Ex. C-0129. As Mr. Rojas describes, "Mr. Kuczynski denied his associates were implicated in any wrongdoing and claimed he knew who was behind the article," and Mr. Kuczynski "made several veiled references to [Mr. Rojas] but stopp[ed] short of naming [him] on national television." See Rojas WS-ENG, at para. 56.

⁴⁰ See above at para. 40.

⁴¹ Rojas WS-ENG, at para. 53.

C. *The Government's Control Over and History of Political Interference in PERUPETRO and Petroperú*

49. PERUPETRO and Petroperú are wholly State-owned entities and are controlled by the government through the composition of their governing bodies.⁴² As described below, there is also a long history of political interference in the governance and decision-making of both, including by Mr. Kuczynski.

1. The Government's Control Over PERUPETRO

50. PERUPETRO is responsible for the “promotion of investment in hydrocarbon exploitation and exploration activities in Peru.”⁴³ PERUPETRO holds the State's sovereign rights over hydrocarbons, and in that capacity, is responsible for licensing and supervising the exploration and extraction of those hydrocarbons.⁴⁴ PERUPETRO's governing bodies are all either composed of or appointed by government officials.⁴⁵ The MINEM ultimately controls PERUPETRO through the Minister of Energy and Mines, who serves as the President of PERUPETRO's General Shareholders' Committee⁴⁶ and appoints the majority of the Directorate.⁴⁷

2. The Government's Control Over Petroperú

51. Petroperú is the national oil company of Peru. It undertakes the transportation, refining, distribution and sale of fuel and other oil products, and “the development of its activities must be oriented to the fulfilment of the annual and five-year objectives approved by the Ministry of Energy and Mines.”⁴⁸

52. Like PERUPETRO, Petroperú's governing bodies are all either composed of or appointed by government officials. The MINEM ultimately controls Petroperú through the Minister of

⁴² See below at paras. 343-361 (addressing PERUPETRO) and 384-391 (addressing Petroperú).

⁴³ Law No. 26225 of 23 August 1993, at Article 3(a), Ex. C-0093; Law 26221 (“Hydrocarbons Law”), at Article 6(a), Ex. C-0092; Quiñones Legal Opinion-SPA, at para. 76.

⁴⁴ Hydrocarbons Law, at Article 6(b), Ex. C-0092; Quiñones Legal Opinion-SPA, at para. 76.

⁴⁵ See below at paras. 353-357.

⁴⁶ The General Shareholders' Committee is the highest decision-making body within PERUPETRO. Law No. 26225, at Article 11, Ex. C-0093; Quiñones Legal Opinion-SPA, at para. 70. The other members of the General Shareholders' Committee are the Vice Minister of Hydrocarbons of the MINEM, and the Secretary-General of Energy and Mines. The Vice Minister of Hydrocarbons of the MINEM replaced the Vice Minister of the MINEM as a member in May 2018. See Supreme Resolution No. 019-2009-EM, Ex. C-0106; Supreme Resolution No. 009-2018-EM, Ex. C-0230.

⁴⁷ The Directorate sits under the General Shareholders' Committee. It holds management and legal representation powers and appoints PERUPETRO's General Manager. Law No. 26225, at Articles 10-12, and 18, Ex. C-0093; Quiñones Legal Opinion-SPA, at para. 71.

⁴⁸ Law No. 28840, Law for the strengthening and modernization of Empresa Petróleos del Perú - PETROPERÚ S.A., at Article 2, Ex. C-0103; Quiñones Legal Opinion-SPA, at para. 207.

Energy and Mines, who also acts as the President of Petroperú's General Shareholders' Committee,⁴⁹ which in turns appoints all but one of Petroperú's Directorate.⁵⁰

3. Petroperú's Subsidiary Role as the Supplier of Last Resort

53. Petroperú also plays a special role in Peru as a supplier of last resort where private companies are unable to supply certain markets. Under Peruvian law, the "exploration and exploitation of oil and gas must be carried out, preferably, by private agents."⁵¹ However, when private companies cannot supply sufficient oil (or related products, like fuel) to meet local needs, Petroperú will intervene to act as the supplier of last resort to supply the market on an exceptional basis, regardless of whether doing so is profitable for Petroperú, until the local market develops self-sufficiency. Petroperú plays this "subsidiary" role for "***reasons of high public interest or manifest national convenience.***"⁵²

54. When Petroperú or other State-owned entities act as the supplier of last resort, the participation of the State-owned entity is not intended to be a permanent substitution for private enterprise.⁵³ Where a particular market includes "one private company and one state company," the State-owned enterprise has "***no subsidiary role***" if the private company "can absorb the demand released by the state company."⁵⁴ This reflects the exceptional, public nature of the State's intervention in the market through State entities like Petroperú.⁵⁵

4. Political Interference in PERUPETRO and Petroperú

55. In addition to the executive branch's control over Petroperú and PERUPETRO as a matter of law, there is a long history of political interference in the management of and decisions made by both State-owned entities, including during the time period at issue in these proceedings.

56. As Dr. Maria Teresa Quiñones explains in her expert report, "there is a ***high degree of interference of the Executive Branch*** in the actions of PETROPERÚ, not only at the level of the supreme body, but also in the Directorate and the General Management ... ***impacting the***

⁴⁹ The other members of the General Shareholders' Committee are the Minister of Economy and Finance, the Vice Minister of Energy at the MINEM, the Vice Minister of Economy at the MINEF, and the Secretary General of the MINEM. Law of the Peruvian Petroleum Company Petroperú, Decree No. 43, at Article 10, Ex. C-0090; PETROPERÚ Bylaws, approved by the General Shareholders' Committee, at Article 23, Ex. C-0109; Supreme Decree No. 056-2008-EM, Ex. C-0104; Quiñones Legal Opinion-SPA, at paras. 213.

⁵⁰ The remaining member is decided by casting votes from Petroperú's personnel. *See* Law of the Peruvian Petroleum Company Petroperú, Decree No. 43, at Article 11, Ex. C-0090; PETROPERÚ Bylaws, approved by the Shareholders' Committee, at Article 47, Ex. C-0109; Quiñones Legal Opinion-SPA, at para. 215.

⁵¹ Quiñones Legal Opinion-SPA, at para. 59.

⁵² 1993 Peruvian Constitution, at Article 60 ("The State may subsidiarily carry out direct or indirect business activities for ... high public interest or manifest national convenience, [and] only pursuant to express legal authorization."), Ex. C-0094; Quiñones Legal Opinion-SPA, at paras. 231, 232, 248.

⁵³ Peruvian Constitution, at Article 60, Ex. C-0094; Quiñones Legal Opinion-SPA, at para. 59.

⁵⁴ Quiñones Legal Opinion-SPA, at para. 243.

⁵⁵ One of the reasons why the State may only play a subsidiary role in the market is that when the State participates with private competitors, its participation has a tendency to "***distort fair competition.***" *See* Quiñones Legal Opinion-SPA, at para. 238 (quoting Resolution 0778-2011/SC1-INDECOPI, Ex. C-0112).

independence it should have in carrying out its economic activities.”⁵⁶ In the words of another Peruvian legal commentator, Petroperú cannot be considered a company “with strictly economic objectives,” but is instead “*a state-owned company with administrative objectives and a high risk of political interference.*”⁵⁷

5. Mr. Kuczynski’s History of Interference in PERUPETRO and Petroperú

57. There were a number of high-profile examples of political interference by the executive branch with both Petroperú and PERUPETRO during Mr. Kuczynski’s presidency, and Mr. Kuczynski has repeatedly been accused of abusing his longstanding influence over both State-owned entities.⁵⁸

58. Once Mr. Kuczynski became President, he again was criticized for his aggressive efforts to exercise control over Petroperú and PERUPETRO. For example, after Petroperú’s Directorate proposed to hire Vladimiro Huaroc, who had been Keiko Fujimori’s candidate for Vice President in the 2016 election, as Petroperú’s Corporate and Community Relations Manager, the government blocked the appointment. This interference was so blatant that Petroperú’s Directorate resigned, as did its President, Augusto Baertl, who had been appointed by Mr. Kuczynski.⁵⁹

59. Mr. Baertl explained that he was resigning because of the executive branch’s interference in Petroperú’s management decisions, saying:

*“[t]he reasons are merely political. I firmly believe that if the State wants to be a business person, it must respect the company and give it total independence from political power. Here, there was a political interference that is not acceptable for us.”*⁶⁰

60. In response, Mr. Kuczynski refused to apologize, asserting that the executive branch needed to “check” Petroperú’s appointments before they were implemented.⁶¹ After this, Mr. Kuczynski continued to exercise control over Petroperú through management appointments closely linked to him, which ultimately became part of the corruption allegations against him in connection with the Odebrecht scandal.

⁵⁶ Quiñones Legal Opinion-SPA, at para. 220.

⁵⁷ M. Huapaya, *Legal Consequences of the Recently Approved Law to Strengthen and Modernize Petroperú*, Ex. C-0102. See also Quiñones Legal Opinion-SPA, at para. 206.

⁵⁸ For example, as described above, the General Comptroller had raised concerns that Mr. Kuczynski had caused PERUPETRO to award an oil concession to his former client, Hunt Oil, without public bidding, when Mr. Kuczynski was Minister of Economy and Finance. See above at para. 39.

⁵⁹ “*Petroperu boss resigns after dispute with government*,” Reuters, dated 1 December 2016, Ex. C-0167.

⁶⁰ “*Augusto Baertl: Hubo una imposición para no contratar a Huaroc*,” El Comercio Perú, dated 1 December 2016, Ex. C-0166; Video of Augusto Baertl discussing his decision to resign as President of Petroperú (accessed at: <https://www.youtube.com/watch?v=iGbAwQnSg-c> (4:00 onwards), Ex. C-0171.

⁶¹ “*PPK sobre Huaroc, ‘Un nombramiento así se tiene que chequear’*,” El Comercio Perú, dated 2 December 2016, Ex. C-0169.

61. Following Mr. Baertl's resignation, Luis García Rosell was appointed as Petroperú's new President.⁶² Mr. García Rosell had been the CEO of the Wiese Group in Peru.⁶³ Mr. Kuczynski, who was a past Director of the Wiese Group, had close connections to the Wiese Group, including through Susana de la Puente Wiese,⁶⁴ whom he appointed as Peru's Ambassador to the United Kingdom in 2017.⁶⁵

62. In late February 2018, evidence emerged that Odebrecht had funneled money to Mr. Kuczynski's 2011 presidential campaign through Ms. de la Puente Wiese.⁶⁶ As described above, Mr. Kuczynski was forced to resign shortly afterwards. Mr. García Rosell, the former Wiese Group CEO whom Mr. Kuczynski had appointed as the President of Petroperú, resigned the same day as Mr. Kuczynski.⁶⁷

63. Even as he was forced out of office in the face of accusations of corruption, Mr. Kuczynski continued to take advantage of his control over Peru's State-owned oil companies. Indeed, on 21 March 2018, the day that he was forced to resign as President, Mr. Kuczynski signed five Supreme Decrees authorizing PERUPETRO to provide licenses for Tullow Oil to operate five oil fields without any public bidding process.⁶⁸ After public outrage over Mr. Kuczynski's actions, as well as criticism by the Congress and by Mr. Kuczynski's successor as President, Mr. Vizcarra,⁶⁹ the MINEM cancelled those Decrees.⁷⁰

64. Following Mr. Kuczynski's presidency, there have been ongoing allegations of political interference in Petroperú's management. For example, a number of senior Petroperú managers were fired in what has been described as "**political management**" of the company.⁷¹ More recently, the Minister of Energy and Mines, Iván Merino, resigned because of political

⁶² Petroperú Press Release, "*Luis E. García Rosell es nombrado Gerente General de PETROPERÚ*," dated 5 September 2016, Ex. C-0163.

⁶³ Petroperú Press Release, "*Luis E. García Rosell es nombrado Gerente General de PETROPERÚ*," dated 5 September 2016, Ex. C-0163.

⁶⁴ Ms. de la Puente Wiese was a Director of Wiese Group and also a member of the family that owned the Wiese Group. "*Sí hubo irregularidades en salvataje de Banco Wiese*," La República, dated 19 October 2004 (updated 22 May 2019), Ex. C-0100; F. Tesen, "*Susana de la Puente sigue fuera del país, pese a investigación fiscal por acusación de Jorge Barata*," Diario Correo, dated 7 February 2019, Ex. C-0238; "*Noticia ¿Quién es lady Su en la campaña de PPK*," LaMula.pe, dated 1 April 2011, Ex. C-0110.

⁶⁵ F. Tesen, "*Susana de la Puente sigue fuera del país, pese a investigación fiscal por acusación de Jorge Barata*," Diario Correo, dated 7 February 2019, Ex. C-0238.

⁶⁶ F. Tesen, "*Susana de la Puente sigue fuera del país, pese a investigación fiscal por acusación de Jorge Barata*," Diario Correo, dated 7 February 2019, Ex. C-0238.

⁶⁷ "*Renuncia el presidente de directorio de Petroperú por temas personales*," Agencia Peruana de Noticias Andina, dated 21 March 2018, Ex. C-0225. Peru recalled Ms. de la Puente Wiese as ambassador. See F. Tesen, "*Susana de la Puente sigue fuera del país, pese a investigación fiscal por acusación de Jorge Barata*," Diario Correo, dated 7 February 2019, Ex. C-0238.

⁶⁸ "*Congreso de la Republica del Perú*," El Heraldo, dated 18 April 2018, Ex. C-0228.

⁶⁹ "*Congreso de la Republica del Perú*," El Heraldo, dated 18 April 2018, Ex. C-0228; H. Cotos, "*Presidente Vizcarra considera sospechosos contratos que Kuczynski firmó con petrolera*," La República, dated 16 May 2018 (updated 28 May 2019), Ex. C-0229.

⁷⁰ "*Peru president cancels London-based Tullow's offshore oil contracts*," Reuters, dated 23 May 2018, Ex. C-0232.

⁷¹ "*Advierten un manejo político en Petroperú*," Peru21, dated 26 September 2021, Ex. C-0262.

interference in the appointment of Petroperú's General Manager.⁷² He also accused Petroperú's management of not following legal procedures and pursuing "other interests."⁷³

65. In February 2022, Petroperú announced that it had identified nearly \$1 billion in irregularities under "the previous administration," and that it was commencing legal proceedings against a number of its former managers for criminal conduct and conflict of interests.⁷⁴

D. Maple Gas Had Successfully Operated in Peru Since 1994

66. After the Blue Oil Investment Group acquired Maple Gas, the government – through PERUPETRO and Petroperú – began a campaign to destroy Maple Gas's business. The Blue Oil Investment Group completed its acquisition of Maple Gas in 2015, as Mr. Kuczynski was campaigning for President and was publicly at war with Blue Oil and Mr. Rojas.

67. At the time of that acquisition, Maple Gas had been operating in the Ucayali department, a remote region in the Amazon jungle, for more than twenty years. In 1993, Maple Gas's parent company won a bid to operate a combined natural gas and electric power generation and transmission project, the Aguaytía Integrated Project ("AIP"), which included: (i) the exploration, operation, and extraction of oil from Blocks 31-B, D and E; (ii) the exploration, operation, and extraction of gas from Block 31-C; (iii) the construction of a new fractionation plant and a new power plant; and (iv) the operation of, and upgrades to, the Pucallpa Refinery.

68. As described in more detail below: (1) Maple Gas originally operated the AIP as a unitary project; (2) the AIP was split into two operations in 1996 through the creation of an affiliate, Aguaytía Energy which was then sold to other investors in 2009, while Maple Gas continued to operate the Pucallpa Refinery and certain oil fields; and (3) the Blue Oil Investment Group acquired Maple Gas in October 2015.

1. The Aguaytía Integrated Project

69. Petroperú launched the bidding process for the AIP in November 1992. The AIP was a combined natural gas and electric power generation and transmission project. At the time of the bidding process, the AIP's three oil fields were producing crude oil feedstock that was sent to the Pucallpa Refinery located in the nearby city of Pucallpa. The government sought a proposal that would integrate the AIP with the extraction of natural gas from a sand formation beneath one of

⁷² In an interview after his resignation, Mr. Merino explained that he had been pressured by the President's office regarding the appointment of Petroperú's General Manager and that, he, as the Minister of Energy and Mines, had undue power to decide on the appointments of Petroperú's Directorate and its General Management, and therefore to control Petroperú's decisions: "[a]lthough [Petroperú's] directorate is the one that decides on this designation [general manager], you [the MINEM] **as the owner of the state company can call the directorate and remove them and then do the same with the general manager** ... Therefore, **they have to have 'my permission,' even though this is not the legal procedure.**" *Iván Merino: 'Me retiré porque no acepté las presiones de Pacheco para que Chávez sea gerente de Petro-Perú,'* El Gas Noticias, dated 3 March 2022, Ex. C-0265

⁷³ *Iván Merino: 'Me retiré porque no acepté las presiones de Pacheco para que Chávez sea gerente de Petro-Perú,'* El Gas Noticias, dated 3 March 2022, Ex. C-0265.

⁷⁴ Petroperú News Release, "*Comptroller's office did not detect irregularities in previous management for close to a billion dollars,*" dated 26 February 2022, Ex. C-0264.

these fields, which had never been commercially developed, as well as the delivery of this natural gas to an existing 20-megawatt power plant in Pucallpa.⁷⁵

70. In addition to the existing oil fields and Pucallpa Refinery, the project included: (i) a new 150 MW thermal power plant; (ii) a dry gas pipeline to the power plant; (iii) a gas processing plant to separate out the liquids from the gas in the producing fields; (iv) a gas liquids pipeline to the Pucallpa Refinery; (v) a new fractionation plant in Pucallpa to separate liquid hydrocarbons into natural gasoline and liquid petroleum gas condensates (“LPGs”), which could be sold in the Pucallpa market; and (vi) the use of natural gasoline as a feedstock to the Pucallpa Refinery, which would be under a new twenty-year renewable lease.⁷⁶

71. On 11 March 1993, Petroperú awarded the AIP to a U.S. company, the Maple Gas Corporation.⁷⁷ On 2 November 1993, the Maple Gas Corporation incorporated a Peruvian subsidiary, Maple Gas, to manage the AIP.⁷⁸

72. In March 1994, Maple Gas entered into the following agreements with Petroperú and PERUPETRO:

- a. a 20-year license agreement for the exploration and exploitation of the Aguaytía gas field (“Block 31-C”) with PERUPETRO;⁷⁹
- b. a 20-year license agreement for the exploration and exploitation of the Maquía (“Block 31-B”) and Agua Caliente (“Block 31-D”) oil fields with PERUPETRO;⁸⁰ and
- c. a 20-year lease agreement for the Pucallpa Refinery (“Pucallpa Refinery Lease Agreement”) with Petroperú.⁸¹

2. The AIP Was Split into Two Operations

73. In 1996, Maple Gas transferred the Block 31-C license to a newly created company, Aguaytía Energy, which was partially owned by Maple Gas’s parent company, the Maple Gas Corporation. Thereafter, Aguaytía Energy produced natural gas from Block 31-C and operated the fractionation plant and the power plant, while Maple Gas produced crude from Blocks 31-B and D and operated the Pucallpa Refinery.

⁷⁵ Award of Contract for the Aguaytía Integrated Project, dated 11 March 1993, at pp. 19-41, Ex. C-0091.

⁷⁶ See Witness Statement of Nabil Katabi for Claimant’s Memorial-ENG, dated 25 March 2022 (“Katabi WS-ENG”), at para. 11.

⁷⁷ Award of Contract for the Aguaytía Integrated Project, dated 11 March 1993, at pp. 19-41, Ex. C-0091.

⁷⁸ Lease Agreement for Pucallpa Refinery between Petroperú and Maple Gas, dated 29 March 1994, at pp. 21-22, Ex. C-0004.

⁷⁹ License Agreement between PERUPETRO S.A. and Maple Gas Corporation Del Peru for Lot 31 C, with the participation of Maple Resources and the Central Bank of Peru, dated 30 March 1994 (“License Agreement for Lot 31 C”), at Article 3.1, Ex. C-0005.

⁸⁰ License Agreement between PERUPETRO S.A. and Maple Gas Corporation Del Peru for Lots 31-B and D, with the participation of Maple Resources and the Central Bank of Peru, dated 30 March 1994 (“License Agreement for Lots 31-B and D”), at Article 3.1, Ex. C-0006.

⁸¹ Lease Agreement for Pucallpa Refinery between Petroperú and Maple Gas, dated 29 March 1994, at p. 11, at Article 3.1, Ex. C-0004.

74. As part of the AIP, Aguaytía Energy extracted “wet” natural gas from Block 31-C and processed it to remove the liquid hydrocarbons. The resulting “dry” natural gas was sent by pipeline to Aguaytía Energy’s thermal power plant in Tingo Maria. The liquid hydrocarbons were separated at the fractionation plant into LPGs, primarily butane and propane, which were sold to wholesalers in the Ucayali region.⁸² The natural gas that Aguaytía Energy used to run its thermal power plant could not be obtained without first removing the liquid hydrocarbons, and the liquid hydrocarbons could not be separated into LPGs that could be sold without fractionation, i.e., separating them into butane, propane and other products.⁸³

75. One of the byproducts of fractionation is natural gasoline. In 1996, Aguaytía Energy and Maple Gas entered into a natural gasoline purchase agreement (the “Natural Gasoline Purchase Agreement”), which required Aguaytía Energy to deliver all of the natural gasoline from the fractionation of the liquid hydrocarbons to the Pucallpa Refinery.⁸⁴ Maple Gas refined the natural gasoline supplied by Aguaytía Energy into commercial products such as gasoline, diesel fuel, and jet fuel (referred to generally as “refined products”).⁸⁵

76. In 2001, Maple Gas acquired another oil field when it entered a 30-year exploration and exploitation license agreement for the Pacaya field (“Block 31-E”) with PERUPETRO.⁸⁶ In 2009, the Maple Gas Corporation sold its interest in Aguaytía Energy to Duke Energy.⁸⁷ Following this, Maple Gas and Aguaytía Energy operated as independent entities. Maple Gas continued to operate the Pucallpa Refinery and Blocks 31-B, D, and E, while Aguaytía Energy operated the exploration and production facilities in Block 31-C.

77. In March 2014, Maple Gas and PERUPETRO agreed to extend the Blocks 31-B and D licenses for ten years, until 2024.⁸⁸ Maple Gas and Petroperú also agreed to extend the Pucallpa Refinery Lease Agreement for ten years, until 2024.⁸⁹

78. Prior to 2014, Maple Gas’s operations were consistently profitable. For example, during the five-year period between 2009 and 2013, the company generated an average operating profit of \$8.6 million per year (an average 10.4% operating margin over revenues).⁹⁰

⁸² Katabi WS-ENG, at para. 11.

⁸³ Katabi WS-ENG, at paras. 11-12.

⁸⁴ Natural Gasoline Purchase Agreement between Maple Gas and Aguaytía Energy, dated 24 July 1996, Ex. C-0095.

⁸⁵ Katabi WS-ENG, at para. 11.

⁸⁶ See Block 31-E License Agreement, dated 6 March 2001, at Article 3.1, Ex. C-0096.

⁸⁷ In subsequent correspondence and press reports, this entity is sometimes referred to as Aguaytía and sometimes as Duke. For clarity, this submission uses “Aguaytía Energy.”

⁸⁸ Extension License Agreement Blocks 31-B and D, dated 30 March 2014, Ex. C-0120. See also Decree Extension License Agreement Blocks 31-B and D, dated 30 March 2014, Ex. C-0119.

⁸⁹ 2014 Pucallpa Refinery Lease Agreement, dated 29 March 2014, at Article 4.1, Ex. C-0118. See also Minutes from the Negotiating Committee for the Pucallpa Refinery for January-March 2014, dated 29 January 2014, Ex. C-0117.

⁹⁰ See Audited Financial Statements 2009-2013, Ex. C-0105. Operating profit (“utilidad operativa” in Spanish) is a line item in each year’s financial statements. In calculating the of the average operating profit for the years 2009-2013, an extraordinary charge of \$38.5 million for 2012 related to writing off intangible assets was excluded.

3. The Blue Oil Investment Group Acquired Maple Gas in October 2015

79. The Maple Gas Corporation's parent, Maple Energy Plc, also owned Maple Etanol S.R.L. ("Maple Etanol"), which built and operated a large ethanol plant on the Pacific coast in northern Peru. Maple Gas's profitable operations in Pucallpa enabled Maple Energy to finance the construction of Maple Etanol's plant.⁹¹ Construction on that plant began in 2007, and it became operational in 2011.⁹²

80. In 2014, shortly after Maple Etanol's plant became operational, there was a worldwide crash in ethanol prices. In October 2014, Maple Etanol defaulted on a \$160 million loan that it had obtained to consolidate the debt issuances used to fund the construction of the plant.⁹³ The loan was secured by Maple Etanol's equity and physical assets, and was guaranteed by Maple Gas.⁹⁴ As a result of Maple Etanol's default, a consortium of banks (the "Creditors") called Maple Gas's guarantee and seized control of Maple Gas.⁹⁵ The Creditors then sought to sell Maple Gas.⁹⁶

81. Nabil Katabi (a former Project Development Manager at Maple Gas) and Jack Hanks (a former Maple Gas shareholder) sought investors to acquire Maple Gas. Together with Blue Oil, they formed a group of investors for the purpose of acquiring Maple Gas.⁹⁷

82. On 20 October 2015, the Blue Oil Investment Group closed on the purchase of Maple Gas's debt and took over Maple Gas's operations.⁹⁸

E. Before Acquiring Maple Gas, the Blue Oil Investment Group Took Steps To Ensure It Had Sufficient Feedstock To Operate at Full Capacity

83. Before it acquired Maple Gas, the Blue Oil Investment Group wanted to ensure that the Pucallpa Refinery would have access to sufficient feedstock to operate at full capacity.⁹⁹ As described below: (1) the existing supplies of feedstock for the Pucallpa Refinery had been declining, and Petroperú had been supplying refined products to the region in its capacity as the

⁹¹ Katabi WS-ENG, at para. 16.

⁹² Katabi WS-ENG, at para. 16.

⁹³ Rojas WS-ENG, at para. 11.

⁹⁴ See Maple Energy plc 2013 Annual Report, at p. 89, Ex. C-0116. See also Katabi WS-ENG, at para. 16; Rojas WS-ENG, at paras. 11.

⁹⁵ Katabi WS-ENG, at para. 17; Rojas WS-ENG, at para. 11.

⁹⁶ Katabi WS-ENG, at para. 18; Rojas WS-ENG, at paras. 11.

⁹⁷ Katabi WS-ENG, at para. 19; Rojas WS-ENG, at para. 12. As described below, Mr. Rojas also discussed with Charles Holzer, the owner of Worth Capital, the possibility of participating in the acquisition of Maple Gas. See *below* at para. 153. At the time, Blue Oil did not need additional capital for the investment, so Mr. Holzer and Mr. Rojas decided to consider an investment by Mr. Holzer at a later stage if it made sense to invest additional capital into Maple Gas. Holzer WS-ENG, at para. 7; Rojas WS-ENG, at para. 61.

⁹⁸ The Creditors had operational control of Maple Gas and a first lien on its cash flows by virtue of Maple Gas's guarantee. As a result, purchasing Maple Gas's equity would not have given the Blue Oil Investment Group control over Maple Gas. For that reason, the Group purchased Maple Gas's debt from the Creditors instead. The acquisition was made through Jancell Corporation, which paid \$15 million to acquire the debt held by Interbank, and through Trilon Enterprises S.A., which acquired the \$47 million in debt held by the other Creditors. Jancell Corporation later became the owner of 100% of Maple Gas's shares when it capitalized the \$15 million debt. See Rojas WS-ENG, at para. 14.

⁹⁹ Rojas WS-ENG, at para. 16.

supplier of last resort; and (2) before it acquired Maple Gas, the Blue Oil Investment Group entered into discussions to acquire feedstock from a new source of local supply that would enable the Pucallpa Refinery to return to operating at full capacity.

1. Petroperú Supplied Refined Products to the Ucayali Region as Maple Gas's Sources of Feedstock Declined

84. By 2014, declining production from Maple Gas's oil fields and declining supply from Aguaytía Energy meant that the Pucallpa Refinery was refining significantly less feedstock than it had in the past. Because of the resulting decline in refined products supplied to the region by the Refinery, Petroperú gradually had begun to supply refined products to the region in its capacity as the supplier of last resort.

85. In 2014, a significant new source of feedstock became available locally. CEPSA began producing crude oil from a nearby oil concession (Block 131), which was an ideal source of feedstock for the Pucallpa Refinery.

86. At the time, Maple Gas's owners were not prepared to make additional investments in the Pucallpa Refinery.¹⁰⁰ Instead, Maple Gas and CEPSA entered into a one-year contract for reception, storage, and dispatch services ("RAD Services"¹⁰¹) for CEPSA's crude in the facilities at the Pucallpa Refinery (the "CEPSA RAD Contract").¹⁰² This contract allowed CEPSA's crude to be stored at the Pucallpa Refinery and loaded onto river barges to be exported by way of the North Peruvian Pipeline to the Pacific, or sold to Petroperú.¹⁰³

87. Petroperú's arrangements to buy feedstock from CEPSA and to supply refined products to the Ucayali region were not an ordinary commercial activity for it. Its operations were not profitable, and also led to fuel shortages, unreliable prices, and environmental risks, among other problems.

88. Indeed, to supply the Ucayali region with refined products from feedstock purchased from CEPSA, Petroperú shipped crude from CEPSA nearly 1,000 kilometers to its refinery in Iquitos by river barge, which could take a week. Once refined, Petroperú then had to ship the refined products by river barge back to the Ucayali region, which could take another week.¹⁰⁴ This led to systematic shortages of fuel in the Ucayali region, which relies on diesel for most of its economic activities (such as logging and farming).¹⁰⁵ These shortages meant fuel and

¹⁰⁰ Rojas WS-ENG, at para. 19; Katabi WS-ENG, at para. 21.

¹⁰¹ "RAD" is an acronym based on the Spanish "recepción, almacenamiento y despacho."

¹⁰² Agreement between CEPSA and Maple Gas, dated 9 September 2014, Ex. C-0122.

¹⁰³ Rojas WS-ENG, at para. 22.

¹⁰⁴ Rojas WS-ENG, at para. 44; Katabi WS-ENG, at para. 45; Neumann WS-SPA, at para. 37. These operations were further complicated by the fact that the navigability of the Ucayali River depends on seasonal factors such as rainfall. Rojas WS-ENG, at para. 44.

¹⁰⁵ Transcript, La Hora N, dated 2 May 2016, Ex. C-0155; Telecast, La Hora N, dated 2 May 2016, Ex. C-0154; "Petroperu amenaza con catástrofe ecológica en ribera de río Ucayali," dated 11 May 2016, Ex. C-0157; "Embarcación produce derrame de petróleo crudo en río Ucayali," Diario Correo, dated 13 January 2017, Ex. C-0177. See also Rojas WS-ENG, at para. 44; Neumann WS-SPA, at para. 37.

electricity supply in Ucayali was the least reliable in Peru. The difficulties of this roundtrip by river barge also meant that there was a significant risk of accidents and environmental damage.¹⁰⁶

2. Before Investing in Maple Gas, the Blue Oil Investment Group Entered into Discussions with CEPSA for Feedstock To Supply the Pucallpa Refinery

89. In order to ensure the Pucallpa Refinery could operate at full capacity and increase the supply of refined products to the Ucayali region, representatives of the Blue Oil Investment Group entered into discussions with CEPSA prior to acquiring Maple Gas. As described below, by December 2015, after the acquisition was completed, Maple Gas and CEPSA had reached agreement on the proposed terms of a supply contract for the Pucallpa Refinery.¹⁰⁷

90. Mr. Katabi first held discussions with CEPSA in April 2015 to discuss whether CEPSA would agree to supply crude to Maple Gas if the Blue Oil Investment Group acquired it.¹⁰⁸ The two parties then had multiple meetings over the following months, and Mr. Katabi made several field visits to CEPSA's Block 131.¹⁰⁹

91. As Mr. Katabi describes in his witness statement, after he met with CEPSA on 21 May 2015, CEPSA's CEO wrote that "it was good to talk with you and know that *we are seriously looking for some synergies between our companies.*"¹¹⁰ There were obvious benefits from a potential crude oil supply agreement for both CEPSA and Maple Gas.¹¹¹ The Pucallpa Refinery was by far the closest refinery to CEPSA's oil concession, and would be able to consume most or all of CEPSA's crude for many years. Moreover, the Pucallpa Refinery's storage terminal meant that CEPSA would not need to incur the significant cost of building its own storage in the field or pay for RAD Services from Maple Gas in order to supply other buyers.¹¹²

92. In June 2015, Mr. Katabi and Mr. Hanks travelled to Madrid to meet with CEPSA's senior executives.¹¹³ Mr. Katabi met again with CEPSA on 14 October 2015 to inform it that the Blue Oil Investment Group was going to complete the acquisition of Maple Gas.¹¹⁴ At that meeting, CEPSA told Mr. Katabi again that it "*looked forward to continuing our negotiations after the deal closed.*"¹¹⁵

93. After the Blue Oil Investment Group acquired Maple Gas in October 2015, Maple Gas and CEPSA met a number of times to negotiate the terms of a supply agreement, including

¹⁰⁶ Katabi WS-ENG, at para. 45. After a spill in December 2016, Petroperú's former President told the press that "*[t]he attitude of Petroperú officials, and the carelessness of the Ministry of Energy and Mines, who presides over Petroperú's General Shareholders' Committee, will make this a permanent risk.*" "*Embarcación produce derrame de petróleo crudo en río Ucayali,*" Diario Correo, dated 13 January 2017, Ex. C-0177. See also below at para. 118.

¹⁰⁷ Katabi WS-ENG, at para. 28; Rojas WS-ENG, at paras. 32-33, 35.

¹⁰⁸ Katabi WS-ENG, at para. 22.

¹⁰⁹ Katabi WS-ENG, at para. 22; Rojas WS-ENG, at para. 18.

¹¹⁰ Katabi WS-ENG, at para. 22; Email from A. Masias to J. Hanks, dated 21 May 2015, Ex. C-0132.

¹¹¹ Katabi WS-ENG, at para. 20; Rojas WS-ENG, at para. 16-17.

¹¹² Rojas WS-ENG, at para. 17.

¹¹³ Katabi WS-ENG, at para. 22.

¹¹⁴ Katabi WS-ENG, at paras. 22-23; Email from J. Hanks to A. Masias, dated 14 October 2015, Ex. C-0135.

¹¹⁵ Katabi WS-ENG, at para. 22.

meetings at CEPSA's offices in Madrid on 23 and 24 November.¹¹⁶ After those negotiations and further exchanges regarding most of the terms, by December 2015 Maple Gas understood it had reached an agreement with CEPSA, and was waiting for the written contract to review.¹¹⁷ Indeed, as part of these negotiations, the parties entered into a written agreement to conduct a test run that subsequently took place in January 2016.¹¹⁸

F. After the Acquisition, Petroperú Blocked Maple Gas from Obtaining New Feedstock for the Pucallpa Refinery

94. Despite the constructive discussions with CEPSA before and just after the Blue Oil Investment Group's acquisition of Maple Gas, the agreement reached in December 2015 was ultimately never signed. Instead, the tone of CEPSA's discussions with Maple Gas suddenly changed radically in early 2016.

95. At the same time, Petroperú began to take aggressive steps to demand that Maple Gas let it use the Pucallpa Refinery for its own storage of refined products to sell in the Ucayali region. After that, purportedly acting in its role as the supplier of last resort, Petroperú entered into a new contract to acquire more of CEPSA's crude at higher prices than before, even though Maple Gas was ready and willing to buy CEPSA's crude at a higher price than Petroperú.

96. As described in more detail below: (1) after Maple Gas changed ownership, in December 2015, Petroperú made aggressive demands that Maple Gas provide it with RAD Services and threatened to take the Pucallpa Refinery; (2) despite the fact that Maple Gas was ready to contract with CEPSA and increase production at the Pucallpa Refinery, Petroperú instead contracted for CEPSA's crude for significantly lower prices than CEPSA was negotiating with Maple Gas; (3) Petroperú's conduct led to complaints and protests in the Ucayali region; and (4) Petroperú continued to threaten to take the Pucallpa Refinery if Maple Gas did not agree to its demands for RAD Services.

1. Petroperú Demanded RAD Services in December 2015

97. Prior to the change of Maple Gas's ownership, Maple Gas had been in discussions with Petroperú for more than a year about Petroperú's request that Maple Gas provide it with RAD Services at the Pucallpa Refinery. As both parties recognized, pursuant to the terms of the Pucallpa Refinery Lease Agreement, Maple Gas was not required to provide RAD Services to Petroperú unless the parties reached agreement on the terms of service through good faith negotiations.¹¹⁹

98. In September 2015, Petroperú had sent Maple Gas a draft proposal for the operating conditions for the RAD Services it was requesting, which Maple Gas was considering when it changed ownership in October 2015.¹²⁰

¹¹⁶ Katabi WS-ENG, at para. 26; Rojas WS-ENG, at paras. 32; Email from A. Masias to J. Hanks, dated 25 October 2015, Ex. C-0136.

¹¹⁷ Katabi WS-ENG, at para. 28; Rojas WS-ENG, at paras. 32-33, 35.

¹¹⁸ Rojas WS-ENG, at para. 32

¹¹⁹ See below at para. 104.

¹²⁰ Letter from Maple Gas to Petroperú, dated 18 December 2015, Ex. C-0141.

99. In December 2015, after the Blue Oil Investment Group acquired Maple Gas, Petroperú suddenly changed its approach. On 1 December 2015, Petroperú sent Maple Gas two different letters demanding that Maple Gas provide RAD Services pursuant to Clause 12.1 in the Pucallpa Refinery Lease Agreement.¹²¹

100. The first 1 December letter, from Gerardo León, Petroperú's Refining and Pipelines Manager, asserted that Maple Gas was required to make available a 30 thousand barrel ("MB") tank for storage of Diesel B5 and related RAD Services, and that this should have been done by 29 September 2014.¹²² Petroperú also asserted that, "despite the time that has elapsed and the communications we have sent you, *your company is not complying with what has been agreed*" regarding the 30 MB tank.¹²³

101. The second 1 December letter, from Justo Delgado, Petroperú's Contracts and Services Manager, asserted that, "for various reasons, ... the 30 MB tank required for the reception, storage and dispatch of PETROPERÚ S.A.'s B5 diesel is not yet available,"¹²⁴ and invoked Clause 12.1 of the Lease Agreement to demand that Maple Gas make available a 30 MB tank for the storage of B5 diesel that Petroperú was shipping from its Iquitos refinery.¹²⁵

102. Maple Gas explained in response that its new management would review Petroperú's requests, and provide a response in January 2016 once it had done so.¹²⁶ When it reviewed the previous correspondence, Maple Gas's new management realized that Petroperú's assertions in its December 2015 correspondence were disingenuous. Contrary to Petroperú's assertions, the parties had *not* reached an agreement to provide Petroperú with RAD Services, and there was no obligation for Maple Gas to do so under the Lease Agreement unless the parties resolved the open issues between them.¹²⁷

103. Indeed, in its correspondence *before* the change of Maple Gas's ownership, Petroperú had acknowledged that the "[p]rocedure for the Reception, Storage and Dispatch Service (RAD) of B5 diesel" had to "be agreed upon by both parties in accordance with the provisions of paragraph 12.1 in the Twelfth Clause."¹²⁸ There had been lengthy negotiations between Petroperú and Maple Gas's previous owners, but they had not been able to reach agreement on significant open issues, such as which party would bear the costs of installing a new pipeline, piping and a dispatch line. Even though Maple Gas had offered to share the cost of this infrastructure, Petroperú had demanded that Maple Gas pay for all of it.¹²⁹

¹²¹ Letter from Petroperú (G. León) to Maple Gas, dated 1 December 2015, Ex. C-0139; Letter from Petroperú (J. Delgado) to Maple Gas, dated 1 December 2015, Ex. C-0140.

¹²² Letter from Petroperú (G. León) to Maple Gas, dated 1 December 2015, Ex. C-0139

¹²³ Letter from Petroperú (G. León) to Maple Gas, dated 1 December 2015, Ex. C-0139.

¹²⁴ Letter from Petroperú (J. Delgado) to Maple Gas, dated 1 December 2015, Ex. C-0140.

¹²⁵ Letter from Petroperú (J. Delgado) to Maple Gas, dated 1 December 2015, Ex. C-0140.

¹²⁶ Letter from Maple Gas to Petroperú, dated 18 December 2015, Ex. C-0141.

¹²⁷ As described below, an arbitral tribunal subsequently rejected Petroperú's claims in an arbitration initiated by Petroperú in 2018. *See below* at paras. 299-300.

¹²⁸ Letter from Petroperú to Maple Gas, dated 22 December 2014, Ex. C-0123.

¹²⁹ *See* Letter from Maple Gas to Petroperú, dated 6 January 2015, Ex. C-0124.

104. In its response to Petroperú on 29 January 2016, Maple Gas proposed conditions that were intended to balance Maple Gas's and Petroperú's respective rights during the provision of RAD Services.¹³⁰

105. Maple Gas and Petroperú met on 2 February 2016 to discuss Petroperú's demands for RAD Services, including the new demands it had made in December 2015. This was Maple Gas's first meeting with Petroperú since the Blue Oil Investment Group had acquired it, and Maple Gas was hopeful that they would be able to have constructive discussions. However, at the meeting, Petroperú simply reiterated the new demands it had made in December 2015,¹³¹ and threatened that it "**take back the refinery**" if Maple Gas did not agree "**and the problem would be over.**"¹³²

106. The day after that meeting, on 3 February 2016, Petroperú wrote to Maple Gas, demanding information as to what actions Maple Gas had undertaken to comply with providing a 3 MB tank for gasoline storage and a 20 MB tank for the storage of B5 diesel.¹³³ Petroperú had never requested these particular RAD Services before, and Petroperú's letter asking for a status update therefore did not make sense to Maple Gas.¹³⁴ Nevertheless, on 22 February 2016, Maple Gas confirmed that it would provide these two tanks and the 30 MB tank subject to the parties reaching agreement on the operating conditions.¹³⁵

107. Because it wanted to resolve the issues and to move forward with increasing production at the Pucallpa Refinery – which was in everyone's interest – Maple Gas requested additional meetings with Petroperú in February 2016. In these meetings, Maple Gas offered to purchase some of the crude that CEPSA was supplying to Petroperú.¹³⁶ However, Petroperú refused, and again simply demanded that Maple Gas renew the separate RAD Services Contract it had with CEPSA, described above, which had expired at the end of 2015. Petroperú again threatened to take back the Pucallpa Refinery if Maple Gas did not agree to continue to provide RAD Services to CEPSA, which enabled Petroperú to purchase CEPSA's crude.¹³⁷

2. Petroperú Continued To Acquire CEPSA's Crude, Even Though Maple Gas Was Willing To Agree to Better Terms

108. Despite Maple Gas's willingness to buy CEPSA's crude in order to increase production at the Pucallpa Refinery, Petroperú instead entered into a series of new contracts with CEPSA that prevented Maple Gas from having sufficient feedstock. Moreover, and inexplicably to Maple Gas at the time, CEPSA agreed to significantly lower prices with Petroperú than those that CEPSA was negotiating with Maple Gas.

¹³⁰ Letter from Maple Gas to Petroperú, dated 29 January 2016, Ex. C-0143; Letter from Petroperú to Maple Gas, dated 9 September 2015, Ex. C-0133.

¹³¹ Katabi WS-SPA, at paras. 38. See also Letter from Maple Gas to Petroperú, dated 30 May 2016, Ex. C-0026.

¹³² Letter from Maple Gas to Petroperú, dated 30 May 2016, Ex. C-0026.

¹³³ Letter from Petroperú to Maple Gas, dated 3 February 2016, Ex. C-0144.

¹³⁴ Katabi WS-SPA, at para. 40.

¹³⁵ Letter from Maple Gas to Petroperú, dated 22 February 2016, Ex. C-0145.

¹³⁶ Letter from Maple Gas to Petroperú, dated 31 August 2016, Ex. C-0029.

¹³⁷ Rojas WS-ENG, at paras. 37; Letter from Maple Gas to Petroperú, dated 30 May 2016, Ex. C-0026; Letter from Maple Gas to Petroperú, dated 31 August 2016, at p. 3, Ex. C-0029.

109. As described above, by December 2015, CEPSA and Maple Gas had negotiated the terms of a long-term agreement for the supply of crude.¹³⁸ However, at the same time that Petroperú suddenly made its new and aggressive demands for RAD Services, CEPSA also changed its position toward supplying Maple Gas.

110. Rather than going forward with the supply contract with Maple Gas on the terms discussed, in December 2015, CEPSA told Maple Gas that it would not enter into a supply agreement unless Maple Gas agreed to renew the CEPSA RAD Contract, which expired at the end of the year.¹³⁹ CEPSA needed this contract only to sell crude to third parties as it would not need to pay for RAD Services for crude that Maple Gas would refine.¹⁴⁰

111. After further discussions in December 2015, Maple Gas and CEPSA agreed that Maple Gas would extend the CEPSA RAD Contract for two months, until 28 February 2016. Maple Gas agreed to do so on the basis that CEPSA would agree to enter into a supply contract for 2,600 barrels per day (“bpd”) at the same price Petroperú was then paying CEPSA.¹⁴¹ This would have allowed the Pucallpa Refinery to operate at full capacity and to greatly increase its supply of refined products to the Ucayali region.

112. However, on 6 January 2016, CEPSA surprised Maple Gas by sending a draft supply agreement with a different, and substantially higher, price (BRENT + \$2.20) than the parties had agreed in December 2015.¹⁴²

113. Because Maple Gas hoped that it would still be able to reach agreement with CEPSA, at the beginning of January 2016 Maple Gas continued to provide RAD Services to CEPSA.¹⁴³ Maple Gas could not continue to do so without an agreement, however, and had to discontinue those services.¹⁴⁴ This was the situation when Maple Gas met with Petroperú in February 2016, and Petroperú threatened to take the Pucallpa Refinery if Maple Gas did not agree to provide RAD Services to both Petroperú and CEPSA, as described above.¹⁴⁵

114. Eventually, Maple Gas decided it had no choice but to agree to the higher price that CEPSA had demanded.¹⁴⁶ However, in March 2016, when Maple Gas told CEPSA that it would agree to its price, CEPSA suddenly demanded an even higher price (BRENT + \$3.25).¹⁴⁷

115. Shortly afterwards, Maple Gas learned that Petroperú had entered into a new supply contract with CEPSA. That new contract was for 3,000 bpd (CEPSA’s maximum production)

¹³⁸ See above at para. 94.

¹³⁹ Rojas WS-ENG, at para. 33. As described above, this contract allowed CEPSA’s crude to be stored at the Pucallpa Refinery and sold to Petroperú. See above at para. 87.

¹⁴⁰ Rojas WS-ENG, at para. 22, 33 (explaining that “refineries do not typically charge suppliers for crude received at their own facilities.”).

¹⁴¹ Rojas WS-ENG, at para. 35.

¹⁴² Rojas WS-ENG, at para. 36.

¹⁴³ Rojas WS-ENG, at paras. 36.

¹⁴⁴ Among other issues, without a valid contract, Maple Gas’s insurance policy would not cover the provision of RAD Services to CEPSA. See Rojas WS-ENG, at para. 36.

¹⁴⁵ See above at paras. 106-108.

¹⁴⁶ Katabi WS-ENG, at paras. 29; Rojas WS-ENG, at para. 40.

¹⁴⁷ Rojas WS-ENG, at para. 40.

for eight months, and it was for a much lower price (BRENT - \$0.80) than CEPSA had demanded from Maple Gas, and much lower than Maple Gas had agreed to pay in March (BRENT + \$2.20).¹⁴⁸

116. Even though Petroperú's role was to act as the supplier of last resort when there was no commercial supplier available, Petroperú's actions effectively prevented Maple Gas from obtaining any crude from CEPSA for the remainder of 2016, which meant that the Pucallpa Refinery did not have sufficient feedstock to operate at capacity.¹⁴⁹

3. Petroperú's Conduct Led to Complaints and Protests in the Ucayali Region

117. As described above, Petroperú's strategy of denying Maple Gas feedstock and instead buying crude from CEPSA, and shipping it to Iquitos and back by river barge, was causing fuel shortages, as well as concerns about accidents and spills.¹⁵⁰ By 2016, this led to protests in the region.¹⁵¹ The situation became even worse once the CEPSA RAD Contract with Maple Gas ended. CEPSA began transporting crude from its field to Petroperú by sending tanker trucks to a residential area by the Ucayali River shore. It then transported the crude from the tanker trucks using plastic hoses through the garden of a private residence, where it loaded the crude onto Petroperú's barges using an improvised docking station.¹⁵² This improvised operation violated environmental regulations¹⁵³ and resulted in an oil spill in December 2016 that polluted the Ucayali River.¹⁵⁴

118. By the end of January 2016, local media began to warn that "[w]hile fuel prices in the rest of the country have reduced, Pucallpa faces shortages and concerns about higher prices than in the city of Lima."¹⁵⁵ However, when the Ucayali Chamber of Commerce summoned

¹⁴⁸ The April 2016 contract between CEPSA and Petroperú also designated Iquitos as the destination of CEPSA's crude. See Oil Purchase Agreement between CEPSA and Petroperú, dated 8 April 2016, at Article 5, Ex. C-0149. This destination restriction appeared to be intended to prevent Maple Gas from requesting to purchase CEPSA crude from Petroperú in Pucallpa. See Rojas WS-ENG, at para. 41.

¹⁴⁹ As described below, CEPSA subsequently told Maple Gas that Petroperú was "the State" and that CEPSA needed to be in alliance with the State-owned company. See below at para. 163.

¹⁵⁰ "Se agrava desabastecimiento del combustible en Pucallpa," Impetu Perú, dated 4 November 2016, Ex. C-0165; "Suben precio de combustibles," Diario Al Día, dated 1 December 2016, Ex. C-0168.

¹⁵¹ "Toda la producción de crudo del Lote 131 es llevada a la región Iquitos," La República, dated 7 December 2016, at p. 12, Ex. C-0170.

¹⁵² Telecast, La Hora N, dated 2 May 2016, Ex. C-0154; Transcript, La Hora N, dated 2 May 2016, Ex. C-0155; "Petroperú amenaza con catástrofe ecológica en ribera de río Ucayali," Gato Encerrado, dated 11 May 2016, Ex. C-0157. See also Neumann WS-SPA, at para. 37.

¹⁵³ Telecast, La Hora N, dated 2 May 2016, Ex. C-0154; Transcript, La Hora N, dated 2 May 2016, Ex. C-0155; "Petroperú amenaza con catástrofe ecológica en ribera de río Ucayali," Gato Encerrado, dated 11 May 2016, Ex. C-0157.

¹⁵⁴ "Embarcacion Produce Derrame De Petróleo Crudo En Rio Ucayali," Diario Expreso, dated 4 January 2017, Ex. C-0175; "Embarcación produce derrame de petróleo crudo en río Ucayali," Diario Correo, dated 13 January 2017, Ex. C-0177.

¹⁵⁵ "Gasolina en Pucallpa cuesta más que en Lima," Diario Al Día, dated 26 January 2017, at p. 2, Ex. C-0178; Ucayalazo Strike Flyer, dated 9 March 2016, Ex. C-0146.

Petroperú to an urgent meeting, Petroperú claimed that its refinery in Iquitos could supply the region and that concerns about fuel shortages “were nothing but a false alarm.”¹⁵⁶

119. Moreover, as described above, Petroperú repeatedly rebuffed Maple Gas’s requests in February 2016 to be allowed to acquire supply from CEPESA so that it could increase production at the Pucallpa Refinery.¹⁵⁷

120. In March 2016, an 11-day strike referred to as the “Ucayalazo” paralyzed the city of Pucallpa. The demonstrators raised several issues, including fuel shortages and prices.¹⁵⁸

121. During the following months, local officials, the business community, and consumers continued to express their frustration at Petroperú’s actions. Petroperú’s former President, César Gutiérrez, publicly described Petroperú’s conduct as not “logical,” and explained that Petroperú was causing the problems experienced in the region:

“When this [production] goes to the refinery in Iquitos, gasoline and diesel are produced, and the residual product, the quantity that is left for Pucallpa is small and then needs to return by river. *It would be logical if part of Cepsa’s crude that Petroperú buys would stay in Pucallpa and that Cepsa make a deal directly with Maple, but this is not happening.*”¹⁵⁹

122. As described below, as the situation worsened, and despite the limits on its mandate as the supplier of last resort, Petroperú took further steps to prevent Maple Gas from obtaining feedstock from CEPESA and subsequently from other suppliers.

4. Petroperú Continued To Threaten To Take the Pucallpa Refinery If Maple Gas Did Not Agree to Its Demands for RAD Services

123. Petroperú continued to write to Maple Gas demanding that it agree to provide the RAD Services Petroperú wanted.¹⁶⁰ On 10 May 2016, Petroperú sent a letter threatening to declare that Maple Gas had breached the Pucallpa Refinery Lease Agreement if it refused to resume negotiations within 15 days.¹⁶¹ Specifically, Petroperú stated that “*the Contract would be automatically terminated*, without the need for a prior request and without prejudice to the legal actions that may take place in order to claim the interests, damages and losses that are caused to our company.”¹⁶²

¹⁵⁶ “Gasolina en Pucallpa cuesta más que en Lima,” Diario Al Día, dated 26 January 2017, Ex. C-0178.

¹⁵⁷ See above at para. 108.

¹⁵⁸ “Ucayali: falta de alimentos y caos por huelga de ‘Ucayalazo,’” RPP Noticias, dated 20 March 2016, Ex. C-0147.

¹⁵⁹ “Toda la producción de crudo del Lote 131 es llevada a la región Iquitos,” La República, dated 7 December 2016, at p. 12, Ex. C-0170.

¹⁶⁰ See Letter from Petroperú to Maple Gas, dated 8 April 2016, Ex. C-0148. In response, Maple Gas reiterated its position that “our company’s decision to terminate the negotiations was due to the confirmation that, after a more than reasonable period of time, and despite the efforts and willingness of both parties, it was not possible to reach a consensus on the operating conditions and procedures.” See Letter from Maple Gas to Petroperú, dated 15 April 2016, Ex. C-0150.

¹⁶¹ Letter from Petroperú to Maple Gas, dated 10 May 2016, Ex. C-0156.

¹⁶² Letter from Petroperú to Maple Gas, dated 10 May 2016, Ex. C-0156.

124. There was no legal basis for these threats.¹⁶³ Indeed, Petroperú's threats contradicted its previous acknowledgement (before Maple Gas changed ownership) that Maple Gas only had an obligation to provide RAD Services if the parties agreed on the operating conditions.¹⁶⁴ However, in its May 2016 correspondence, Petroperú asserted, without any contractual basis, that "at the sole request of PETROPERÚ S.A., MAPLE is obliged to provide reception, storage and dispatch services."¹⁶⁵

125. Maple Gas learned at the same time that Petroperú had been telling other companies that it was going to terminate the Pucallpa Refinery Lease Agreement,¹⁶⁶ which undermined Maple Gas's relationships with its suppliers.¹⁶⁷

126. Mr. Katabi explains that he was shocked when he learned that Petroperú had been saying publicly that it was about to terminate the Lease Agreement:

"What I found shocking ... was that *Petroperú had apparently been saying publicly that it would imminently terminate the Lease Agreement*, which could potentially make suppliers question why they should negotiate with us if we might not be in business much longer. I heard this from one of Aguaytía Energy's executives during a meeting on 26 May 2016. Apparently, *Petroperú stated it would terminate our lease and suggested to Aguaytía Energy that it will take over the refinery.*"¹⁶⁸

127. On 30 May 2016, Maple Gas wrote to Petroperú about its conduct. In its letter, Maple Gas objected to Petroperú's public statements that it intended to terminate the Pucallpa Refinery Lease Agreement and take over its operation, and emphasized the consequences those statements had for Maple Gas's relationships with its current and potential business partners.¹⁶⁹

128. Maple Gas highlighted that Petroperú's statements were causing "*enormous uncertainties*" during its ongoing renegotiation of its contract with Aguaytía Energy, which Maple Gas depended on for feedstock.¹⁷⁰ Maple Gas also objected to the fact that, after threatening to take the Pucallpa Refinery in February 2016, Petroperú had entered into contracts that "*make it impossible for [Maple Gas] to acquire the necessary crude [for its] refining activities.*"¹⁷¹ In particular, Petroperú's contract with CEPESA meant that Petroperú had effectively prevented Maple Gas from obtaining sufficient crude from CEPESA through the end of 2016. Maple Gas emphasized that Petroperú's conduct was not in good faith and contrary to the

¹⁶³ As described below, Petroperú subsequently brought an arbitration in which it sought to terminate the Lease Agreement. The arbitral tribunal rejected Petroperú's claim that Maple Gas had breached any obligations with regard to providing RAD Services, holding that Petroperú's claim was contrary to the plain language of the Lease Agreement. See *below* at paras. 299-300.

¹⁶⁴ Letter from Petroperú to Maple Gas, dated 22 December 2014, Ex. C-0123.

¹⁶⁵ Letter from Petroperú to Maple Gas, dated 10 May 2016, Ex. C-0156.

¹⁶⁶ Katabi WS-ENG, at para. 43.

¹⁶⁷ Katabi WS-ENG, at para. 43.

¹⁶⁸ Katabi WS-ENG, at para. 43.

¹⁶⁹ Letter from Maple Gas to Petroperú, dated 30 May 2016, Ex. C-0026.

¹⁷⁰ Letter from Maple Gas to Petroperú, dated 30 May 2016, Ex. C-0026.

¹⁷¹ Letter from Maple Gas to Petroperú, dated 30 May 2016, Ex. C-0026.

purpose of the Pucallpa Refinery Lease Agreement, and that it threatened the sustainability of Maple Gas's business.

129. Maple Gas asked Petroperú to stop interfering with its business activities, and requested a meeting with Petroperú to address these issues.¹⁷²

G. As the Result of Petroperú's Conduct Following Its Acquisition of Maple Gas, the Blue Oil Investment Group Decided To Sell Maple Gas

130. Maple Gas did not understand Petroperú's conduct. It was not consistent with Petroperú's role as the supplier of last resort, and there was no reason for Petroperú to continue intervening once Maple Gas was under new ownership and was willing and able to purchase a long-term supply of feedstock for the Pucallpa Refinery.¹⁷³

131. Petroperú had no legitimate reason to be pursuing market share in the Ucayali region, or to prevent Maple Gas from being able to supply locally, but it seemed determined to drive Maple Gas out of business.

132. Moreover, Petroperú was not only intervening to prevent Maple Gas from acquiring feedstock, it was also undercutting Maple Gas's prices:

“[Petroperú] was also selling refined products in the Ucayali market at prices that were lower, in terms of the difference with the benchmark price in Lima, than it had sold them for previously. ***This forced Maple Gas to lower its prices and squeezed our margins. Petroperú's pricing appeared to be another strategy to drive us from the market.***”¹⁷⁴

133. Petroperú was therefore both making it harder for Maple Gas to obtain feedstock and forcing Maple Gas to lower the prices of its products, and Petroperú's strategy appeared to be to turn the Pucallpa Refinery into a terminal and storage facility for its own use. As Mr. Katabi explains:

“Petroperú did not want us to compete with it. It appeared that ***Petroperú wanted the Pucallpa Refinery to function as Petroperú's storage terminal rather than to operate as an actual refinery ... supplying the Ucayali region.***”¹⁷⁵

134. After months of threats from Petroperú that it intended to take the Pucallpa Refinery from Maple Gas, and no progress in resolving the situation, the Blue Oil Investment Group concluded that the only way forward was to sell its interest in Maple Gas.

¹⁷² Letter from Maple Gas to Petroperú, dated 30 May 2016, Ex. C-0026. On 25 August 2016, Petroperú wrote again demanding that Maple Gas meet within five days in order to “fulfill its obligations” to provide RAD Services, or it would commence legal proceedings. Letter from Petroperú to Maple Gas, dated 25 August 2016, Ex. C-0270.

¹⁷³ Katabi WS-ENG, at para. 46; Neumann WS-SPA, at paras. 11, 38; Rojas WS-ENG, at para. 46.

¹⁷⁴ Rojas WS-ENG, at para. 42.

¹⁷⁵ Katabi WS-ENG, at para. 46.

135. Mr. Rojas did not think it was a coincidence that Petroperú's aggressive conduct had started as soon as the Blue Oil Investment Group acquired Maple Gas.¹⁷⁶ He was therefore concerned that it would only continue during Mr. Kuczynski's presidency if he and Blue Oil remained Maple Gas's shareholders, and decided to identify a new investor. Mr. Rojas explains that "following Mr. Kuczynski's election as President, I had decided that Maple Gas would never be able to move forward with its business if the Blue Oil Investment Group continued to own it."¹⁷⁷

136. As described in more detail below, Mr. Rojas had been in discussions with Charles Holzer, a prominent U.S. investor, about the possibility of investing in Maple Gas. Mr. Rojas and Mr. Holzer initially discussed the possibility that Mr. Holzer would invest in Maple Gas, but eventually agreed that it would be better if Mr. Rojas and Blue Oil were no longer involved.¹⁷⁸ In November 2016, Mr. Holzer incorporated Worth Capital and acquired Maple Gas's shares.¹⁷⁹

H. Maple Gas Identified Additional Sources of Feedstock, Which Increased Its Value as an Investment

137. Despite the unexpected difficulties with Petroperú, Maple Gas remained an attractive investment. It was the only refinery in the southern Amazon region, and, as described above, it had a long history of profitable operations.¹⁸⁰ Maple Gas also was confident that, with new ownership, and no reason for Petroperú to continue abusing its role as the supplier of last resort and its market position, it would have access to more than sufficient local feedstock to resume its role as the primary supplier of refined products for the city of Pucallpa and the rest of the Ucayali region.¹⁸¹

138. Moreover, as described in more detail below, there were several developments in 2016 that made Maple Gas an even more attractive investment: (1) CEPSA told Maple Gas that it would agree to a supply contract after it changed ownership; (2) Maple Gas identified the possibility of taking over the development of a nearby concession, Block 126, which would enable it to produce crude oil itself as feedstock for the Pucallpa Refinery; and (3) Maple Gas received support from PERUPETRO and the MINEM for its plan to obtain the Block 126 License after it was acquired by new ownership.

¹⁷⁶ As Mr. Rojas explains, "there was no logical regulatory or commercial explanation for Petroperú's actions. However, Blue Oil did have a powerful enemy in Pedro Pablo Kuczynski, and he had been personally attacking me after he lost a business dispute with Blue Oil." Rojas WS-ENG, at paras. 46-47. *See also* Neumann WS-SPA, at para. 11 (explaining that, when he joined in May 2016, "Maple Gas was frustrated by difficulties it was having reaching an agreement to acquire feedstock from CEPSA, as well as Petroperu's ongoing efforts to acquire local feedstock, which did not make sense to us in the circumstances").

¹⁷⁷ Rojas WS-ENG, at para. 59; Holzer WS-ENG, at para. 10 ("Mr. Rojas was concerned that Petroperú would continue to create difficulties for Maple Gas unless Blue Oil and Mr. Rojas were no longer investors.").

¹⁷⁸ Holzer WS-ENG, at para. 10; Rojas WS-ENG, at paras. 46-47, 59.

¹⁷⁹ *See below* at para. 157. As described below, Worth Capital acquired all but one of Maple Gas's shares.

¹⁸⁰ *See above* at para. 79.

¹⁸¹ Rojas WS-ENG, at paras. 42, 46, 59, 61; Holzer WS-ENG, at para. 10.

1. Maple Gas Had Renewed Discussions with CEPSA About Supplying the Pucallpa Refinery After the Blue Oil Investment Group Sold Its Interest

139. In May 2016, Maple Gas appointed a new General Manager, Kurt Neumann. While the Blue Oil Investment Group sought new investors for Maple Gas, Mr. Neumann's responsibility was to resolve the issue of crude oil supply for the Pucallpa Refinery, as well as streamlining and rationalizing its operations. Among other steps, Mr. Neumann contacted CEPSA to see whether it would consider entering into a long-term supply contract, and explained to CEPSA that Maple Gas expected that it would be sold to a new shareholder.¹⁸²

140. CEPSA indicated that it would be willing to enter into supply contracts with Maple Gas. Indeed, following his initial discussions with CEPSA, Mr. Neumann was confident that CEPSA would agree to a new supply contract in December 2016. As described in more detail below, once Worth Capital acquired Maple Gas in November 2016, Mr. Neumann sent CEPSA a proposal for a new long-term supply contract, noting "how willing the new shareholder and management team are to discuss and collaborate."¹⁸³

2. Maple Gas Identified the Opportunity To Obtain the Block 126 License

141. In addition to its negotiations for a supply contract with CEPSA following a change of ownership, Maple Gas had also found an even more valuable long-term solution to the feedstock issue. In April 2016, Maple Gas had identified the possibility of taking over the license for exploration and production of Block 126 (the "Block 126 License"), a nearby oil field that was licensed to Frontera Energy Corporation ("Frontera").¹⁸⁴

142. Based on information from Frontera and Maple Gas's own due diligence, Block 126 could provide 1,200 bpd of feedstock to the Pucallpa Refinery, more than a third of its total capacity,¹⁸⁵ from the beginning, and had the potential to provide for the Pucallpa Refinery's full capacity within a few years.¹⁸⁶ Maple Gas would also benefit from the synergies resulting from owning both the source of the feedstock and the refinery for that feedstock.

143. Frontera had a strong motivation to sell the license to Maple Gas because it had recently filed for bankruptcy protection and initiated a comprehensive restructuring.¹⁸⁷ In the circumstances, Frontera could not meet the investment commitments required under the Block 126 License's minimum work program, which had to be completed by December 2017. Unless

¹⁸² Neumann WS-SPA, at para. 12.

¹⁸³ Email exchange between K. Neumann, L. Travesedo Loring, *et al.*, dated 11 January 2017, Ex. C-0175.

¹⁸⁴ At the time, Frontera was named Pacific Stratus Energy del Perú S.R.L. The company changed its name to Frontera Energy Corporation in June 2017. See Pacific Exploration & Production Corp., "*Pacific announces name change to Frontera Energy Corporation*," dated 12 June 2017, Ex. C-0183. In correspondence and other documents, this entity is sometimes referred to as Pacific and sometimes as Frontera (or variations on these names). For clarity, this submission uses "Frontera."

¹⁸⁵ Katabi WS-ENG, at para. 51.

¹⁸⁶ As part of its due diligence, Maple Gas reviewed a virtual data room of documents on Block 126 from Frontera that included detailed geological studies of the block and the prior development work undertaken by Frontera and its predecessors. Katabi WS-ENG, at para. 53.

¹⁸⁷ Order Directing Joint Administration of Chapter 15 Cases for Pacific E&P in N.Y.S.D., dated 2 May 2016, Ex. C-0153.

Frontera could find a suitable assignee, it would have to forfeit a \$2.8 million performance bond to PERUPETRO and pay approximately \$11 million in abandonment costs.¹⁸⁸

144. Frontera and Maple Gas began negotiating the terms of a farmout agreement in August 2016.¹⁸⁹ They expected to have a signed agreement in the first quarter of 2017.¹⁹⁰ Maple Gas estimated that it could begin producing oil from Block 126 within six to eight months after the transfer of the License.¹⁹¹

3. PERUPETRO and the MINEM Supported the Transfer of the Block 126 License to Maple Gas After It Was Acquired by a New Shareholder

145. During September and October 2016, Maple Gas held meetings with a number of senior officials from the MINEM and PERUPETRO to discuss the transfer of the Block 126 License to Maple Gas. Mr. Neumann and other representatives of Maple Gas met with, among others, Percy Velarde, General Director of the MINEM Directorate of Hydrocarbons, Raúl Pérez-Reyes, Vice Minister of the MINEM (and a member of PERUPETRO's General Shareholders' Committee), and Milton Rodríguez, PERUPETRO's General Manager.

146. In the meetings with the MINEM and PERUPETRO, Mr. Neumann explained that a new investor was considering the acquisition of Maple Gas. He also explained that the transfer of the Block 126 License, which was being negotiated with Frontera, was an important element of Maple Gas's plans, and that Maple Gas projected Block 126 to eventually become the main source of feedstock for the Pucallpa Refinery.¹⁹²

147. The MINEM and PERUPETRO responded very favorably to Maple Gas's plans.¹⁹³ As Mr. Neumann explains:

“The Peruvian officials I talked to were pleased to hear of the potential transfer of the Block 126 License. They understood that this acquisition would be a win for Peru, Frontera and Maple Gas. Frontera would be able to avoid any penalties for not meeting its commitments, Maple Gas would obtain a needed source of feedstock, and Block 126 would be productive, which would provide Peru with royalties. They were eager for Block 126 to enter into the exploitation phase.”¹⁹⁴

148. It was not surprising that the MINEM and PERUPETRO responded positively. Although Block 126 was promising from a production standpoint, it was in a remote area of the Amazon jungle. If Frontera abandoned Block 126, it was unclear whether and when another company would be willing to undertake the logistical and transportation-related challenges of developing Block 126.¹⁹⁵

¹⁸⁸ Katabi WS-ENG, at para. 50; Neumann WS-SPA, at para. 13.

¹⁸⁹ Katabi WS-ENG, at para. 53.

¹⁹⁰ Katabi WS-ENG, at para. 53.

¹⁹¹ Katabi WS-ENG, at para. 51.

¹⁹² Neumann WS-SPA, at para. 18.

¹⁹³ Neumann WS-SPA, at paras. 16-19.

¹⁹⁴ Neumann WS-SPA, at para. 19.

¹⁹⁵ Coz WS-SPA, at para. 42.

149. Maple Gas, however, was particularly well suited to take over the Block 126 License. Maple Gas had drilled approximately ninety wells in the Ucayali region over the previous decades, and had considerable experience in operating oil and gas fields in the local environment.¹⁹⁶ Moreover, Block 126 was located approximately 200 kilometers from the Pucallpa Refinery.¹⁹⁷

150. Given its close proximity, Maple Gas only needed to pave a road from the wells to the barge-loading area in Block 126 in order to transport crude from the Block to the Pucallpa Refinery.¹⁹⁸ Moreover, the location of Block 126 meant that Maple Gas's transportation costs would be substantially lower than the costs for other companies, which would need to transport crude from Block 126 much further away for refining or sale.¹⁹⁹

151. There were a number of significant benefits to Peru from permitting Frontera to assign the Block 126 License to Maple Gas, rather than having Frontera abandon it and conducting a new tender. In addition to the benefits of transferring the Block 126 License to an experienced and successful local operator with a local refinery, Maple Gas would be able to quickly begin production from Block 126. That would help ease the fuel shortages in the region more quickly. It also would mean that Peru would begin to receive royalties from Block 126 sooner.²⁰⁰

I. Worth Capital Completes Its Acquisition of Maple Gas

152. In 2015, Mr. Rojas and Mr. Holzer had discussed the possibility of Mr. Holzer participating in the acquisition of Maple Gas.²⁰¹ However, the Blue Oil Investment Group did not need additional capital to acquire Maple Gas, and they concluded that it did not make sense for Mr. Holzer to invest in Maple Gas at that time.²⁰² In 2016, when Maple Gas had identified the possibility of acquiring the Block 126 License, Mr. Rojas began discussing with Mr. Holzer the possibility of an investment in Maple Gas. The acquisition of Block 126 would require additional capital, and also had potentially significant value for Maple Gas.

153. The possibility of acquiring the Block 126 License was particularly interesting to Mr. Holzer. He had successfully invested in a project in Brazil involving oil exploration rights, and saw a similar opportunity with Maple Gas and its potential acquisition of the Block 126 License from Frontera.²⁰³ Block 126 could both supply the Pucallpa Refinery and potentially yield significant additional quantities of crude.²⁰⁴

154. After initially discussing the possibility of Mr. Holzer investing in Maple Gas, Mr. Holzer and Mr. Rojas agreed that Mr. Holzer would acquire it.²⁰⁵ Mr. Rojas remained concerned that Petroperú would continue to create difficulties for Maple Gas while he and the Blue Oil

¹⁹⁶ Neumann WS-SPA, at para. 14.

¹⁹⁷ Katabi WS-ENG, at para. 51.

¹⁹⁸ Katabi WS-ENG, at para. 54; Neumann WS-SPA, at para. 47.

¹⁹⁹ Neumann WS-SPA, at para. 14.

²⁰⁰ Neumann WS-SPA, at para. 19; Rojas WS-ENG, at para. 63.

²⁰¹ See above at note 97.

²⁰² Rojas WS-ENG, at para. 61; Holzer WS-ENG, at para. 7.

²⁰³ Holzer WS-ENG, at paras. 6, 9.

²⁰⁴ Holzer WS-ENG, at para. 9.

²⁰⁵ Rojas WS-ENG, at paras. 61-62, 64; Holzer WS-ENG, at para. 10.

Investment Group remained investors, but no one expected that there would be further issues after Mr. Holzer acquired Maple Gas. As Mr. Holzer explains:

“If I acquired Maple Gas, there would be no reason for Petroperú or others in the government to interfere with Maple Gas’s business. I am an international investor with no previous involvement in Peru, and there was no reason for Mr. Kuczynski or anyone else in the Peruvian government to have any animosity toward me.”²⁰⁶

155. This was confirmed by Maple Gas’s discussions with senior officials of the MINEM and PERUPETRO, all of whom had responded positively to Maple Gas’s proposal to acquire the Block 126 License after being acquired by a new investor.²⁰⁷ There were no apparent issues with regard to the transfer proposal, and Peru had previously approved the transfer of the Block 126 License from True Energy Peru S.A.C. to Veraz Petroleum Peru S.A.C. in 2009, to Petrominerales Peru S.A. in 2011, and to Frontera on 1 March 2017.²⁰⁸

156. In November 2016, Mr. Holzer incorporated Worth Capital to acquire Maple Gas.²⁰⁹ Worth Capital concluded its investment in Maple Gas on 24 November 2016.²¹⁰ It acquired Maple Gas for consideration of \$62 million.²¹¹

J. Despite the Sale of Maple Gas to Worth Capital, Petroperú Continued To Target Maple Gas and Starve It of Feedstock

157. The expectation that Petroperú would no longer disrupt Maple Gas’s business following the exit of the Blue Oil Investment Group from the company at first appeared to be confirmed. In addition to the positive reaction from the MINEM and PERUPETRO to the proposal that Maple Gas would acquire the Block 126 License, during the first months of 2017, Maple Gas appeared to make progress in negotiating a supply of crude from CEPSA.

158. However, later in 2017, Petroperú renewed its efforts to prevent Maple Gas from acquiring feedstock for the Pucallpa Refinery. As described in more detail below, while purportedly still acting in its role as the supplier of last resort and despite the problems it was causing in the region: (1) Petroperú again contracted for all of CEPSA’s crude at prices lower

²⁰⁶ Holzer WS-ENG, at para. 10. *See also* Rojas WS-ENG, at paras. 59, 61.

²⁰⁷ Holzer WS-ENG, at para. 12.

²⁰⁸ Neumann WS-SPA, at paras. 18-19; Holzer WS-ENG, at para. 11. *See also* First Amendment to Natural Gasoline Purchase Agreement, dated 10 June 2009, Ex. C-0107; Block 126 Assignment of 25 percent to PETROMINERALES, dated 1 June 2011, Ex. C-0113; Modification of the License Contract for the Exploration and Exploitation of Hydrocarbons in Block 126, dated 1 March 2017, Ex. C-0179.

²⁰⁹ Holzer WS-ENG, at para. 15.

²¹⁰ Sale and Purchase Agreement between Parsdome Holdings Ltd and Worth Capital Holdings 27 LLC, dated 24 November 2016, Ex. C-0033.

²¹¹ Specifically, Worth Capital acquired all but one of the shares in Maple Gas for \$15 million from Jancell Corporation. It also issued a \$47 million parent guarantee for Maple Gas’s debt held by Trilon Enterprises S.A. Holzer WS-ENG, at para. 15. *See also* Sale and Purchase Agreement between Parsdome Holdings Ltd and Worth Capital Holdings 27 LLC, dated 24 November 2016, Ex. C-0033; Parent Company Guarantee issued by Worth Capital for the benefit of Trilon Enterprises S.A., dated 23 November 2016, Ex. C-0032; Jancell Corporation Share Register, dated 15 June 2017, Ex. C-0038; Anotación de Inscripción de Aumento de Capital y Modificación de Estatuto, dated 6 October 2016, Ex. C-0030.

than CEPSA offered Maple Gas; and (2) Petroperú contracted for all of Aguaytía Energy's supply of natural gasoline to the Pucallpa Refinery.

159. As described in Section II.O, in 2018, Petroperú went even further, holding press conferences and issuing press releases where it made false and misleading allegations against Maple Gas and publicly threatened to commence legal proceedings to terminate the Pucallpa Refinery Lease Agreement, which ensured that Maple Gas was unable to secure alternative sources of income.

1. Petroperú Contracted to Purchase All of CEPSA's Production, Depriving Maple Gas of a Critical Source of Feedstock

160. As described above, after Mr. Neumann's discussions with CEPSA in late 2016 about the change of Maple Gas's ownership, Maple Gas sent a proposal to CEPSA for a supply contract, and explained that its "new shareholder and management team" were eager "to discuss and collaborate" with CEPSA.²¹² In response, CEPSA said that it wanted to learn more about Maple Gas's new shareholder and proposed to have a meeting in mid-January 2017.²¹³

161. However, after this initial positive response, CEPSA again slowed down discussions with Maple Gas. It told Maple Gas that negotiations could not start right away because Maple Gas had to submit extensive documentation required by CEPSA's new compliance policies.²¹⁴ Once discussions finally began in April 2017, Maple Gas was surprised by the lack of apparent interest from CEPSA. Maple Gas subsequently learned that, in the meantime, Petroperú again had contracted with CEPSA to purchase nearly all of CEPSA's production (up to 3,000 bpd through September 2017). Moreover, Petroperú again was paying CEPSA less than Maple Gas was offering to pay for the same crude.²¹⁵

162. In August 2017, Maple Gas again approached CEPSA to try to negotiate a long-term contract.²¹⁶ However, CEPSA told Maple Gas that a long-term contract with Maple Gas would interfere with its "**strategy**."²¹⁷ At a meeting with CEPSA in Madrid on 29 September 2017, CEPSA told Mr. Neumann and Mario Koehler, the President of Maple Gas, that Petroperú was "**the State**" and that CEPSA's "**strategy was to have an alliance with the company of the State**."²¹⁸

²¹² Email from K. Neumann to L. Travesedo, dated 19 December 2016, Ex. C-0173.

²¹³ Email from L. Travesedo to K. Neumann, dated 23 December 2016, Ex. C-0174.

²¹⁴ Neumann WS-SPA, at para. 31.

²¹⁵ Neumann WS-SPA, at para. 31.

²¹⁶ Email from A. Joyanes Diaz to K. Neumann, dated 23 August 2017, Ex. C-0191.

²¹⁷ Email from A. Joyanes Diaz to K. Neumann, dated 23 August 2017, Ex. C-0191.

²¹⁸ Neumann WS-SPA, at para. 35. CEPSA only agreed to a very short-term contract with Maple Gas in October 2017. See Amendment to International Crude Oil Sale and Purchase Contract in Tank Sales, dated 30 October 2017, Ex. C-0200.

163. Shortly after this, in October 2017, CEPSA entered into a new 11-month contract with Petroperú for 3,000 bpd, again at a price lower than Maple Gas was willing to pay for a long-term contract.²¹⁹

164. Petroperú's new contract with CEPSA meant that Maple Gas had no prospect of obtaining a meaningful supply of feedstock from CEPSA for most of 2018. This meant that, again purportedly acting in its role as the supplier of last resort, Petroperú's actions prevented Maple Gas from access to feedstock that would allow it to supply refined products in the Ucayali region from its local refinery for the next year, even though Maple Gas was ready and willing to pay CEPSA more for its crude.

2. Petroperú Intervened to Buy Aguaytía Energy's Supply of Natural Gasoline

165. In addition to acquiring CEPSA's capacity on a long-term basis in 2017, Petroperú also intervened in Maple Gas's relationship with Aguaytía Energy in 2017. Petroperú offered Aguaytía Energy an uncommercial price for the natural gasoline it had been supplying to Maple Gas, and Aguaytía Energy cut off supply to Maple Gas, further reducing the supply of feedstock to the Pucallpa Refinery.

166. As described above, Aguaytía Energy produced natural gasoline as a byproduct of its production of LPGs.²²⁰ Aguaytía Energy sent the natural gasoline to the Pucallpa Refinery by pipeline, where Maple Gas used it as feedstock. Maple Gas was the only off-taker for Aguaytía Energy's natural gasoline in the Ucayali region.²²¹

167. The Natural Gasoline Purchase Agreement between Maple Gas and Aguaytía Energy had terminated in March 2016 after Aguaytía Energy and Maple Gas had failed to reach agreement on a price redetermination. The parties' discussions were complicated by a pre-existing dispute.²²² However, Aguaytía Energy continued to send its natural gasoline through the pipeline to the Pucallpa Refinery, and the parties were in price negotiations.²²³

²¹⁹ The contract between CEPSA and Petroperú had a price of BRENT - \$1.82. *See* Oil Purchase Agreement between CEPSA and Petroperú, dated 31 October 2017, at Article 8, Ex. C-0201.

²²⁰ *See above* at paras. 75-76.

²²¹ Katabi WS-ENG, at paras. 11-13.

²²² The negotiations between Maple Gas and Aguaytía Energy were complicated by a dispute between the parties that pre-dated the acquisition of Maple Gas by the Blue Oil Investment Group in 2015 and the subsequent acquisition of Maple Gas by Worth Capital in 2016. The Blue Oil Investment Group learned when negotiating to purchase Maple Gas that Aguaytía Energy claimed that the previous owners of Maple Gas had failed to pay for all the natural gasoline Maple Gas had received under the Natural Gasoline Purchase Agreement. For its part, Maple Gas claimed that Aguaytía Energy failed to supply the requisite amounts of natural gasoline. Although the parties discussed these claims as part of their negotiations regarding the Natural Gasoline Purchase Agreement, they were unable to reach an agreement. *See* Rojas WS-ENG, at paras. 26-28.

²²³ Rojas WS-ENG, at para. 31.

168. Petroperú then intervened and offered to purchase all of Aguaytía Energy’s natural gasoline at a substantially higher price than the price Maple Gas had paid under the Natural Gasoline Purchase Agreement.²²⁴

169. As with its contracts with CEPESA, Petroperú’s arrangement with Aguaytía Energy made no commercial sense, and it was not consistent with its mandate as the supplier of last resort. There were no other buyers for Aguaytía Energy’s natural gasoline that justified the high price that Petroperú agreed to pay.²²⁵ It appears that Petroperú paid Aguaytía Energy a higher price so that it would build storage and dispatch facilities in order to supply Petroperú, rather than sending its natural gasoline through the local pipeline to the Pucallpa Refinery.²²⁶

170. Even with this arrangement, Petroperú faced significant logistical challenges in refining Aguaytía Energy’s natural gasoline.²²⁷ Petroperú had to load barrels of natural gasoline onto tanker trucks at Aguaytía Energy’s loading facility. Those tanker trucks then needed to drive nearly 800 kilometers to Petroperú’s Conchán refinery near Lima, which required the tanker trucks to cross the Andes. Because of its additional shipping costs, Aguaytía Energy’s natural gasoline cost Petroperú over 50% more per barrel than Maple Gas had been paying under the Natural Gasoline Purchase Agreement.²²⁸

171. If, as the supplier of last resort, Petroperú shipped refined products back to the Ucayali region from Conchán, tanker trucks had to make the return 800-kilometer trip over the Andes. This was much more expensive, slow, and environmentally risky than using the 16-kilometer pipeline between Aguaytía Energy and the Pucallpa Refinery, as had been the case before Petroperú intervened to acquire feedstock from Aguaytía Energy.²²⁹

172. Maple Gas wrote to Petroperú to object that its decision to enter into a supply agreement with Aguaytía Energy was an “intervention” that was contrary to the core object of the Pucallpa Refinery Lease Agreement, and reflected Petroperú’s ongoing strategy to “illegally take back the refinery.”²³⁰ Petroperú ignored Maple Gas’s objection.

²²⁴ Petroperú agreed to pay Aguaytía Energy 26% more than Maple Gas had paid it, and Petroperú also had to incur the costs of taking the natural gasoline to its Conchán refinery. Neumann WS-SPA, at para. 28. As Mr. Neumann explains, “[w]hen transportation costs were added to the contract price, Petroperú was paying 50% more than what we had paid. If Petroperú then shipped back refined product, its costs would be even higher.” Neumann WS-SPA, at para. 28.

²²⁵ Although local oil producers that produce heavy crude could use natural gasoline to dilute it, the price of natural gasoline for those purposes is much lower than what a refinery would pay for it. Neumann WS-SPA, at para. 29.

²²⁶ Neumann WS-SPA, at paras. 26-27.

²²⁷ Neumann WS-SPA, at para. 28.

²²⁸ Neumann WS-SPA, at para. 28.

²²⁹ Neumann WS-SPA, at paras. 24, 28.

²³⁰ Letter from Maple Gas to Petroperú, dated 22 May 2017, Ex. C-0025. Maple Gas also noted that it had “sent multiple written communications inviting Aguaytía to negotiate a new contract,” and Aguaytía Energy’s “refusal to sit down and negotiate seemed inexplicable... until now.” Letter from Maple Gas to Petroperú, dated 22 May 2017, Ex. C-0025.

173. In July 2017, Aguaytía Energy cut off supplies to Maple Gas and began selling all of its natural gasoline to Petroperú.²³¹

* * * * *

174. By the end of 2017, purportedly pursuant to its mandate as the supplier of last resort, Petroperú had entered into uncommercial arrangements that blocked Maple Gas from acquiring feedstock from both CEPSA and Aguaytía Energy, and prevented the Pucallpa Refinery from returning to full capacity. Not only was Petroperú’s conduct inconsistent with its subsidiary role as the supplier of last resort, but it made no commercial sense. Petroperú’s conduct also continued to cause fuel shortages, unreliable prices, and environmental damage, and local protests against its actions continued. As described below, despite this, Peru then blocked Maple Gas’s only solution for acquiring the feedstock needed to operate the Pucallpa Refinery – the transfer of the Block 126 License.

K. PERUPETRO Approved All the Substantive Steps Necessary for the Assignment of the Block 126 License

175. Petroperú’s efforts in 2017 to block Maple Gas from purchasing feedstock from CEPSA and Aguaytía Energy meant that the Pucallpa Refinery was left with only the declining feedstock from the Block 31 Fields. Accordingly, Maple Gas’s acquisition of the Block 126 License was critical to its ability to operate profitably and to Worth Capital’s investment in Maple Gas.

176. As described in more detail below, during 2017: (1) Maple Gas conducted further due diligence on Block 126; (2) it negotiated a farmout agreement with Frontera, while conferring with PERUPETRO and the MINEM, both of which expressed support for the plan; (3) PERUPETRO qualified Maple Gas as an oil company that could operate the Block 126 and take over its license, and agreed to the requested license modifications, as well as an extension period for exploration work in the Block; (4) PERUPETRO provided a final version of the modified Block 126 License, and invited Maple Gas and Frontera to its offices to execute it; and (5) PERUPETRO told Maple Gas that its Directorate would formally approve the assignment of the License and submit it to the MINEM to issue a decree in early November 2017.

177. As described in Section II.L below, however, without any warning, PERUPETRO’s Directorate refused to approve the Block 126 License modification. PERUPETRO never provided a clear explanation to Maple Gas for its about-face. Instead, it subsequently purported to nullify Maple Gas’s qualification to operate Block 126. Its nullification decision was obviously a pretext, manufactured after the political decision to block the transfer of the Block 126 License to Maple Gas.

1. Maple Gas Conducted Additional Due Diligence on Block 126

178. As described above, prior to Worth Capital’s investment, Maple Gas had conducted initial due diligence on Block 126, including by reviewing materials that Frontera had made

²³¹ Neumann WS-SPA, at para. 27. In order to supply Petroperú, Aguaytía Energy agreed to build its own storage and loading facilities on Block 31-C, which allowed Aguaytía Energy to bypass the Pucallpa Refinery. See Neumann WS-SPA, at paras. 26-27.

available in a data room.²³² In the first quarter of 2017, Maple Gas retained a team of advisors, including highly reputed experts in the Peruvian oil and gas industry, to conduct additional due diligence on the feasibility of developing Block 126. Among other things, Maple Gas commissioned a geological evaluation of Block 126 from Hidrocarburos Consulting S.A.C.²³³

179. Hidrocarburos Consulting's report confirmed that Block 126 had contingent resources of up to 82 million barrels of crude, with 19 million barrels as the mean, and it included a production plan for producing 7.8 million barrels. Block 126 also had very significant prospective resources.²³⁴

2. Maple Gas and Frontera Negotiated a Farmout Agreement for the Transfer of the Block 126 License

180. Maple Gas and Frontera negotiated terms for the assignment of the Block 126 License to Maple Gas and executed a binding term sheet on 13 March 2017.²³⁵

181. On 23 May 2017, Maple Gas and Frontera entered into a farmout agreement for the assignment of the Block 126 License to Maple Gas in exchange for cash consideration of \$236,000 and Maple Gas taking over Frontera's commitments under the Block 126 License (the "Farmout Agreement").²³⁶ The commitments that Maple Gas agreed to assume included the \$2.8 million performance bond and Frontera's minimum work requirements.²³⁷ By assigning the License to Maple Gas, Frontera would also avoid approximately \$11 million in abandonment costs it would incur if it had to relinquish the Block 126 License to PERUPETRO.²³⁸

182. Frontera and Maple Gas agreed on certain modifications to the Block 126 License that they would request as part of the approval process by PERUPETRO. These related to the minimum work requirements under the Block 126 License and the time period for completing that work.

183. The Block 126 License required the operator to conduct an "evaluation of all types of geological, geophysical, geochemical and other studies, as well as the drilling of exploratory wells and other related activities necessary for the discovery of hydrocarbons" during the first seven years (the "Exploration Period").²³⁹ If the operator made a commercial discovery, it would execute the production phase (the "Exploitation Period") for the remaining thirty years of the license.²⁴⁰

184. The Exploration Period was divided into five stages. Each stage included a set of activities to be performed and delivered within a specific time frame (referred to as the

²³² Katabi WS-ENG, at para. 53.

²³³ Katabi WS-ENG, at para. 58.

²³⁴ Hidrocarburos Consulting, Evaluación Estructura Sheshea Lote 126, dated April 2017, at pp. 15, 21, Ex. C-0181.

²³⁵ Binding Heads of Terms for Maple Gas, dated 13 March 2017, Ex. C-0180. Prospective resources are volumes of oil that are potentially recoverable with additional development work.

²³⁶ Farmout Agreement between Frontera and Maple Gas, dated 23 May 2017, Ex. C-0036.

²³⁷ Katabi WS-ENG, at para. 50.

²³⁸ Katabi WS-ENG, at para. 50.

²³⁹ Block 126 License Agreement, dated 23 October 2007, at Article 1.20, Ex. C-0008.

²⁴⁰ Block 126 License Agreement, dated 23 October 2007, Ex. C-0008.

“Minimum Work Program”).²⁴¹ By April 2016, when Maple Gas and Frontera began discussing a potential transfer of the Block 126 License, only the Minimum Work Program for the fifth stage remained (“Stage 5 Work”). Frontera had to complete this work by 20 December 2017, after which it was expected to commence the Exploitation Period.

185. Frontera had not, however, undertaken any of the Stage 5 Work by the time the Farmout Agreement with Maple Gas was agreed in May 2017. Given the short time available before December 2017, it would not be possible for Maple Gas to complete the Stage 5 Work before the deadline. Frontera and Maple Gas therefore agreed to request a five-year extension to the deadline (in the form of a so-called “Retention Period”).²⁴²

186. Frontera and Maple Gas also agreed to request a modification to the content of the Stage 5 Work. Maple Gas wanted to focus on the work necessary to begin production from the Sheshea field in Block 126 as soon as possible. During its diligence, Maple Gas had concluded that the existing Sheshea 126-17-1X (“Sheshea 1X”) well could become commercially viable with relatively minor additional investments in infrastructure (specifically, rehabilitating the Sheshea 1X well and paving an existing road).²⁴³ This would take Maple Gas approximately six to eight months.²⁴⁴

187. Given the importance to Maple Gas of the transfer of Block 126, it retained José Coz, one of Peru’s most highly regarded experts in the oil and gas industry, to provide consulting services with respect to PERUPETRO’s approval process. Mr. Coz was employed by Petroperú between 1982 and 1993, and was one of PERUPETRO’s first oil and gas contract specialists when it was created in 1994.²⁴⁵ Mr. Coz was thoroughly familiar with PERUPETRO’s process and was well placed to advise Maple Gas through the approval.

188. On 5 June 2017, Maple Gas and Frontera met again with PERUPETRO’s General Manager, Mr. Rodríguez,²⁴⁶ to inform him that they were going to formally submit the Block 126 License transfer for approval. During the meeting, they described the details of the Farmout Agreement, including the modifications they planned to request as part of the approval process. Mr. Rodríguez acknowledged the need to modify the license for the assignment to be effective.²⁴⁷ He also acknowledged that “*Maple Gas was the only viable option to save the Block 126 License Agreement.*”²⁴⁸

²⁴¹ Block 126 License Agreement, dated 23 October 2007, Ex. C-0008.

²⁴² Under the Block 126 License, the operator could request a Retention Period between the Exploration and Exploitation Periods to perform additional infrastructure investments to render a discovery commercial. *See* Block 126 License Agreement, dated 23 October 2007, at Clause 3.6, Ex. C-0008. As discussed below, Maple Gas intended to use the Retention Period to put in place infrastructure required to make the Sheshea discovery commercial. *See below* at paras. 185-186.

²⁴³ Frontera Technical Report, dated August 2017 (submitted to PERUPETRO with the request for the Retention Period), Ex. C-0192; Letter from Frontera to PERUPETRO, dated 28 August 2017, Ex. C-0192. Maple Gas also proposed an integrated technical and economic study of the Sheshea field. *See* Coz WS-SPA, at para. 19.

²⁴⁴ Letter from Frontera to PERUPETRO, dated 22 June 2017, Ex. C-0184.

²⁴⁵ Coz WS-SPA, at paras 6-7.

²⁴⁶ As described above, Maple Gas had met with PERUPETRO’s General Manager, Mr. Rodríguez, in October 2016 to discuss Maple Gas’s plan to acquire the Block 126 License. *See above* at para. 145.

²⁴⁷ Coz WS-SPA, at para. 26.

²⁴⁸ Neumann WS-SPA, at para. 44.

3. PERUPETRO Provided Maple Gas with Key Approvals for the Transfer of the Block 126 License

189. Frontera and Maple Gas submitted their application to PERUPETRO to transfer the Block 126 License on 7 June 2017, two days after the meeting with Mr. Rodríguez. The transfer required three key approvals:

- a. PERUPETRO had to qualify Maple Gas as capable of operating Block 126.²⁴⁹ As part of this qualification, PERUPETRO had to confirm that Maple Gas had the financial capacity to operate Block 126 and perform the work it was proposing to do.
- b. PERUPETRO had to agree to the modifications to the Block 126 License regarding the content of and the timing for the Stage 5 Work.
- c. PERUPETRO had to approve the Retention Period in which Maple Gas would perform additional work.²⁵⁰

190. Between June and October 2017, Maple Gas and Frontera worked closely and cooperatively with PERUPETRO to obtain these approvals. During this time, PERUPETRO repeatedly made public statements reporting on their progress. It did so in activity reports that it published monthly, and it also reported on the progress of the Block 126 License transfer in executive summaries it prepared for monthly AMECOP meetings.²⁵¹

191. As described below, PERUPETRO provided all three approvals by the end of October 2017.

- a) Maple Gas and Frontera submitted their application to transfer the Block 126 License in June 2017

192. In their 7 June 2017 application, Frontera and Maple Gas formally notified PERUPETRO that they had executed a Farmout Agreement to transfer Frontera's "100% participation in the License Contract for the Exploration and Exploitation of Hydrocarbons in Block 126 ... leaving [Maple Gas] with a 100% participation."²⁵²

193. The 7 June 2017 application attached Maple Gas's request for qualification to operate Block 126, and supporting materials.²⁵³ Specifically, Maple Gas provided: (a) its unaudited 2015 and 2016 financial statements, to demonstrate its financial capacity to operate Block 126; (b) a report of Maple Gas's hydrocarbon exploration and exploitation activities, to demonstrate its

²⁴⁹ Supreme Decree No. 030-2004-EM, at Article 2 (providing that an oil company must be duly qualified by PERUPETRO before it can obtain a license to operate a block), Ex. C-0099.

²⁵⁰ Coz WS-SPA, at paras. 19, 31.

²⁵¹ The AMECOP meetings are a monthly event in which oil companies in Peru are invited to present reports and discuss topics relevant to the oil industry, such as new sources of feedstock and exploration and exploitation of oil fields. See Neumann WS-SPA, at para. 49.

²⁵² Letter from Frontera and Maple Gas to PERUPETRO, dated 7 June 2017, at p. 1, Ex. C-0037.

²⁵³ Letter from Maple Gas to PERUPETRO, dated 5 June 2017, attachment to Ex. C-0037.

technical capacity to operate Block 126; and (c) affidavits required under Decree No. 030-2004-EM (the “2004 Decree”), which regulates the qualification of oil companies.²⁵⁴

194. On 22 June 2017, Frontera and Maple Gas requested PERUPETRO’s approval to modify the Stage 5 Work and to add a Retention Period of five years.²⁵⁵ Maple Gas and Frontera requested that both modifications to the Block 126 License be effective “on the Assignment Date of [Frontera’s] contractual position in favor of [Maple Gas].”²⁵⁶

195. On 3 July 2017, PERUPETRO requested Maple Gas’s audited financial statements for 2015 and 2016, in addition to the unaudited statements for these same years that Maple Gas had already provided.²⁵⁷ On 11 July 2017, Maple Gas provided its audited 2015 and 2016 financial statements as requested by PERUPETRO.²⁵⁸

b) PERUPETRO qualified Maple Gas to operate Block 126 in August 2017

196. On 11 August 2017, PERUPETRO informed Maple Gas that, after conducting “an assessment of the legal, technical, economic, and financial capacity of MAPLE GAS CORPORATION DEL PERÚ S.R.L. ... **MAPLE GAS CORPORATION DEL PERÚ S.R.L. has been approved as an Oil Company to take over one hundred percent (100%) of Block No. 126.**”²⁵⁹

197. PERUPETRO provided Maple Gas with a Qualification Certificate that stated:

“PERUPETRO S.A. has determined that the company MAPLE GAS CORPORATION DEL PERU S.R.L. possesses the necessary legal, technical, economic and financial capacity to assume directly, one hundred percent (100%) of participation in the License Agreement for the Exploration and Exploitation of Hydrocarbons in Block 126, as Operator and carry out activities of exploration and exploitation of hydrocarbons in the referenced Block.”²⁶⁰

²⁵⁴ Letter from Maple Gas to PERUPETRO, dated 5 June 2017, attachment to Ex. C-0037. The 2004 Decree provides that all oil companies must be duly qualified before they can enter into a license agreement, service agreement or certain other agreements authorized by the Minister of Energy and Mines, and it details the processes and requirements for such qualification. See Supreme Decree No. 030-2004-EM, at Article 2, Ex. C-0099.

²⁵⁵ Letter from Frontera to PERUPETRO, dated 22 June 2017, at p. 1, Ex. C-0184.

²⁵⁶ Letter from Frontera to PERUPETRO, dated 22 June 2017, at p. 2, Ex. C-0184.

²⁵⁷ Letter from PERUPETRO to Maple Gas, dated 3 July 2017, Ex. C-0187.

²⁵⁸ Letter from Maple Gas to PERUPETRO, dated 11 July 2017, Ex. C-0188. PERUPETRO reported in its monthly activity reports in June and July 2017 that it was in the process of approving Maple Gas as a qualified oil company. See Monthly Report of PERUPETRO’s Activities, dated June 2017, at p. 3 (reporting that the assignment of the Block 126 License to Maple Gas was “under evaluation”), Ex. C-0182; Monthly Report of PERUPETRO’s Activities, dated July 2017, at p. 3 (reporting that the assignment of the Block 126 License to Maple Gas was “in process of qualification”), Ex. C-0186. It also reported on the progress of Maple Gas’s qualification in its executive summary for the July 2017 AMECOP meeting. See PERUPETRO’s Executive Summary (AMECOP), dated July 2017, at p. 2 (reporting that the assignment of the Block 126 License to Maple Gas was “in process of qualification”), Ex. C-0185.

²⁵⁹ Letter from PERUPETRO to Maple Gas, dated 11 August 2017, at p. 1, Ex. C-0042.

²⁶⁰ Letter from PERUPETRO to Maple Gas, dated 11 August 2017, at p. 2, Ex. C-0042.

198. The qualification was granted by PERUPETRO “in conformity with the terms of Article 5 of the Regulation on the Qualification of Oil Companies approved by Supreme Decree No 030-2004-EM.”²⁶¹

199. PERUPETRO reported in its August 2017 monthly activity report and in its executive summary for the August 2017 AMECOP meeting that it had qualified Maple Gas to operate Block 126.²⁶²

200. PERUPETRO’s qualification of Maple Gas to operate Block 126 was the first of the three key approvals required for the transfer of the Block 126 License from Frontera to Maple Gas.

c) Maple Gas, Frontera and PERUPETRO agreed on the modifications to the Block 126 License

201. The second key approval was for PERUPETRO to accept the modifications to the timing and content of the Stage 5 Work. This required Maple Gas and Frontera to show that they met the requirements for the granting of a Retention Period, which would allow the extension of the deadline for the Stage 5 Work.²⁶³

202. On 28 August 2017, Frontera submitted a request for a five-year Retention Period to run from the transfer of the Block 126 License to Maple Gas.²⁶⁴

203. On the same day, Maple Gas sent a letter to PERUPETRO stating that, in accordance with Frontera’s request, Maple Gas would assume the resulting commitments under the Block 126 Retention Period.²⁶⁵ In doing so, Maple Gas committed to “*the presentation of the bank bonds* that guarantee the drilling of the two (2) confirmatory wells to be made during the Retention Period.”²⁶⁶

204. Frontera and Maple Gas continued to work closely with PERUPETRO. The companies met with PERUPETRO on multiple occasions and exchanged emails regarding the modifications

²⁶¹ Letter from PERUPETRO to Maple Gas, dated 11 August 2017, at p. 1, Ex. C-0042.

²⁶² Monthly Report of PERUPETRO’s Activities, dated August 2017, at p. 3 (reporting that the “*certificate of qualification was issued in favor of Maple Gas*” and that the modification of the minimum work program of the fifth period of the exploration phase was “in evaluation”), Ex. C-0189; PERUPETRO’s Executive Summary (AMECOP), dated August 2017, at pp. 2-3 (same), Ex. C-0190.

²⁶³ Section 3.6 of the Block 126 License provided that the operator could request a Retention Period if it met three requirements: “a) that the volumes of Hydrocarbons discovered in the Contract Area are insufficient to economically justify the construction of the Main Pipeline; b) [t]hat the aggregate of discoveries in contiguous areas plus those of the Contractor is insufficient to economically justify the construction of a main pipeline; and, c) ... that the Hydrocarbons discovered cannot be transported from the Contract Area to a place for commercialization by any means of transportation.” Block 126 License Agreement, dated 23 October 2007, at Clause 3.6, Ex. C-0008.

²⁶⁴ Frontera invoked Section 3.6 of the Block 126 License and explained that, “during the drilling of the Sheshea 126-17-1X well, we made an oil discovery in the Sheshea field, which is not commercial for transportation reasons.” Frontera requested the Retention Period “in order to make the transportation of hydrocarbons from the aforementioned field feasible.” Frontera also enclosed a technical report and a schedule of activities to be carried out during the Retention Period (“Schedule of Activities”). The Schedule of Activities identified the assignment of Block 126 to Maple Gas as the first event, expected to occur by October 2017. See Letter from Frontera to PERUPETRO, dated 28 August 2017, at pp. 1, 17, Ex. C-0192.

²⁶⁵ Letter from Frontera to PERUPETRO, dated 28 August 2017, at p. 1, Ex. C-0192.

²⁶⁶ Letter from Frontera to PERUPETRO, dated 28 August 2017, at p. 1, Ex. C-0192.

to the Stage 5 Work and the Retention Period required for Maple Gas to complete the work.²⁶⁷ In its August 2017 monthly activity report, PERUPETRO reported that the modifications to the Stage 5 Work were being evaluated, and that a working group had written the technical terms of the Block 126 License modification.²⁶⁸

205. During a meeting on 12 September 2017, PERUPETRO confirmed that Maple Gas and Frontera had satisfied the first two of three requirements for a Retention Period pursuant to Section 3.6 of the Block 126 License.²⁶⁹ With respect to the third requirement, PERUPETRO requested additional support to “[d]emonstrate on an economic basis that the discovered hydrocarbons cannot be transported from the Contract Area to a place for commercialization (distance in km: Sheshea-Nueva Italia-Pucallpa), by any means of transport (land, fluvial (Ucayali River), and main pipeline, or combinations thereof).”²⁷⁰

206. Maple Gas and Frontera jointly coordinated a response to PERUPETRO’s request. In a letter dated 27 September 2017, Frontera submitted a third-party technical report commissioned by Maple Gas that explained in detail why the hydrocarbons discovered in Block 126 could not be transported for commercialization without further investment.²⁷¹

207. Two days later, on 29 September 2017, PERUPETRO sent a draft version of the Block 126 License, including the proposed amendments, to Maple Gas for its review.²⁷² The draft acknowledged the steps taken by Maple Gas, Frontera, and PERUPETRO to finalize the assignment of the Block 126 License.²⁷³

208. PERUPETRO’s draft Block 126 License confirmed its intent to approve Maple Gas’s and Frontera’s proposals to modify the Stage 5 Work and their request for a Retention Period (albeit a Retention Period of three years rather than five). For example, the draft explicitly provided for an additional three years to rehabilitate the Sheshea 1X well and prepare it for production:²⁷⁴

“3.9.A. From the expiry of the fifth period of the exploration phase, the Contractor undertakes to carry out the following, within the time limits indicated:

²⁶⁷ Coz WS-SPA, at paras. 29, 35-36, 39; Neumann WS-SPA, at paras. 48, 51.

²⁶⁸ Monthly Report of PERUPETRO’s Activities, dated August 2017, at pp. 3, 26, Ex. C-0189.

²⁶⁹ Frontera and Maple Gas met the first two requirements of Section 3.6 of the Block 126 License because they had shown that building a main pipeline to transport oil from Block 126 was not economically justified. Email from PERUPETRO to Frontera and Maple Gas, PERUPETRO, dated 12 September 2017, Ex. C-0195.

²⁷⁰ Email from PERUPETRO to Frontera and Maple Gas, PERUPETRO, dated 12 September 2017, Ex. C-0195.

²⁷¹ Letter from Frontera to PERUPETRO, dated 27 September 2017, Ex. C-0196.

²⁷² Email from L. Pérez Najar to K. Neumann, *et al.*, dated 29 September 2017, attaching draft proposal for Block 126 Agreement, Ex. C-0197.

²⁷³ PERUPETRO’s draft of the Block 126 License also reiterated that Maple Gas had been qualified to operate Block 126, providing in Clause 1.10 that “**PERUPETRO**, by means of Statement No. GGRL-CC-007-2017 dated August 11, 2017, **qualified MAPLE GAS CORPORATION DEL PERÚ S.R.L., to assume one hundred percent (100%) participation in the License Agreement**, as a consequence of the assignment of participation by PACIFIC STRATUS ENERGY DEL PERÚ S.A.” Email from L. Pérez Najar to K. Neumann, *et al.*, dated 29 September 2017, attaching draft proposal for Block 126 Agreement, at p. 2, Ex. C-0197.

²⁷⁴ Email from L. Pérez Najar to K. Neumann, *et al.*, dated 29 September 2017, attaching draft proposal for Block 126 Agreement, at p. 4, Ex. C-0197.

| <i>Time Limit</i> | <i>Obligation</i> |
|--|---|
| <i>18 months from the day following the expiration of the fifth period</i> | <i>Drilling of one (01) confirmatory well. Rehabilitation of the Sheshea 126-17-1X well, to bring it into production.</i> |
| <i>18 months from the day following the expiry of the period referred to above</i> | <i>Drilling of one (01) confirmatory well. ✓ Implementation of production facilities for the Sheshea 126-17-1X well, including:</i> <ul style="list-style-type: none"> <i>• Rehabilitation of access roads.</i> <i>• Installation of tanks and surface equipment for production.</i> <i>• Collecting facilities.</i> |

209. In its September 2017 activity report, PERUPETRO noted that the modifications to the Block 126 License and the Stage 5 Work were “in process for PERUPETRO’s Directorate.”²⁷⁵

210. At a meeting with PERUPETRO on 11 October 2017, Maple Gas requested, and PERUPETRO agreed to, an adjustment to the timing of the two stages of the Retention Period proposed by PERUPETRO in the draft Block 126 License.²⁷⁶

4. PERUPETRO Provided a Final Version of the Modified Block 126 License, Which Maple Gas and Frontera Signed

211. On 17 October 2017, PERUPETRO informed Maple Gas that it would execute the Block 126 License, and it provided the final version of the License to Maple Gas and Frontera for their final approval.²⁷⁷ PERUPETRO proposed a meeting the next day, 18 October 2017, for Maple Gas and Frontera to execute the Block 126 License.²⁷⁸

212. On 18 October 2017, Maple Gas and Frontera met with PERUPETRO, and signed the Block 126 License.²⁷⁹

²⁷⁵ Monthly Report of PERUPETRO’s Activities, dated September 2017, at p. 3, Ex. C-0194. *See also* PERUPETRO’s Executive Summary (AMECOP), dated September 2017, at pp. 2-3, Ex. C-0193.

²⁷⁶ Coz WS-SPA, at para. 36; Email exchange between J. Coz, K. Neumann, *et al.*, dated 10 October 2017, Ex. C-0198.

²⁷⁷ Coz WS-SPA, at paras. 37-38.

²⁷⁸ Coz WS-SPA, at para. 38.

²⁷⁹ Email from Maple Gas to MINEM, dated 22 November 2017, attaching Summary of Block 126 Negotiations with PERUPETRO, Ex. C-0204.

213. On 26 October 2017, PERUPETRO informed Frontera that it had approved the requested Retention Period.²⁸⁰ This approval was effectively a formality given that PERUPETRO's agreement to the Retention Period was already reflected in the agreed modifications to the Block 126 License, as described above. Nevertheless, this was the final approval that was required from PERUPETRO.

214. PERUPETRO's Directorate then needed to approve the transfer of the Block 126 License from Frontera to Maple Gas. The remaining steps after that approval were typically a formality:²⁸¹ the MINEM would prepare a draft Supreme Decree approving the modification of the license; this draft would be approved and signed by the MINEM and MINEF,²⁸² and the Supreme Decree would then officially be issued once the President signed it.²⁸³

5. PERUPETRO Told Maple Gas that the Block 126 License Would Be Approved at the 2 November Directorate Meeting

215. Maple Gas and Frontera were anxious for the approval to be granted as soon as possible. Absent the transfer, Frontera was going to be forced to relinquish the Block 126 License by 20 December 2017 due to its inability to complete the Minimum Work Program by the original deadline.

216. On 26 October 2017, Mr. Neumann contacted PERUPETRO for a status update. PERUPETRO's General Manager, Roberto Guzmán, assured Mr. Neumann that everything was ready for the Directorate's approval, which would be granted at its 2 November 2017 meeting.²⁸⁴ Mr. Guzmán also said that the modified License would be sent to the MINEM on 3 November 2017, and that PERUPETRO would send Maple Gas the MINEM's acknowledgement of receipt once submitted.²⁸⁵

L. *Without Any Explanation, PERUPETRO's Directorate Refused To Approve the Block 126 License*

217. Despite PERUPETRO's assurances on 26 October that its Directorate would approve the Block 126 License at its 2 November meeting, Maple Gas did not hear anything from PERUPETRO on 2 November or 3 November. By the following Monday, 6 November, Maple Gas was both concerned and confused about PERUPETRO's silence.²⁸⁶

²⁸⁰ Letter from PERUPETRO to Frontera, dated 26 October 2017, at p. 2, Ex. C-0199. Mr. Rodríguez had been replaced by Mr. Roberto Guzmán on 23 October 2017, and Mr. Guzmán signed the letter approving the Retention Period. Mr. Guzmán had previously been in different roles at PERUPETRO, and had been Secretary of PERUPETRO's Directorate since 3 February 2014. See Curriculum Vitae Roberto Carlos Guzmán Oliver, Peruvian State Portal, Ex. C-0269.

²⁸¹ Neumann WS-SPA, at para 52.

²⁸² Quiñones Legal Opinion-SPA, at para. 65.

²⁸³ Quiñones Legal Opinion-SPA, at para. 65.

²⁸⁴ Neumann WS-SPA, at para. 54.

²⁸⁵ Neumann WS-SPA, at para. 54.

²⁸⁶ See Neumann WS-SPA, at para. 57 (explaining he was "concerned and confused" after not hearing on 2 or 3 November that the Directorate had approved the Block 126 License); Katabi WS-ENG, at para. 67 ("we did not hear anything and by 6 November we were worried"); Coz WS-SPA, at para. 43 ("[b]y the second week of November, Maple Gas started to worry").

218. Maple Gas began to hear rumors that PERUPETRO's Directorate was not going to approve the Block 126 License because the Directorate was concerned that the Comptroller General might criticize it if it did not call Frontera's \$2.8 million performance bond.²⁸⁷ Maple Gas also heard that PERUPETRO's Directorate had not approved the transfer of the Block 126 License to Maple Gas for "political" reasons.²⁸⁸ Mr. Neumann therefore requested an urgent meeting with Mr. Guzmán.²⁸⁹

219. When Mr. Neumann met with PERUPETRO on 7 November, Mr. Guzmán told him that PERUPETRO's Directorate had not approved the Block 126 License modification.²⁹⁰ Mr. Guzmán did not provide a clear explanation of the reason, although he alluded to calling Frontera's performance bond and a concern that the Comptroller General might criticize PERUPETRO if it did not do so.²⁹¹

220. It did not make sense that PERUPETRO's Directorate would not approve the Block 126 License in order to obtain payment of the \$2.8 million performance bond. Throughout the many months of work with PERUPETRO on the transfer of the Block 126 License, no one at PERUPETRO had ever suggested that this was a consideration, or that there was a potential concern about the Comptroller General.²⁹²

221. Indeed, Maple Gas was required to and had committed to providing the performance bond in place of Frontera.²⁹³ Moreover, transferring the Block 126 License to Maple Gas, and beginning production, would bring significantly more in royalties than the amount of the performance bond.²⁹⁴ It also would have avoided the delay and uncertainty of re-tendering the Block 126 License, as well as increased the reliable supply of refined products to the Ucayali region.

222. Maple Gas was shocked and confused by the failure of PERUPETRO's Directorate to approve the Block 126 License at its 2 November meeting, and the lack of any formal explanation or any updates about what was happening.²⁹⁵ Moreover, the timing was critical because, without approval for the assignment, Frontera would be required to relinquish the Block 126 License by 20 December 2017. Maple Gas therefore continued to press PERUPETRO for more information and for the Directorate to further consider the approval.²⁹⁶

²⁸⁷ Neumann WS-SPA, at para. 56, 58; Coz WS-SPA, at para. 41.

²⁸⁸ Neumann WS-SPA, at para. 56.

²⁸⁹ Neumann WS-SPA, at para. 57.

²⁹⁰ Neumann WS-SPA, at para. 57.

²⁹¹ Neumann WS-SPA, at para. 58.

²⁹² Neumann WS-SPA, at para. 57; Coz WS-SPA, at para. 42.

²⁹³ See above at para. 182. See also Coz WS-SPA, at para. 42; Neumann WS-SPA, at para. 59.

²⁹⁴ Coz WS-SPA, at para. 42.

²⁹⁵ See Neumann WS-SPA, at para. 57 (explaining that Mr. Neumann and Mr. Coz "were shocked" after the meeting with Mr. Guzmán); Katabi WS-ENG, at para. 67 (noting that the news was "shocking to everyone at Maple Gas."); Holzer WS-ENG, at para. 18 ("[T]here suddenly was bad news, which surprised everyone at Maple Gas. The transfer had not been approved and Maple Gas could not find out why.").

²⁹⁶ Neumann WS-SPA, at para. 57.

223. Given the silence from PERUPETRO, Mr. Neumann requested an urgent meeting with the Minister of Energy and Mines, Cayetana Aljovín.²⁹⁷ Mr. Neumann met with Ms. Aljovín on 21 November 2017. He explained Maple Gas’s confusion about the surprising failure of PERUPETRO’s Directorate to approve the Block 126 License, and asked if she could help Maple Gas.²⁹⁸ The Minister told Mr. Neumann she would meet with PERUPETRO, and update Maple Gas afterwards.²⁹⁹

224. Following their meeting, Mr. Neumann wrote to the Advisor to the Ministerial Office, providing a summary of the Block 126 negotiations.³⁰⁰ He noted that the suggestion that PERUPETRO had not approved the Block 126 License after it had been agreed with and signed by Maple Gas and Frontera because of a concern about being criticized for not calling the performance bond made no sense:

“We were told that [PERUPETRO] was not going to approve, even though the contract was drafted by [PERUPETRO] and signed by the [General Managers] of Frontera and Maple. In the conversation, we only received the explanation that there was fear of being questioned for not collecting Frontera’s bond (I have never before seen a case in which an improvement for everyone’s benefit is not accepted for fears of this kind).”³⁰¹

225. Mr. Neumann followed up with the MINEM on 23 November 2017, noting that “*we are up against time*” because Frontera would be required to relinquish the Block 126 License on 20 December 2017 if the modification and transfer were not approved before then.³⁰²

226. Mr. Neumann sent another email to the MINEM on 24 November 2017, stressing that, “given the tight time schedule we face, we need to meet with you so that you can inform us of the status of our proposal for Block 126.”³⁰³

227. Mr. Neumann never received a further response from the Minister or the MINEM.³⁰⁴ Indeed, Maple Gas has never received a formal explanation for the unexplained reversal of PERUPETRO’s agreement to the Block 126 License from any government official or entity.

M. PERUPETRO Nullified Maple Gas’s Qualification as an Oil Company Capable of Operating Block 126

228. On 27 November 2017, while Maple Gas’s urgent requests to PERUPETRO and the MINEM regarding the failure of PERUPETRO’s Directorate to approve the Block 126 License remained unanswered, Maple Gas received a letter from PERUPETRO purporting to nullify

²⁹⁷ Neumann WS-SPA, at para. 61.

²⁹⁸ Neumann WS-SPA, at para. 62.

²⁹⁹ Neumann WS-SPA, at para. 63.

³⁰⁰ Email exchange between Maple and the MINEM, dated 24 November 2017, Ex. C-0203.

³⁰¹ Email exchange between Maple and the MINEM, dated 24 November 2017, Ex. C-0203.

³⁰² Email exchange between Maple and the MINEM, dated 24 November 2017, Ex. C-0203.

³⁰³ Email exchange between Maple and the MINEM, dated 24 November 2017, Ex. C-0203.

³⁰⁴ Neumann WS-SPA, at para. 64; Coz WS-SPA, at para. 44.

Maple Gas’s qualification to operate Block 126.³⁰⁵ The letter was signed by PERUPETRO’s General Manager, Mr. Guzmán, and it stated that “**PERUPETRO leaves without effect the Qualification Certificate No. GGRL-CC-007-2017, issued on August 11, 2017.**”³⁰⁶ The consequence of PERUPETRO’s decision was that, as a matter of law, Maple Gas could not acquire the Block 126 License, because only qualified oil companies can enter into a license agreement with PERUPETRO.³⁰⁷

229. Although it was legally required to do so,³⁰⁸ PERUPETRO did not give Maple Gas any notice that it was considering revoking its qualification, or an opportunity to respond. Moreover, PERUPETRO’s explanation for its decision to nullify Maple Gas’s qualification was preposterous.

230. According to PERUPETRO’s letter, when it had qualified Maple Gas to operate Block 126 in August 2017, it had erroneously relied on Maple Gas’s unaudited financial statements *for 2014 and 2015* rather than the audited financial statements *for 2015 and 2016* that Maple Gas had submitted (at PERUPETRO’s request) on 11 July 2017 as part of the Block 126 License transfer approval process.³⁰⁹

231. Without explaining why it had conducted a new review of Maple Gas’s financial capacity after the Directorate had already failed to approve the Block 126 License, PERUPETRO said that it had now reviewed the correct financial statements, and they supposedly showed that Maple Gas lacked the financial capacity to take over the Block 126 License.³¹⁰

232. PERUPETRO’s explanation made no sense. Maple Gas had submitted its unaudited financial statements for 2014 and 2015 to PERUPETRO *more than a year before* and *for an entirely unrelated purpose*. PERUPETRO did not explain why it had looked at those older financial statements, rather than the 2015 and 2016 financial statements that Maple Gas had submitted in June and July 2017 as part of the qualification process.³¹¹

233. PERUPETRO’s explanation was particularly confusing because PERUPETRO had explicitly acknowledged in July 2017 that it had received Maple Gas’s unaudited financial

³⁰⁵ Letter from PERUPETRO to Maple Gas, dated 27 November 2017, Ex. C-0044. PERUPETRO’s letter did not mention the Directorate’s failure to approve the Block 126 License at its 2 November meeting, let alone purport to explain it.

³⁰⁶ Letter from PERUPETRO to Maple Gas, dated 27 November 2017, at p. 1, Ex. C-0044. As discussed below, the phrase “leaves without affect” is not found in the 2004 Decree or in the Administrative Procedure Act. *See below* at paras. 449-450. Maple Gas understood that by leaving the qualification certificate “without effect” PERUPETRO had nullified its qualification. *See* Neumann WS-SPA, at para. 65.

³⁰⁷ Neumann WS-SPA, at para. 65; Coz WS-SPA, at paras. 45-47.

³⁰⁸ Quiñones Legal Opinion-SPA, at para. 188.

³⁰⁹ Specifically, PERUPETRO said: “the assessment of MAPLE’s contracting capacity was made by erroneously taking the information contained in the Unaudited Financial Statements for the years 2015 and 2014, submitted by MAPLE to PERUPETRO on 21 June 2016, instead of the information contained in the Audited Financial Statements for the years 2016 and 2015 delivered by MAPLE to PERUPETRO, for qualification purposes, dated 11 July 2017.” Letter from PERUPETRO to Maple Gas, dated 27 November 2017, at p. 1, Ex. C-0044.

³¹⁰ In its letter, PERUPETRO asserted that Maple Gas’s 2015 and 2016 financial statements showed that its financial capacity was \$11.84 million, whereas the required capacity was \$25 million. *See* Letter from PERUPETRO to Maple Gas, dated 27 November 2017, Ex. C-0044.

³¹¹ Letter from Maple Gas to PERUPETRO, dated 5 June 2017, attachment to Ex. C-0037.

statements *for 2015 and 2016* as part of Maple Gas’s June 2017 application.³¹² And it was even more perplexing because, in order to conduct the qualification analysis, PERUPETRO had expressly requested Maple Gas’s *audited 2015 and 2016* financial statements on 3 July 2017,³¹³ and Maple Gas had provided them on 11 July 2017.³¹⁴ It thus made no sense that PERUPETRO somehow would have looked at Maple Gas’s *2014 and 2015* financial statements when it qualified Maple Gas in August 2017.

234. PERUPETRO’s letter also made no sense for another reason. The letter stated that PERUPETRO’s decision was issued “in conformity with the Regulation on the Qualification of Oil Companies, approved by Supreme Decree No. 030-2004-EM and its amendments.”³¹⁵ In particular, PERUPETRO purported to base its conclusion that Maple Gas lacked the necessary financial capacity on the requirements of Directorate Agreement No. 048-2010 (the “2010 Guidelines”),³¹⁶ which had been published by PERUPETRO to supplement and implement the 2004 Decree regarding the qualification of oil companies.³¹⁷ However, the 2010 Guidelines had been replaced in early July 2017 by a new set of requirements, Directorate Agreement No. 049-2017 (the “2017 Guidelines”). The 2010 Guidelines were therefore not applicable to PERUPETRO’s decision on 11 August 2017 to certify Maple Gas as a qualified oil company.³¹⁸

235. Under the 2017 Guidelines, oil companies no longer needed to establish their contracting capacity under the “Current Assets” indicator set out in the 2010 Guidelines.³¹⁹ The requirements actually in force pursuant to the 2017 Guidelines provided that oil companies could show their financial capacity in various ways, including by submitting a declaration undertaking to deposit in an escrow account the amount needed to finance the project.³²⁰ Thus, by relying on the “Current Assets” indicator from the 2010 Guidelines in its 27 November letter, PERUPETRO used a criterion that was no longer in force when it purported to “leave without effect” Maple Gas’s qualification.³²¹

236. In its nullification letter, PERUPETRO also added that “[n]otwithstanding the above, it is important to note that MAPLE retains its right to request again its qualification as an Oil Company, which would be carried out in accordance with the provisions of the Guidelines for the Qualification of Oil Companies, approved by Directorate Agreement No. 049-2017 and the

³¹² Indeed, when it wrote to Maple Gas on 3 July 2017 requesting Maple Gas’s audited financial statements for 2015 and 2016, PERUPETRO had expressly noted that it had “*received the unaudited financial statements for [the company] for the years 2015 and 2016.*” Letter from PERUPETRO to Maple Gas, dated 3 July 2017, at p. 1, Ex. C-0187.

³¹³ Letter from PERUPETRO to Maple Gas, dated 3 July 2017, at p. 1, Ex. C-0187.

³¹⁴ Letter from Maple Gas to PERUPETRO, dated 11 July 2017, at p. 1, Ex. C-0188.

³¹⁵ Letter from PERUPETRO to Maple Gas, dated 27 November 2017, Ex. C-0044.

³¹⁶ PERUPETRO Directorate Agreement No. 048-2010, dated 15 April 2010, Ex. C-0108.

³¹⁷ Letter from PERUPETRO to Maple Gas, dated 27 November 2017, Ex. C-0044.

³¹⁸ Quiñones Legal Opinion-SPA, at paras. 118-120.

³¹⁹ See Quiñones Legal Opinion-SPA, at para. 121.

³²⁰ Maple Gas would have submitted such a declaration if PERUPETRO had requested it or if it otherwise had been given the opportunity. Neumann WS-SPA, at para. 68; Holzer WS-ENG, at para. 18.

³²¹ The 2017 Guidelines became effective on 20 July 2017. See Quiñones Legal Opinion-SPA, at paras. 118-120, 122,144,148. The 2017 Guidelines were “immediately applicable to the qualification procedures in progress, including the qualification request submitted by MAPLE that had not yet been answered.” Quiñones Legal Opinion-SPA, at para. 120.

Regulations.”³²² In other words, PERUPETRO suggested that, if Maple Gas were to apply again to be qualified to operate Block 126, the requirements in the 2017 Guidelines would apply.

237. This, of course, was meaningless, because PERUPETRO’s 27 November 2017 nullification letter had effectively rendered moot any possibility of the Block 126 License being transferred to Maple Gas. Frontera was going to be forced to relinquish the Block 126 License in a matter of days, which meant that the Block 126 License would terminate as a matter of law and could no longer be amended or transferred to Maple Gas. This is precisely what happened on 7 December 2017, just over a week after PERUPETRO’s nullification letter, when Frontera relinquished the Block 126 License.³²³

238. In the days following the nullification letter, PERUPETRO did not give Maple Gas an opportunity to respond to the nullification decision or to provide any explanation for it. Mr. Neumann and Mr. Koehler met with Mr. Guzmán to try to get an explanation for PERUPETRO’s letter. However, as Mr. Neumann describes, they did not get a clear explanation. Rather, “*Mr. Guzmán was evasive ... He finally told us, without explanation, that the decision was beyond his control because it was a top-down directive.*”³²⁴

239. Mr. Neumann again urgently sought help from the MINEM, and he arranged another meeting with the Minister, Ms. Aljovín. However, to their surprise, when Mr. Neumann and Mr. Coz went to the MINEM on 4 December 2017, the Minister failed to attend their meeting. Mr. Neumann and Mr. Coz explained the urgency of the situation to her Office Advisor, who said that she would convey the information to the Minister.³²⁵ However, Maple Gas heard nothing more from either the Minister or the MINEM.³²⁶

N. PERUPETRO Rejected Maple Gas’s Appeal of the Nullification of Its Qualification as an Oil Company

240. On 13 December 2017, Maple Gas filed an appeal against the nullification decision with PERUPETRO’s Directorate.³²⁷ Maple Gas explained that PERUPETRO’s nullification “suffers from several defects that render the decision null and void” and that, as a result, PERUPETRO’s decision “has no legal effect on the Qualification Certificate No. GGRL-CC-007-2017.”³²⁸

241. Among other defects, PERUPETRO’s nullification was invalid because PERUPETRO’s General Manager had issued both the original qualification and the nullification. Under the General Administrative Procedure Act, PERUPETRO’s General Manager cannot nullify his own

³²² Letter from PERUPETRO to Maple Gas, dated 27 November 2017, at p. 1, Ex. C-0044.

³²³ Neumann WS-SPA, at para. 72.

³²⁴ Neumann WS-SPA, at para. 70.

³²⁵ Neumann WS-SPA, at para. 70; Coz WS-SPA, at para. 51.

³²⁶ Neumann WS-SPA, at para. 70.

³²⁷ Letter from Maple Gas to PERUPETRO, dated 13 December 2017, Ex. C-0045.

³²⁸ Letter from Maple Gas to PERUPETRO, dated 13 December 2017, at p. 3, Ex. C-0045.

decisions. Instead, any decision on nullification should have been made by PERUPETRO's Directorate.³²⁹

242. Maple Gas also explained that it should have been notified in advance of PERUPETRO's intention to nullify its qualification, according to the due process clause in Article IV 1.2 of the General Administrative Procedure Act.³³⁰ Maple Gas then should have been given at least five business days to provide a response to the proposed nullification decision.³³¹

243. By letter dated 4 January 2018, PERUPETRO's General Manager, Mr. Guzmán, denied Maple Gas's appeal.³³² He did so despite the fact that Maple Gas's appeal of his earlier decision was addressed to PERUPETRO's Directorate. In accordance with the General Administrative Procedure Act, Maple Gas's appeal should have been decided by the Directorate rather than Mr. Guzmán, the person who had issued it.³³³

244. In his letter rejecting Maple Gas's appeal, Mr. Guzmán stated that "it made no sense" to consider Maple Gas's appeal of the nullification decision because Frontera had relinquished the Block 126 License.³³⁴ According to Mr. Guzmán, Maple Gas's qualification had been issued in the context of the application to transfer the Block 126 License. However, because Frontera had relinquished its rights to Block 126 on 7 December 2017, the License had terminated as a matter of law.³³⁵ Specifically, Mr. Guzmán stated:

“[S]ince there is no contract in force with respect to which a Contractual Position can be assigned, *it makes no sense to evaluate the alleged nullity of the pronouncements issued by PERUPETRO* with respect to your company's qualification, *since the purpose of said qualification was to evaluate compliance with a commitment provided in a contract that has now been terminated.*”³³⁶

245. Mr. Guzmán also denied that the General Administrative Procedure Act even applied to the nullification of Maple Gas's qualification. Instead, he asserted that the nullification was a purely contractual act, issued in the context of the Block 126 License transfer application, and therefore not an administrative act subject to the General Administrative Procedure Act.³³⁷ In doing so, the Mr. Guzmán ignored that PERUPETRO'S qualification of oil companies is not an act it takes pursuant to any contract but rather a duty mandated by the 2004 Decree.³³⁸

³²⁹ According to Article 11.2 of the Peruvian General Administrative Procedure Act, an “[e]x officio nullity shall be heard and declared by the superior authority of the authority that issued the act.” Act No. 27444 General Administrative Procedure Act, at Article 11.2, Ex. C-0097.

³³⁰ Letter from Maple Gas to PERUPETRO, dated 13 December 2017, at pp. 5-6, Ex. C-0045.

³³¹ Quiñones Legal Opinion-SPA, at para. 43.

³³² Letter from PERUPETRO to Maple, dated 4 January 2018, Ex. C-0046.

³³³ Quiñones Legal Opinion-SPA, at para. 135.

³³⁴ Letter from PERUPETRO to Maple Gas, dated 4 January 2018, at p. 1, Ex. C--0046.

³³⁵ Letter from PERUPETRO to Maple Gas, dated 4 January 2018, at p. 1, Ex. C--0046.

³³⁶ Letter from PERUPETRO to Maple Gas, dated 4 January 2018, at p. 2, Ex. C--0046.

³³⁷ Letter from PERUPETRO to Maple Gas, dated 4 January 2018, at p. 2, Ex. C--0046.

³³⁸ As discussed below, PERUPETRO's duty to verify whether an oil company is qualified to enter into a license with the state is a regulatory action clearly governed by General Administrative Procedure Act. *See below* at para. 348.

O. *Petroperú and the MINEM Publicly Made False and Misleading Allegations Against Maple Gas in Early 2018*

246. PERUPETRO's refusal to approve the Block 126 License had catastrophic consequences for Maple Gas. Over the previous two years, Petroperú had blocked it from accessing feedstock from both CEPSA and Aguaytía Energy. As a result, on 24 December 2017, Maple Gas was forced to suspend refining operations at the Pucallpa Refinery due to lack of sufficient feedstock. Maple Gas's subsequent efforts to find any additional feedstock and other sources of revenue for the Pucallpa Refinery were further thwarted by the conduct of Petroperú, the MINEM, and PERUPETRO.

247. As described in more detail below: in early 2018, following PERUPETRO's reversal on the transfer of the Block 126 License: (1) there were further local protests after Maple Gas suspended refining operations at the Pucallpa Refinery and, in response, both the MINEM and Petroperú publicly made false and misleading statements against Maple Gas, and Petroperú also publicly threatened to commence legal action to terminate the Pucallpa Refinery Lease Agreement; and (2) this caused Maple Gas's negotiations with other companies to fail, further damaging its business.

1. Petroperú and the MINEM Publicly Made False and Misleading Allegations Against Maple Gas

248. After the Pucallpa Refinery had to shut its refining operations, there was alarm in the local community that this would not be a temporary stoppage, and that the Refinery would shut down permanently, worsening fuel shortages and resulting in loss of employment.

249. In early January 2018, local media began to warn that, if the Pucallpa Refinery shut down permanently, there would be more delays and shortages in fuel supplies from Petroperú.³³⁹

250. On 12 January 2018, the leaders of the "Ucayalazo," the 11-day strike in March 2016, called a press conference to announce their concerns about Petroperú's approach of buying crude from CEPSA and refining it in Iquitos, rather than allowing it to be refined at the Pucallpa Refinery, explaining that:

"The crude oil was exploited and refined in Ucayali, this was enough to supply our market at production prices; but economic interests now take it to Iquitos in barges and later return only part of it, which is not sufficient, that is why they bring some from Lima with higher costs."³⁴⁰

251. In response, Ángel López, the Ucayali Regional Director of the MINEM, blamed Maple Gas for the shutdown of the Pucallpa Refinery. During a television interview on 16 January, Mr.

³³⁹ One article described how, rather than producing refined products locally at the Pucallpa Refinery, Petroperú's approach meant bringing products from its Conchán refinery in Lima by tanker trucks across the Andes and from its Iquitos refinery via the Ucayali River, and that the local population had to wait "until [Petroperú] sends a barge every time there is a problem with the road, or a strike shuts down the road" from Lima. See "Refinería de Pucallpa dejaría de operar," Impetu Journal, dated 9 January 2018, Ex. C-0207.

³⁴⁰ See "Anuncian medidas de lucha por inminente cierra de la refinería de Pucallpa," Diario Impetu, dated 13 January 2018, Ex. C-0208.

López alleged that the MINEM was “aware” of debts that Maple Gas supposedly owed to CEPSA.³⁴¹

252. Mr. López asserted in a subsequent interview that “the dispute between [Maple Gas], CEPSA, and Petroperú is a dispute between private enterprises where the State cannot intervene,” and that, if the Pucallpa Refinery had stopped operating, “well, that’s their problem.”³⁴²

253. In response, Maple Gas sent a letter to the MINEM making clear that Maple Gas “does not have outstanding debts with the company Cepsa del Perú S.A.”³⁴³ Maple Gas attached a letter from CEPSA dated 17 January 2018 confirming that “to this date Maple Gas Corporation del Perú, S.R.L. (Petróleos de la Selva) does not have registered any outstanding debt with our company.”³⁴⁴

254. There continued to be local unrest and press coverage, and there were public demonstrations on 7 and 8 February 2018.³⁴⁵ In response to the demonstrations, the media and local leaders continued to criticize Petroperú for causing the situation.

255. One newspaper described how Maple Gas had been forced to stop refining operations because Petroperú had acquired CEPSA’s crude, explaining that “*CEPSA could supply the refinery 100% with its production ... Nevertheless, today Petroperú acquires 100% of CEPSA’s crude production.*”³⁴⁶ Local leaders also complained about the fact that Petroperú had “*hoarded feedstock to benefit other cities rather than the Ucayali region.*”³⁴⁷ They also criticized Petroperú because it “*wants to eliminate the Ucayali refinery*”³⁴⁸ and blamed Petroperú and CEPSA for the fact that “*a refinery that belongs to Ucayali is practically shutting down.*”³⁴⁹ Similarly, a representative of local gas station owners raised concerns that, if Maple

³⁴¹ Mr. López was interviewed on a television news program, “Hablemos Claro,” broadcast by Exitosa Noticias. See Neumann WS-SPA, at para. 74. See also Letter from Maple Gas to the Ucayali Regional Directorate of the Ministry of Energy, dated 22 January 2018, Ex. C-0211.

³⁴² See “*Director de Energía y Minas descarta desabastecimiento de gasolina, por el cierre de ex Maple,*” Diario Impetu, dated 19 January 2018, Ex. C-0210. Mr. López also stated that he had coordinated with Petroperú an “increase in Petroperú’s supply capacity to fill the gap that [Maple Gas] used to cover.” See “*Director de Energía y Minas descarta desabastecimiento de gasolina, por el cierre de ex Maple,*” Diario Impetu, dated 19 January 2018, Ex. C-0210.

³⁴³ Letter from Maple Gas to the Ucayali Regional Directorate of the Ministry of Energy, dated 22 January 2018, at p. 1, Ex. C-0211.

³⁴⁴ Letter from CEPSA to Maple Gas, dated 17 January 2018, Ex. C-0209. Mr. Neumann also explained in an interview that the Pucallpa Refinery could not operate due to a lack of feedstock because Petroperú had “hoarded all of the crude produced in the region.” “*Petro-Perú entablará arbitraje contra Maple por refinería,*” El Comercio Perú, dated 15 February 2018, Ex. C-0217.

³⁴⁵ There were demonstrations at Petroperú, CEPSA, and Maple Gas. See “*Amenazan con huelga regional por el cierre de la refinería de Pucallpa,*” Impetu Journal, dated 8 February 2018, Ex. C-0213; “*Sigue la protesta contra el cierre de refinería,*” Diario Impetu, dated 9 February 2018, Ex. C-0214.

³⁴⁶ “*Amenazan con huelga regional por el cierre de la refinería de Pucallpa,*” Impetu Journal, dated 8 February 2018, Ex. C-0213.

³⁴⁷ “*No dejarán embarcar petróleo crudo a Iquitos,*” Diario Ahora, dated 12 February 2018 (he also described Petroperú’s conduct as “*a highly costly operation that all Peruvians pay for*”), Ex. C-0215.

³⁴⁸ “*No dejarán embarcar petróleo crudo a Iquitos,*” Diario Ahora, dated 12 February 2018, Ex. C-0215.

³⁴⁹ “*FREDEU prepara medida de fuerza contra CEPSA,*” Diario Impetu, dated 12 February 2018, Ex. C-0216.

Gas left the market, consumers would be “*left alone against Petroperú* and could face a monopoly... that can lead to excessive [market] power.”³⁵⁰

256. On 15 February 2018, Petroperú held a press conference, and sought to blame Maple Gas for the fact that it had been forced to suspend refining operations at the Pucallpa Refinery and for supply problems in the Ucayali region.

257. In particular, Petroperú alleged that Maple Gas had stopped paying CEPSA and Aguaytía Energy, and that these companies supposedly “did not want to sell to [Maple Gas] because they weren’t receiving a payment for their production.”³⁵¹ Petroperú claimed that, as a result, it had “intervened” to buy feedstock in its subsidiary role as supplier of last resort.³⁵² Petroperú also asserted that Maple Gas had “the obligation to rent part of its infrastructure to Petroperú,” and announced that it intended to bring an arbitration against Maple Gas “for breach of the lease contract for the storage tanks of the Pucallpa Refinery.”³⁵³

258. Gustavo Navarro, Petroperú’s General Manager, held another press conference on 21 February 2018 purportedly “to explain with complete transparency”³⁵⁴ what was happening in Ucayali. He again sought to blame Maple Gas, asserting that the region was “going through a crisis that we did not create” and that Petroperú was “helping so that the crisis created by other companies ... does not affect the economic development of Ucayali.”³⁵⁵

259. In addition to the two press conferences, Petroperú issued press releases on 23 February and 26 February, in which it asserted that:

- a. “Petroperú guarantees and always has guaranteed the supply of fuel in the Ucayali region.”³⁵⁶

³⁵⁰ “*En 5 días podríamos estar desabastecidos de gasolina de 90 octanos,*” Impetu Perú, dated 1 February 2018, Ex. C-0212.

³⁵¹ “*Petro-Perú entablará arbitraje contra Maple por refinería,*” El Comercio Perú, dated 15 February 2018, Ex. C-0217. See also Neumann WS-SPA, at para. 76.

³⁵² Petroperú claimed it had only intervened to buy feedstock from CEPSA and Aguaytía Energy to prevent “a crisis in Ucayali” and that “*its decision to buy crude corresponded to its subsidiary role*, since, if it hadn’t, Pucallpa would have been left without fuel.” “*Petro-Perú entablará arbitraje contra Maple por refinería,*” El Comercio Perú, dated 15 February 2018, Ex. C-0217.

³⁵³ “*Petro-Perú entablará arbitraje contra Maple por refinería,*” El Comercio Perú, dated 15 February 2018, Ex. C-0217.

³⁵⁴ “*Gerente de Petroperú explicó situación del combustible en Ucayali,*” Impetu Perú, dated 22 February 2018, Ex. C-0219.

³⁵⁵ “*Gerente de Petroperú explicó situación del combustible en Ucayali,*” Impetu Perú, dated 22 February 2018, Ex. C-0219. Two days after Mr. Navarro’s press conference, Mr. Neumann gave an interview in which he described Petroperú’s steps over the previous two years to acquire supplies from CEPSA and Aguaytía Energy, and how this had prevented Maple Gas from obtaining feedstock for the Pucallpa Refinery. He also explained that Petroperú had demanded use of Maple Gas’s storage tanks so that it could supply the market instead of allowing Maple Gas to do so. “*Es difícil poder cerrar una negociación con la intromisión de PetroPerú,*” Impetu Perú, dated 23 February 2018, Ex. C-0221.

³⁵⁶ “*Comunicado a la Opinión Pública de Ucayali,*” El Choche, dated 23 February 2018, Ex. C-0220.

b. “If Petroperú had not ‘interfered,’ as [Maple Gas’s] representative claims, CEPSA and Aguaytía would have had to suspend operations affecting the royalties for the producing regions.”³⁵⁷

c. Petroperú was not monopolizing the market because its contract with CEPSA did not give it exclusivity.³⁵⁸

d. “Petroperú’s mission is to supply fuel to the country and the Ucayali region. Though it competes in the market, the main function of the company is to guarantee the provision of fuel especially when private operators cannot do so. Petroperú has no particular commercial interest in taking the complete production of both companies and even less at the cost of harming a third party.”³⁵⁹

e. Maple Gas had been in breach of its obligations to provide RAD Services to Petroperú for four years.³⁶⁰

260. The public statements made by Petroperú not only wrongly sought to blame Maple Gas for the consequences of Petroperú’s own conduct, but were false and misleading.

261. Petroperú’s allegation that Maple Gas had debts to CEPSA was simply false. CEPSA itself confirmed that there were no such debts³⁶¹ and Petroperú subsequently admitted that its allegation was false.³⁶²

262. Petroperú’s claims about Aguaytía Energy also were highly misleading. As described above, there was a long-running dispute between Maple Gas and Aguaytía Energy in which both sides alleged that the other had breached the Natural Gasoline Purchase Agreement. However, that dispute arose before either the Blue Oil Investment Group or Worth Capital had acquired Maple Gas.³⁶³ Moreover, as described above, after the Blue Oil Investment Group acquired Maple Gas, it was in negotiations to reach agreement on a price with Aguaytía Energy, and was prepared to continue to buy natural gasoline to supply the Pucallpa Refinery, until Petroperú had intervened.³⁶⁴

³⁵⁷ Petroperú News Release, “*Petroperú aclara que no tiene injerencia en disputas entre privados en Pucallpa*,” dated 26 February 2018, Ex. C-0222; “*Gerente de Petroperú explicó situación del combustible en Ucayali*,” Impetu Perú, dated 22 February 2018, Ex. C-0219.

³⁵⁸ Petroperú News Release, “*Petroperú aclara que no tiene injerencia en disputas entre privados en Pucallpa*,” dated 26 February 2018, Ex. C-0222.

³⁵⁹ Petroperú News Release, “*Petroperú aclara que no tiene injerencia en disputas entre privados en Pucallpa*,” dated 26 February 2018, Ex. C-0222.

³⁶⁰ Petroperú News Release, “*Petroperú aclara que no tiene injerencia en disputas entre privados en Pucallpa*,” dated 26 February 2018, Ex. C-0222.

³⁶¹ See Letter from CEPSA to Maple Gas, dated 17 January 2018, Ex. C-0209. See also above at para. 253.

³⁶² Letter from Petroperú to Maple Gas, dated 1 March 2018 (stating that “when Maple’s debts were mentioned, [Petroperú] was only referring to the company Aguaytía.”), Ex. C-0053.

³⁶³ See above at para. 167.

³⁶⁴ See above at paras. 165, 168-170.

263. Petroperú also had no contractual basis for its claims that Maple Gas had breached the Lease Agreement by not agreeing to Petroperú's demands for RAD Services or that Maple Gas had "the obligation to rent part of its infrastructure to Petroperú."³⁶⁵

264. As explained above, Maple Gas did *not* have an obligation to provide the RAD Services demanded by Petroperú, and Petroperú had in fact acknowledged this in discussions with Maple Gas before the Blue Oil Investment Group had acquired Maple Gas.³⁶⁶ Moreover, Petroperú's baseless claim that Maple Gas had violated the Lease Agreement by not providing it with RAD Services was subsequently rejected by an arbitral tribunal as contrary to the plain language of the agreement, as described below.³⁶⁷

2. Petroperú's Public Attacks Caused Other Companies To Cut Off Negotiations With Maple Gas

265. At the time of Petroperú's press conferences and press releases, Maple Gas was still looking for other suppliers and other possible sources of income for the Pucallpa Refinery.³⁶⁸ For example, Maple Gas was in negotiations to become Repsol's sales terminal in Pucallpa and the wholesale distributor for Puma Energy.³⁶⁹ However, as a result of Petroperú's public allegations that Maple Gas did not pay its suppliers and its threats to bring a legal action under the Lease Agreement, Repsol and Puma Energy cut off negotiations with Maple Gas.³⁷⁰

266. As Mr. Neumann explains, Repsol "told us that ***Petroperú's press conference caused too much uncertainty and concern to continue the negotiations.***"³⁷¹ Puma Energy also ended its negotiations with Maple Gas immediately after Petroperú's statements to the press.³⁷²

267. Even though they were baseless, Petroperú's public allegations and threats ensured that Maple Gas was unable to secure alternative sources of income for the Pucallpa Refinery, and ensured that Maple Gas could not recover from the dire financial straits it was already after Petroperú had starved the Pucallpa Refinery of feedstock for two years and PERUPETRO had then blocked the transfer of the Block 126 License.

³⁶⁵ Petroperú News Release, "*Petroperú aclara que no tiene injerencia en disputas entre privados en Pucallpa,*" dated 26 February 2018, Ex. C-0222.

³⁶⁶ See above at para. 124.

³⁶⁷ As described below, Petroperú initiated an arbitration against Maple Gas under the Lease Agreement in May 2018. See below at para. 275.

³⁶⁸ Neumann WS-SPA, at para. 80.

³⁶⁹ Neumann WS-SPA, at para. 80.

³⁷⁰ Neumann WS-SPA, at para. 80-81.³⁷¹ Neumann WS-SPA, at paras. 81.

³⁷¹ Neumann WS-SPA, at paras. 81.

³⁷² Neumann WS-SPA, at paras. 81.

P. Petroperú and PERUPETRO Took Further Steps that Blocked Maple Gas's Attempts To Obtain Feedstock

268. On 12 April 2018, Maple Gas filed a lawsuit before the Peruvian Administrative Court against PERUPETRO. Through its lawsuit, it sought to challenge PERUPETRO's nullification decision as a violation of its due process rights.³⁷³

269. In May 2018, as Maple Gas continued to look for sources of feedstock for the Pucallpa Refinery, it approached PERUPETRO about gaining access to Block 126. Maple Gas believed that there might be an opportunity because, after Frontera relinquished the Block 126 License in December 2017, PERUPETRO had not commenced a new tender for the Block, and it remained idle.

270. As described below: (1) in April 2018, Maple Gas made a proposal to PERUPETRO to be permitted to temporarily operate the Sheshea field in Block 126; (2) in May 2018, as part of those discussions, Maple Gas agreed to PERUPETRO's request that Maple Gas withdraw its administrative lawsuit; (3) Petroperú then immediately commenced its arbitration seeking to terminate the Pucallpa Refinery Lease Agreement and PERUPETRO discontinued the discussions about additional feedstock for Maple Gas; and (4) Worth Capital's attempts to amicably resolve the dispute with Peru failed.

1. Maple Gas Sought Temporary Access to the Sheshea 1X Well in Block 126

271. As explained above, one of the exploration wells in Block 126, Sheshea 1X, could start producing oil once the well had been rehabilitated and a road connecting the well to Block 126's barge-loading area was paved.³⁷⁴ In April 2018, Maple Gas proposed to PERUPETRO that it be permitted to undertake this work and to operate the Sheshea field on a temporary basis.³⁷⁵

2. Maple Gas Agreed to PERUPETRO's Request To Withdraw Its Administrative Lawsuit

272. During a meeting on 22 May 2018, PERUPETRO told Maple Gas that, if it wanted to reapply for the Block 126 License or to operate the Sheshea field, it should withdraw its administrative lawsuit against PERUPETRO.³⁷⁶ PERUPETRO also said that Maple Gas would have to make additional investments in the Block 31 Fields.³⁷⁷

³⁷³ Maple's Challenge to 4 January 2018 Decision, dated 12 April 2018, Ex. C-0057.

³⁷⁴ See above at para. 150.

³⁷⁵ Neumann WS-SPA, at para. 83; Coz WS-SPA, at paras. 54, 56. Maple Gas also proposed that, if it demonstrated the commercial viability of the field, it would be able to declare the commerciality of the field and enter into an agreement for the Block 126 License. Neumann WS-SPA, at para. 85. See also Letter from Maple Gas to PERUPETRO, dated 24 May 2018, Ex. C-0064.

³⁷⁶ Neumann WS-SPA, at paras. 84. As Mr. Coz explains, PERUPETRO's position was that it would not negotiate with a company that was suing it. Coz WS-SPA, at para. 55 ("PERUPETRO indicated that Maple Gas should withdraw its administrative claim against PERUPETRO ... because PERUPETRO could not negotiate with a party that was suing it.").

³⁷⁷ Neumann WS-SPA, at para. 84; Coz WS-SPA, at para. 53.

273. Maple Gas expressed concerns about investing in the Block 31 Fields because the royalty rates for those fields ranged between 30% and 50%.³⁷⁸ PERUPETRO proposed a two-fold approach by which PERUPETRO would form a committee to consider lowering the royalties on Block 31 (in return for additional investment by Maple Gas) and to consider Maple Gas's proposal for temporarily operating the Sheshea field.³⁷⁹

274. Encouraged by its discussions with PERUPETRO, on 24 May 2018, Maple Gas wrote to PERUPETRO describing its proposal for operating the Sheshea field.³⁸⁰ Maple Gas also withdrew its administrative lawsuit against PERUPETRO on 25 May 2018.³⁸¹

3. Petroperú Sought To Terminate the Pucallpa Refinery Lease Agreement and PERUPETRO Discontinued Discussions About Access to Feedstock

275. On 29 May 2018, immediately after Maple Gas withdrew its lawsuit, Petroperú filed a request for arbitration at the Lima Chamber of Commerce pursuant to the Pucallpa Refinery Lease Agreement.³⁸² Petroperú alleged that Maple Gas had not provided RAD Services and failed to make the 2018 second quarter lease payment in breach of the Lease Agreement, and it sought the termination of the Lease Agreement and damages.³⁸³

276. After this, PERUPETRO stopped replying to Maple Gas's communications. It did not form the committee to discuss the royalty payments for Block 31, and it never responded to Maple Gas's 24 May 2018 proposal regarding developing the Sheshea field.³⁸⁴

4. Worth Capital's Attempt To Resolve the Dispute Amicably with Peru Failed

277. Faced with the destruction of its investment in Maple Gas, Worth Capital sought to resolve its dispute with Peru amicably.³⁸⁵ Worth Capital sent a Notice of Intent pursuant to Article 10.16.2 of the Treaty to Peru on 18 May 2018.³⁸⁶

278. In July 2018, Worth Capital met with Peru's Special Commission that represents the State in international investment disputes, as well as Petroperú and PERUPETRO. In that meeting, Worth Capital reiterated its willingness to reach a commercial solution in the interests of all involved. However, nothing came of these discussions.

³⁷⁸ Neumann WS-SPA, at para. 85.

³⁷⁹ Neumann WS-SPA, at paras. 84-85.

³⁸⁰ Letter from Maple Gas to PERUPETRO, dated 24 May 2018, Ex. C-0064.

³⁸¹ Maple Gas's Withdrawal of Court Challenge against PERUPETRO, dated 25 May 2018, Ex. C-0065.

³⁸² Petroperú's Request for Arbitration, dated 29 May 2018, Ex. C-0066.

³⁸³ Petroperú's Request for Arbitration, dated 29 May 2018, at paras. 10, 23, Ex. C-0066.

³⁸⁴ Neumann WS-SPA, at para. 87; Coz WS-SPA, at para. 56.

³⁸⁵ See Holzer WS-ENG, at para. 19.

³⁸⁶ Claimant's Notice of Intent to Commence Arbitration under the United States-Peru Trade Promotion Agreement, dated 18 May 2018, Ex. C-0063.

Q. Maple Gas Was Forced Out of Business, and Its Assets Were Seized by Petroperú and PERUPETRO

279. Without being able to operate the Pucallpa Refinery, Maple Gas eventually ran out of money and ceased all business activity. After Maple Gas began bankruptcy proceedings, PERUPETRO terminated the licenses for the Block 31 Fields and Petroperú physically seized control of the Pucallpa Refinery.

280. As described in more detail below: (1) Maple Gas was forced to shut down its operations in the summer of 2018; (2) in 2019, after Maple Gas began bankruptcy proceedings, Petroperú and PERUPETRO seized Maple Gas's assets; (3) PERUPETRO announced that it would re-tender the Block 126 License, which it acknowledged was particularly valuable because of its potential to supply the Pucallpa Refinery, but it was unable to attract any bidders; and (4) the arbitral tribunal rejected Petroperú's claim that Maple Gas had violated the Pucallpa Refinery Lease Agreement by not agreeing to Petroperú's demands for RAD Services.

1. Maple Gas Was Forced to Shut Down Its Operations

281. By the summer of 2018, Maple Gas had run out of options and had no choice but to lay off the majority of its employees. It also was late making the second quarter lease payment for the Pucallpa Refinery.³⁸⁷ The payment was due on 31 March 2018, but with the Refinery's operations suspended because of the lack of sufficient feedstock, Maple Gas could not make the payment. Worth Capital eventually made the payment of \$332,129.78 in June 2018.³⁸⁸ In the meantime, as described above, on 29 May 2018, Petroperú had commenced its arbitration, seeking to terminate the Lease Agreement.³⁸⁹

282. On 17 August 2018, after Maple Gas missed the third quarter lease payment, Petroperú purported to terminate the Pucallpa Refinery Lease Agreement as of that date (although the arbitration under the Lease Agreement remained pending).³⁹⁰

283. At the same time, Maple Gas was continuing to look for new sources of revenue for the Pucallpa Refinery. On 24 August 2018, Maple Gas notified Petroperú of a request from Oleoducto Sur del Perú SAC for RAD Services at the Pucallpa Refinery.³⁹¹ Petroperú never responded.

2. Petroperú and PERUPETRO Seized Maple Gas's Assets

284. On 7 January 2019, Maple Gas entered into bankruptcy proceedings.³⁹² Thereafter, PERUPETRO and Petroperú quickly took steps to seize all of Maple Gas's assets.

³⁸⁷ Letter from Petroperú to Maple Gas, dated 22 May 2018, Ex. C-0231.

³⁸⁸ Letter from Maple Gas to Petroperú, dated 6 June 2018, at p. 2, Ex. C-0233.

³⁸⁹ See above at para. 275.

³⁹⁰ Letter from Petroperú to Maple Gas, dated 17 August 2018, at p. 1, Ex. C-0069.

³⁹¹ Letter from Maple Gas to Petroperú, dated 24 August 2018, at p. 2, Ex. C-0235.

³⁹² Aviso Concurso Procesal, dated 7 January 2019, Ex. C-0237.

285. On 6 February 2019, PERUPETRO sent a notice letter terminating the Block 31 License as of 4 February 2019.³⁹³ PERUPETRO stated that the termination was due to Maple Gas's inability to provide the requisite insurance policies.³⁹⁴

286. On 8 February 2019, Petroperú filed its statement of claim in its arbitration against Maple Gas under the Pucallpa Refinery Lease Agreement.³⁹⁵ Petroperú requested damages of \$13.4 million on the basis that Maple Gas had allegedly breached the Pucallpa Refinery Lease Agreement by not providing RAD Services to Petroperú and by failing to make the 2018 third quarter lease payment.³⁹⁶ It also requested that the tribunal declare that Petroperú's termination of the Pucallpa Refinery Lease Agreement was valid due both to Maple Gas's non-payment of the 2018 third quarter lease payment and its alleged failure to provide RAD Services.³⁹⁷

287. On 12 March 2019, Maple Gas wrote to PERUPETRO stating that its bankruptcy proceedings constituted a *force majeure* event that exempted Maple Gas from complying with the insurance requirements or payment obligations under the Block 31 licenses.³⁹⁸ PERUPETRO denied that there was a *force majeure* event and proceeded with the termination of the Blocks 31-B and D licenses.³⁹⁹

288. On 25 March 2019, PERUPETRO also terminated the Block 31-E license.⁴⁰⁰

289. Maple Gas wrote to PERUPETRO on 2 May 2019 objecting to the unilateral termination of the Block 31 licenses. In its letter, Maple Gas requested that the Blocks be returned to Maple Gas within five days, and notified PERUPETRO of its claim for \$5 million for the damage caused to Maple Gas's equipment on Blocks 31-B, D and E.⁴⁰¹

290. On 4 June 2019, Maple Gas sent another letter to PERUPETRO objecting to the termination of the Block 31 licenses.⁴⁰² In response, on 21 June 2019, PERUPETRO reiterated its termination of the licenses.⁴⁰³

291. On 25 June 2019, the tribunal in the arbitration between Petroperú and Maple Gas granted Petroperú the right to inspect the Pucallpa Refinery for three days.⁴⁰⁴ Petroperú commenced this inspection on 1 August 2019, but never left the Pucallpa Refinery.⁴⁰⁵ Petroperú sent a letter taking formal possession of the Pucallpa Refinery on 21 August 2019.⁴⁰⁶

³⁹³ Letter from PERUPETRO to Maple Gas, dated 6 February 2019, Ex. C-0072.

³⁹⁴ Letter from PERUPETRO to Maple, dated 5 December 2018, Ex. C-0271.

³⁹⁵ *Award in Lima Centro de Arbitraje Case No. 0258-2018-CCL*, dated 8 October 2020, at para. 18, Ex. C-0260.

³⁹⁶ *Award in Lima Centro de Arbitraje Case No. 0258-2018-CCL*, dated 8 October 2020, at para. 11, Ex. C-0260.

³⁹⁷ *Award in Lima Centro de Arbitraje Case No. 0258-2018-CCL*, dated 8 October 2020, at para. 11, Ex. C-0260.

³⁹⁸ Letter from Maple Gas to PERUPETRO, dated 12 March 2019, at p. 2, Ex. C-0240.

³⁹⁹ Letter from PERUPETRO to Maple Gas, dated 15 March 2019, at p. 1, Ex. C-0241.

⁴⁰⁰ Letter from PERUPETRO to Maple Gas, dated 25 March 2019, Ex. C-0073.

⁴⁰¹ Letter from Maple Gas to PERUPETRO, dated 2 May 2019, Ex. C-0245.

⁴⁰² Letter from Maple Gas to PERUPETRO, dated 4 June 2019, at pp. 1-2, Ex. C-0247.

⁴⁰³ Letter from PERUPETRO to Maple Gas, dated 21 June 2019, Ex. C-0248.

⁴⁰⁴ Letter from Petroperú to the Tribunal (Case No. 0258-2018-CCL), dated 23 July 2019, Ex. C-0250.

⁴⁰⁵ See Letter from Maple Gas to Petroperú, dated 1 August 2019, Ex. C-0075; Letter from Maple Gas to Petroperú, dated 19 August 2019, Ex. C-0077.

⁴⁰⁶ Letter from Petroperú to Maple Gas, dated 21 August 2019, Ex. C-0251.

3. PERUPETRO Re-Tendered the Block 126 License, but Received No Bids

292. In January 2019, after Maple Gas entered bankruptcy proceedings, PERUPETRO announced that it intended to launch a new tender for the Block 126 License.

293. In a press release on 14 January 2019, PERUPETRO explained that Sheshea “is a project with an interesting potential given the high quality [of its crude],” and that Sheshea had previously reached a production of “1,430 barrels of crude per day from a well that ‘is idle today.’”⁴⁰⁷ PERUPETRO also noted that “Sheshea is a project demanded by the people of Pucallpa, and that’s why we are putting together a block for bidding very soon.”⁴⁰⁸

294. Later in 2019, PERUPETRO renamed Block 126 as Block 201 and launched a new tender.⁴⁰⁹ In doing so, PERUPETRO acknowledged that the Pucallpa Refinery was the most logical place to refine oil from the Block, explaining that “given its location, [Block 126] could supply the Pucallpa Refinery” and that the Refinery could “reactivate” and “process between 3,000 and 4,000 barrels per day.”⁴¹⁰

295. Despite Block 126’s value, particularly as a source of supply for the Pucallpa Refinery, it was in a remote area of the Amazon jungle. Moreover, by the time PERUPETRO re-tendered Block 126 in September 2019,⁴¹¹ Petroperú had physically taken control of the Pucallpa Refinery and commenced its arbitration against Maple Gas to terminate the Lease Agreement, as described above.

296. Not surprisingly, therefore, in January 2020, PERUPETRO announced that it had received no bids in the new tender process and it declared the Block deserted.⁴¹²

297. Since PERUPETRO’s Directorate’s abrupt and unexplained refusal to approve the transfer of the Block 126 License to Maple Gas, the Block has remained idle and it is not being used to supply refined products to the Ucayali region, as Maple Gas had committed to doing if it had received the License.

4. Petroperú’s Claim Regarding Its Demands for RAD Services Was Rejected by the Arbitral Tribunal

298. On 8 October 2020, the tribunal in the arbitration Petroperú had brought against Maple Gas seeking to terminate the Pucallpa Refinery Lease Agreement issued its final award.

299. Because of Maple Gas’s failure to make the lease payment for the third quarter of 2018, the tribunal declared the Lease Agreement terminated as of 16 August 2018.⁴¹³ However, the

⁴⁰⁷ PERUPETRO, Boletín de Prensa, dated 14 January 2019, at p. 1, Ex. C-0070.

⁴⁰⁸ “Perú-Petro relanzará proyecto Sheshea,” El Comercio Perú, dated 16 January 2019, at p. 2, Ex. C-0071.

⁴⁰⁹ PERUPETRO Official Page, Block 201, dated 24 November 2020, Ex.C-0087.

⁴¹⁰ “Lote petrolero cerca a frontera con Brasil demandará \$ 90 millones de inversión,” Diario Correo, dated 10 September 2019, Ex. C-0078.

⁴¹¹ PERUPETRO renamed Block 126 as Block 201 and launched a new bidding round on 10 September 2019. See PERUPETRO Press Release, Announcing the Block 201 Bid, dated 10 September 2019, Ex. C-0252.

⁴¹² PERUPETRO Comunicado No. 4, Proceso de Selección Ordinario Lote 201, dated 17 January 2020, Ex. C-0079.

⁴¹³ Award in Lima Centro de Arbitraje Case No. 0258-2018-CCL, dated 8 October 2020, at para. 205, Ex. C-0260.

tribunal rejected Petroperú's claim that Maple Gas had breached an obligation to provide RAD Services to Petroperú, and it denied Petroperú's request for damages on that basis.⁴¹⁴ The tribunal explained that, under the plain meaning of the Lease Agreement, Petroperú could not demand RAD Services or claim a breach where the parties had not reached agreement on terms and conditions not previously agreed in the contract.⁴¹⁵ The tribunal emphasized that "**MAPLE cannot be held in breach of contract**, since the **non-performance of the RAD Service was due to a cause beyond its control**, such as PETROPERÚ's refusal to assume the cost of an investment that had not been contractually agreed as non-refundable."⁴¹⁶

300. As of today, the Pucallpa Refinery remains out of operation.⁴¹⁷ It only serves as terminal and storage facility for Petroperú, which continues to send refined products by river barge from its refinery in Iquitos.⁴¹⁸ There continue to be fuel shortages in the Ucayali region.⁴¹⁹

301. On 24 November 2020, Worth Capital filed its Notice of Arbitration under the U.S.-Peru TPA, commencing these proceedings.

⁴¹⁴ *Award in Lima Centro de Arbitraje Case No. 0258-2018-CCL*, dated 8 October 2020, at paras. 381-411, Ex. C-0260.

⁴¹⁵ *Award in Lima Centro de Arbitraje Case No. 0258-2018-CCL*, dated 8 October 2020, at paras. 386-387 ("From a literal interpretation of the twelfth clause, it is noted that the declared intention of the parties was that the content of the obligation to provide the RAD Service related to the provision of operating conditions (clause 12.1) and compliance with the operating procedures (clause 12.3) would be established by mutual agreement. ... As long as said conditions and procedures were not agreed upon, there could be no breach, since by the will of the parties, the required conduct was subject to a subsequent definition."). Ex. C-0260.

⁴¹⁶ *Award in Lima Centro de Arbitraje Case No. 0258-2018-CCL*, dated 8 October 2020, at para. 409, Ex. C-0260. In particular, the tribunal concluded that the construction of a dispatch pipeline was not infrastructure that the contract required Maple Gas to provide, and that it was Petroperú's obligation to cover its entire cost if it wanted to receive RAD Services. Because it had failed to do so, Petroperú could not expect to receive such services. *Id.* at paras. 403, 407, Ex. C-0260.⁴¹⁷ R. Hidalgo, "El mercado de Petroperú," *Expreso*, dated 31 January 2022, Ex. C-0263.

⁴¹⁷ R. Hidalgo, "El mercado de Petroperú," *Expreso*, dated 31 January 2022, Ex. C-0263.

⁴¹⁸ Petroperú 2020 Annual Report, at p. 55, Ex. C-0253.

⁴¹⁹ Petroperú News Release, "Se reanuda el abastecimiento de combustible en Pucallpa," dated 19 February 2020, Ex. C-0255.

III. THE TRIBUNAL HAS JURISDICTION OVER WORTH CAPITAL'S CLAIMS UNDER THE TREATY

302. On 12 April 2006, the United States and Peru signed the U.S.-Peru TPA.⁴²⁰ The Treaty entered into force on 1 February 2009.⁴²¹

303. The United States and Peru agreed in the Treaty that disputes between either of them and an investor of the other Contracting Party can be referred to arbitration. Article 10.16.1 of the Treaty provides that “the claimant, on its own behalf, may submit to arbitration under this Section a claim (i) that the respondent has breached (A) an obligation under Section A [Investment] ... and (ii) that the claimant has incurred loss or damage by reason of, or arising out of, that breach.”

304. Under Article 10.16.3 of the Treaty, “a claimant may submit a claim referred to in [Article 10.16.1]: (a) under the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent and the Party of the claimant are parties to the ICSID Convention.”

305. Under Article 25(1) of the ICSID Convention, the “jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State ... and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre.”

306. As discussed below, this Tribunal has jurisdiction over Worth Capital's claims that Peru has violated its obligations under the Treaty.

A. *Worth Capital Is a Protected Investor Under the Treaty and the ICSID Convention*

307. Under Article 10.28 of the Treaty, an “investor of a Party” is defined in relevant part as:

“an enterprise of a Party ... that attempts through concrete action to make, is making, or has made an investment in the territory of another Party”

308. An “enterprise of a Party” under the Treaty includes “an enterprise constituted or organized under the law of a Party.”⁴²² In turn, an “enterprise” is defined as:

“any entity constituted or organised under applicable law ... including any corporation”⁴²³

⁴²⁰ Free Trade Agreement between the United States of America and Peru (“Treaty”), Ex. CL-0001.

⁴²¹ Treaty, Ex. CL-0001.

⁴²² Treaty, Article 1.3 (defining “enterprise of a Party”), Ex. CL-0001.

⁴²³ Treaty, Article 1.3 (defining “enterprise”), Ex. CL-0001.

309. Worth Capital is a company incorporated under the laws of the State of Delaware, United States of America.⁴²⁴ As discussed below, Worth Capital made an investment in Peru. Worth Capital therefore qualifies as a protected investor under the Treaty.

310. Article 25(2) of the ICSID Convention provides in relevant part that “National of another Contracting State” means:

“any juridical person which had the nationality of a Contracting State other than the State Party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration.”

311. Both the United States and Peru are Contracting States to the ICSID Convention. As a company incorporated in the State of Delaware as of the date of its Notice of Arbitration, Worth Capital qualifies as a U.S. national for purposes of the ICSID Convention.

B. Worth Capital’s Claims Arise out of Protected Investments Under the Treaty and the ICSID Convention

312. Article 10.28 of the Treaty defines “investment” as:

“every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk.”

313. Article 10.28 sets out a non-exhaustive list of “forms” that an investment may take. These include “an enterprise”; “shares, stock, and other forms of equity participation in an enterprise”; “licenses, authorizations, permits, and similar rights conferred pursuant to domestic law”; and “other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.”⁴²⁵

314. Worth Capital’s indirect shareholding in Maple Gas, a Peruvian enterprise, falls squarely within the meaning of “investment” as “*shares* ... in an enterprise.”⁴²⁶ Worth Capital made a substantial commitment of \$62 million to purchase Maple Gas in November 2016, with the expectation of earning a profit from Maple Gas’s operations in Peru. In doing so, Worth Capital assumed the risk inherent in investing in any ongoing business. Accordingly, Worth Capital’s shareholding in Maple Gas qualifies as an “investment” under the Treaty.

315. Worth Capital’s shareholding also qualifies as an “investment” for purposes of the ICSID Convention. In general, where an investment satisfies the definition of “investment” under the applicable treaty, this should also suffice to qualify as an “investment” under the ICSID Convention.⁴²⁷ This is particularly true where the treaty in question, like the U.S.-Peru TPA,

⁴²⁴ Worth Capital Certificate of Formation, dated 22 November 2016, Ex. C-31.

⁴²⁵ Treaty, Article 10.28, Ex. CL-0001.

⁴²⁶ As discussed above, Worth Capital owns all but one share of Maple Gas. *See above* at note 211.

⁴²⁷ *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Decision on Jurisdiction, dated 29 April 2004, at para. 73, Ex. CL-0086; *Fedax N.V. v. Republic of Venezuela*, ICSID Case No. ARB/96/3, Decision on Jurisdiction, dated 11 July 1997, at para. 22, Ex. CL-0039.

refers to “characteristics of an investment” similar to those often applied by ICSID tribunals.⁴²⁸ In any event, ICSID tribunals have consistently held that shareholdings in local companies, like Worth Capital’s shareholding in Maple Gas, qualify as an “investment” under the ICSID Convention.⁴²⁹

316. Worth Capital claims that Peru has breached the Treaty through a series of actions that have destroyed its investment in Maple Gas. The parties’ dispute therefore arises directly out of Worth Capital’s investment. Through Peru’s consent to arbitration in Article 10.17.1 of the Treaty and Worth Capital’s consent to arbitration in its Notice of Arbitration, the parties have consented in writing to submit that dispute to ICSID.

C. Worth Capital Has Complied with the Other Formal Requirements Under the Treaty To Commence Arbitration

317. Article 10.16.2 of the Treaty requires that “[a]t least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration.” Worth Capital sent its Notice of Intent to Peru on 18 May 2018, more than two years before Worth Capital initiated the arbitration on 24 November 2020.⁴³⁰

318. Article 10.15 of the Treaty also requires that, “[i]n the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation.”⁴³¹ Worth Capital met with Peruvian officials in July 2018 in an effort to resolve the dispute amicably.⁴³² These efforts were unsuccessful.

319. When Worth Capital submitted its Notice of Arbitration on 24 November 2020, it also provided the waiver of domestic remedies required under Article 10.18.2(b)(i).⁴³³ As explained in the Notice of Arbitration, Worth Capital has also satisfied the other procedural requisites under the Treaty for filing a claim.⁴³⁴

⁴²⁸ See, e.g., *Salini Costruttori S.p.A. and Italstrade S.p.A v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, dated 31 July 2001, at para. 52 (identifying as hallmarks of investment: (1) the contribution of money or assets; (2) duration; (3) the assumption of risk; and (4) contribution to the host State’s economic development), Ex. CL-0075.

⁴²⁹ *American Manufacturing and Trading, Inc. v. Republic of Zaire*, ICSID Case No. ARB/93/1, Award, dated 21 February 1997, at paras. 5.12-5.15, Ex. CL-0010; *Maffezini v. Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision on Jurisdiction, dated 25 January 2000, at paras. 67-68, Ex. CL-0057; *CMS Gas Transmission Co. v. Republic of Argentina*, ICSID Case No. ARB/01/8, Decision on Objections to Jurisdiction, dated 17 July 2003, at paras. 48, 63-65, Ex. CL-0028; *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Decision on Jurisdiction, dated 8 December 2003, at paras. 64-65, Ex. CL-0015; *Camuzzi International S.A. v. Argentine Republic*, ICSID Case No. ARB/03/2, Decision on Objections to Jurisdiction, dated 11 May 2005, at paras. 80-81, 140, Ex. CL-0021; *Gas Natural SDG S.A. v. Argentine Republic*, ICSID Case No. ARB/03/10, Decision on Preliminary Questions on Jurisdiction, dated 17 June 2005, at paras. 32-34, Ex. CL-0044.

⁴³⁰ Claimant’s Notice of Intent, dated 18 May 2018, Ex. C-0063. Worth Capital also waited more than six months since the events giving rise to the claim before filing its Notice of Arbitration, pursuant to Article 10.16.3 of the Treaty.

⁴³¹ Treaty, Article 10.15, Ex. CL-0001.

⁴³² See above at paras. 278-279.

⁴³³ Claimant’s Waiver and Consent, dated 24 November 2020, Ex. C-0089.

⁴³⁴ See Notice of Arbitration, at paras. 68-73.

IV. PERU IS RESPONSIBLE FOR THE CONDUCT OF PERUPETRO AND PETROPERÚ

320. As described below, the conduct of PERUPETRO, Petroperú and the MINEM has breached the Treaty and caused damage to Worth Capital's investment in Maple Gas. The conduct of all three is attributable to Peru, as discussed in more detail below.⁴³⁵

A. *Attribution Under Customary International Law and the Treaty*

321. The question of attribution in this case must be determined by reference to the text of the Treaty and the ILC Articles.

322. Under the customary international law rules embodied in the ILC Articles, a State is responsible for all conduct of its organs (Article 4). States are also responsible for the conduct of any entity when that entity exercises governmental authority (Article 5). The conduct of private entities when acting under the instruction of, or under the direction or control of, the State is also attributable to the State (Article 8).

1. Attribution Under Article 4 of the ILC Articles

323. Article 4 of the ILC Articles provides:

“1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

2. An organ includes any person or entity which has that status in accordance with the internal law of the State.”⁴³⁶

324. As is evident from the text of Article 4, an “organ” for the purpose of attribution “includes” all entities that have the status of an organ under internal law, but is not restricted to

⁴³⁵ PERUPETRO and Petroperú are discussed below. The MINEM undisputedly is a State organ and its conduct is attributable to Peru, and therefore it is not discussed separately below.

⁴³⁶ International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts* (“ILC Articles”), Article 4, Ex. CL-0005. The ILC Commentary makes clear that “[i]t is irrelevant for the purposes of attribution that the conduct of a State organ may be classified as ‘commercial’ or as *acta iure gestionis*” ILC, *Yearbook of International Law Commission*, 2001, vol. II, Part Two (“ILC Commentary”), at p. 41, para. 6 (footnotes omitted), Ex. CL-0006.

such entities.⁴³⁷ “Organs” for the purpose of attribution under Article 4 also include *de facto* organs. In identifying a *de facto* organ, substance prevails over form.⁴³⁸

325. As a result, a *de facto* organ may have a separate legal identity under the law of the State. The ILC’s commentary on Article 4 makes this clear:

“In internal law, it is common for the ‘State’ to be subdivided into a series of distinct legal entities. For example, ministries, departments, component units of all kinds, State commissions or *corporations may have separate legal personality under internal law, with separate accounts and separate liabilities*. But international law *does not permit a State to escape its international responsibilities by a mere process of internal subdivision*. The State as a subject of international law is held responsible for the conduct of all the organs, instrumentalities and officials which form part of its organization and act in that capacity, *whether or not they have separate legal personality under its internal law*.”⁴³⁹

326. To determine whether an entity is a *de facto* organ of the State, tribunals have examined various factors, including: (i) the law under which the entity was created; (ii) the nature of functions delegated to, and exercised by, the entity; (iii) the entity’s financial dependence on the State; (iv) the State’s influence in the constitution of the governing body of the entity; and (v) the control or supervision of the State in the entity’s decision-making.

327. In *Ampal-American v. Egypt* – a case involving entities similar to PERUPETRO and Petroperú – the Egyptian Gas and Petroleum Company was found to be an organ of the Egyptian State because: (i) it was created under a statute as a public authority; (ii) its operations were overseen and some of its decisions confirmed by the Egyptian Minister of Petroleum; (iii) its capital was allocated by the State; and (iv) its board of directors was comprised of appointees of the President of Egypt.⁴⁴⁰

328. In assessing the overall control by the State over the entity, tribunals have looked to structural, operational, and/or financial means of control. In *Deutsche Bank v. Sri Lanka*, the tribunal found that Sri Lanka’s State Petroleum company was an organ of Sri Lanka because: (i) the company was obliged to follow the directions of the Petroleum Minister; (ii) the company

⁴³⁷ ILC Commentary, at p. 42, para. 11 (“The internal law of a State may not classify, exhaustively or at all, which entities have the status of ‘organs’. In such cases, while the powers of an entity and its relation to other bodies under internal law will be relevant to its classification as an ‘organ’, internal law will not itself perform the task of classification. Even if it does so, the term ‘organ’ used in internal law may have a special meaning, and not the very broad meaning it has under article 4.”), Ex. CL-0006.

⁴³⁸ J. Crawford, *State Responsibility: the General Part*, 2013, at p. 125, Ex. CL-0096. The ICJ has also recognized the existence of *de facto* State organs. See, e.g., *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, dated 26 February 2007, at para. 392, Ex. CL-0013.

⁴³⁹ ILC Commentary, at p. 39, para. 7, Ex. CL-0006.

⁴⁴⁰ *Ampal-American Israel Corp., EGI-Fund (08-10) Investors LLC, EGI-Series Investments LLC, BSS-EMG Investors LLC and David Fischer v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, dated 21 February 2017, at para. 138, Ex. CL-0011.

was obliged to act in the public interest; and (iii) the State exerted significant control over the company's finances.⁴⁴¹

329. Similarly, in *Flemingo Duty Free v. Poland*, the Polish Airport State Enterprise was found to be a *de facto* organ of Poland because the entity: (i) was owned by the Polish State; (ii) carried out an activity that is normally reserved for the State (the operation of an airport); (iii) was required to seek Poland's approval before granting or terminating leases of the airport under its administration; and (iv) reported to the Polish Transport Ministry, which had the power to appoint or suspend officials.⁴⁴²

330. Where an entity is used as a conduit by the State to implement its policy, this weighs in favor of characterizing the entity as an organ of the State. For instance, in *Nykomb v. Latvia*, the tribunal found that a former Latvian State enterprise, which had taken another corporate form as a PJSC, was an organ of Latvia. The tribunal found it to be “a constituent part of the Republic's organisation of the electricity market and a **vehicle to implement the Republic's decisions concerning the price setting for electric power.**”⁴⁴³

2. Attribution Under Article 5 of the ILC Articles and Article 10 of the Treaty

331. In addition to the conduct of its organs, a State is also responsible for conduct involving the exercise of governmental authority.⁴⁴⁴ In this respect, Article 10.1 of the Treaty provides:

“A Party's obligations under this Section shall apply to a state enterprise or other person **when it exercises regulatory, administrative, or other governmental authority delegated to it by that Party**, such as the authority to expropriate, **grant licenses, approve commercial transactions**, or impose quotas, fees, or other charges.”⁴⁴⁵

332. Article 5 of the ILC Articles similarly provides:

“The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.”⁴⁴⁶

333. As opposed to the *structural* test embodied in Article 4 of the ILC Articles, Article 10.1 of the Treaty and Article 5 of the ILC Articles contains a *functional* test – namely, whether the

⁴⁴¹ *Deutsche Bank AG v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/09/2, Award, dated 31 October 2012, at para. 405(b), Ex. CL-0033.

⁴⁴² *Flemingo DutyFree Shop Private Limited v. Republic of Poland*, PCA Case No. 2014-11, Award, dated 12 August 2016, at paras. 426-430, Ex. CL-0041.

⁴⁴³ *Nykomb Synergetics Technology Holding AB v. Republic of Latvia*, SCC Case No. 118/2001, Arbitral Award, dated 16 December 2003, at p. 31, Ex. CL-0065.

⁴⁴⁴ J. Crawford, *State Responsibility: the General Part*, 2013, at p. 127, Ex. CL-0096; ILC Commentary, Article 7, Ex. CL-0006.

⁴⁴⁵ Treaty, Article 10.1.2, Ex. CL-0001.

⁴⁴⁶ ILC Articles, Article 5, Ex. CL-0005.

entity is “empowered, if only exceptionally and to a limited extent, to exercise specific functions which are akin to those normally exercised by the organs of the State.”⁴⁴⁷

334. Article 5 does not precisely identify the scope of “governmental authority” because it is a flexible notion that requires a fact-specific analysis.⁴⁴⁸

335. Examples of “governmental authority” confirmed by investment tribunals include: (i) the authority of a State-owned energy company to represent the host State in matters relating to oil and gas and to grant concessions;⁴⁴⁹ (ii) the authority to enter into and, subsequently, terminate lease agreements for modernization of an airport;⁴⁵⁰ (iii) the authority of a public agency to enter into and terminate contracts for the construction of a dam, change its methods of construction, or approve financing proposals by investors;⁴⁵¹ (iv) the authority of operationally independent majority-State-owned oil companies to conduct negotiations for the grant of a concession contract; (v) the authority of a State-owned company to deal with and manage payments of (and to) private companies in furtherance of the host State’s industrial policy;⁴⁵² (vi) the authority to enter into contracts concerning a public construction project;⁴⁵³ and (vii) the authority of a self-funded public enterprise to engage in planning and preparing budgets for public works projects.⁴⁵⁴

336. Under both the Treaty and Article 5, there are accordingly a variety of circumstances in which an entity may exercise elements of governmental authority. When it does so, that conduct is attributable to the State.

3. Attribution Under Article 8 of the ILC Articles

337. As a matter of customary international law, conduct of persons acting under the instructions of, or under the direction or control of, the State is attributable to the State. Article 8 of the ILC Articles provides:

⁴⁴⁷ J. Crawford, *State Responsibility: the General Part*, 2013, at p. 127, Ex. CL-0096.

⁴⁴⁸ *UAB Energija (Lithuania) v. Republic of Latvia*, ICSID Case No. ARB/12/33, Award of the Tribunal, dated 22 December 2017, at para. 808 (referring to ILC Commentary to Article 5, at para. 6), Ex. CL-0089; *F-W Oil Interests, Inc. v. Republic of Trinidad and Tobago*, ICSID Case No. ARB/01/14, Award, dated 3 March 2006, at para. 203, Ex. CL-0043.

⁴⁴⁹ *Ioannis Kardassopoulos v. Republic of Georgia*, ICSID Case No. ARB/05/18, Award, dated 3 March 2010, at para. 276, Ex. CL-0050; *Ron Fuchs v. Republic of Georgia*, ICSID Case No. ARB/07/15, Award, dated 3 March 2010, at para. 276, Ex. CL-0072.

⁴⁵⁰ *Flemingo DutyFree Shop Private Limited v. Republic of Poland*, PCA Case No. 2014-11, Award, dated 12 August 2016, at paras. 436-437, Ex. CL-0041.

⁴⁵¹ *LESI, S.p.A. and Astaldi, S.p.A. v. People’s Democratic Republic of Algeria*, ICSID Case No. ARB/05/3, Award, dated 12 November 2008, at paras. 114-116, Ex. CL-0056.

⁴⁵² *Emilio Agustín Maffezini v. Kingdom of Spain*, ICSID Case No. ARB/97/7, Award, dated 13 November 2000, at para. 78, Ex. CL-0037.

⁴⁵³ *Toto Costruzioni Generali S.p.A. v. Republic of Lebanon*, ICSID Case No. ARB/07/12, Decision on Jurisdiction, dated 11 September 2009, at para. 53, Ex. CL-0088.

⁴⁵⁴ *Toto Costruzioni Generali S.p.A. v. Republic of Lebanon*, ICSID Case No. ARB/07/12, Decision on Jurisdiction, dated 11 September 2009, at paras. 57-60, Ex. CL-0088.

“The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact **acting on the instructions of, or under the direction or control of, that State** in carrying out the conduct.”⁴⁵⁵

338. In the investor-State context, tribunals have found sufficient levels of control for attribution under Article 8 where officials of the State are also office-bearers of the entity in question. For instance, in *Hulley v. Russia*, the tribunal found that “it may reasonably be held that the highest officers of Rosneft who at the time served as officials of the Russian Federation in close association with President Putin acted in implementation of the policy of the Russian Federation.”⁴⁵⁶

339. A State-owned entity’s conduct will also be attributable under Article 8 when the State uses its ownership interest in and control of the enterprise to achieve a particular result adverse to the investor. In *EDF v. Romania*, the tribunal found that the conduct of two Romanian State-owned enterprises was attributable to Romania because the Romanian Ministry of Transportation had issued directions to the enterprises to exercise their contractual rights in a manner adverse to the investor and aimed at bringing about “**a particular result**.”⁴⁵⁷

340. Approval by a State of the conduct of a State-owned entity may also meet the direction or control test under Article 8. In *Ampal-American v. Egypt*, the tribunal found that the conduct of two Egyptian State-owned gas companies in concluding and then terminating a gas supply agreement with the claimant was attributable to Egypt because those decisions were “**all taken with the blessing of** the highest levels of the Egyptian Government.”⁴⁵⁸

B. *PERUPETRO’s Conduct Is Attributable to Peru*

341. PERUPETRO’s conduct is attributable to Peru because: (1) PERUPETRO is an organ of the Peruvian State under Article 4 of the ILC Articles; (2) its conduct in relation to Maple Gas involved the exercise of governmental authority and is therefore attributable to Peru under Article 5 of the ILC Articles and Article 10.1 of the Treaty; and (3) PERUPETRO is under the control and direction of the Peruvian government, and/or received instructions from the government regarding the transfer of the Block 126 License, and Peru is therefore responsible for PERUPETRO’s acts under Article 8 of the ILC Articles.

1. PERUPETRO Is an Organ of Peru

342. In assessing whether an entity is an organ of the State, international law looks to the character of the entity under domestic law, the nature of the functions exercised by the entity, the extent of the entity’s dependence on the State, and the powers exercised by the State over the entity. As explained below, based on PERUPETRO’s corporate structure, its capital, the public

⁴⁵⁵ ILC Articles, Article 8, Ex. CL-0005.

⁴⁵⁶ *Hully Enterprises Limited (Cyprus) v. Russian Federation*, UNCITRAL, PCA Case No. AA 226, Final Award, dated 18 July 2014, at para. 1480, Ex. CL-0047.

⁴⁵⁷ *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, dated 8 October 2009, at para. 201, Ex. CL-0035.

⁴⁵⁸ *Ampal-American Israel Corp., EGI-Fund (08-10) Investors LLC, EGI-Series Investments LLC, BSS-EMG Investors LLC and David Fischer v. Arab Republic of Egypt*, ICSID Case No. ARB/12/11, Decision on Liability and Heads of Loss, dated 21 February 2017, at para. 146, Ex. CL-0011.

nature of its functions, and the control of the Peruvian State over its management and decision making, PERUPETRO is an organ of Peru.

a) PERUPETRO exercises Peru's governmental functions

343. As Dr. Quiñones explains, the Peruvian Constitution “provides that *the renewable and non-renewable natural resources are ‘patrimony of the Nation’* and that the State is sovereign in their use.”⁴⁵⁹ Accordingly, “*only the State can administer and authorize their exploitation and use.*”⁴⁶⁰

344. This constitutional function of Peru has been delegated to PERUPETRO. As Dr. Quiñones explains, “*PERUPETRO thus acts as representative or delegate of the Peruvian State in awarding exploration and exploitation rights* over hydrocarbons [and has] the power to grant contractors a property right over the resources extracted in the granted area.”⁴⁶¹ In doing so, PERUPETRO may also bind other organs of Peru, such as the Ministry of Economy and Finance, Ministry of Defense, and the Ministry of the Interior, that are not parties to the service contract or license in question.⁴⁶² This reflects PERUPETRO's status as an organ of Peru.

345. PERUPETRO's power to enter into licenses and service contracts is provided for in Article 12 of the Hydrocarbons Law.⁴⁶³ In turn, that provision states that Article 1357 of the Civil Code applies to these agreements. Article 1357 is a provision that only applies to “guarantees and securities *granted by the State* by means of a contract.”⁴⁶⁴ Peruvian law therefore expressly recognizes the equivalence between PERUPETRO and the State.

346. PERUPETRO's action in representation of the State is also clear from the Preliminary Clause of the Block 126 License. The Preliminary Clause states that “*PERUPETRO intervenes by virtue of the authority granted by [the Hydrocarbons Law]*”⁴⁶⁵ and:

- a. “The *Hydrocarbons ‘in situ’ are State property*”;
- b. “[t]he *rights of ownership over the Hydrocarbons extracted are transferred by PERUPETRO to the Contractor*”; and
- c. “[t]he *Contractor is obliged to pay royalties in cash to the State, via PERUPETRO.*”⁴⁶⁶

⁴⁵⁹ Quiñones Legal Opinion-SPA, at para. 58.

⁴⁶⁰ Quiñones Legal Opinion-SPA, at para. 78.

⁴⁶¹ Quiñones Legal Opinion-SPA, at para. 87.

⁴⁶² Quiñones Legal Opinion-SPA, at para. 95.

⁴⁶³ Quiñones Legal Opinion-SPA, at para. 90.

⁴⁶⁴ Quiñones Legal Opinion-SPA, at para. 91.

⁴⁶⁵ Block 126 License Agreement, dated 23 October 2007, at Preliminary Clause, Section I., Ex. C-0008.

⁴⁶⁶ Block 126 License Agreement, dated 23 October 2007, at Preliminary Clause, Section II., Ex. C-0008.

347. Clause 22.6 of the Block 126 License also acknowledges this equivalence. It provides that upon termination of the License, the Contractor is obliged to “deliver the *property to the State, through PERUPETRO*.”⁴⁶⁷

- b) Like other Peruvian organs, PERUPETRO is an entity of public administration under Peruvian law

348. Under Peruvian law, PERUPETRO qualifies as an entity of public administration.⁴⁶⁸ This means that decisions taken by PERUPETRO are subject to administrative review under Peruvian law.⁴⁶⁹

349. In addition, PERUPETRO has other attributes of a State organ. For instance:

- a. PERUPETRO is subject to the National Comptroller System as it is a State entity. It is therefore subject to the Organic Law No. 27785 (“National Comptrollers System Act”) and regular public audits.⁴⁷⁰
 - b. Employees of PERUPETRO qualify as “Public Servants or Officers” under the National Comptrollers System Act and can be held criminally liable under that law.
 - c. PERUPETRO is also subject to requests for public disclosure under the Law 27806 (“Transparency and Public Information Access Act”).⁴⁷¹
- c) PERUPETRO is obliged to act in the public interest

350. As explained above, PERUPETRO is required to act on behalf of the State and for the greater interest of Peru. Article 3 of the Administrative Procedure Law also requires PERUPETRO to act with the “*purposes of public interest*.”⁴⁷² As Dr. Quiñones explains, “[a]n administrative act that does not respond to a public interest will be considered *an abuse of power* and, therefore, will be *null and void*.”⁴⁷³

351. Moreover, Peru is the sole beneficiary of PERUPETRO. Consistent with Peru’s eminent dominion over natural resources, Peru is the sole shareholder of PERUPETRO. As a matter of Peruvian law, Peru cannot sell, pledge, or otherwise dispose of these shares.⁴⁷⁴ Further, Article

⁴⁶⁷ Block 126 License Agreement, dated 23 October 2007, at Clause 22.6, Ex. C-0008.

⁴⁶⁸ Quiñones Legal Opinion-SPA, at para. 82 (“Even legal entities subject to the private regime (whether privately or State-owned) will be considered ‘entities’ and will therefore be subject to the Administrative Procedural Law when they exercise administrative functions delegated by the State, which is precisely the case of PERUPETRO.”).

⁴⁶⁹ Quiñones Legal Opinion-SPA, at paras. 89 (“[W]hen PERUPETRO qualifies oil companies, as well as when it negotiates, celebrates or modifies license or service contracts, it exercises a public delegated authority.”) and 115 (“It is also necessary to specify that if Maple’s Qualification has the status of an administrative act, [then] PERUPETRO’s decisions to leave it without effect (the Annulment of the Qualification) and to dismiss the appeal filed MAPLE (the Denial of the Appeal) also have such status. Thus, the three decisions are subject to the validity requirements for administrative acts.”).

⁴⁷⁰ Organic Law No. 27785, National Comptrollers System Act, at Arts. 3(f) and 17, Ex. C-0267.

⁴⁷¹ Law 27806, Transparency and Public Information Access Act, at Arts. 2 and 8, Ex. C-0268.

⁴⁷² Quiñones Legal Opinion-SPA, at para. 149.

⁴⁷³ Quiñones Legal Opinion-SPA, at para. 150.

⁴⁷⁴ Quiñones Legal Opinion-SPA, at para. 68.

6(g) of Supreme Decree No. 042-2005 and Article 3(g) of Law 26225 require PERUPETRO to transfer all revenue from its activities (net of its expenditures) to the Treasury within one working day of receipt of these payments.⁴⁷⁵ The combined effect of these provisions is that the Peruvian exchequer is the only beneficiary of PERUPETRO's activities.

d) Peru exercises operational control over PERUPETRO

352. Peru also exercises operational control over PERUPETRO. As described above, PERUPETRO is governed by: (i) the General Shareholders' Committee, the highest decision-making body within PERUPETRO; (ii) the Directorate, which functions under the supervision of the General Shareholders' Committee, and which holds management and legal representation powers and acts as a consulting body for the MINEM;⁴⁷⁶ and (iii) the General Management of PERUPETRO, which is led by the General Manager and is responsible for its day-to-day activities.⁴⁷⁷

353. The General Shareholders' Committee is composed of three members appointed by the State.⁴⁷⁸ By way of Supreme Resolution in 2009, the MINEM and President of Peru directed that the following government office-holders at the MINEM *automatically* be assigned a role on the General Shareholders' Committee: (i) the Minister of Energy and Mines; (ii) the Vice Minister of Energy and Mines; and (iii) the Secretary-General of Energy and Mines.⁴⁷⁹ They are appointed by the President of Peru and by the Minister of Energy and Mines.⁴⁸⁰

354. PERUPETRO's Directorate is composed of five members, all appointed by the government.⁴⁸¹ The Minister of Energy and Mines appoints three members as representatives of the MINEM, and the Minister of Economy and Finance appoints the remaining two members as representatives of the MINEF.⁴⁸² The President of Peru and the Minister of Energy and Mines jointly appoint one of the MINEM's representatives as the President of PERUPETRO's Directorate for a six-year term.⁴⁸³ The President of Peru, the Minister of Energy and Mines, and the Minister of Economy and Finance may replace the members at any time during their tenure.⁴⁸⁴

355. PERUPETRO's Directorate appoints the General Manager, who acts as its representative and oversees PERUPETRO's day-to-day operations. The General Manager can be removed in the Directorate's discretion at any time.⁴⁸⁵

⁴⁷⁵ Supreme Decree No. 042-2005 at Article 6(g), Ex. C-0101; Law No. 26225, at Article 3(g), Ex. C-0093.

⁴⁷⁶ PERUPETRO Bylaws, approved by the General Shareholders' Committee, at Article 45, Ex. C-0098.

⁴⁷⁷ Quiñones Legal Opinion-SPA, at paras. 69-70, 72.

⁴⁷⁸ PERUPETRO Bylaws, approved by the General Shareholders' Committee, at Article 16, Ex. C-0098.

⁴⁷⁹ Supreme Resolution No. 019-2009-EM, Ex. C-0106. A 2018 Supreme Resolution amended the 2009 Resolution, providing that the Vice Minister of Hydrocarbons of the MINEM (rather than the Vice Minister of the MINEM) should automatically assume one of the three roles. *See* Supreme Resolution No. 009-2018-EM, Ex. C--0230.

⁴⁸⁰ Law No. 26225, at Article 11, Ex. C-0093; Quiñones Legal Opinion-SPA, at para. 69.

⁴⁸¹ Law No. 26225, at Article 12, Ex. C-0093; Quiñones Legal Opinion-SPA, at paras. 70-71.

⁴⁸² Law No. 26225, at Article 12, Ex. C-0093; Quiñones Legal Opinion-SPA, at para. 70.

⁴⁸³ Law No. 26225, at Article 12, Ex. C-0093; Quiñones Legal Opinion-SPA, at para. 71.

⁴⁸⁴ The President of Peru has the discretion to remove the Directorate's President. *See* Law No. 26225, at Article 12, Ex. C-0093. *See also* PERUPETRO Bylaws, at Article 40, Ex. C-0098.

⁴⁸⁵ PERUPETRO Bylaws, approved by the General Shareholders' Committee, at Article 55, Ex. C-0098.

356. In addition to controlling all the governing bodies forming part of PERUPETRO, Peru also directly supervises the discharge of functions by PERUPETRO. For instance, the Minister of Energy and Mines and the Minister of Economy and Finance must formally approve PERUPETRO's issuance of licenses and service contracts relating to hydrocarbons.⁴⁸⁶

e) Peru exercises financial control over PERUPETRO

357. As explained above, Peru owns the entire share capital of PERUPETRO. PERUPETRO is also under the direct financial control of Peru. Article 6(g) of Supreme Decree No. 042-2005 and Article 3(g) of Law 26225 require PERUPETRO to transfer any income obtained from licenses and service contracts to the Treasury within the next business day, after deducting operational expenses.⁴⁸⁷ Any interest earned by PERUPETRO on its income or unused balance in its accounts must also be transferred to the Treasury.⁴⁸⁸

358. PERUPETRO's classification as an organ of Peru is also evident from the fact that it has no separate commercial purpose. PERUPETRO has no commercial objective or profit-making purpose, other than the governmental functions of administering, evaluating, and assigning rights over hydrocarbons at the behest, for the benefit, and under the control of Peru.

359. As a result, international organizations such as the International Monetary Fund that have assessed the nature of PERUPETRO's conduct have recommended that, for purposes of financial reporting, PERUPETRO "should be considered a *central government entity* ..." ⁴⁸⁹ The IMF noted that PERUPETRO undertakes "mostly *non-market activities* ... Specifically, *PeruPetro performs promotional and administrative functions*, including *granting rights to explore and produce petroleum* and *collecting royalty revenue on behalf of the government*. *It neither takes commercial interests nor receives production shares in petroleum licenses*, apart from four legacy contracts."⁴⁹⁰

360. For all of these reasons, PERUPETRO is an organ of Peru. Its conduct is therefore attributable to Peru.

2. PERUPETRO Exercises Governmental Authority

361. PERUPETRO also qualifies as an entity exercising "elements of governmental authority" under Article 10.1 of the Treaty and Article 5 of the ILC Articles.

362. As explained above, PERUPETRO derives its powers and functions from the Hydrocarbons Law.⁴⁹¹ In that role, PERUPETRO acts on behalf of Peru, to fulfill the Peruvian

⁴⁸⁶ Quiñones Legal Opinion-SPA, at para. 65.

⁴⁸⁷ Supreme Decree No. 042-2005, at Article 6(g), Ex. C-0101; Law No. 26225, at Article 3(g), Ex. C-0093.

⁴⁸⁸ Law No. 26225, at Article 20, Ex. C-0093.

⁴⁸⁹ International Monetary Fund, Peru: Fiscal Transparency Evaluation, dated 26 October 2015, at para. 36, Ex. C-0137.

⁴⁹⁰ International Monetary Fund, Peru: Fiscal Transparency Evaluation, dated 26 October 2015, at p. 20, note 2, Ex. C-0137.

⁴⁹¹ See above at paras. 51, 346-347.

government's mandate under the Peruvian Constitution to administer and regulate the exploration and exploitation of hydrocarbons.

363. Under the Hydrocarbons Law, PERUPETRO holds the responsibility for certifying that an oil company is qualified to enter into licenses.⁴⁹² As such, it carries out the essential role of “determining, after evaluation, the legal, technical, economic and financial capacity of an Oil Company to comply with all its contractual obligations.”⁴⁹³ PERUPETRO's Directorate, as the body responsible for supervising the General Manager, is “the competent body to declare [the] nullity” of such qualifications.⁴⁹⁴

364. In this case, PERUPETRO exercised governmental authority: (i) in considering, granting, and ultimately nullifying Maple Gas's qualification as a company to operate Block 126; (ii) in negotiating and agreeing the modifications to the Block 126 License and the Retention Period;⁴⁹⁵ and (iii) when its Directorate considered the modifications to the Block 126 License, the Retention Period and the transfer of Block 126 to Maple Gas.

365. PERUPETRO's exercise of governmental authority is confirmed by Article 10.1 of the Treaty, which expressly identifies the “grant[ing of] licenses” and the “approv[al of] commercial transactions” as conduct attributable to the State.⁴⁹⁶

366. These actions by PERUPETRO are accordingly attributable to Peru.

3. PERUPETRO Acted Under the Instructions, Direction or Control of Peru

367. As discussed above, the acts of an entity will be attributable to the State under Article 8 of the ILC Articles where the State controls that entity, for example through the presence of government officials in the entity's governing bodies. The State will also be responsible for the entity's acts where the government issues directions to the entity with the aim of bringing about a “particular result” or where the government approves the entity's conduct.⁴⁹⁷ As discussed below, the government controls and directs PERUPETRO's actions through its General Shareholders' Committee, Directorate, and General Manager. PERUPETRO's actions in certain respects, such as the issuance of licenses, must also be approved by the MINEM and the MINEF.

368. PERUPETRO's governing bodies are all either composed of or appointed by Peruvian government officials.⁴⁹⁸ In particular, as discussed above, the President of Peru, the Minister of Energy and Mines and the Minister of Economy and Finance collectively appoint all of the members of PERUPETRO's General Shareholders' Committee (all of whom are government officials) and its Directorate, and the Directorate then appoints the General Manager. The President of Peru, the Minister of Energy and Mines and the Minister of Economy and Finance may also replace any member of the Directorate at any time. The Directorate in turn may replace

⁴⁹² Quiñones Legal Opinion-SPA, at para. 80.

⁴⁹³ Supreme Decree No. 030-2004-EM, at Article 2 (providing that an oil company must be duly qualified by PERUPETRO before it can obtain a license to operate a block), Ex. C-0099.

⁴⁹⁴ Quiñones Legal Opinion-SPA, at para. 134.

⁴⁹⁵ Quiñones Legal Opinion-SPA, at para. 80.

⁴⁹⁶ Treaty, Article 10.1.2, Ex. CL-0001.

⁴⁹⁷ *See above* at para. 340.

⁴⁹⁸ *See above* at paras. 353-357.

the General Manager at any time. In this way, Peru effectively controls PERUPETRO's management and is able to direct its conduct.

369. Peru, and Mr. Kuczynski in particular, have previously misused this ability to control and direct PERUPETRO's actions in the context of licenses to explore and exploit hydrocarbons. As described above, the General Comptroller raised concerns that, when Mr. Kuczynski was the Minister of Economy and Finance, he had caused PERUPETRO to award an oil block to his former client, Hunt Oil, without public bidding.⁴⁹⁹ Moreover, on the last day of his presidency, Mr. Kuczynski signed five Supreme Decrees authorizing PERUPETRO to provide licenses for Tullow Oil to operate five oil fields, again without any public bidding process.⁵⁰⁰ After a public outcry, and criticism from Congress and Mr. Kuczynski's successor, the MINEM cancelled the Decrees.⁵⁰¹

370. With respect to the Block 126 License, as described above, PERUPETRO had supported the transfer of the License to Maple Gas in several concrete ways. It had qualified Maple Gas to operate Block 126, agreed to the modifications to the Block 126 License with Maple Gas and Frontera, and approved the Retention Period.⁵⁰² PERUPETRO even finalized the modified Block 126 License, sent that revised version to Maple Gas and Frontera, and invited Maple Gas and Frontera to sign it at PERUPETRO's offices, which they did.⁵⁰³

371. On 26 October 2017, PERUPETRO's General Manager told Maple Gas that the Block 126 License transfer would be approved by the Directorate on 2 November, and would be sent to the MINEM to issue the decree implementing it the next day, 3 November. He also told Maple Gas that PERUPETRO would send to Maple Gas the MINEM's acknowledgment of receipt, once the transfer was submitted.⁵⁰⁴ There was simply no indication that PERUPETRO's Directorate might not approve the Block 126 License.

372. When it failed to do so, PERUPETRO provided no explanation for this inexplicable reversal.⁵⁰⁵ If PERUPETRO's Directorate had identified a legitimate reason not to approve the license transfer, it could have explained the reason, and it could have given Maple Gas the opportunity to address any issue it had identified. Instead, despite months of close cooperation and assurances, PERUPETRO said nothing. In these circumstances, the most plausible conclusion is that the decision was directed by the executive branch of the government, which, as described above, controls PERUPETRO.

⁴⁹⁹ See above at para. 39. Mr. Kuczynski also signed the Supreme Decree approving the concession. "*Informe.21: Pedro Pablo Kuczynski y su relación con Hunt Oil: ¿otra puerta giratoria?*," Peru21, dated 19 February 2018, Ex. C-0218.

⁵⁰⁰ "*Congreso de la Republica del Perú*," El Heraldo, dated 18 April 2018, Ex. C-0228.

⁵⁰¹ "*Peru president cancels London-based Tullow's offshore oil contracts*," Reuters, dated 23 May 2018, Ex. C-0232.

⁵⁰² See above at paras. 197-201.

⁵⁰³ See above at paras. 212-213.

⁵⁰⁴ See above at para. 216.

⁵⁰⁵ See above at paras. 220, 224-228.

373. This is corroborated by the fact that the Minister of Energy and Mines, after initially telling Maple Gas that she would seek an explanation and provide an update, suddenly went silent and never responded.⁵⁰⁶

374. It is further confirmed by PERUPETRO's subsequent conduct. Rather than explaining the Directorate's decision, PERUPETRO manufactured a new and plainly pretextual justification to independently prevent the transfer of the Block 126 License when it issued, without any notice, the 27 November 2017 nullification letter. The only reason for PERUPETRO to do this was to provide cover for the Directorate; if the Directorate had made an independent and reasoned decision to reject the License transfer, rather than being directed to do so, PERUPETRO would not have had to contrive a new justification to block the transfer after the fact. Indeed, when pressed by Maple Gas for an explanation, Mr. Guzmán, PERUPETRO's General Manager, was evasive before finally admitting that the decision was beyond his control because it was a "*top-down directive*."⁵⁰⁷

375. In sum, PERUPETRO's decision regarding the License transfer was made by high-ranking government officials and government appointees. Moreover, under the circumstances here, the most plausible explanation was that PERUPETRO's actions were taken under the direction, instruction and control of the executive branch of the government. For both reasons, PERUPETRO's acts also are attributable to Peru under Article 8 of the ILC Articles.

C. *Petroperú's Conduct Is Attributable to Peru*

376. Petroperú's conduct also is attributable to Peru. Peruvian law endows Petroperú with governmental authority, including in the form of its role as supplier of last resort. Petroperú's conduct in exercise of that authority is attributable to Peru under Article 5 of the ILC Articles and Article 10.1 of the Treaty. Like PERUPETRO, Petroperú is also under the direction and control of the Peruvian government, and its actions at issue here were made on the instructions of the government. Its conduct is accordingly attributable to Peru under Article 8 of the ILC Articles as well.

1. Petroperú Exercises Governmental Authority

377. As discussed above, Peru is responsible under Article 10.1 of the Treaty and under Article 5 of the ILC Articles for conduct Petroperú takes in the exercise of governmental authority. This includes Petroperú's conduct as supplier of last resort.

378. Petroperú acts as the supplier of last resort for fuel and other petroleum products in accordance with Article 60 of the Peruvian Constitution. Article 60 provides that "*[t]he State may subsidiarily carry out direct or indirect business activities for ... high public interest or manifest national convenience, [and] only pursuant to express legal authorization.*"⁵⁰⁸ Petroperú is therefore equivalent to "the State" for purposes of Article 60, and its conduct as

⁵⁰⁶ See above at paras. 225-228.

⁵⁰⁷ Neumann WS-SPA, at para. 70.

⁵⁰⁸ 1993 Peruvian Constitution, at Article 60 ("The State may conduct business activities, directly or indirectly, for reasons of high public interest or manifest national convenience, and pursuant to express legal authorization."), Ex. C-0094. See also Quiñones Legal Opinion-SPA, at para. 231.

supplier of last resort must serve a “high public interest or manifest national convenience.” This “subsidiary” role of the State means that “*the State should only act as a business person in the absence of private initiative to meet a given demand.*”⁵⁰⁹

379. Petroperú also operates according to objectives based on annual and five-year plans that must be submitted to the MINEM and approved by a ministerial resolution, reflecting Petroperú’s purpose to achieve State objectives.⁵¹⁰ As Dr. Quiñones explains:

“PETROPERÚ does not play the same role or respond to the same objectives as a private company participating in the hydrocarbons sector. Rather, *it is an instrument of the Executive Branch* -which controls its general shareholders’ committee, its directorate and its general management- *for the development of public energy policies in Peru and the fulfillment of its political objectives.*”⁵¹¹

380. Furthermore, both Petroperú and Peru have recognized in public filings that Petroperú functions as part of the Peruvian State. In a recent public bond offering, Petroperú reserved the right to “plead *sovereign immunity* under the U.S. Foreign Sovereign Immunities Act of 1976.”⁵¹² In 2014, Peru issued a prospectus for a bond offering, in which it provided that “Peru’s non-financial public sector consists of “the government,” “the government’s various decentralized administrative and regulatory agencies,” “the local government,” and “*non-financial state-owned enterprises, such as Petroperu.*”⁵¹³

381. For all of these reasons, Petroperú clearly exercises elements of governmental authority. Its conduct at issue here is accordingly attributable to Peru under Article 5 of the ILC Articles and Article 10.1 of the Treaty.

2. Petroperú Acted Under the Instructions, Direction or Control of Peru

382. Petroperú’s conduct is attributable to Peru under Article 8 of the ILC Articles because: (a) Petroperú is under the direction and control of the government; and (b) Petroperú’s actions with respect to Maple Gas were taken under the instructions of the government.

a) Petroperú is under the direction and control of the government

383. As described above, Petroperú operates under the direct control of the MINEM.⁵¹⁴ It is a “State Company of the Energy and Mines Sector” in Peru, and is wholly owned by Peru.⁵¹⁵ Similar to PERUPETRO, Petroperú is governed by its General Shareholders’ Committee, Directorate, and General Management. The General Shareholders’ Committee is made up of five members.⁵¹⁶ The Minister of Energy and Mines acts as the President of the General

⁵⁰⁹ Quiñones Legal Opinion-SPA, at para. 232.

⁵¹⁰ Quiñones Legal Opinion-SPA, at para. 211.

⁵¹¹ Quiñones Legal Opinion-SPA, at para. 229.

⁵¹² Petroperú, Offering Memorandum, dated 4 February 2021, at p. iv, Ex. C-0261.

⁵¹³ Peru, Preliminary Prospectus Supplement, dated 22 July 2014, at p. S-32, Ex. C-0121.

⁵¹⁴ See above at para. 53.

⁵¹⁵ Quiñones Legal Opinion-SPA, at paras. 204, 211.

⁵¹⁶ Supreme Decree No. 014-2018-EM, at Article 10, Ex. C-0234.

Shareholders' Committee.⁵¹⁷ By Supreme Decree, the other four members are the Minister of Economy and Finance, the Vice Minister of Energy at the MINEM, the Vice Minister of Economy at the MINEF, and the Secretary General of the MINEM.⁵¹⁸ As such, all of the members of PERUPETRO's General Shareholders' Committee are also members of Petroperú's General Shareholders' Committee by virtue of their governmental office.

384. The General Shareholders' Committee is the highest decision-making body in Petroperú. It appoints all but one of the members of the Directorate and exercises supervisory control over the activities of Petroperú.⁵¹⁹

385. Petroperú's Directorate is composed of six members. Five of these members, including the President, are appointed by the General Shareholders' Committee, and the sixth is elected by Petroperú's employees. Only two of these six directors are required to be independent members who are professionals in their field and have an arms-length relationship with Petroperú.⁵²⁰

386. The General Shareholders' Committee has the power to, at any time, remove any director from the Directorate in its discretion. Given that the General Shareholders' Committee is controlled by the MINEM, as discussed above, the result is that the Directorate is controlled by the MINEM as well.⁵²¹

387. The General Manager oversees the day-to-day functioning of Petroperú. The General Manager of Petroperú is appointed by the Directorate. The Directorate also has the discretion to remove the General Manager at will.⁵²² As a result, as Dr. Quiñones explains, "the General Manager does not enjoy independence since, to avoid being removed, *they must follow and comply with the instructions of the Executive Branch, particularly those of the MINEM.*"⁵²³

388. This system of governance of Petroperú was put in place in 2006.⁵²⁴ As Dr. Quiñones explains, "[t]he consequence of this regulatory modification was that *PETROPERÚ's directorate and general management became directly controlled by the MINEM, with the resulting risk of political interference in its administration.*"⁵²⁵ In the words of another Peruvian legal commentator, Petroperú "has *replaced a holding company structure* with strictly

⁵¹⁷ Quiñones Legal Opinion-SPA, at para. 213.

⁵¹⁸ Supreme Decree No. 056-2008-EM, Ex. C-0104. Quiñones Legal Opinion-SPA, at para. 211. A 2018 Supreme Decree amended the 2008 Decree, providing that the Vice Minister of Hydrocarbons of the MINEM (rather than the Vice Minister of Energy) and the Vice Minister of Finance at the MINEF (rather than the Vice Minister of Economy) should automatically assume one of the four roles. See Supreme Decree No. 014-2018-EM, Ex. C-0234. A 2020 Supreme Decree amended the 2018 Decree, providing that the Vice Minister of Treasury of the MINEF (rather than the Vice Minister of Finance) should automatically assume one of the four roles. See PERUPETRO Bylaws, Ex. C-0098.

⁵¹⁹ Quiñones Legal Opinion-SPA, at para. 211.

⁵²⁰ Quiñones Legal Opinion-SPA, at para. 214.

⁵²¹ Quiñones Legal Opinion-SPA, at para. 216.

⁵²² Quiñones Legal Opinion-SPA, at para. 217.

⁵²³ Quiñones Legal Opinion-SPA, at para. 218.

⁵²⁴ Quiñones Legal Opinion-SPA, at para. 205. Previously, Petroperú had been supervised by the National Fund for the Financing of the State's Business Activity ("Fondo Nacional de Financiamiento de la Actividad Empresarial del Estado" or "FONAFE"), the State holding company in charge of supervising all public companies. See Quiñones Legal Opinion-SPA, at para. 206.

⁵²⁵ Quiñones Legal Opinion-SPA, at para. 206.

economic objectives with that of a state-owned company *with administrative objectives* and a *high risk of political interference*.”⁵²⁶

389. As described above, there are concrete examples of this political interference in Petroperú’s conduct. While Mr. Kuczynski was President, Petroperú’s Directorate, including the President who had been appointed by Mr. Kuczynski, resigned due to the government’s “*political interference*” in Petroperú’s management decisions.⁵²⁷ More recently, the Minister of Energy and Mines resigned because of ongoing political interference in the appointment of Petroperú’s General Manager, and he also accused Petroperú’s management of not following legal procedures and pursuing “other interests.”⁵²⁸

390. Given the presence of multiple government officials in Petroperú’s management bodies, as well as the history of political interference in its activities, Peru clearly controls and directs Petroperú’s conduct generally, and that conduct is accordingly attributable to Peru.

b) Petroperú was acting under the instructions of the government in this case

391. Petroperú was also acting under the instructions of the government with respect to the conduct at issue here. As described above, Petroperú is only permitted to exercise its governmental authority as supplier of last resort when there is not sufficient private supply to satisfy demand in the market.⁵²⁹ Petroperú purported to be acting in this subsidiary role when it intervened in Maple Gas’s relationships with CEPSA and Aguaytía Energy.⁵³⁰ There was, however, no legitimate basis for Petroperú to do so given that Maple Gas was willing and able to provide refined products to the Ucayali region after the change in its ownership.

392. Petroperú’s sudden aggressive (and baseless) demands for RAD Services, its threats to take the Refinery, and its continued pursuit of supply contracts that starved the Pucallpa Refinery of feedstock despite Maple Gas’s willingness to enter into contracts with suppliers, began after the Blue Oil Investment Group acquired Maple Gas.⁵³¹ This took place when Mr. Kuczynski was publicly at war with Blue Oil and Mr. Rojas.

393. As is clear from the INDECOPI chart above, where a particular market includes “one private company and one state company,” the State-owned enterprise has “*no subsidiary role*” if the private company “can absorb the demand released by the state company.”⁵³² This reflects the exceptional, public nature of the State’s intervention in the market through State entities like

⁵²⁶ M. Huapaya, *Legal Consequences of the Recently Approved Law to Strengthen and Modernize Petroperú*, Ex. C-0102. See also Quiñones Legal Opinion-SPA, at para. 206.

⁵²⁷ See above at paras. 59-60.

⁵²⁸ “Iván Merino: ‘Me retiré porque no acepté las presiones de Pacheco para que Chávez sea gerente de Petro-Perú,’” El Gas Noticias, dated 3 March 2022, Ex. C-0265.

⁵²⁹ See above at paras. 54-55.

⁵³⁰ See above at para. 258.

⁵³¹ “Petro-Perú entablará arbitraje contra Maple por refinería,” El Comercio Perú, dated 15 February 2018, Ex. C-0217. See above at paras. 98-117.

⁵³² See below at para.427; Quiñones Legal Opinion-SPA, at para. 242.

Petroperú, which is limited to circumstances of “*high public interest or manifest national convenience*.”⁵³³

394. There was no legitimate explanation for Petroperú’s conduct here. In particular, its repeated interventions in Maple Gas’s efforts to obtain the feedstock it needed to run the Pucallpa Refinery did not fit Petroperú’s role as the supplier of last resort; it required feedstock and refined products to be transported thousands of kilometers to Iquitos and Conchán and back to the Ucayali region, which was expensive, slow and risky; it was uneconomical for Petroperú; and it caused fuel shortages, unemployment, and environmental damage. In these circumstances, the most plausible explanation for Petroperú’s ongoing conduct was that it was at the instructions of the executive branch.

395. This is further corroborated by the close coordination of Petroperú’s and PERUPETRO’s conduct in destroying Maple Gas’s business. In December 2017, immediately after PERUPETRO’s failure to approve the transfer of the Block 126 License and the issuance of the nullification decision, the Pucallpa Refinery was forced to suspend refining operations.⁵³⁴ Immediately after that, in February 2018, both the MINEM and Petroperú publicly attacked Maple Gas, destroying its efforts to obtain new sources of revenue.⁵³⁵ Later, when Maple Gas made proposals to PERUPETRO for access to the Sheshea field in Block 126 in order to obtain a new source of feedstock for the Pucallpa Refinery, PERUPETRO asked Maple Gas to withdraw the administrative lawsuit it had filed to challenge the nullification decision. Immediately after Maple Gas did so, Petroperú filed its arbitration to terminate the Pucallpa Refinery Lease Agreement.⁵³⁶

396. The close coordination of the actions of PERUPETRO, Petroperú, and the MINEM against Maple Gas also demonstrates that both PERUPETRO and Petroperú were acting at the instruction of the executive branch. As described, the executive branch ultimately controls the governing bodies of both Petroperú and PERUPETRO (including through the government officials who sit on the General Shareholders’ Committee of both entities), and has a well-established history of political interference in both.⁵³⁷

397. Through its control of Petroperú’s management bodies, Peru exercises control of and direction over Petroperú’s actions. Peru also instructed Petroperú to carry out the acts in

⁵³³ 1993 Peruvian Constitution, at Article 60 (“The State may conduct business activities, directly or indirectly, for reasons of high public interest or manifest national convenience, and pursuant to express legal authorization.”), Ex. C-0094. As noted by Dr. Quiñones, INDECOPI’s Court for the Defense of Competition and Intellectual Property has repeatedly explained that one of the reasons why the State may only play a subsidiary role in the market is that when the State participates with private competitors, its participation has a tendency to “*distort fair competition*.” See Quiñones Legal Opinion-SPA, at para. 238 (quoting Resolution 0778-2011/SC1-INDECOPI, Ex. C-0112). This is because State enterprises enjoy an “artificial advantage” over their private competitors, including through access to public funding, the ability to sell products below cost, and/or access to State infrastructure. See Quiñones Legal Opinion-SPA, at para. 238 (same).

⁵³⁴ See above at para. 247.

⁵³⁵ See above at paras. 249-265.

⁵³⁶ See above at para. 276.

⁵³⁷ See above at paras. 51-66.

question here. Petroperú's acts are therefore attributable to Peru under Article 8 of the ILC Articles.

* * * * *

398. In sum, the actions of PERUPETRO and Petroperú are attributable to Peru. Peru is therefore responsible for the breaches of the Treaty arising out of PERUPETRO's and Petroperú's conduct, as discussed below.

V. PERU FAILED TO ACCORD THE MINIMUM STANDARD OF TREATMENT TO WORTH CAPITAL'S INVESTMENT

399. Under the Treaty, Peru is obligated to provide fair and equitable treatment in accordance with customary international law to Worth Capital's investment in Maple Gas. The fair and equitable treatment standard under customary international law and the Treaty is a broad and flexible standard that protects against State conduct that is arbitrary, discriminatory, lacking in due process, taken in bad faith, or otherwise inequitable.

400. Article 10.5 (Minimum Standard of Treatment) of the Treaty provides:

"1. Each Party shall accord to covered investments treatment in accordance with customary international law, ***including fair and equitable treatment*** and full protection and security.

"2. For greater certainty, paragraph 1 prescribes the ***customary international law minimum standard of treatment*** of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of 'fair and equitable treatment' and 'full protection and security' do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights."

401. Article 10.5 is to be interpreted in accordance with Annex 10-A of the Treaty, which provides:

"The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 10.5 results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 10.5, the customary international law minimum standard of treatment of aliens refers to ***all customary international law principles that protect the economic rights and interests of aliens.***"

402. For the reasons set out below, Peru failed to afford Worth Capital's investment "fair and equitable treatment" "in accordance with customary international law," and has therefore breached its obligations under Article 10.5 of the Treaty.

A. *The Minimum Standard of Treatment Under the Treaty*

403. Article 31(1) of the Vienna Convention on the Law of Treaties (the "VCLT") provides:

"A treaty shall be interpreted in good faith ***in accordance with the ordinary meaning to be given to the terms of the treaty*** in their context and in the light of its object and purpose."⁵³⁸

404. The tribunal in *Eco Oro Minerals v. Colombia*, in its assessment of the minimum standard of treatment (the "MST") pursuant to the VCLT, first looked to the ordinary meaning of the terms in the provision. It set out that "[t]he ordinary meaning of 'fair' and 'equitable' is

⁵³⁸ Vienna Convention on the Law of Treaties (the "VCLT"), at Article 31(1), Ex. CL-0004.

‘just’ ‘even-handed’ ‘unbiased’ and ‘legitimate.’ Thus, *actions that infringe a sense of fairness, equity and reasonableness will fall afoul of [the MST].*⁵³⁹

405. The tribunal in *Waste Management v. Mexico (II)*, in its assessment of the term “fair and equitable treatment,” defined the MST as follows:

“[T]he minimum standard of treatment of fair and equitable treatment is *infringed* by conduct attributable to the State and harmful to the claimant *if the conduct is arbitrary, grossly unfair, unjust or idiosyncratic*, is discriminatory and exposes the claimant to sectional or racial prejudice, or *involves a lack of due process* leading to an outcome which offends judicial propriety.”⁵⁴⁰

406. This standard set forth in *Waste Management (II)* is often used as the starting point for tribunals when assessing whether a State has breached its obligation to provide an investor with the MST.⁵⁴¹

407. Moreover, the MST and the autonomous fair and equitable treatment (“FET”) standard found in many investment protection treaties have converged over time and are today often described as equivalent in practice.⁵⁴² As the tribunal in *Merrill and Ring Forestry v. Canada* noted, over a decade ago, “the name assigned to the standard does not really matter. *What matters is that the standard protects against all such acts or behavior that might infringe a sense of fairness, equity and reasonableness.*”⁵⁴³

⁵³⁹ *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, dated 9 September 2021, at para. 747, Ex. CL-0034. The plain text and ordinary meaning of the term “fair and equitable treatment” is reinforced by the Treaty’s Preamble, which provides that its purpose is to, inter alia: “Ensure a predictable legal and commercial framework for business and investment; ... [and] Promote transparency ... in international trade and investment.” Treaty, Preamble, Ex. CL-0001 (bold and all-caps omitted).

⁵⁴⁰ *Waste Management, Inc. v. United Mexican States (“Number 2”)*, ICSID Case No. ARB(AF)/00/3, Award, dated 30 April 2004, at para. 98, Ex. CL-0092.

⁵⁴¹ See *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, dated 9 September 2021, at paras. 754-755, Ex. CL-0034; *Joshua Dean Nelson and Jorge Blanco v. United Mexican States*, ICSID Case No. UNCT/17/1, Award, dated 5 June 2020, at paras. 321-322, 351, 358, Ex. CL-0052; *Vento Motorcycles, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/17/3, Award, dated 6 July 2020, at paras. 276, 285, Ex. CL-0091; *William Ralph Clayton and others v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability, dated 17 March 2015, at paras. 442-443, Ex. CL-0094.

⁵⁴² See *Merrill and Ring Forestry L.P. v. Canada*, ICSID Case No. UNCT/07/1, Award, dated 31 March 2010, at para. 210 (“A requirement that aliens be treated fairly and equitably in relation to business, trade and investment is the outcome of this changing reality and as such it has become sufficiently part of widespread and consistent practice so as to demonstrate that it is reflected today in customary international law as *opinio juris*.”), Ex. CL-0060; *Pope & Talbot Inc. v. Government of Canada*, UNCITRAL, Award in Respect of Damages, dated 31 May 2002, at paras. 75-85, Ex. CL-0069; *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, dated 9 September 2021, at para. 752 (“[T]he Tribunal is satisfied that FET encompassing concepts of non-arbitrariness, transparency and fairness are recognised elements of customary international law within the confines of reasonableness.”), Ex. CL-0034.

⁵⁴³ *Merrill and Ring Forestry L.P. v. Canada*, ICSID Case No. UNCT/07/1, Award, dated 31 March 2010, at para. 210, Ex. CL-0060.

408. Commentators also support this position. Professor Schreuer, in his role as an expert in another case under the Treaty, states that:

“Article 10.5(1) of the TPA speaks of ‘customary international law, including fair and equitable treatment.’ In other words, *customary international law includes FET*. ... *FET is part of customary international law*.”⁵⁴⁴

409. Finally, it is well established that a breach of the MST can result from a series of State actions. In *Railroad Development Corp. v. Guatemala*, for example, the tribunal found that several acts “taken together demonstrate the arbitrary, grossly unfair, and unjust nature of [the State’s conduct] in this case.”⁵⁴⁵

410. As discussed below, Peru’s treatment of Worth Capital’s investment in Maple Gas was in clear violation of the MST. Peru’s conduct consisted of several acts that, taken either separately or together, constitute a breach of the MST. It was arbitrary, pretextual, undertaken in bad faith, and lacking in due process.

1. Article 10.5 of the Treaty Protects Against Arbitrary Conduct

411. It is undisputable that arbitrary State conduct violates the MST.⁵⁴⁶ As recognized by the tribunal in *Merrill and Ring Forestry v. Canada*, “[g]ood faith and the prohibition of arbitrariness are no doubt an expression of such general principles [of law], and no tribunal today could be asked to ignore these basic obligations of international law.”⁵⁴⁷

412. The tribunal in *Eco Oro Minerals* defined “arbitrariness” as follows:

“According to the Oxford English Dictionary, ‘arbitrary’ means ‘[d]ependent on will or pleasure’ or ‘[b]ased on mere opinion or preference as opposed to the real nature of things, *capricious, unpredictable, inconsistent*.’ A similar definition is found in Black Law’s Dictionary which defines the word ‘arbitrary’ as ‘[d]epending on individual

⁵⁴⁴ *Latam Hydro LLC and CH Mamacocha S.R.L. v. Republic of Peru*, ICSID Case No. ARB/19/28, Claimant’s Comments on the Non-Disputing Party Submission by the United States of America, dated 8 December 2021, at para. 57, Ex. CL-0054.

⁵⁴⁵ *Railroad Development Corp. v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award, dated 29 June 2012, at para. 235, Ex. CL-0071. See also *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, dated 22 September 2014, at para. 566, Ex. CL-0046.

⁵⁴⁶ See *Waste Management, Inc. v. United Mexican States (II)*, ICSID Case No. ARB(AF)/00/3, Award, dated 30 April 2004, at para. 98, Ex. CL-0092; *Mobil Investments Canada Inc. and Murphy Oil Corp. v. Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum (Redacted), dated 22 May 2012, at para. 153, Ex. CL-0063; *Railroad Development Corp. v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award, dated 29 June 2012, at para. 235 (“In the Tribunal’s view, the manner in which and the grounds on which Respondent applied the *lesivo* remedy in the circumstances of this case constituted a breach of the minimum standard of treatment in Article 10.5 of CAFTA by being, in the words of *Waste Management II*, ‘arbitrary, grossly unfair, [and] unjust.’”), Ex. CL-0071.

⁵⁴⁷ *Merrill and Ring Forestry L.P. v. Canada*, ICSID Case No. UNCT/07/1, Award, dated 31 March 2010, at para. 187, Ex. CL-0060.

discretion; of, relating to, or involving *a determination made without consideration of or regard for facts, circumstances, fixed rules or procedures.*”⁵⁴⁸

413. Similar definitions of “arbitrariness” have been adopted by tribunals applying the FET standard. Professor Schreuer, in his role as an expert in *EDF (Services) Limited v. Romania*, listed four “categories of measures” that he considered to be arbitrary. These categories, set out below, have been endorsed by tribunals applying both the MST and FET standard:

“a. a measure that inflicts damage on the investor without serving any apparent legitimate purpose;

b. a measure that is not based on legal standards but on discretion, prejudice or personal preference;

c. a measure taken for reasons that are different from those put forward by the decision maker; [and]

d. a measure taken in wilful disregard of due process and proper procedure.”⁵⁴⁹

414. As discussed below, Peru’s treatment of Worth Capital’s investment was arbitrary and in breach of its obligations under Article 10.5 of the Treaty.

2. Article 10.5 of the Treaty Prohibits Conduct that Lacks Due Process

415. It is well settled that a failure to provide due process, which forms an integral part of the rule of law, violates the MST.⁵⁵⁰ In *The Loewen Group v. United States of America*, for example, the tribunal, applying the MST under the NAFTA, held that neither bad faith nor malicious intent are “*an essential element of unfair and inequitable treatment*,” and that “[m]anifest injustice *in the sense of a lack of due process* ... is enough.”⁵⁵¹ In *Joshua Dean Nelson v. Canada*, the

⁵⁴⁸ *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, dated 9 September 2021, at para. 757, Ex. CL-0034; *S.D. Myers, Inc. v. Government of Canada*, UNCITRAL (1976), Partial Award, dated 13 November 2000, at para. 263 (“The Tribunal considers that a breach of [the MST] occurs only when it is shown that an investor has been treated in such an unjust or arbitrary manner that the treatment rises to the level that is unacceptable from the international perspective.”), Ex. CL-0074.

⁵⁴⁹ *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, dated 9 September 2021, at para. 760, Ex. CL-0034; *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, dated 8 October 2009, at para. 303, Ex. CL-0035.

⁵⁵⁰ See *The Loewen Group Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)98/3, Award, dated 26 June 2003, at para. 132, Ex. CL-0085; *Waste Management, Inc. v. United Mexican States* (“*Number 2*”), ICSID Case No. ARB(AF)/00/3, Award, dated 30 April 2004, at para. 98, Ex. CL-0092; *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, dated 22 September 2014, at para. 609 (“Respondent failed to accord Claimant FET regarding the whole process leading to the termination of the Brisas Concession by failing *inter alia* to respect Claimant’s due process rights.”), Ex. CL-0046.

⁵⁵¹ *The Loewen Group Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)98/3, Award, dated 26 June 2003, at para. 132, Ex. CL-0085.

tribunal held that a State violates the MST where “[t]he lack of due process has lead [to] ... a complete lack of transparency and candour in an administrative process.”⁵⁵²

416. In *Gold Reserve v. Venezuela*, the tribunal found that Venezuela had breached the FET standard in revoking without notice the claimant company’s construction permit based on alleged environmental concerns, despite the fact that the environmental risks attendant to the construction had been assessed and the project approved less than a year prior to the revocation. The tribunal held:

“Respondent’s conduct did not accord with the obligations required by the FET standard in the BIT. Respondent **issued the Revocation Order without allowing Claimant an opportunity to be heard.** ...

Respondent failed to accord Claimant FET regarding the whole process leading to the termination of the Brisas Concession by **failing inter alia to respect Claimant’s due process rights.** ...

Respondent’s actions were part of a well-coordinated program aimed at cancelling the Brisas Project. ... The need to terminate the two Concessions expeditiously as a part of the same process led Respondent to deny Claimant’s due process rights by failing to initiate a specific administrative procedure to revoke the extension of the two Concessions, thus violating the FET standard also in that regard.”⁵⁵³

417. As discussed below, Peru’s actions towards Worth Capital’s investment failed to respect Worth Capital’s and Maple Gas’s due process rights, and therefore Peru has breached its obligations under Article 10.5 of the Treaty.

3. Article 10.5 of the Treaty Protects Against Bad Faith Conduct

418. Where a State treats a foreign investment in bad faith, this violates the MST.⁵⁵⁴ Tribunals applying the MST have held that, while not required, a finding of bad faith will suffice for a finding of breach of the MST. Bad faith has been found in circumstances where the State willfully targeted an investor.⁵⁵⁵

⁵⁵² *Joshua Dean Nelson and Jorge Blanco v. United Mexican States*, ICSID Case No. UNCT/17/1, Award, dated 5 June 2020, at para. 358, Ex. CL-0052.

⁵⁵³ *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, dated 22 September 2014, at paras. 600, 609, 614, Ex. CL-0046.

⁵⁵⁴ See *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, dated 9 September 2021, at para. 754 (“[S]ubjective bad faith [has...] been found to be in breach of FET. A State may treat foreign investment unfairly and inequitably without necessarily acting in bad faith.”) and para. 762 (the tribunal assessed whether the State “did not act in good faith as required by international law”), Ex. CL-0034; *Cargill, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, dated 18 September 2009, at para. 271, Ex. CL-0022; *Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, dated 12 November 2010, at paras. 300-301, Ex. CL-0042; *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, dated 22 September 2014, at para. 591, Ex. CL-0046.

⁵⁵⁵ See *Cargill, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, dated 18 September 2009, at paras. 271, 299-300, Ex. CL-0022.

419. The tribunal in *Frontier Petroleum*, applying the FET standard, similarly explained:

“Bad faith action by the host state includes the use of legal instruments for purposes other than those for which they were created. It also includes a conspiracy by state organs to inflict damage upon or to defeat the investment, the termination of the investment for reasons other than the one put forth by the government, and expulsion of an investment based on local favouritism. Reliance by a government on its internal structures to excuse non-compliance with contractual obligations would also be contrary to good faith.

It follows from these authorities that *action by the host state that is not in good faith is at variance with the fair and equitable treatment promise*. However, not every violation of the standard of fair and equitable treatment requires bad faith. *The fair and equitable treatment standard may be violated, even if no mala fides is involved.*⁵⁵⁶

420. Where a State fails to give the true reasons for its decisions regarding an investment, it acts in bad faith. As Professor McLachlan explains:

“[T]he State, when taking a decision that affects an investor in the exercise of its public administration, must act in good faith. Where reasons are given, they must be stated clearly and consistently not deceptively.”⁵⁵⁷

421. As discussed below, Peru’s conduct towards Worth Capital’s investment was taken in bad faith. As such, Peru breached its obligations under Article 10.5 of the Treaty.

B. Peru Failed To Accord the Minimum Standard of Treatment to Worth Capital’s Investment in Maple Gas

422. As discussed above, a host State violates the MST where it treats an investment arbitrarily or without due process, or where it targets a particular investment or otherwise acts in bad faith. Here, Petroperú abused its role as supplier of last resort during Mr. Kuczynski’s presidency in an effort to drive Maple Gas out of business. When Maple Gas attempted to repair the damage Petroperú had caused by acquiring the Block 126 License, Peru intervened once again, and PERUPETRO arbitrarily refused to approve the transfer, despite having taken a series of concrete steps in support of the transfer over the preceding months. PERUPETRO then issued its obviously pretextual nullification decision as an attempt to justify its unexplained about-face after the fact. Petroperú and the MINEM continued the attack on Worth Capital’s investment through their public threats and false allegations in February 2018.

423. Peru’s conduct violated the MST in multiple respects. As discussed below: (1) Petroperú abused its role as supplier of last resort; (2) PERUPETRO’s failure to approve the transfer of the Block 126 License, its nullification decision, and its rejection of Maple Gas’s appeal of that

⁵⁵⁶ *Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, dated 12 November 2010, at paras. 300-301, Ex. CL-0042.

⁵⁵⁷ C. McLachlan, L. Shore, M. Weiniger, *International Investment Arbitration: Substantive Principles*, 2d ed., 2017, at p. 322, Ex. CL-0099.

decision were arbitrary, pretextual, and fundamentally lacking in due process; and (3) Peru acted in bad faith.

1. Petroperú Abused Its Role as Supplier of Last Resort

424. Where, as here, a State abuses its governmental authority, this conduct violates the MST.⁵⁵⁸ As discussed above, Petroperú exercises governmental authority, including in its role as supplier of last resort.⁵⁵⁹ In this case, it abused that authority by wrongfully intervening in Maple Gas’s efforts to obtain feedstock for the Pucallpa Refinery. Petroperú also abused its role by selling refined products in the Ucayali region at lower prices than it had previously, which undercut Maple Gas’s prices and furthered Petroperú’s strategy to turn the Pucallpa Refinery into a terminal and storage facility for its own use.⁵⁶⁰ In this way, Petroperú breached the MST.

425. As discussed above, Petroperú must carry out its activities in accordance with Article 60 of the Constitution.⁵⁶¹ As Dr. Quiñones explains, this means that Petroperú must act “*in a subsidiary or complementary manner to private activity, without engaging in predatory practices* that affect private competitors.”⁵⁶² Moreover, Petroperú may only take on this subsidiary role as supplier of last resort in exceptional circumstances of “*high public interest or manifest national convenience*.”⁵⁶³

426. Peru’s competition agency, the National Institute for the Defense of Competition and Protection of Intellectual Property (“INDECOPI”⁵⁶⁴), has created a chart to graphically represent the limitations on the subsidiary role of State entities like Petroperú.⁵⁶⁵

⁵⁵⁸ *Frontier Petroleum Services Ltd. v. Czech Republic*, PCA Case No. 2008-09, Final Award, dated 12 November 2010, at paras. 300-301, Ex. CL-0042.

⁵⁵⁹ *See above* at paras. 378-382.

⁵⁶⁰ *See above* at paras. 109-117, 124-134.

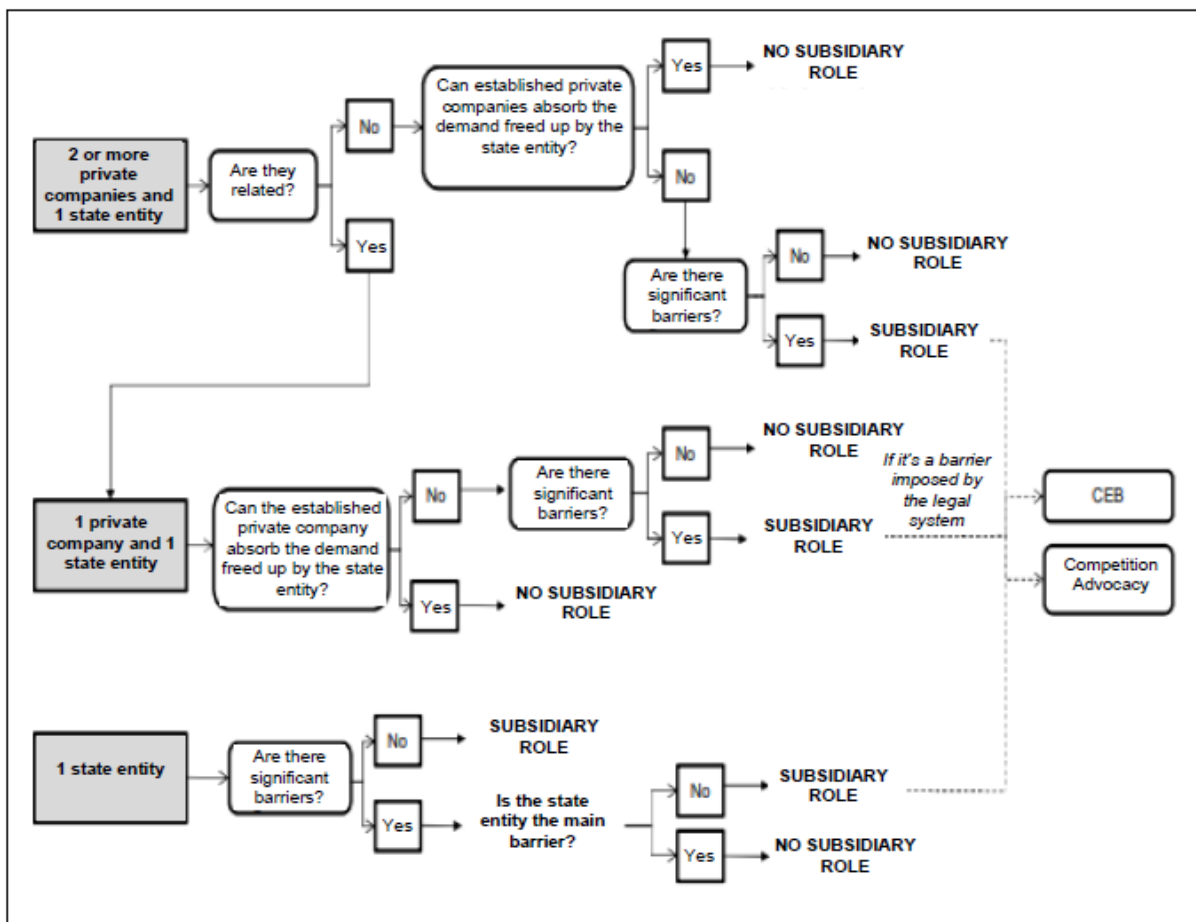
⁵⁶¹ *See above* at paras. 379, 426.

⁵⁶² Quiñones Legal Opinion-SPA, at para. 247.

⁵⁶³ 1993 Peruvian Constitution, at Article 60 (“The State may conduct business activities, directly or indirectly, for reasons of high public interest or manifest national convenience, and pursuant to express legal authorization.”), Ex. C-0094. *See also* Quiñones Legal Opinion-SPA, at para. 231.

⁵⁶⁴ In Spanish, the “Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual.”

⁵⁶⁵ Quiñones Legal Opinion-SPA, at para. 244.



427. In particular, where a given market includes “one private company and one state company,” the State-owned enterprise has “*no subsidiary role*” where the private company “can absorb the demand released by the state company.” In such a case, the State-owned enterprise must act like an ordinary commercial party. Otherwise, State-owned enterprises would enjoy an “artificial advantage” over their private competitors – including through access to public funding, the ability to sell products below cost, and/or access to State infrastructure – which has a tendency to “*distort fair competition*” in the market.⁵⁶⁶

428. Petroperú acknowledged that it was acting in its role as the supplier of last resort when it intervened to buy feedstock from CEPASA and Aguaytía Energy that Maple Gas needed for the Pucallpa Refinery.⁵⁶⁷ Indeed, both the MINEM and Petroperú publicly justified Petroperú’s conduct on that basis.⁵⁶⁸ In doing so, Petroperú asserted that it “*has no particular commercial*

⁵⁶⁶ Quiñones Legal Opinion-SPA, at para. 238 (quoting Resolution 0778-2011/SC1-INDECOPI, Ex. C-0112).

⁵⁶⁷ “*Petro-Perú entablará arbitraje contra Maple por refinería,*” El Comercio Perú, dated 15 February 2018, Ex. C-0217.

⁵⁶⁸ See above at paras. 252-253, 257-260.

*interest in taking the complete production of both companies and even less at the cost of harming a third party.*⁵⁶⁹ However, this is precisely what Petroperú did.

429. Maple Gas was a private company that was willing and able to purchase feedstock for the Pucallpa Refinery to supply the local market. Despite this, Petroperú actively worked to undermine Maple Gas's efforts through its interventions to purchase feedstock from CEPSA and Aguaytía Energy, and to do so on terms that made no sense commercially or operationally. Indeed, it did so even though it had to incur the added costs, inefficiencies and risks of shipping that feedstock long distances to its own refineries in Iquitos and Conchán. There was no legitimate reason for Petroperú to do this, and it was contrary to Petroperú's role as the supplier of last resort, particularly given Maple Gas's ability to purchase that feedstock and process it locally at the Pucallpa Refinery.⁵⁷⁰

430. The terms of Petroperú's contracts with CEPSA and Aguaytía Energy made no commercial sense. As described above, Petroperú repeatedly agreed to contracts with CEPSA at prices that were significantly lower than Maple Gas was willing to pay CEPSA. It appears that CEPSA was willing to enter into these uncommercial contracts because Petroperú was "the State," and it felt pressured "to have an alliance with the company of the State."⁵⁷¹ However, it was contrary to Petroperú's role to enter into below market contracts with suppliers, or to do so where a private company "can absorb the demand released by the state company."⁵⁷²

431. Moreover, even though Petroperú was able to secure CEPSA's crude at substantially lower prices than Maple Gas was willing to pay, those contracts were not economical for Petroperú, including because of the costs associated with shipping the crude to Iquitos and back.⁵⁷³ Petroperú was also selling refined products in the Ucayali region at prices that were lower than it had sold them for previously, which forced Maple Gas to lower its prices and further hurt Maple Gas's business. As Mr. Rojas explains, "***Petroperú's pricing appeared to be another strategy to drive [Maple Gas] from the market.***"⁵⁷⁴

432. Mr. Katabi likewise explains that "*[t]his was not a profitable operation for Petroperú. We knew Petroperú did not make any money on it because we knew how much it paid for the*

⁵⁶⁹ Petroperú, "*Petroperú aclara que no tiene injerencia en disputas entre privados en Pucallpa,*" dated 26 February 2018, Ex. C-0222.

⁵⁷⁰ See above at paras. 161-175.

⁵⁷¹ Neumann WS-SPA, at para. 35.

⁵⁷² See above at para. 427-428.

⁵⁷³ See above at paras. 88-89. See also Katabi WS-ENG, at para. 44; Rojas WS-ENG, at paras. 43-45.

⁵⁷⁴ Rojas WS-ENG, at para. 42. See also Katabi WS-ENG, at para. 46 ("We ... believed that Petroperú would welcome our efforts to have the Pucallpa Refinery operate at capacity. But we were wrong. ... It appeared that Petroperú wanted the Pucallpa Refinery to function as Petroperú's storage terminal rather than to operate as an actual refinery run by a commercial company and supplying the Ucayali region. Indeed, Petroperú went one step further and started selling refined products at lower prices than it had sold them previously, undercutting our prices.").

crude, how much the transportation cost, and the price at which it sold its refined products in the Ucayali region.”⁵⁷⁵

433. Given the lack of any commercial rationale for Petroperú’s conduct, Maple Gas did not understand why Petroperú continued to intervene. Mr. Rojas explains that Maple Gas did not understand what Petroperú was doing:

*“Its actions did not make economic sense ... After Petroperú had met the needs of Pucallpa at considerable cost to the Peruvian taxpayer, there was now an opportunity for private enterprise to take its place. ... Petroperú was resisting it by attempting to perpetuate its presence in the market, taking measures to block private investment.”*⁵⁷⁶

434. Petroperú’s interventions to purchase CEPESA’s crude and send it to be refined in Iquitos were publicly criticized at the time, including by its own former President, who said *“[i]t would be logical if part of Cepsa’s crude that Petroperú buys would stay in Pucallpa and that Cepsa make a deal directly with Maple, but this is not happening.”*⁵⁷⁷

435. As described above, Petroperú’s contractual arrangements to acquire all of CEPESA’s crude were also repeatedly criticized in the press, who noted that *“CEPSA could supply the refinery 100% with its production ... [n]evertheless, today Petroperú acquires 100% of CEPESA’s crude production.”*⁵⁷⁸

436. Petroperú’s contractual arrangements to purchase natural gasoline from Aguaytía Energy also did not make sense, either commercially or in Petroperú’s role as the supplier of last resort, and further reduced the feedstock available for the Pucallpa Refinery. Petroperú agreed to pay substantially higher prices than Maple Gas had paid, and did so despite the fact that there were no other buyers who would pay the prices that Petroperú agreed to pay.⁵⁷⁹ As described above, it appears that Petroperú did so in order to subsidize Aguaytía Energy’s construction of facilities

⁵⁷⁵ Katabi WS-ENG, at para. 45. See also Neumann WS-SPA, at para. 38 (“Given the costs and impracticalities Petroperú incurred in acquiring CEPESA’s crude, it did not make sense to me that Petroperú would continue seeking to acquire CEPESA’s crude, rather than let Maple Gas, the local supplier, obtain sufficient feedstock for the Pucallpa Refinery. Petroperú seemed to be intentionally trying to harm Maple Gas by interfering in our ability to obtain a supply of feedstock.”).

⁵⁷⁶ Rojas WS-ENG, at para. 43. See also Neumann WS-SPA, at para. 11 (“Petroperú’s ongoing efforts to acquire local feedstock, ... *did not make sense to us in the circumstances.*”).

⁵⁷⁷ “*Toda la producción de crudo del Lote 131 es llevada a la región Iquitos,*” La República, dated 7 December 2016, at p. 12, Ex. C-0170.

⁵⁷⁸ “*Amenazan con huelga regional por el cierre de la refinería de Pucallpa,*” Diario Impetu, dated 8 February 2018, Ex. C-0213. Similarly, as described in more detail above, local leaders complained that: *“The crude oil was exploited and refined in Ucayali, this was enough to supply our market at production prices;* but economic interests now take it to Iquitos in barges and later return only part of it, which is not sufficient, that is why they bring some from Lima with higher costs.” *“Anuncian medidas de lucha por inminente cierre de la refinería de Pucallpa,”* Diario Impetu, dated 13 January 2018, Ex. C-0208. See above at paras. 249-256.

⁵⁷⁹ See above at paras. 169-170. See also Katabi WS-ENG, at para. 13 (“Maple Gas was the only buyer for Aguaytía Energy’s natural gasoline as it needs to be refined to be usable and there was no other refinery nearby. It could not be economically transported to any other refinery in Perú. Aguaytía could sell it without refining to some nearby operators as an additive to dilute heavy crude, but it would command a much lower price.”).

that would allow it to bypass the Pucallpa Refinery and instead ship its natural gasoline by tanker truck to Petroperú's refinery at Conchán.⁵⁸⁰

437. As with Petroperú's arrangements with the feedstock it bought from CEPESA, its arrangements with Aguaytía Energy were costly, inefficient and risky. To refine this feedstock, Petroperú had to load Aguaytía Energy's natural gasoline onto tanker trucks, which then needed to drive nearly 800 kilometers, across the Andes, to Petroperú's Conchán refinery. If Petroperú then wanted to ship the refined products back to the Ucayali region, the tanker trucks had to make the return 800-kilometer journey.⁵⁸¹ In contrast, if this feedstock had been sent to the Pucallpa Refinery, it would have all been used to supply refined products to the Ucayali region.

438. Petroperú's conduct appears to have been intended to deprive the Pucallpa Refinery of the feedstock it required to operate as a refinery, and instead to allow Petroperú to turn it into a terminal for its own use.⁵⁸² In any event, Petroperú's conduct was plainly inconsistent with its subsidiary role as supplier of last resort. Instead of competing in the market as an ordinary commercial actor, Petroperú abused its position as "the State" to harm Maple Gas's business and sought to justify its conduct by reference to its role as supplier of last resort. Moreover, by purporting to act in accordance with its subsidiary role as a cover for its targeting of Maple Gas, Petroperú engaged in conduct "taken for reasons that are different from those put forward by the decision maker."⁵⁸³ As a result, Peru violated the MST through Petroperú's abusive and arbitrary conduct.

2. PERUPETRO's Decision To Block the Transfer of the Block 126 License Was Arbitrary and Pretextual and Lacked Due Process

439. Where, as here, a State acts arbitrarily or pretextually or in a way that fundamentally lacks due process, this conduct violates the MST. PERUPETRO's failure to approve the transfer of the Block 126 License, its issuance of the nullification decision, and its rejection of Maple Gas's appeal of that decision were arbitrary, pretextual, and violated due process. As discussed below: (a) there was no legitimate basis for PERUPETRO's unexplained decision not to approve the transfer of the Block 126 License; (b) PERUPETRO's after-the-fact nullification decision was a "top-down directive" that was both pretextual and contrary to due process; and (c) PERUPETRO's subsequent rejection of Maple Gas's appeal was also pretextual and violated due process.

- a) There was no legitimate basis for PERUPETRO's decision not to approve the transfer of the Block 126 License

440. As described above, PERUPETRO and the MINEM had encouraged Maple Gas's plan to apply for the transfer of the Block 126 License after Worth Capital acquired Maple Gas, and that plan was beneficial for everyone. It meant that Frontera would not be forced to abandon the Block; Maple Gas would have an independent source of feedstock for the Pucallpa Refinery,

⁵⁸⁰ See above at para. 170.

⁵⁸¹ See above at paras. 171-172.

⁵⁸² See above at paras. 161-175. See also Katabi WS-ENG, at para. 46.

⁵⁸³ *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, dated 8 October 2009, at para. 303, Ex. CL-0035.

which would allow it to provide refined products to the Ucayali region; the Block would begin production; and Peru would begin to receive royalties from it.⁵⁸⁴

441. After this initial support, Maple Gas worked cooperatively with PERUPETRO over a number of months to agree on the modifications needed to transfer the License and to satisfy the various requirements for the transfer. In these discussions, PERUPETRO never suggested that it had any concerns with the transfer, and issued monthly public reports that the transfer was progressing. PERUPETRO ultimately approved all of the requirements necessary for the transfer to go forward. It qualified Maple Gas to operate Block 126, it agreed the modifications to the Block 126 License, and it approved the Retention Period.⁵⁸⁵

442. After PERUPETRO invited Maple Gas and Frontera to its offices to sign the modified Block 126 License, PERUPETRO assured Maple Gas that its Directorate would approve the Block 126 License the following week, and that it would send the approved license to the MINEM the day after.⁵⁸⁶

443. Throughout that process, there had been no suggestion of any potential issues with the approval or of the possibility that PERUPETRO's Directorate might not approve the transfer. Moreover, PERUPETRO and the MINEM had previously approved the transfer of the Block 126 License on several occasions. Given the collaborative working relationship with PERUPETRO and its approvals of all the required steps, Maple Gas had no reason to doubt the assurances it received that PERUPETRO's Directorate would approve the transfer at its 2 November meeting. Instead, PERUPETRO went silent after the meeting, and Maple Gas began to hear nonsensical rumors that the Directorate was concerned about the possibility that the Comptroller General might criticize PERUPETRO for failing to call Frontera's \$2.8 million performance bond and that PERUPETRO's Directorate was not going to approve the transfer to Maple Gas for "political" reasons.⁵⁸⁷

444. When PERUPETRO's General Manager met with Maple Gas on 7 November, he confirmed that the Directorate had not approved the Block 126 License, but he did not provide a clear explanation of the reason.⁵⁸⁸

445. Although Maple Gas continued to press for more information after that meeting [and for a reconsideration of the Directorate's decision (on whatever basis it had been made)], PERUPETRO did not respond, and it never provided an explanation as to why its Directorate had not approved the transfer on 2 November 2017.⁵⁸⁹

446. Similarly, after Maple Gas arranged an urgent meeting with the Minister of Energy and Mines, who has formal oversight over PERUPETRO as the President of its General

⁵⁸⁴ See above at paras. 146-152.

⁵⁸⁵ See above at paras. 190-211.

⁵⁸⁶ See above at paras. 212-217.

⁵⁸⁷ Neumann WS-SPA, at para. 56; Coz WS-SPA, at para. 41.

⁵⁸⁸ Neumann WS-SPA, at paras. 57-58. As explained above, at the meeting Mr. Guzmán alluded to the possibility that the Directorate had been concerned that the Comptroller General might criticize it if did not call Frontera's performance bond. However, this did not make any sense, and PERUPETRO never formally stated that this was the reason for the Directorate's refusal to approve the transfer. See above at paras. 218-222.

⁵⁸⁹ See above at paras. 223-228.

Shareholders' Committee, she never provided any explanation as to why the transfer had not been approved. Instead, like PERUPETRO's management, she went silent, and Maple Gas was left without any explanation for the Directorate's decision.⁵⁹⁰

447. This sequence of events alone makes clear that PERUPETRO's failure to approve the transfer of the Block 126 License was not an independent and reasoned decision. If there had been a legitimate reason for PERUPETRO's decision, both it and the Minister of Energy and Mines would have provided it. The suggestion that PERUPETRO's Directorate was concerned that the Comptroller General might criticize it for not calling Frontera's performance bond is utterly implausible. As described above, PERUPETRO and the MINEM had approved previous transfers of the Block 126 License, and Maple Gas was obligated to provide a new performance bond in place of Frontera's.⁵⁹¹ This cannot have been the reason behind the Directorate's decision, and it was not seriously offered as such.

448. Thus, at best, the decision was arbitrary. Moreover, as discussed above, the more obvious explanation is that PERUPETRO's Directorate was instructed not to approve the transfer to Maple Gas, as the rumors at the time indicated. In either case, PERUPETRO's action was taken without a legitimate basis – and therefore violated the MST.

- b) PERUPETRO's nullification decision was a top-down directive that was pretextual and issued in violation of fundamental principles of due process

449. The lack of any legitimate justification for PERUPETRO's and the MINEM's conduct is confirmed by PERUPETRO's subsequent nullification decision, which was a "top-down directive" that was both obviously pretextual and issued with a blatant disregard for Maple Gas's due process rights.

450. As described in more detail above, after weeks of silence from PERUPETRO and the MINEM, and without providing any notice or the opportunity to respond, PERUPETRO issued its decision purporting to "leave[] without effect" Maple Gas's qualification to operate Block 126.⁵⁹²

451. PERUPETRO's 27 November 2017 letter did not purport to justify the Directorate's earlier failure to approve the transfer on the basis that it had determined that Maple Gas lacked the capacity to be qualified to operate Block 126, and it did not suggest that the Directorate had any concerns about Maple Gas's capacity when it made its decision. Indeed, PERUPETRO only purported to have "discovered" this lack of capacity after the Directorate's 2 November meeting, and PERUPETRO's letter made no reference at all to the Directorate's failure to approve the transfer. Moreover, without explaining why it had done so, PERUPETRO indicated that it had reconsidered its 11 August 2017 qualification of Maple Gas and had concluded it had been a mistake.⁵⁹³

⁵⁹⁰ See above at paras. 224-228.

⁵⁹¹ See above at paras. 156, 182.

⁵⁹² Letter from PERUPETRO to Maple Gas, dated 27 November 2017, Ex. C-0044.

⁵⁹³ Letter from PERUPETRO to Maple Gas, dated 27 November 2017, Ex. C-0044.

452. This explanation was not only preposterous and contrary to the applicable law, as described below, but it relied on a concept – “leav[ing] without effect” – that it appears PERUPETRO invented for purposes of this letter.

453. There is no basis in any of the relevant laws or guidelines to “leave a qualification without effect,” as PERUPETRO purported to do. That concept does not appear in the 2004 Decree, in the 2010 Guidelines, or in the 2017 Guidelines, all of which regulate the qualification process. Rather, under those guidelines, a qualification will “lapse” if no license is signed within two years of its issuance, and may be “revoked” if the company does not maintain a sufficiently experienced work force.⁵⁹⁴

454. Moreover, even if there were a basis to “leave a qualification without effect” or to otherwise nullify or revoke a previously issued qualification, PERUPETRO was required to give Maple Gas notice and an opportunity to respond before doing so. As Dr. Quiñones explains, the General Administrative Procedure Act requires that a person whose rights are affected by a negative administrative decision be granted a minimum of five business days *in advance* of the implementation of that decision to exercise his right of defense.⁵⁹⁵ She notes that “this principle has not only been acknowledged by the [General] Administrative Procedure Act but *it also enjoys constitutional protection.*”⁵⁹⁶

455. Here, however, PERUPETRO provided Maple Gas no notice at all in advance of issuing the nullification decision. Nor did it provide Maple Gas with the opportunity to respond before issuing a final decision. This was manifestly unlawful. Moreover, given the urgent timing and the consequences of the decision, it was “*arbitrary conduct that is tantamount to malice,*” as Dr. Quiñones explains:

“PERUPETRO’s actions are unlawful and null. To annul MAPLE’s Qualification, without allowing it to defend its right, is ... arbitrary [and] tantamount to malice, since PERUPETRO made this decision while knowing that the expiration date of the exploration phase was near and that the consequences would be the early termination of the License Agreement.”⁵⁹⁷

456. This right to notice and an opportunity to be heard before one’s rights are impaired is of course an equally fundamental aspect of due process under international law.⁵⁹⁸ Moreover, simple good faith required that PERUPETRO offer Maple Gas an opportunity to respond to any concerns about Maple Gas’s financial capacity – in precisely the same way that PERUPETRO had previously requested additional information from Maple Gas during the application process.

457. In addition to the lack of any notice, PERUPETRO’s General Manager did not have the authority under the General Administrative Procedure Act to nullify the decision made by his

⁵⁹⁴ Coz Witness Statement-SPA, at para. 48.

⁵⁹⁵ Quiñones Legal Opinion-SPA, at para. 139. Mr. Coz similarly explains that there is no basis in the 2004 Decree or in the 2010 Guidelines (from Directorate Agreement No. 048-2010) for “PERUPETRO to be able to automatically ‘leave without effect’ a Qualification that has already been granted, and without giving Maple Gas an opportunity for clarification or rectification, as applicable.” Coz WS-SPA, at para. 50.

⁵⁹⁶ Quiñones Legal Opinion-SPA, at para. 140.

⁵⁹⁷ Quiñones Legal Opinion-SPA, at para. 143.

⁵⁹⁸ See above at paras. 416-417.

predecessor as General Manager to certify Maple Gas as a qualified oil company. Under Articles 11.2 and 211.2 of the General Administrative Procedure Act, the nullification of an administrative act can only be declared by the authority superior to the authority that issued the original act.⁵⁹⁹ As Dr. Quiñones explains, this means that only the Directorate had the authority to nullify the General Manager’s decision to certify Maple Gas as a qualified oil company.⁶⁰⁰

458. Leaving aside these grave defects in due process, the letter also made no sense and was plainly pretextual. As discussed above, PERUPETRO asserted that it had somehow looked at the wrong financial statements when it qualified Maple Gas in August 2017. However, PERUPETRO had not only received the 2015 and 2016 financial statements with Maple Gas’s application in June 2017, but it had *specifically requested and received* an audited copy of those financial statements in July 2017.⁶⁰¹ PERUPETRO did not explain how – after twice receiving the 2015 and 2016 financial statements, including after specifically requesting them – it instead examined financial statements for 2014 and 2015 that were not even submitted as part of the application. Nor did PERUPETRO explain why it had apparently decided to reexamine its files after the Directorate had already failed to approve the transfer of the Block 126 License.

459. In addition, PERUPETRO purported to rely on the outdated 2010 Guidelines as the basis for its decision.⁶⁰² As with its other explanations, this made no sense. That 2010 Guidelines had been replaced by the 2017 Guidelines *before* PERUPETRO issued its qualification in August 2017. As Dr. Quiñones explains, “the 2017 Guidelines were immediately applicable to the [qualification] procedures in progress, including the [qualification] request submitted by MAPLE.”⁶⁰³ The specific basis on which PERUPETRO asserted that Maple Gas allegedly lacked sufficient financial capacity – the “current assets” indicator – is not in the 2017 Guidelines.⁶⁰⁴ Indeed, PERUPETRO appeared to acknowledge this when it told Maple Gas that it could reapply for qualification under the new [regulation], although PERUPETRO also knew that it was too late for Maple Gas to do so.⁶⁰⁵

460. Under both Peruvian and international law, due process requires that reasons be given for administrative decisions.⁶⁰⁶ PERUPETRO’s purported justification for its nullification decision cannot satisfy this requirement. PERUPETRO did not explain why it was applying a superseded standard. PERUPETRO also did not explain why it did not (or would not) consider Maple Gas’s application under the standard PERUPETRO admitted now applied, without requiring Maple Gas to reapply. PERUPETRO’s stated rationale was obviously inadequate and pretextual. Indeed, Mr. Guzman admitted this, when he explained the nullification decision by saying it was

⁵⁹⁹ General Administrative Procedure Act, at Articles 11.2, and 211.2, Ex. C-0097. *See also* Quiñones Legal Opinion-SPA, at para. 134.

⁶⁰⁰ Quiñones Legal Opinion-SPA, at paras. 134-135.

⁶⁰¹ *See above* at paras. 194, 196, 232-234.

⁶⁰² *See above* at paras. 235-236.

⁶⁰³ Quiñones Legal Opinion-SPA, at para. 120.

⁶⁰⁴ Quiñones Legal Opinion-SPA, at para. 158.

⁶⁰⁵ As described above, PERUPETRO stated that “[n]otwithstanding the above, it is important to note that MAPLE retains its right to request again its qualification as an Oil Company, which would be carried out in accordance with the provisions of the Guidelines for the Qualification of Oil Companies, approved by Directorate Agreement No. 049-2017 and the Regulations.” Letter from PERUPETRO to Maple Gas, dated 27 November 2017, at p. 1, Ex. C-0044. *See also above* at paras. 237-238.

⁶⁰⁶ Quiñones Legal Opinion-SPA, at paras. 47-48, 131, 154, and 160.

beyond his control because it was a “*top-down directive*.”⁶⁰⁷ As a result, it cannot be deemed sufficient for purposes of international law.

461. Mr. Guzman’s acknowledgement that it was a “*top-down directive*” confirms the most obvious explanation for PERUPETRO’s 27 November letter. That letter was issued to create a seemingly “objective” basis to prevent the transfer of the Block 126 License to Maple Gas because there was no legitimate basis for the failure of PERUPETRO’s Directorate to approve the transfer at its 2 November meeting. Given that neither PERUPETRO nor the MINEM could provide a plausible explanation for that decision, PERUPETRO manufactured a new basis to block the transfer to Maple Gas.⁶⁰⁸ That new decision not only provided cover for the Directorate’s arbitrary and political action, but it ensured that Frontera would be forced to relinquish the license (as it did a week later).

462. As a result, in order to obtain feedstock from Block 126, Maple Gas would need to wait for a new tender process and then wait for necessary investments to be made before production could begin. This meant that, even if Maple Gas successfully reapplied for qualification and won an eventual bidding process (or was able to contract for supply from another company that eventually won the bid), Maple Gas would have no meaningful opportunity to obtain feedstock from Block 126 for a significant period of time. After Petroperú had already starved the Pucallpa Refinery of other sources of feedstock, PERUPETRO’s 27 November nullification decision effectively guaranteed that Maple Gas would not be able to continue operating the Pucallpa Refinery.

463. As with the Directorate’s decision not to approve the transfer, regardless of the underlying motivation for PERUPETRO’s nullification decision, it was made without a legitimate basis, was arbitrary and was made in breach of due process, and therefore violated the MST.

- c) PERUPETRO’s rejection of Maple Gas’s appeal of the nullification decision was pretextual and violated due process

464. The pretextual nature and real purpose of PERUPETRO’s 27 November nullification decision is confirmed by PERUPETRO’s subsequent treatment of Maple Gas’s appeal of that decision. As discussed below, PERUPETRO used circular and manifestly insufficient reasoning to avoid having to address the merits of Maple Gas’s appeal. Moreover, as with the 27 November 2017 decision, PERUPETRO’s 4 January 2018 letter denying Maple Gas’s appeal also violated Maple Gas’s due process rights.

465. **First**, PERUPETRO’s rejection of Maple Gas’s appeal fundamentally violated due process. Maple Gas directed its appeal of the 27 November 2017 nullification decision, which

⁶⁰⁷ See above at para. 239.

⁶⁰⁸ This is reinforced by the MINEM’s conduct at the time. When Maple Gas again urgently requested assistance from the MINEM after PERUPETRO’s nullification decision, the Minister failed to attend their meeting, and Maple Gas received no further response from her or the MINEM. See above at para. 240; Neumann WS-SPA, at para. 70; Coz WS-SPA, at para. 51.

had been issued by PERUPETRO's General Manager, Mr. Guzmán, to PERUPETRO's Directorate. However, Mr. Guzmán himself denied Maple Gas's appeal of his earlier decision.

466. This was contrary to the General Administrative Procedure Act, as well as to fundamental precepts of due process. As discussed above, the legitimacy of an administrative act can only be determined by the authority superior to the authority that issued the original act.⁶⁰⁹ Even assuming that PERUPETRO's General Manager could properly nullify his predecessor's own prior qualification of Maple Gas to operate Block 126 (which he could not), only PERUPETRO's Directorate had the authority to decide Maple Gas's appeal of that nullification decision.⁶¹⁰ As Dr. Quiñones explains, PERUPETRO's denial of Maple Gas's appeal was accordingly null because it had been issued by the wrong authority.⁶¹¹

467. *Second*, in rejecting Maple Gas's appeal, Mr. Guzmán denied that the General Administrative Procedure Act even applied, on the supposed basis that the nullification was a purely contractual act, "issued in the context of the evaluation required for purposes of the Assignment of the Contractual Position."⁶¹² As a result, according to Mr. Guzmán, "these pronouncements were not issued in the exercise of [the] authority delegated to PERUPETRO to issue administrative acts."⁶¹³

468. As Dr. Quiñones explains in her report, however, PERUPETRO's nullification decision was indeed an administrative act because none of the relevant decisions were "contractual," as Mr. Guzmán claimed in his 4 January 2018 letter:

a. Maple Gas was not a party to the contract referred to by Mr. Guzmán, i.e., the existing Block 126 License. That license was issued by PERUPETRO to Frontera.⁶¹⁴

b. PERUPETRO had not issued Maple Gas's qualification to operate Block 126 pursuant to a contract.⁶¹⁵ Rather, the qualification itself expressly provides that it was issued "*in conformity with* the terms of *Article 5 of the Regulation on the Qualification of Oil Companies approved by Supreme Decree No 030-2004-EM*"⁶¹⁶ – and not pursuant to the Block 126 License.

c. The reason invoked by PERUPETRO for nullifying Maple Gas's qualification "*was not contractual.*"⁶¹⁷ Rather, PERUPETRO purported to base its decision on its new assessment that Maple Gas supposedly did not comply with the financial capacity requirements in the 2010 Guidelines. Those guidelines were published by PERUPETRO to implement the 2004 Decree.

⁶⁰⁹ General Administrative Procedure Act, at Articles 11.2, and 211.2, Ex. C-0097. *See also* Quiñones Legal Opinion-SPA, at para. 134.

⁶¹⁰ Quiñones Legal Opinion-SPA, at para. 181.

⁶¹¹ Quiñones Legal Opinion-SPA, at para. 179.

⁶¹² Letter from PERUPETRO to Maple Gas, dated 4 January 2018, at p. 1, Ex. C-0046.

⁶¹³ Letter from PERUPETRO to Maple Gas, dated 4 January 2018, at p. 2, Ex. C-0046.

⁶¹⁴ Quiñones Legal Opinion-SPA, at para. 167.

⁶¹⁵ Quiñones Legal Opinion-SPA, at para. 167.

⁶¹⁶ Letter from PERUPETRO to Maple Gas, dated 11 August 2017, at p. 2, Ex. C-0042.

⁶¹⁷ Quiñones Legal Opinion-SPA, at para. 167.

469. As a result, as Dr. Quiñones explains in her expert report, the nullification decision was “*a failed attempt to evade the application of the principles and procedures of Administrative Law*, aimed at avoiding deviations of power and arbitrary actions by the State.”⁶¹⁸

470. *Third*, Mr. Guzmán did not even purport to address the grounds that Maple Gas had raised in its appeal. Rather, he said that the appeal was moot because Frontera had relinquished the Block 126 License. As described above, in rejecting Maple Gas’s appeal, he stated that “*it makes no sense to evaluate the alleged nullity of the pronouncements issued by PERUPETRO with respect to your company’s qualification, since the purpose of said qualification was to evaluate compliance with a commitment provided in a contract that has now been terminated.*”⁶¹⁹

471. Mr. Guzmán’s circular reasoning underscores the fundamentally pretextual nature of the nullification of Maple Gas’s qualification. As described above, PERUPETRO’s 27 November letter had provided an “objective” basis to prevent the transfer of the Block 126 License to Maple Gas after the unexplained and inexplicable failure of PERUPETRO’s Directorate to approve the transfer at its 2 November meeting. By issuing its nullification decision just before Frontera would need to relinquish the Block 126 License, without giving Maple Gas notice or the opportunity to respond, PERUPETRO effectively destroyed any opportunity for Maple Gas to replace the feedstock being taken by Petroperú and to continue to operate the Pucallpa Refinery.

472. As Dr. Quiñones concludes in her expert report:

“Based on an *unreasonable and arbitrary interpretation of the rules* applicable to the qualification of an oil company, *refusing to comply with the due process* for the ex officio nullity of an administrative act, PERUPETRO *acted against the most elementary good faith and violated the principle of legitimate trust.*”⁶²⁰

473. In summary, the nullification decision was a blatant attempt to avoid having to provide a credible explanation for the Directorate’s inexplicable failure to approve the transfer of the Block 126 License by subsequently manufacturing a new basis that would prevent Maple Gas from being able to obtain the License before Frontera was forced to relinquish it. The subsequent rejection of Maple Gas’s appeal – whereby PERUPETRO refused even to consider the substance of Maple Gas’s complaints on the basis that it was now too late because the license no longer could be transferred following its earlier decision – confirms the arbitrary and pretextual nature of PERUPETRO’s conduct.

3. Peru Acted in Bad Faith

474. Where, as here, a State acts in bad faith or with an improper motive, this conduct violates the MST. As discussed below, Peru, through Petroperú, PERUPETRO, and the MINEM, targeted Maple Gas and ultimately drove it out of business. In doing so, Peru acted not only

⁶¹⁸ Quiñones Legal Opinion-SPA, at para. 168.

⁶¹⁹ Letter from PERUPETRO to Maple Gas, dated 4 January 2018, at p. 2, Ex. C-0046.

⁶²⁰ Quiñones Legal Opinion-SPA, at para. 201.

arbitrarily and in breach of due process, as discussed above, but also in bad faith and for improper reasons.

475. As discussed above, a breach of the MST may be composed of a series of measures that, taken together, rise to the level of a violation of international law.⁶²¹ Here, Petroperú and the MINEM targeted Maple Gas and, combined with PERUPETRO's unjustified failure to approve the Block 126 License transfer, ultimately succeeded in cutting off its access to sufficient feedstock to continue to operate the Pucallpa Refinery. By February 2018, the impact of these combined measures had effectively crippled Maple Gas's business. It was also clear by this point that the government was engaged in a deliberate attack on Maple Gas and would not be satisfied until Maple Gas was forced to give up the Pucallpa Refinery.⁶²² As explained above, such willful targeting of a foreign investment constitutes bad faith and is a breach of the MST.⁶²³

476. **First**, as described in more detail above, Petroperú engaged in aggressive conduct toward Maple Gas as soon as the Blue Oil Investment Group acquired Maple Gas, at a time when Mr. Kuczynski was publicly at war with Blue Oil and Mr. Rojas.⁶²⁴ For example, after the Blue Oil Investment Group acquired Maple Gas, Petroperú repeatedly threatened to take the Pucallpa Refinery from Maple Gas.⁶²⁵ It refused to sell any of CEPESA's crude to Maple Gas, and instead demanded that Maple Gas allow CEPESA and Petroperú to use the Refinery as a storage terminal.⁶²⁶ Petroperú told Maple Gas that, "*if [it] did not agree to Petroperú's RAD Services demands, Petroperú would simply take back the refinery and the problem would be over.*"⁶²⁷

477. **Second**, as explained above, Petroperú was also selling refined products in the Ucayali region at prices that were lower than it had sold them for previously. This was contrary to Petroperú subsidiary role when there was a private company in the same market. In doing so, Petroperú improperly abused its "artificial advantage," and further damaged Maple Gas's business.⁶²⁸

478. **Third**, after the Blue Oil Investment Group's acquisition of Maple Gas, it did not make sense for Petroperú to continue buying feedstock that Maple Gas was willing and able to buy, and which would have enabled it to run the Pucallpa Refinery at full capacity. However, throughout Mr. Kuczynski's presidency, Petroperú inexplicably continued to intervene in Maple Gas's efforts to acquire feedstock, and to take steps that starved the Pucallpa Refinery of the feedstock it needed to return to full production. As explained above, Petroperú's conduct

⁶²¹ See above at para. 410.

⁶²² As described above and discussed further in the discussion of expropriation, after February 2018, Petroperú and PERUPETRO continued to take steps that ensured that Maple Gas's business was destroyed. See above at paras. 269-277, 280-292; see below at paras. 515-519. These acts are also part of Peru's breach of the MST.

⁶²³ See above at paras. 419-420; *Cargill, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, dated 18 September 2009, at paras. 271, 299-300, Ex. CL-0022.

⁶²⁴ See above at paras. 96-97, 136.

⁶²⁵ See above at paras. 106-108.

⁶²⁶ See above at paras. 98-108.

⁶²⁷ Katabi WS-ENG, at para. 38. See also Letter from Maple Gas to Petroperú, dated 30 May 2016, Ex. C-0026.

⁶²⁸ See above at paras. 133-134.

appears to have been intended to instead allow Petroperú to turn the Pucallpa Refinery into a terminal for its own use.⁶²⁹

479. **Fourth**, the transfer to Maple Gas of the Block 126 License would have solved the problems that Petroperú's interference had caused. However, after months of successful negotiations, that transfer was suddenly blocked at the last minute, when it was supposed to be approved by PERUPETRO's Directorate, which was controlled by the executive branch. As described above, this decision was consistent with Mr. Kuczynski's history of interference with PERUPETRO's license decisions, and Maple Gas was told at the time that the reason for the decision was "**political**" (which Mr. Guzman later confirmed when he described PERUPETRO's actions as a "**top-down directive**"). Neither PERUPETRO nor the MINEM ever provided a credible explanation for the Directorate's sudden reversal – or, indeed, any explanation at all. The fact that there was no good faith basis for the decision by PERUPETRO's Directorate is confirmed by the subsequent silence from both PERUPETRO and the Minister of Energy and Mines, despite Maple Gas's repeated requests.

480. **Fifth**, PERUPETRO's subsequent actions further confirm that the sudden reversal by PERUPETRO's Directorate was not a good faith or reasoned decision. Rather than explaining the Directorate's decision, and without providing any notice to Maple Gas or an opportunity to respond (as it was required to do), PERUPETRO suddenly nullified Maple Gas's qualification to operate Block 126, pursuant to the "top-down directive." As discussed above, PERUPETRO's purported reasons for doing so were nonsensical, and violated Peruvian law.⁶³⁰ The government knew, though, that the consequence of this pretextual decision was that Frontera would have to relinquish the Block 126 License, as it did a week later.

481. **Sixth**, after improperly nullifying Maple Gas's qualification, PERUPETRO then denied Maple Gas's appeal of that decision on the basis that Frontera had, as expected (and intended), relinquished the license. It told Maple Gas that it did not matter whether PERUPETRO had violated the law, "**since the purpose of said qualification was to evaluate compliance with a commitment provided in a contract that has now been terminated.**"⁶³¹ PERUPETRO's rejection of Maple Gas's appeal on this circular basis again confirms that it knew exactly what it was doing when it manufactured the nullification decision, and that the Directorate's unexplained failure to approve the transfer was not done in good faith.

482. **Seventh**, when PERUPETRO's actions inevitably forced the refinery operations to be suspended, the MINEM and Petroperú then publicly and falsely attacked Maple Gas. These attacks by the MINEM and Petroperú confirm Peru's animus toward Maple Gas, and Peru's improper motivations. Indeed, the various allegations that the MINEM and Petroperú made were baseless.

⁶²⁹ See above at para. 134.

⁶³⁰ See above at para. 230-239.

⁶³¹ Letter from PERUPETRO to Maple Gas, dated 4 January 2018, at p. 2, Ex. C-0046.

- a. The allegation by its Regional Director that the MINEM was “aware” of debts that Maple Gas allegedly owed to CEPESA was false, as were the similar allegations that Petroperú subsequently made in its public statements.⁶³²
- b. The assertion made by both the MINEM and Petroperú that Petroperú’s actions to starve the Pucallpa Refinery were justified by its role as supplier of last resort was plainly wrong and a pretext for its abusive conduct.⁶³³
- c. Like its earlier threats to take the Pucallpa Refinery from Maple Gas, Petroperú’s public threat to bring an arbitration against Maple Gas for supposedly breaching the Pucallpa Refinery Lease Agreement by failing to provide Petroperú with RAD Services was baseless, as is confirmed by the subsequent arbitral award.⁶³⁴

483. ***Eighth***, not only were the MINEM’s and Petroperú’s allegations baseless, but they were made intentionally to disguise the fact that Peru’s actions were the real reason why the Pucallpa Refinery had been forced to stop its refining operations. As described above, the MINEM and Petroperú attacked Maple Gas because Petroperú’s efforts to starve the Pucallpa Refinery of feedstock were being criticized in the press and causing increasing unrest in the Ucayali region, including the demonstrations in February 2018.⁶³⁵ The allegations made by the MINEM and Petroperú were not made in good faith, but as a deliberate attempt to excuse Petroperú’s own role in causing fuel shortages and other problems in Ucayali, and its improper conduct targeting Maple Gas.

484. ***Finally***, Petroperú’s and the MINEM’s public attacks ensured that Maple Gas’s efforts to obtain other sources of revenue for the Pucallpa Refinery would fail,⁶³⁶ and Petroperú subsequently refused to cooperate in other efforts by Maple Gas to obtain additional revenue for the Pucallpa Refinery.⁶³⁷ Petroperú also initiated arbitration against Maple Gas under the Pucallpa Refinery Lease Agreement immediately after Maple Gas withdrew its administrative lawsuit against PERUPETRO, frustrating any discussions about Maple Gas’s proposal to operate the Sheshea Field, and then preemptively declared the Lease Agreement terminated and eventually physically occupied the Refinery.⁶³⁸

485. These actions by various supposedly independent Peruvian government entities show their animus towards Maple Gas and confirm that Peru was in fact engaged in a concerted effort to drive Maple Gas out of business.⁶³⁹ As discussed above, Petroperú’s campaign to starve the Pucallpa Refinery of feedstock began when the Blue Oil Investment Group acquired Maple Gas and inexplicably continued throughout Mr. Kuczynski’s presidency. PERUPETRO’s refusal to

⁶³² See above at paras. 252-254, 258-262.

⁶³³ See above at paras. 252-253, 257-260.

⁶³⁴ See above at paras. 264-265, 300. In fact, before the Blue Oil Investment Group acquired Maple Gas, Petroperú had acknowledged, as the arbitral tribunal later confirmed, that Maple Gas was not obligated to provide RAD Services to Petroperú unless the parties agreed on the applicable operating conditions. See above at paras. 103-104.

⁶³⁵ See above at paras. 250-251, 255-256, 429-439.

⁶³⁶ As described above, Repsol and Puma Energy cut off negotiations with Maple Gas after Petroperú’s public attacks. See above at paras. 266-267.

⁶³⁷ See above at para. 284.

⁶³⁸ See above at paras. 276-277, 283, 292.

⁶³⁹ See above at paras. 396-397.

approve the transfer of the Block 126 License was the final step in the campaign to starve the Pucallpa Refinery of feedstock and turn it into a terminal providing storage services for Petroperú. That unexplained and last-minute reversal only took place when the decision was elevated to PERUPETRO's Directorate, which was directly controlled by Mr. Kuczynski and the executive.

486. In any event, the conduct of Petroperú, PERUPETRO, and the MINEM was not in good faith, and was arbitrary, pretextual and abusive. As such, that conduct was fundamentally incompatible with Peru's obligation to accord the MST to Worth Capital's investment.

* * * * *

487. For all of these reasons, Peru's conduct, through the actions of Petroperú, PERUPETRO, and the MINEM, amounted to a breach of its obligation to accord the MST to Worth Capital's investment. Peru must therefore provide full reparation for the damage caused by this breach, as discussed below.

VI. PERU UNLAWFULLY EXPROPRIATED WORTH CAPITAL'S INVESTMENT

488. The Treaty prohibits Peru from unlawfully expropriating U.S. investors' investments in Peru. The Claimant's case on expropriation is straightforward. As described above, Peru – acting through PERUPETRO, Petroperú, and the MINEM – took a series of actions that ultimately destroyed the value of Worth Capital's investment in Maple Gas. That expropriation was unlawful, in breach of Peru's obligations under the Treaty.

A. Article 10.7 of the Treaty Prohibits Unlawful Expropriation

489. Article 10.7 of the Treaty provides:

“No Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ('expropriation'), except: (a) for a public purpose; (b) in a non-discriminatory manner; (c) on payment of prompt, adequate, and effective compensation; and (d) in accordance with due process of law and Article 10.5.”⁶⁴⁰

490. Article 10.7 of the Treaty by its plain terms prohibits both direct and indirect expropriation, unless the specified conditions are met.⁶⁴¹ A direct expropriation occurs “where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.”⁶⁴²

491. An indirect expropriation occurs “where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.”⁶⁴³ As the tribunal in *PL Holdings v. Poland* explained:

“A State may be deemed to expropriate private property even if it does not itself take ownership of it. Expropriations in investor-State arbitration are commonly found to have occurred without any actual physical deprivation of the property in question. ***In indirect expropriation cases, the investor almost invariably retains ownership; expropriation***

⁶⁴⁰ Treaty, Article 10.7, Ex. CL-0001.

⁶⁴¹ *Crystallex International Corp. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, dated 4 April 2016, at para. 716 (“When a treaty cumulatively requires several conditions for a lawful expropriation, arbitral tribunals seem uniformly to hold that failure of any one of those conditions entails a breach of the expropriation provisions.”), Ex. CL-0032; *Marion Unglaube v. Republic of Costa Rica*, ICSID Case No. ARB/08/1, Award, dated 16 May 2012, at para. 204 (“[t]hese requirements must be fulfilled cumulatively’ or the expropriation will be considered to be in violation of customary international law.”), Ex. CL-0059; *Saluka Investments B.V. v. Czech Republic*, UNCITRAL, Partial Award, dated 17 March 2006, at para. 266 (non-compliance with “one or more of the conditions” set out in Article 5 of the treaty would “inevitably” lead to the conclusion that the respondent has breached Article 5 of the treaty), Ex. CL-0076.

⁶⁴² Treaty, Annex 10-B, at para. 2, Ex. CL-0001.

⁶⁴³ Treaty, Annex 10-B, at para. 3, Ex. CL-0001. See also *AIG Capital Partners, Inc. and CJSC Tema Real Estate Company v. Republic of Kazakhstan*, ICSID Case No. ARB/01/6, Award, dated 7 October 2003, at para. 10.3.1, Ex. CL-0009; *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, dated 29 May 2003, at para. 114 (Indirect expropriations “do not explicitly express the purpose of depriving on of rights or assets, but actually have that effect.”), Ex. CL-0082; R. Dolzer and C. Schreuer, *Principles of International Investment Law*, 2022, at p. 154, Ex. CL-0097.

will have occurred because, notwithstanding that fact, the investment has been deprived of virtually all value.”⁶⁴⁴

492. An indirect expropriation can be caused by an action *or* an omission. As the tribunal in *CME v. Czech Republic* noted, “it makes no difference whether the deprivation was caused by actions or inactions.”⁶⁴⁵

493. The Treaty clearly provides that “*an action or series of actions*” can result in an indirect expropriation.⁶⁴⁶ Such expropriations, often framed as “creeping” expropriations, are widely accepted under international law.⁶⁴⁷ As the tribunal in *Generation Ukraine v. Ukraine* explained:

“Creeping expropriation is a form of indirect expropriation with a distinctive temporal quality in the sense that it encapsulates the situation whereby a series of acts attributable to the State *over a period of time* culminate in the expropriatory taking of such property A plea of creeping expropriation must proceed on the basis that the investment existed at a particular point in time and that *subsequent acts attributable to the State have eroded the investor’s rights to its investment* to an extent that is violative of the relevant international standard of protection against expropriation.”⁶⁴⁸

494. Reisman and Sloane explain the concept of a creeping expropriation as follows:

“Discrete acts, analyzed in isolation rather than in the context of the *overall flow of events*, may, whether legal or not in themselves, seem innocuous vis-à-vis a potential expropriation. Some may not be expropriatory in themselves. *Only[] in retrospect will it become evident that those acts comprised part of an accretion of deleterious acts and omissions, which in the aggregate expropriated the foreign investor’s property rights.*”⁶⁴⁹

495. The Treaty makes clear that “[t]he determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-

⁶⁴⁴ *PL Holdings S.A.R.L. v. Republic of Poland*, SCC Case No V2014/163, Partial Award, dated 28 June 2017, at para. 320, Ex. CL-0068.

⁶⁴⁵ See, e.g., *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award, dated 13 September 2001, at para. 605, Ex. CL-0027.

⁶⁴⁶ Treaty, Annex 10-B, at para. 3, Ex. CL-0001.

⁶⁴⁷ See, e.g., *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, dated 24 July 2008, at para. 455, Ex. CL-0018; *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award, dated 6 February 2007, at para. 263, Ex. CL-0080; *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, dated 16 September 2003, at para. 20.22, Ex. CL-0045; *Fireman’s Fund Insurance Co. v. United Mexican States*, ICSID Case No. ARB(AF)/02/01, Award, dated 17 July 2006, at para. 176(i), Ex. CL-0040; *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, dated 29 May 2003, at para. 114, Ex. CL-0082; *AIG Capital Partners, Inc. and CJSC Tema Real Estate Co. v. Republic of Kazakhstan*, ICSID Case No. ARB/01/6, Award, dated 7 October 2003, at para. 10.3.1, Ex. CL-0009.

⁶⁴⁸ *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award, dated 16 September 2003, at para. 20.22 (first emphasis in the original), Ex. CL-0045.

⁶⁴⁹ W. Reisman and R. Sloane, *Indirect Expropriation and Its Valuation in the BIT Generation*, (2003) 74 *BYBIL*, at paras. 115, 123-125, Ex. CL-0100.

case, fact-based inquiry.”⁶⁵⁰ In making this case-specific determination, a tribunal must consider all relevant factors, including those listed in Annex 10-B of the Treaty:

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

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

(iii) the character of the government action.”⁶⁵¹

496. These three factors are neither exhaustive “[nor] strict conditions to finding an indirect expropriation.”⁶⁵² Rather, “among other factors,”⁶⁵³ they form “part of a holistic analysis” that the Tribunal must undertake in assessing whether Peru has breached its obligations under Article 10.7 of the Treaty.⁶⁵⁴

497. With regard to the economic impact of the challenged action(s), the relevant question is whether the investor has been “substantially deprived” of the benefit of the investment.⁶⁵⁵ To meet this threshold, the State’s interference must be “significant, even if not complete, in the sense of depriving the investor of its ability to benefit from the relevant asset.”⁶⁵⁶

498. As the tribunal in *Metalclad v. Mexico* explained:

“[E]xpropriation under NAFTA includes not only open, deliberate and acknowledged takings of property, such as outright seizure or formal or obligatory transfer of title in favour of the host State, but also covert or *incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of*

⁶⁵⁰ Treaty, Annex 10-B, at para. 3(a), Ex. CL-0001.

⁶⁵¹ Treaty, Annex 10-B, at para. 3(a), Ex. CL-0001. The Treaty also provides that “[e]xcept in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.” Treaty, Annex 10-B, at para. 3(b), Ex. CL-0001.

⁶⁵² *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, dated 9 September 2021, at para. 535, Ex. CL-0034.

⁶⁵³ Treaty, Annex 10-B, at para. 3(a), Ex. CL-0001.

⁶⁵⁴ *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, dated 9 September 2021, at para. 535, Ex. CL-0034. See also *Fireman’s Fund Insurance Co. v. United Mexican States*, ICSID Case No. ARB(AF)/02/01, Award, dated 17 July 2006, at para. 176(a)-(k), Ex. CL-0040.

⁶⁵⁵ See, e.g., *Anatolie Stati, Gabriel Stati, Ascom Group S.A. & Terra Raf Trans Trading Ltd. v. Republic of Kazakhstan*, SCC Case No. V116/2010, Award, dated 19 December 2013, at para. 1112 (“There is a generous amount of jurisprudence describing the kinds of acts that can amount to indirect expropriation, which is often defined as a substantial deprivation of the rights or attributes of ownership of an investment.”), Ex. CL-0012; *Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/5, Award, dated 21 November 2007, at para. 241, Ex. CL-0014.

⁶⁵⁶ *Les Laboratoires Servier, S.A.S., Biofarma, S.A.S., Arts et Techniques du Progres S.A.S. v. Republic of Poland*, UNCITRAL, Award, dated 14 February 2012, at para. 576, Ex. CL-0055.

the use or reasonably-to-be-expected economic benefit of property even if not necessarily to the obvious benefit of the host State.”⁶⁵⁷

The tribunal in *Metalclad* also underscored that the State’s interference with an investor’s property does not need to be for the State’s benefit to constitute an expropriation.⁶⁵⁸

499. It is well settled that a State’s interference will amount to an indirect expropriation where it deprives a shareholder-investor of the value of its shares. In *Casinos Austria v. Argentina*, the tribunal explained:

“In the jurisprudence of investment treaty tribunals, it has been held that ... indirect expropriation can occur, inter alia, when host State measures, which directly affect assets of the company, **substantially and permanently deprive the shareholder-investor of her investment in the shareholding in the company and effectively destroy the value of those shares**. In such cases, shareholders can bring claims based on (indirect) expropriation of their shareholding in the host State.”⁶⁵⁹

500. With regard to the investor’s loss of control, use and enjoyment of its investment, the tribunal in *Anatolie Stati v. Kazakhstan* explained that “[i]nvestment tribunals have routinely found that **substantial interference with an investor’s ability to manage its investment** entails indirect expropriation.”⁶⁶⁰ As the tribunal in *PSEG v. Turkey* observed:

“[T]here must be some form of deprivation of the investor in the control of the investment, the management of day-to-day operations of the company, interfering in the administration, impeding the distribution of dividends, interfering in the appointment of officials and managers, or depriving the company of its property or control in total or in part.”⁶⁶¹

⁶⁵⁷ *Metalclad Corp. v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, dated 30 August 2000, at para. 103, Ex. CL-0061.

⁶⁵⁸ *Fireman’s Fund Insurance Co. v. United Mexican States*, ICSID Case No. ARB(AF)/02/01, Award, dated 17 July 2006, at para. 176(e) (“The taking usually involves a transfer of ownership to another person (frequently the government authority concerned), but that need not necessarily be so in certain cases.”), Ex. CL-0040.

⁶⁵⁹ *Casinos Austria International GmbH and Casinos Austria Aktiengesellschaft v. Argentine Republic*, ICSID Case No. ARB/14/32, Decision on Jurisdiction, dated 29 June 2018, at para. 228, Ex. CL-0025.

⁶⁶⁰ *Anatolie Stati, Gabriel Stati, Ascom Group S.A. & Terra Raf Trans Trading Ltd. v. Republic of Kazakhstan*, SCC Case No. V116/2010, Award, dated 19 December 2013, at para. 1113, Ex. CL-0012. See also *Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/5, Award, dated 21 November 2007, at para. 241 (“There is extensive international jurisprudence recognizing that an indirect expropriation may take place as result of a government measure which results in the effective loss of management, use or control, or significant loss or depreciation of the value or the assets of the foreign investment.”), Ex. CL-0014.

⁶⁶¹ *PSEG Global, Inc., The North American Coal Corporation, and Konya Ingin Elektrik Üretim ve Ticaret Limited Sirketi v. Republic of Turkey*, ICSID Case No. ARB/02/5, Award, dated 19 January 2007, at para. 278, Ex. CL-0070.

501. Tribunals not only assess the severity of the impact, but also the “duration of that impact” in determining whether there has been an indirect expropriation.⁶⁶² Determining the point at which a deprivation becomes permanent is not a rigid or mechanical inquiry, but rather is case- and context-specific. As the tribunal in *Azurix v. Argentina* explained:

“There is *no specific time set* under international law for measures constituting creeping expropriation to produce [an expropriatory] effect. *It will depend on the specific circumstances of the case.* Arbitral tribunals have considered that a measure is not ephemeral if the property was out of the control of the investor for a year (*Wena*) or an export license was suspended for four months (*Middle East Cement*), or that the measure was ephemeral if it lasted for three months (*S.D. Myers*). These cases involved a single measure. *When considering multiple measures, it will depend on the duration of their cumulative effect.* Unfortunately, there is no mathematical formula to reach a mechanical result. How much time is needed must be judged by the specific circumstances of each case.”⁶⁶³

502. Where, as here, the investment has permanently lost essentially all of its value as a result of the State’s actions, and the shareholder has lost the control, use and enjoyment of its investment, this showing of substantial deprivation is clearly satisfied.⁶⁶⁴

503. In considering the second factor in Annex 10-B, “the extent to which the government action interferes with distinct, reasonable investment-backed expectations,” tribunals have looked to whether the expectation was “held at the time of making the investment” and whether it “caused the investor to make the investment.”⁶⁶⁵ Representations made by the host State, at the time the investor was contemplating its investment, are therefore relevant in assessing an investor’s reasonable expectations and whether subsequent measures amount to an indirect expropriation.⁶⁶⁶

⁶⁶² See *Cargill, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, dated 18 September 2009, at para. 359, Ex. CL-0022; *Valeri Belokon v. Kyrgyz Republic*, PCA Case No. AA518, Award, dated 24 October 2014, at para. 206 (“Whether there has been a measure equivalent to a taking depends on whether there has been a substantial deprivation of the benefits of property ownership, and that deprivation is permanent or imposed for a substantial period of time.”), Ex. CL-0090.

⁶⁶³ *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Award, dated 14 July 2006, at para. 313, Ex. CL-0016. See also *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/99/6, Award, dated 12 April 2002, at para. 107, Ex. CL-0062; *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award, dated 8 December 2000, at para. 99, Ex. CL-0093.

⁶⁶⁴ See, e.g., *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, dated 29 May 2003, at para. 117, Ex. CL-0082; *Metalclad Corp. v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award, dated 30 August 2000, at para. 103, Ex. CL-0061; *Railroad Development Corp. v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award, dated 29 June 2012, at para. 151, Ex. CL-0071; *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Award, dated 26 July 2007, at para. 119, Ex. CL-0087.

⁶⁶⁵ *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, dated 9 September 2021, at para. 588, Ex. CL-0034.

⁶⁶⁶ *Abed El Jaouni and Imperial Holding SAL v. Lebanese Republic*, ICSID Case No. ARB/15/3, Decision on Jurisdiction, Liability and Certain Aspects of Quantum, dated 25 June 2018, at para. 794 (“[T]he representations made by the host State at the time the investor was contemplating its investment are also a relevant fact for assessing the occurrence of indirect expropriation.”), Ex. CL-0007.

504. In *Eco Oro Minerals v. Colombia*, the tribunal held that “good faith is a fundamental principle of international law” and encompasses, *inter alia*, “a State’s obligation not to act in a way that frustrates an investor’s legitimate expectations.”⁶⁶⁷ In this context, tribunals have looked to what the investor “could reasonably expect in [its] interactions with [the State ...] and the legal and policy framework that existed at the time.”⁶⁶⁸ In *Bilcon v. Canada*, the State’s “specific representations, rather than abstract references ... or general statements,” sufficed to establish the investors’ reasonable expectations.⁶⁶⁹

505. With respect to the “character” of the government action, tribunals have considered, among other things, whether the government acted in good faith, whether the measure was aimed at a particular investment or was generally applicable, and whether the measure was arbitrary or discriminatory.⁶⁷⁰ Where a State acts in bad faith, directs a damaging measure at a particular investment, or acts discriminatorily or arbitrarily, this weighs in favor of finding that an action or series of actions depriving the investor of the use, control, and/or substantially all the value of its investment amounts to an expropriation.

506. In *Biwater Gauff v. Tanzania*, the tribunal assessed whether the Tanzanian government’s public statements with respect to the claimant amounted to expropriatory conduct. The tribunal found that the statements were “an exercise of executive authority, which effectively, and publicly, inflamed the dispute, thereby undermining [the claimant] in the general public’s eye, and disabling it from progressing the contractual process in an ordinary fashion.”⁶⁷¹ The tribunal concluded that such statements were “damaging to [the claimant’s] interest, ... motivated by political considerations ... [and] inconsistent with the Republic’s obligations under the Treaty.”⁶⁷² The tribunal held further that the State’s occupation of the claimant’s facilities was

⁶⁶⁷ *Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41, Decision on Jurisdiction, Liability and Directions on Quantum, dated 9 September 2021, at paras. 540-541, Ex. CL-0034.

⁶⁶⁸ *Clayton and Bilcon of Delaware Inc. v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability, dated 17 March 2015, at para. 455, Ex. CL-0026.

⁶⁶⁹ *Clayton and Bilcon of Delaware Inc. v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability, dated 17 March 2015, at paras. 470-474, 589, Ex. CL-0026. Investors may even develop reasonable, investment-backed expectations in circumstances in which they rely on a State’s mistaken interpretation of legal rights. See *Railroad Development Corp. v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Award, dated 29 June 2012, at paras. 116, 120, 123, Ex. CL-0071.

⁶⁷⁰ See *Fireman’s Fund Insurance Co. v. United Mexican States*, ICSID Case No. ARB(AF)/02/01, Award, dated 17 July 2006, at para. 176(j) (“To distinguish between a compensable expropriation and a non-compensable regulation by a host State, the following factors (usually in combination) may be taken into account: whether the measure is within the recognized police powers of the host State; the (public) purpose and effect of the measure; whether the measure is discriminatory; the proportionality between the means employed and the aim sought to be realized; and the bona fide nature of the measure.”), Ex. CL-0040; *Merrill and Ring Forestry L.P. v. Canada*, ICSID Case No. UNCT/07/1, Award, dated 31 March 2010, at para. 187 (“Good faith and the prohibition of arbitrariness are no doubt an expression of ... general principles [of law], and no tribunal today could be asked to ignore these basic obligations of international law.”), Ex. CL-0060; L. Yves Fortier and Stephen L. Drymer, *Indirect Expropriation in the Law of International Investment: I Know It When I See It, or Caveat Investor*, 19 ICSID Review-FILJ 293, 317, Ex. CL-0098.

⁶⁷¹ *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, dated 24 July 2008, at para. 498, Ex. CL-0018.

⁶⁷² *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, dated 24 July 2008, at para. 500, Ex. CL-0018.

“unreasonable and arbitrary” and “unjustified by any public purpose.”⁶⁷³ The tribunal held that, among other events, the State’s public statements and occupation of the claimant’s facilities amounted to an expropriation of the claimant’s investment.⁶⁷⁴

507. In determining whether a State’s actions amount to indirect expropriation, tribunals focus on the effect or result of the government measure, rather than the intentions of the State.⁶⁷⁵ However, where there is evidence of the State’s intention to take the investment, tribunals have held that this is a relevant factor that weighs in favor of a finding of expropriation.⁶⁷⁶

508. Tribunals have held that evidence of State intent and deliberate targeting is often circumstantial and “unlikely to be available.”⁶⁷⁷ However, the lack of direct evidence has not

⁶⁷³ *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, dated 24 July 2008, at para. 503, Ex. CL-0018.

⁶⁷⁴ *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, dated 24 July 2008, at para. 519, Ex. CL-0018.

⁶⁷⁵ *Técnicas Medioambientales Tecmed S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, dated 29 May 2003, at para. 116 (“The government’s intention is less important than the effect of the measure on the owner of the assets.”), Ex. CL-0082; *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award, dated 17 January 2007, at para. 270 (“The Treaty refers to measures that have the effect of an expropriation; it does not refer to the intent of the State to expropriate.”), Ex. CL-0079; *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Award, dated 21 July 2017, at para. 948 (“The Tribunal agrees that the relevant focus of the inquiry for this purpose is the effect or result of the measure, as opposed to the purpose for which each measure was undertaken.”), Ex. CL-0083; *Fireman’s Fund Insurance Co. v. United Mexican States*, ICSID Case No. ARB(AF)/02/01, Award, dated 17 July 2006, at para. 176(f) (“The effects of the host State’s measures are dispositive, not the underlying intent, for determining whether there is expropriation.”), Ex. CL-0040.

⁶⁷⁶ *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, dated 20 August 2007, at para. 7.5.20 (“While intent will weigh in favour of showing a measure to be expropriatory, it is not a requirement, because the effect of the measure on the investor, not the state’s intent, is the critical factor.”), Ex. CL-0030. Commentators support this position. Fortier and Drymer, for example, explain that “the deliberate nature of a governmental measure *may* be one of the elements taken into account in a contextual analysis, and may even be determinative. For instance, a regulation that would otherwise be uncompensable *may be found to be an expropriatory act if it is shown that the State deliberately targeted a particular investor.*” L. Fortier and S. Drymer, *Indirect Expropriation in the Law of International Investment: I Know It When I See It, or Caveat Investor*, 19 ICSID Review-FILJ 293, 317, note 55, Ex. CL-0098.

⁶⁷⁷ *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, dated 29 July 2008, at para. 709, Ex. CL-0073. See also *The Corfu Channel Case*, I.C.J Reports 1949, Judgment dated 9 April 1949, at p. 18 (“[T]he fact of this exclusive territorial control exercised by a State within its frontiers has a bearing upon the methods of proof available to establish the knowledge of that State as to such events. By reason of this exclusive control, the other State, the victim of a breach of international law, is often unable to furnish direct proof of facts giving rise to responsibility. Such a State should be allowed a more liberal recourse to inferences of fact and circumstantial evidence. This indirect evidence is admitted in all systems of law, and its use is recognized by international decisions. It must be regarded as of special weight when it is based on a series of facts linked together and leading logically to a single conclusion.”), Ex. CL-0084; *Tokios Tokelés v. Ukraine*, ICSID Case No. ARB/02/18, Award, dated 26 July 2007, at para. 124, Ex. CL-0087.

prevented tribunals from finding such intent and deliberate targeting where the evidence points to the logical conclusion it had occurred.⁶⁷⁸

509. For example, in *Crystallex v. Venezuela*, the tribunal considered the State's intentions to "take back" the Las Cristinas mine from Crystallex.⁶⁷⁹ The tribunal noted that State officials "targeted Crystallex's investment with statements that **resulted in a gradual devaluation of the investor's investment**, and which **paved the way for the final act**."⁶⁸⁰ Seen together with Venezuela's denial of a necessary exploitation permit and the rescission of the mine operating contract with Crystallex, the tribunal concluded that the "**cumulative and incremental effect of those measures was 'equivalent to ... expropriation' under ... the Treaty**."⁶⁸¹

510. As explained below, Peru's series of actions towards Maple Gas substantially deprived Worth Capital, on a permanent basis, of the value, control, use and enjoyment of its investment. Peru has therefore breached its obligations under Article 10.7 of the Treaty.

B. Peru Unlawfully Expropriated Worth Capital's Investment in Breach of Article 10.7 of the Treaty

511. In this case, the combined conduct of Petroperú, PERUPETRO and the MINEM ultimately rendered valueless Worth Capital's investment in Maple Gas. Worth Capital has also been fully deprived of its control, use and enjoyment of its investment. Peru's actions have indirectly expropriated Worth Capital's investment. Moreover, Peru's expropriation of Worth Capital's investment in Maple Gas failed to satisfy the conditions required for a lawful expropriation. As such, Peru unlawfully expropriated Worth Capital's investment in breach of Article 10.7.1 of the Treaty.

1. Peru Expropriated Worth Capital's Investment in Maple Gas

512. Peru, through Petroperú, PERUPETRO and the MINEM, expropriated Worth Capital's investment in Maple Gas. Petroperú, PERUPETRO and the MINEM, through a series of actions, eroded Maple Gas's value until it was entirely destroyed, and thus permanently deprived Worth Capital of its control, use and enjoyment of its investment.

⁶⁷⁸ *Crystallex International Corp. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, dated 4 April 2016, at paras. 51, 306, 675, 702, 708, Ex. CL-0032; *Mohamed Abdel Raouf Bahgat v. Arab Republic of Egypt*, PCA Case No. 2012-07, Final Award, dated 23 December 2019, at paras. 227-229, Ex. CL-0064; *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28, Award, 24 April 2019, at para. 725, Ex. CL-0048; *Cargill, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award, dated 18 September 2009, at paras. 220, 303-304, Ex. CL-0022.

⁶⁷⁹ *Crystallex International Corp. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, dated 4 April 2016, at paras. 51, 306, 675, 702, 708, Ex. CL-0032.

⁶⁸⁰ *Crystallex International Corp. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, dated 4 April 2016, at para. 675, Ex. CL-0032.

⁶⁸¹ *Crystallex International Corp. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, dated 4 April 2016, at para. 708, Ex. CL-0032. See also *Hydro S.r.l. and others v. Republic of Albania*, ICSID Case No. ARB/15/28, Award, dated 24 April 2019, at para. 725 (holding that Albania's "deliberate interference" with the investors' business was part of a political campaign against the investors, and considering that this "deliberate interference" with the investors' business was not a legitimate exercise of Albania's police powers), Ex. CL-0048.

513. As discussed above, Annex 10-B of the Treaty provides a non-exhaustive list of factors to consider when determining whether State conduct amounts to an indirect expropriation: (a) “the economic impact of the government action”; (b) “interfere[nce] with distinct, reasonable investment-backed expectations”; and (c) “the character of the government action.”⁶⁸² These factors are discussed in turn below.

- a) Peru’s actions substantially deprived Worth Capital of the value of its investment

514. As described above, Peru’s actions substantially deprived Worth Capital of the value of its investment in Maple Gas. By December 2017, Petroperú had obstructed the Pucallpa Refinery’s access to feedstock, preventing it from returning to full capacity, and PERUPETRO had blocked the transfer of the Block 126 License to Maple Gas. This forced Maple Gas to suspend refining operations at the Pucallpa Refinery.⁶⁸³

515. Subsequently, Petroperú continued targeting Maple Gas, deliberately interfering with its business and further thwarting its ability to obtain new feedstock for the Pucallpa Refinery. As described in more detail above, Petroperú’s and the MINEM’s false and misleading public allegations about Maple Gas in February 2018 undermined Maple Gas’s efforts to obtain new sources of revenue after it had been forced to suspend refining at the Pucallpa Refinery.⁶⁸⁴

516. With no new source of feedstock, and Block 126 idle, Maple Gas proposed to PERUPETRO that it be permitted to temporarily operate the Sheshea field in Block 126. PERUPETRO told Maple Gas that it was willing to discuss Maple Gas’s proposal but that Maple Gas first needed to withdraw its administrative lawsuit against PERUPETRO.⁶⁸⁵

517. Immediately after Maple Gas did so, Petroperú commenced its arbitration against Maple Gas, seeking to terminate the Pucallpa Refinery Lease Agreement. PERUPETRO then stopped replying to Maple Gas, and never responded to Maple Gas’s May 2018 proposal regarding the Sheshea field.⁶⁸⁶

518. The inevitable result of Petroperú’s and PERUPETRO’s prior wrongful conduct was that Maple Gas was unable to make payments under the Pucallpa Refinery Lease Agreement or to provide the necessary insurance coverage under the licenses to the Block 31 fields. Petroperú and PERUPETRO then completed the destruction of Maple Gas through the termination of Maple Gas’s lease and licenses, and the physical occupation of the Pucallpa Refinery and the Block 31 Fields. Petroperú purported to terminate the Pucallpa Refinery Lease Agreement even before the tribunal in its arbitration could rule on Petroperú’s claim, and physically occupied the Pucallpa Refinery in August 2019. PERUPETRO terminated the Block 31 License as of 4

⁶⁸² Treaty, Annex 10-B, Article 3, Ex. CL-0001. *See above* at paras. 496-497.

⁶⁸³ *See above* at para. 247.

⁶⁸⁴ *See above* at paras. 249-268.

⁶⁸⁵ *See above* at paras. 269-275.

⁶⁸⁶ *See above* at paras. 276-277.

February 2019 and occupied Blocks 31-B and D on 12 February 2019. Maple Gas ultimately entered into bankruptcy on 7 January 2019.⁶⁸⁷

519. These actions collectively deprived Worth Capital of the value, use and enjoyment of its investment in Maple Gas.⁶⁸⁸

- b) Peru interfered with Worth Capital's reasonable investment-backed expectations

520. PERUPETRO's failure to approve the transfer of the Block 126 License frustrated Worth Capital's reasonable investment-backed expectations. In September and October 2016, Maple Gas held meetings with the MINEM and PERUPETRO to discuss the transfer of Block 126. During those meetings, Mr. Neumann informed the MINEM and PERUPETRO that Worth Capital was considering the acquisition of Maple Gas.⁶⁸⁹ Maple Gas made clear that Block 126 was an important element of Maple Gas's plans, and that it was projected to become the main source of feedstock for the Pucallpa Refinery.⁶⁹⁰

521. As Mr. Neumann explains, the MINEM and PERUPETRO officials responded very favorably to Maple Gas's plans:

“They understood that this acquisition would be a win for Peru, Frontera and Maple Gas. Frontera would be able to avoid any penalties for not meeting its commitments, Maple Gas would obtain a needed source of feedstock, and Block 126 would be productive, which would provide Peru with royalties. [The MINEM and PERUPETRO] were eager for Block 126 to enter into the exploitation phase.”⁶⁹¹

522. This was unsurprising. Block 126 is in a remote area of the Amazon jungle and it was unclear whether another company would be willing to undertake the development of the block if Frontera abandoned it. Maple Gas, however, was well suited to undertake the development.⁶⁹²

⁶⁸⁷ See above at paras. 280-292. On that date, Worth Capital lost the control of its rights as the sole shareholder of Maple Gas. Aviso Concurso Procesal, dated 7 January 2019, Ex. C-0237. As a matter of Peruvian bankruptcy law, during the bankruptcy proceedings, Worth Capital's powers as sole shareholder were suspended and instead performed by the creditors' committee. See Law 27809 of 2002, Article 63(1), Ex. C-0273.

⁶⁸⁸ *Carlos Rios and Francisco Javier Rios v. Republic of Chile*, ICSID Case No. ARB/17/16, Award, dated 11 January 2021, at paras. 197-198 (date of indirect expropriation is date the local company could no longer meet its financial obligations), Ex. CL-0023; *Yukos Universal Limited (Isle of Man) v. Russian Federation*, UNCITRAL, PCA Case No. 2005-04/AA227, Final Award, dated 18 July 2014, at para. 1762 (“a substantial and irreversible deprivation of Claimants' assets occurred ... [on the date of] a substantial and irreversible diminution of Claimants' investment. ... [when] Yukos had become ‘incapable of operating as a business’”), Ex. CL-0095; *Casinos Austria International GmbH and Casinos Austria Aktiengesellschaft v. Argentine Republic*, ICSID Case No. ARB/14/32, Decision on Jurisdiction, dated 29 June 2018, at para. 228 (“In the jurisprudence of investment treaty tribunals, it has been held that ... indirect expropriation can occur, inter alia, when host State measures, which directly affect assets of the company, substantially and permanently deprive the shareholder-investor of her investment in the shareholding in the company.”), Ex. CL-0025.

⁶⁸⁹ See above at paras. 146-149.

⁶⁹⁰ Neumann WS-SPA, at para. 18.

⁶⁹¹ Neumann WS-SPA, at para. 19. See also Rojas WS-ENG, at para. 63; Holzer WS-ENG, at para. 12.

⁶⁹² See above at paras. 150-152.

Indeed, in a meeting in June 2017 with Mr. Coz and Mr. Neumann, PERUPETRO acknowledged that “*Maple Gas was the only viable option to save the Block 126 License Agreement.*”⁶⁹³

523. As Worth Capital considered finalizing its \$62 million acquisition of Maple Gas, it was reassured by the responses the MINEM and PERUPETRO had given regarding the proposal to transfer the Block 126 License to Maple Gas.⁶⁹⁴

524. The reasonableness of Worth Capital’s reliance is evidenced by the fact that Maple Gas subsequently received each of the three key approvals for the transfer of the Block 126 License from PERUPETRO. PERUPETRO even provided the Block 126 License for execution, which Maple Gas signed.⁶⁹⁵

525. Then, despite many months of work with PERUPETRO on the transfer of the Block 126 License, PERUPETRO’s Directorate inexplicably failed to approve the transfer and instead PERUPETRO issued its pretextual nullification decision. The MINEM, which is responsible for supervising both Petroperú and PERUPETRO, compounded PERUPETRO’s wrongful conduct by refusing to respond or otherwise protect Worth Capital and its investment in Maple Gas.

526. As a result, PERUPETRO eliminated the “*only viable option to save Block 126*” and, just over one week later, Frontera was forced to relinquish the Block 126 License. The application to transfer the Block 126 License to Maple Gas therefore terminated as a matter of law.

527. In sum, Worth Capital invested in Maple Gas with the distinct, reasonable expectation that the transfer of Block 126 from Frontera to Maple Gas would be considered and approved in accordance with the applicable regulations. PERUPETRO’s last-minute reversal had catastrophic consequences for Maple Gas’s business, and frustrated that expectation.

c) Peru’s actions were arbitrary, pretextual and abusive

528. Peru’s arbitrary, pretextual and abusive actions cannot be considered a legitimate exercise of governmental authority and instead were an indirect expropriation of Maple Gas. The analysis of Peru’s conduct under the MST applies equally here.⁶⁹⁶ As explained above, Petroperú abused its role as supplier of last resort in its campaign to starve the Pucallpa Refinery of feedstock. PERUPETRO then failed to approve the transfer of the Block 126 License, the final step in starving the Pucallpa Refinery of feedstock and turning it into a storage terminal for Petroperú. PERUPETRO provided no explanation for this failure, before contriving a justification to prevent the Block 126 transfer through its nullification decision.

529. PERUPETRO’s nullification decision was a top-down directive, issued after-the-fact in a plainly pretextual attempt to provide cover for the Directorate’s arbitrary and baseless failure to approve the transfer of the Block 126 License to Maple Gas.⁶⁹⁷ This is confirmed by the fact that PERUPETRO subsequently refused to even consider Maple Gas’s appeal of the nullification

⁶⁹³ Neumann WS-SPA, at para. 44.

⁶⁹⁴ See above at paras. 146-149. See also Holzer WS, at para. 12; Neumann WS-SPA, at paras. 16-19.

⁶⁹⁵ See above at paras. 190-215.

⁶⁹⁶ See above at 423-488.

⁶⁹⁷ See above at paras. 450-463.

decision based on the circular reasoning that “*it makes no sense to evaluate the alleged nullity of the pronouncements issued by PERUPETRO with respect to your company’s qualification, since the purpose of said qualification was to evaluate compliance with a commitment provided in a contract that has now been terminated.*”⁶⁹⁸

530. It is also confirmed by the fact that, when Maple Gas urgently requested assistance from the MINEM, the Minister of Energy and Mines said she would obtain an explanation for PERUPETRO’s failure to approve the Block 126 License, and then never responded. She then failed to even show up for the urgent meeting requested by Maple Gas after the nullification decision, leaving Maple Gas’s urgent requests for assistance unanswered.

* * * * *

531. For all of these reasons, Peru’s actions resulted in the indirect expropriation of Worth Capital’s shareholding in Maple Gas. As explained below, that expropriation was unlawful, in violation of Article 10.7.1 of the Treaty.

2. Peru’s Expropriation of Worth Capital’s Investment Was Unlawful

532. As discussed above, Article 10.7.1 of the Treaty requires that any expropriation satisfy four conditions, namely, that the expropriation be taken for a public purpose, in a non-discriminatory manner, on payment of compensation, and in accordance with due process and Article 10.5 of the Treaty. Peru’s expropriation of Worth Capital’s investment fails to satisfy these requirements.

533. As discussed above, Peru’s conduct towards Worth Capital’s investment was arbitrary, pretextual and abusive.⁶⁹⁹ Where a State expropriates an investment through measures that are arbitrary, pretextual, and abusive, that expropriation inherently lacks a public purpose.⁷⁰⁰ Peru’s expropriation of Worth Capital’s investment in Maple Gas served no public interest whatsoever, and in fact deprived the Ucayali region of its sole privately owned supplier of refined products.

⁶⁹⁸ Letter from PERUPETRO to Maple Gas, dated 4 January 2018, at p. 2, Ex. C-0046.

⁶⁹⁹ See above at paras. 423-488.

⁷⁰⁰ See *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, dated 2 October 2006, at para. 432 (“In the Tribunal’s opinion, a treaty requirement for “*public interest*” requires some genuine interest of the public. If mere reference to “*public interest*” can magically put such interest into existence and therefore satisfy this requirement, then this requirement would be rendered meaningless since the Tribunal can imagine no situation where this requirement would not have been met.”), Ex. CL-0008; *British Caribbean Bank Limited v. Government of Belize*, PCA Case No. 2010-18, Award, dated 19 December 2014, at para. 240 (“To the Tribunal, those words suggest that the motivation for the 2009 Orders included a personal animus to Lord Michael Ashcroft that—whether justifiable or not—bears no identifiable relation to the ostensible public purposes of stabilizing and improving the telecommunications industry of Belize, or of providing reliable telecommunications services to the public.”), Ex. CL-0019; *Yukos Universal Limited (Isle of Man) v. Russian Federation*, UNCITRAL, PCA Case No. 2005-04/AA227, Final Award, dated 18 July 2014, at para. 1581 (“[W]hether the destruction of Russia’s leading oil company and the largest taxpayer was in the public interest is profoundly questionable. It was in the interest of the largest State-owned oil company, Rosneft, which took over the principal assets of Yukos virtually cost-free, but that is not the same as saying that it was in the public interest of the economy, polity and population of the Russian Federation.”), Ex. CL-0095.

534. Peru has also failed to provide Worth Capital any compensation whatsoever. There can accordingly be no dispute that Peru's expropriation was not "on payment of prompt, adequate, and effective compensation."⁷⁰¹ Peru's expropriation is unlawful for this reason as well.

535. Finally, as discussed above, Peru's expropriation violated Article 10.5 of the Treaty. Moreover, Peru did not provide due process when it expropriated Worth Capital's investment, and in fact failed to provide any process at all.⁷⁰² Rather than acknowledging its intention to expropriate Worth Capital's investment in Maple Gas and providing the requisite due process, Peru simply drove Maple Gas into bankruptcy. Peru therefore failed to satisfy this element of Article 10.7.1 as well.

* * * * *

536. In summary, Peru indirectly expropriated Worth Capital's investment in Maple Gas. That expropriation was unlawful and, as a result, violated Peru's obligations under Article 10.7 of the Treaty. Worth Capital is therefore entitled to full reparation for Peru's breach, as discussed below.

⁷⁰¹ Treaty, Article 10.7.1(c), Ex. CL-0001.

⁷⁰² See *above* at paras. 423-488.

VII. WORTH CAPITAL IS ENTITLED TO SUBSTANTIAL DAMAGES AS A RESULT OF PERU'S BREACHES OF THE TREATY

537. Worth Capital is entitled under international law to be put in the position it would have been in absent Peru's breaches of the Treaty. Peru must therefore compensate Worth Capital for all of the damages caused by its breaches. As explained in more detail in the expert reports from Compass Lexecon and from Hidrocarburos Consulting, these damages are currently quantified at \$136.3 million, plus interest.

A. *Worth Capital Is Entitled to Full Reparation for Peru's Failure to Provide the MST and for Its Unlawful Expropriation of Worth Capital's Investment*

538. As discussed below, (1) the Treaty does not provide a standard of compensation for breaches of the MST or for unlawful expropriation, thus the customary international law standard for full reparation applies; (2) fair market value is the accepted standard for full reparation where the investor loses the value of its investment; and (3) Worth Capital is entitled to both pre-and post-award interest under the full reparation standard.

1. The Customary International Law Standard of Full Reparation Applies to Compensation for Unlawful Expropriation and Breach of the MST

539. The Treaty specifies the standard of compensation for a lawful expropriation in Article 10.7 but does not expressly address compensation for unlawful expropriation or for breaches of the MST.⁷⁰³ Accordingly, the customary international law standard of "full reparation" applies to compensate Worth Capital for Peru's unlawful expropriation of its investment, as well as for Peru's failure to accord to Worth Capital's investment the MST.

540. It is a well-established principle of international law that a State that breaches an international obligation is required to make full reparation to the injured claimant.⁷⁰⁴ As the Permanent Court of International Justice explained in the seminal *Chorzów Factory* case:

"The essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that reparation must, as far as possible, **wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.** Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which

⁷⁰³ Specifically, Article 10.7.1 requires "payment of prompt, adequate, and effective compensation." Article 10.7.2 then defines the elements of such compensation. See Treaty, Article 10.7.2, Ex. CL-0001.

⁷⁰⁴ This is codified in the ILC Articles. See ILC Articles, Article 31(1), Ex. CL-0005. See also *Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Award, dated 22 May 2007, at para. 359, Ex. CL-0038; *El Paso Energy International Co. v. Argentine Republic*, ICSID Case No. ARB/03/15, Award, dated 31 October 2011, at para. 700, Ex. CL-0036.

should serve to determine the amount of compensation due for an act contrary to international law.”⁷⁰⁵

541. Similarly, the ILC Articles make clear that the injured party is entitled to compensation for all losses resulting from the respondent’s breach:

“(1) The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution.

(2) The compensation shall cover any financially assessable damage including loss of profits insofar as it is established.”⁷⁰⁶

542. Under international law, Worth Capital is therefore entitled to compensation for all of the losses caused by Peru’s breaches.⁷⁰⁷

2. Fair Market Value Is the Accepted Measure of Full Reparation Where the Investor Loses the Value of Its Investment

543. As a result of Peru’s unlawful conduct, Worth Capital has lost the entire value of its investment and is therefore entitled to compensation for the fair market value (“FMV”) of that investment. The ILC commentary to Article 36 provides that:

“Compensation reflecting the capital value of property taken or destroyed as the result of an internationally wrongful act is generally assessed on the basis of the ‘fair market value’ of the property lost.”⁷⁰⁸

⁷⁰⁵ *Case Concerning the Factory at Chorzów (Ger. v. Pol.)*, Judgment on the Merits, dated 13 September 1928, 1928 P.C.I.J. (Ser. A) No. 17, at 47, Ex. CL-0024. See also *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, dated 22 September 2014, at paras. 678, 681, Ex. CL-0046.

⁷⁰⁶ ILC Articles, Article 36, Ex. CL-0005. See also *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, dated 22 September 2014, at para. 679, Ex. CL-0046.

⁷⁰⁷ *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award, dated 14 January 2010, at paras. 170, 208, 246, Ex. CL-0051; *Southern Pacific Properties (Middle East) Ltd. v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3, Award, dated 20 May 1992, at para. 215, Ex. CL-0081; *Ioan Micula, Viorel Micula, S.C. European Food S.A., S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania* [I], ICSID Case No. ARB/05/20, Final Award, dated 11 December 2013, at para. 924, Ex. CL-0049; *Crystallex International Corp. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, dated 4 April 2016, at para. 871, Ex. CL-0032; *Técnicas Medioambientales Tecmed S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award, dated 29 May 2003, at para. 190, Ex. CL-0082; *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, dated 22 September 2014, at para. 686, Ex. CL-0046; *Siemens A.G. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award, dated 17 January 2007, at para. 352, Ex. CL-0079; *Occidental Exploration and Production Company v. Republic of Ecuador*, LCIA Case No. UN3467, Final Award, dated 1 July 2004, at paras. 792, 797, Ex. CL-0066.

⁷⁰⁸ ILC Commentary, Article 36, at para. 22, Ex. CL-0006.

544. The FMV standard is widely accepted as reflecting the standard of full reparation.⁷⁰⁹ It applies to both failure to provide the MST and to unlawful expropriation.⁷¹⁰

545. As explained by the tribunal in *Crystallex v. Venezuela*:

“Appraising the investment in accordance with the fair market value methodology indeed ensures that the consequences of the breach are wiped out and that the situation which would, in all probability, have existed if the wrongful acts had not been committed is reestablished.”⁷¹¹

546. A tribunal must assess the FMV of the investment as of a specific date of valuation. In the context of an FET breach involving multiple governmental measures, the tribunal in *Azurix v. Argentina* valued the investment as of “the day when the interference has ripened into a more or less irreversible deprivation.”⁷¹²

547. Tribunals have adopted the same approach in cases involving indirect expropriations. Where the expropriation is cumulative or creeping, the tribunal will generally look to “the day when the interference has ripened into a more or less irreversible deprivation of the property rather than on the beginning date of the events.”⁷¹³

548. For example, the tribunal in *Santa Elena v. Costa Rica*, in determining the relevant valuation date for a creeping expropriation, opined:

“The expropriated property is to be evaluated as of the date on which the governmental ‘interference’ has deprived the owner of his rights or has made those rights practically useless. This is a matter of fact for the Tribunal to assess in the light of the circumstances of the case.”⁷¹⁴

⁷⁰⁹ S. Ripinsky and K. Williams, *Damages in International Investment Law*, 2008, at p. 79, Ex. CL-0101. See also World Bank Guidelines on the Treatment of Foreign Direct Investment, Guideline IV, 1992, Ex. CL-0102.

⁷¹⁰ *CMS Gas Transmission Co. v. Argentine Republic*, ICSID Case No. ARB/01/8, Award, dated 12 May 2005, at para. 410, Ex. CL-0029; *Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Award, dated 22 May 2007, at para. 362, Ex. CL-0038; *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Award, dated 14 July 2006, at paras. 419-424, Ex. CL-0016.

⁷¹¹ *Crystallex International Corp. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, dated 4 April 2016, at para. 850, Ex. CL-0032. Similarly, the tribunal in *Sempra Energy v. Argentina* explained that FMV is “the appropriate standard of reparation in respect of breaches other than expropriation, particularly if such breaches cause significant disruption to the investment made.” *Sempra Energy International v. Argentine Republic*, ICSID Case No. ARB/02/16, Award, dated 28 September 2007, at para. 403, Ex. CL-0078. See also *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, dated 22 September 2014, at para. 681 (“As the consequence of the serious breach in the present situation was to deprive the investor totally of its investment, the Tribunal considers it appropriate that the remedy that would wipe-out the consequences of the breach is to assess damages using a fair market value methodology.”), Ex. CL-0046.

⁷¹² *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Award, dated 14 July 2006, at para. 417, Ex. CL-0016.

⁷¹³ *Malek v. Iran*, Iran-U.S. Claims Tribunal, Award No. 534-193-3, dated 11 August 1992, at para. 114 (citing *International Technical Productions Corps. v. Iran*, Award No. 190-302-3, 9 Iran-US Claims Tribunal Report 206, 1985, at pp. 240-241), Ex. CL-0058.

⁷¹⁴ *Compañía del Desarrollo de Santa Elena S.A. v. Republic of Costa Rica*, ICSID Case No. ARB/96/1, Award, dated 17 February 2000, at para. 78, Ex. CL-0031.

549. Where there are many acts of the State leading to a treaty breach, it may be difficult to identify the precise moment when the State interference “ripens” into a “more or less irreversible deprivation.” In such circumstances, tribunals conduct a detailed inquiry into the facts to determine the date on which the breach crystallized.

550. Reisman and Sloane explain that, in circumstances where a “fact-sensitive inquiry” is required “to determine the moment at which liability for an expropriation attaches,” this moment “should not [necessarily] be equated with the moment at which the value of expropriated rights properly should be appraised for compensation purposes.”⁷¹⁵ The valuation date should instead “be established in a manner that will enable a tribunal seized with a claim based on a creeping expropriation to give full effect to [the principle of full reparation].”⁷¹⁶

551. In this case, as explained above, Peru’s conduct, through the actions of Petroperú, PERUPETRO, and the MINEM, amounted to a breach of its obligation to accord the MST to Worth Capital’s investment. Among other wrongful actions, PERUPETRO blocked Maple Gas’s acquisition of the Block 126 License on arbitrary and pretextual grounds, and Petroperú’s and the MINEM’s false and misleading public allegations impeded Maple Gas’s final efforts to obtain revenue.⁷¹⁷

552. Further, as also explained above, Peru’s actions substantially deprived Worth Capital of the value, control, use, and enjoyment of its investment in Maple Gas and thus unlawfully expropriated that investment.⁷¹⁸ At the end of December 2017, Maple Gas was forced to suspend refining operations at the Pucallpa Refinery.⁷¹⁹ Peru’s breaches of the Treaty continued beyond December 2017, and the destruction of Worth Capital’s investment was completed through the termination of Maple Gas’s leases and licenses, the physical occupation of the Pucallpa Refinery and Block 31 Fields, and Maple Gas’s entry into bankruptcy.

553. Accordingly, Compass Lexecon and Hidrocarburos Consulting have used 31 December 2017 as the valuation date for their damages assessments.⁷²⁰

3. Worth Capital Is Entitled to Both Pre- and Post-Award Interest Under the Full Reparation Standard

554. Under Article 10.26 of the Treaty, the Tribunal may award “monetary damages and any applicable interest.” For a lawful expropriation, the Treaty provides that the compensation provided to the investor be “no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate ... accrued from the date of expropriation until the date of payment.”⁷²¹

⁷¹⁵ W. Reisman and R. Sloane, *Indirect Expropriation and Its Valuation in the BIT Generation*, (2003) 74 *BYBIL*, at p. 128, Ex. CL-0100.

⁷¹⁶ W. Reisman and R. Sloane, *Indirect Expropriation and Its Valuation in the BIT Generation*, (2003) 74 *BYBIL*, at p. 128, Ex. CL-0100.

⁷¹⁷ *See above* at paras. 475-487.

⁷¹⁸ *See above* at paras. 515-520.

⁷¹⁹ *See above* at para. 515.

⁷²⁰ *See below* at para. 562.

⁷²¹ Treaty, Article 10.7(3), Ex. CL-0001.

555. The principle of full reparation requires that Worth Capital receive pre- and post-award interest. This is reflected in Article 38(1) of the ILC Articles, which states that “[i]nterest ... shall be payable when necessary in order to ensure full reparation. The interest rate and mode of calculation shall be set so as to achieve that result.”⁷²²

556. Tribunals have frequently awarded pre- and post-award interest on this basis. In *Phillips v. Petróleos de Venezuela*, the tribunal explained that “while interest rates may serve different purposes, the purpose of such rates with regard to compensation of damages for [breach] is generally to ensure full compensation of a claimant by restoring it to the position it would have enjoyed if the [breach] he suffered had not occurred.”⁷²³

557. Worth Capital is accordingly entitled to pre-award interest from 31 December 2017, the date of valuation. It is also entitled to post-award interest on the amounts awarded to it, which is necessary to ensure Peru’s prompt compliance with the arbitral award and to preserve the economic integrity of the amount awarded. Worth Capital should be awarded pre- and post-award interest at the rate of 6.1%, which, as discussed below, represents Maple Gas’s pre-tax cost of debt. Investment tribunals have adopted a similar approach.⁷²⁴

558. Finally, Worth Capital should be awarded compound, not simple, interest. Article 38(1) of the ILC Articles recognizes that tribunals have discretion to determine the necessary rate to

⁷²² ILC Articles, Article 38(1), Ex. CL-0005.

⁷²³ *Phillips B.V. v. Petroleum Company Venezuela Limited & ConocoPhillips Petrozuata Petróleos de Venezuela, S.A.*, ICC 16849/JRF, Award, dated 17 September 2012, at para. 295, Ex. CL-0067.

⁷²⁴ See e.g., *ESPF Beteiligungs GmbH, ESPF Nr. 2 Austria Beteiligungs GmbH, and InfraClass Energie 5 GmbH & Co. KG v. Italian Republic*, ICSID Case No. ARB/16/5 at para. 929 (“The rate of interest that most accurately captures the Claimants’ losses is the Claimants’ cost of debt, which FTI calculated using the 12-month Euribor plus a spread of approximately 4.0% on the Date of Assessment. The average rate was approximately 4.0% from January 2015 through November 2017. As this is the Claimants’ actual cost of debt, this rate of interest best accords with the principle of full compensation.”), Ex. CL-0103; *Mobil Exploration and Development Inc. Suc. Argentina and Mobil Argentina S.A. v. Argentine Republic*, ICSID Case No. ARB/04/16 at para. 292 (“[T]he appropriate interest rate to be applied to the date of payment should be average interest rate that the Claimant would paid when taking a loan from that date to the date of payment.”), Ex. CL-0104.

achieve full reparation. Tribunals have routinely held that achieving full reparation requires awarding compound interest.⁷²⁵

B. Worth Capital Is Entitled to Compensation for All of Its Losses Resulting from Peru's Unlawful Conduct

559. As discussed above, through a series of actions – including Petroperú starving the Pucallpa Refinery of feedstock and PERUPETRO blocking the transfer of Block 126 – Peru has deprived Worth Capital of the value, control, use and enjoyment of its investment in Maple Gas.⁷²⁶ As a result of Peru's actions, Maple Gas had to suspend operations at the Pucallpa Refinery in December 2017, and subsequently never managed to recover the business, resulting in the termination of its Lease and License Agreements in 2019. In accordance with the full reparation standard under customary international law, Worth Capital is entitled to compensation for all of the losses it has suffered as a result of Peru's unlawful acts.

560. Worth Capital's losses consist of, at a minimum, the fair market value, in the absence of Peru's unlawful actions, of its stake in the Pucallpa Refinery and Block 126 as of 31 December 2017. As described above, this was the date on which Worth Capital's investment in Maple Gas had lost substantially all value due to Peru's unlawful acts. The fair market value of the Refinery

⁷²⁵ See, e.g., *SAUR International v. Argentine Republic*, ICSID Case No. ARB/04/4, Award, dated 22 May 2014, at paras. 252, 430 (“The modern approach tends to allow interest to be capitalized annually or semi-annually, and the Tribunal notes that, of nine damage decisions published by ICSID, eight resulted in the payment of capitalized interest. The reason generally given in ICSID decisions for granting compound interest is that this is the only way to adequately compensate for the loss of profitability of the investment over an extended period of time.”), Ex. CL-0077; *Crystalex International Corp. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, dated 4 April 2016, at para. 935 (“The Tribunal acknowledges that traditionally there was an inclination on the part of international tribunals to award only simple interest. However, more recently, it has become increasingly recognized that simple interest may not adequately ensure full reparation for the loss suffered and the award of interest on a compound basis is therefore not excluded. This is because modern financial activity normally involves compound interest ... The Tribunal is able to discern a clear trend in recent decisions in favor of the award of compound interest.”), Ex. CL-0032; *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Reconsideration and Award, dated 7 February 2017, at para. 539 (“Compound interest, which has become the standard to remunerate the use of money in modern finance, comes closer to achieving this purpose [of full reparation] than simple interest.”), Ex. CL-0020; *El Paso v. Argentine Republic*, ICSID Case No. ARB/03/15, Award, dated 31 October 2011, at para. 746 (“Compound interest is generally recognized by arbitral tribunals in the field of investment protection, including all awards in the Argentine cases. The Tribunal shares the view expressed by these awards that compound interest reflects economic reality and will therefore better ensure full reparation of the Claimant's damage.”), Ex. CL-0036; *Bear Creek Mining Corp. v. Republic of Perú*, ICSID Case No. ARB/14/21, Award, dated 30 November 2017, at para. 715 (“The Tribunal also accepts that compound interest is generally accepted in the practice of investment arbitration for any damages awarded.”), Ex. CL-0017; *Koch Minerals Sàrl and Koch Nitrogen International Sàrl v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/19, Award, dated 30 October 2017, at para. 11.10 (“Indeed, in modern times, it would be ‘abnormal’ for interest to be limited to simple interest.”), Ex. CL-0053; *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Award, dated 21 July 2017, at para. 1125 (“In the Tribunal's view, compound interest will better compensate for actual damages suffered since it is consistent with contemporary financial practice and would have been available had the amount awarded been paid in a timely manner.”), Ex. CL-0083; *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, dated 2 October 2006, at para. 522 (“[T]ribunals in investor-State arbitrations in recent times have recognized economic reality by awarding compound interest.”), Ex. CL-0008.

⁷²⁶ See above at paras. 515-520.

and Block 126 is the “price at which willing buyers and sellers would have been willing to exchange [these assets] under no compulsion to buy or sell.”⁷²⁷

561. Absent Peru’s unlawful acts, Maple Gas would have operated the Pucallpa Refinery and Block 126 as an integrated project where the production from Block 126 would have first served to supply the Refinery and excess production would have been sold to third parties. However, for purposes of this valuation, Worth Capital determined that the Refinery and Block 126 are best valued as two different enterprises as they have significantly different characteristics.

562. Worth Capital engaged Compass Lexecon to calculate damages resulting from Peru’s unlawful acts equal to the fair market value of Worth Capital’s stake in the refinery, and Hidrocarburos Consulting (“Hidrocarburos”) to calculate the damages resulting from Peru’s unlawful acts equal to the fair market value of Worth Capital’s stake in Block 126. Both experts used a discounted cash flow (DCF) method of valuation and discounted the resulting free cash flows to 31 December 2017, the date of valuation.

563. As of that date, Hidrocarburos calculated the fair market value of Block 126 at \$99 million, and Compass Lexecon calculated the fair market value of the Pucallpa Refinery at \$37.3 million. Accordingly, the minimum that Worth Capital claims in this arbitration is \$136.3 million plus pre- and post-award interest as described below. Pre-award interest on this amount totals \$39.3 million as of the date of this submission.

564. Worth Capital also reserves the right to claim the value of the Pucallpa Refinery and Block 126 as of the date of the award rather than 31 December 2017 if that valuation is higher.

1. Worth Capital Is Entitled to Compensation for the Loss in Value of Its Investment in Maple Gas

565. The DCF method for calculating fair market value “is one of the most generally accepted and used techniques in valuation analysis” and is “the preferred valuation methodology for income-earning assets.”⁷²⁸ This approach computes an enterprise’s free cash flow “by netting cash inflows (such as revenue) against cash outflows (such as operating costs, capital expenditures, and taxes).”⁷²⁹ These free cash flows are then discounted at a rate that reflects the company’s cost of raising capital to take into account the time value of money.⁷³⁰

566. The experts’ calculation of the discounted free cash flows associated with the Refinery and Block 126 are described below. This description summarizes the different inputs the experts considered in calculating these cash flows.

567. While the Refinery and Block 126 have different characteristics, the valuations were performed to be consistent with each other, especially because Maple Gas would operate the Refinery and Block 126 as an integrated project. In particular, the experts relied on the same forecasts of Brent oil prices, the same prices at which Block 126 would sell crude oil production

⁷²⁷ Compass Lexecon Expert Report, dated 25 March 2022, at para. 35.

⁷²⁸ Compass Lexecon Report, at para. 42.

⁷²⁹ Compass Lexecon Report, at para. 51.

⁷³⁰ Compass Lexecon Report, at para. 40.

and the refinery would acquire its crude oil feedstock, and the same annual volumes of crude production (“production profile”).

568. The price at which Block 126 sold its production of crude should be the same price at which the Refinery bought crude. The price of oil used for the valuations was the price at which CEPSA sold to Petroperú in 2017, as this is the price at which Maple Gas should have been able to buy crude from CEPSA but for Petroperú’s unlawful acts. This price was a discount from the Brent price.⁷³¹ For future Brent prices, the experts used the median of a large sample of industry analysts’ forecasts.

569. Additionally, the volume and timing of crude available to the Refinery should match the volume and timing of crude produced by Block 126. Accordingly, in considering the feedstock that would have been available to the Refinery, Compass Lexecon relied on the Block 126 production profiles estimated by Hidrocarburos.

a) Valuation of Block 126

570. Hidrocarburos is a preeminent Peruvian consulting firm that specializes in preparing integrated geological and petroleum engineering studies for the exploration and exploitation of oil and gas. It has specific expertise in the Amazon region of Peru, and undertook a geological study of Block 126 for Maple Gas in 2017 (the “2017 Study”) as part of Maple Gas’s due diligence before entering into the farmout agreement with Frontera.⁷³² That 2017 study estimated the volume of contingent resources (oil potentially recoverable from a known oil deposit) in Block 126. Hidrocarburos was able to build on the 2017 Study to estimate production profiles for Block 126.

571. Hidrocarburos considered production profiles for three scenarios considered in the 2017 Study: the P90 scenario (most conservative); the P50 scenario (most probable); and the P10 scenario (most optimistic). Consistent with industry practice, it chose the P50 production profile to value Block 126.⁷³³

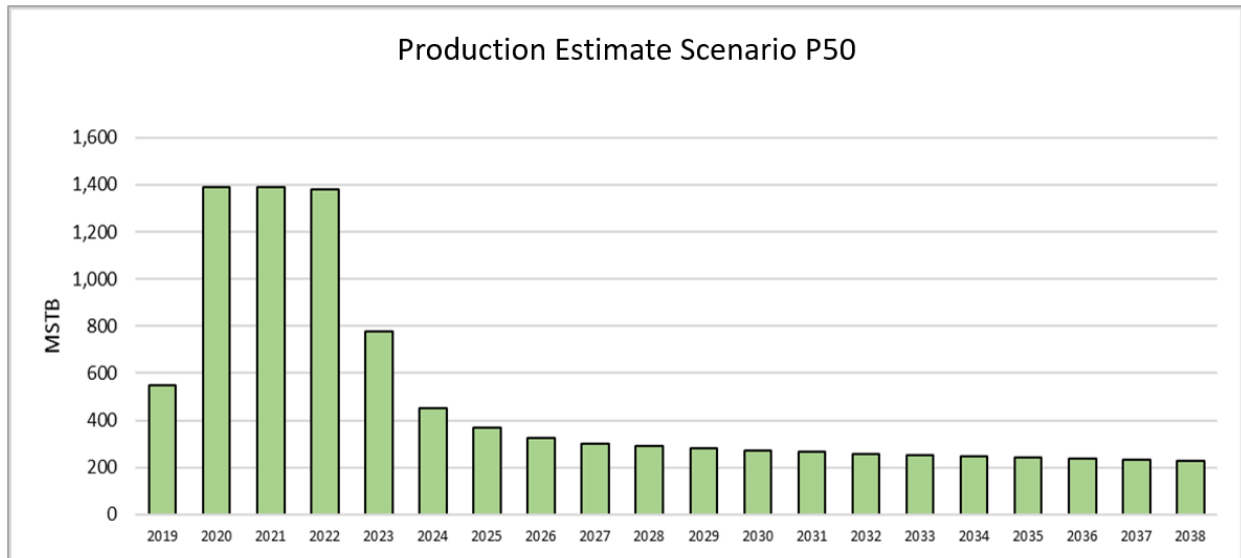
572. In the P50 scenario, 64 million barrels of oil are estimated to be in place, and 9.7 million barrels can be recovered taking into account risk factors.⁷³⁴ Hidrocarburos estimated the annual production volume at which these 9.7 million barrels would be produced. This production volume is shown below.

⁷³¹ Compass Lexecon Report, at para. 66.

⁷³² Hidrocarburos Consulting, Evaluación Estructura Sheshea Lote 126, April 2017, Ex. C-0034.

⁷³³ Hidrocarburos Consulting Expert Report, dated 25 March 2022 (“Hidrocarburos Report”), at p. 93 (second bullet).

⁷³⁴ Hidrocarburos Report, at para. 157.



573. Next, Hidrocarburos estimated future revenues from the sale of this production. As noted above, the revenues from the sale of these barrels of crude were based on a forecast of Brent prices. Hidrocarburos estimated future revenues to be \$550.6 million.⁷³⁵

574. The production of these 9.7 million barrels would require an investment of \$79.6 million. This investment includes the rehabilitation of the Sheshea 1X well, and the drilling of five new wells. It also includes the pavement of a road from the wells to the Ucayali River and an initial seismic study, which would permit more efficient placement of those wells and maximize recovery.⁷³⁶

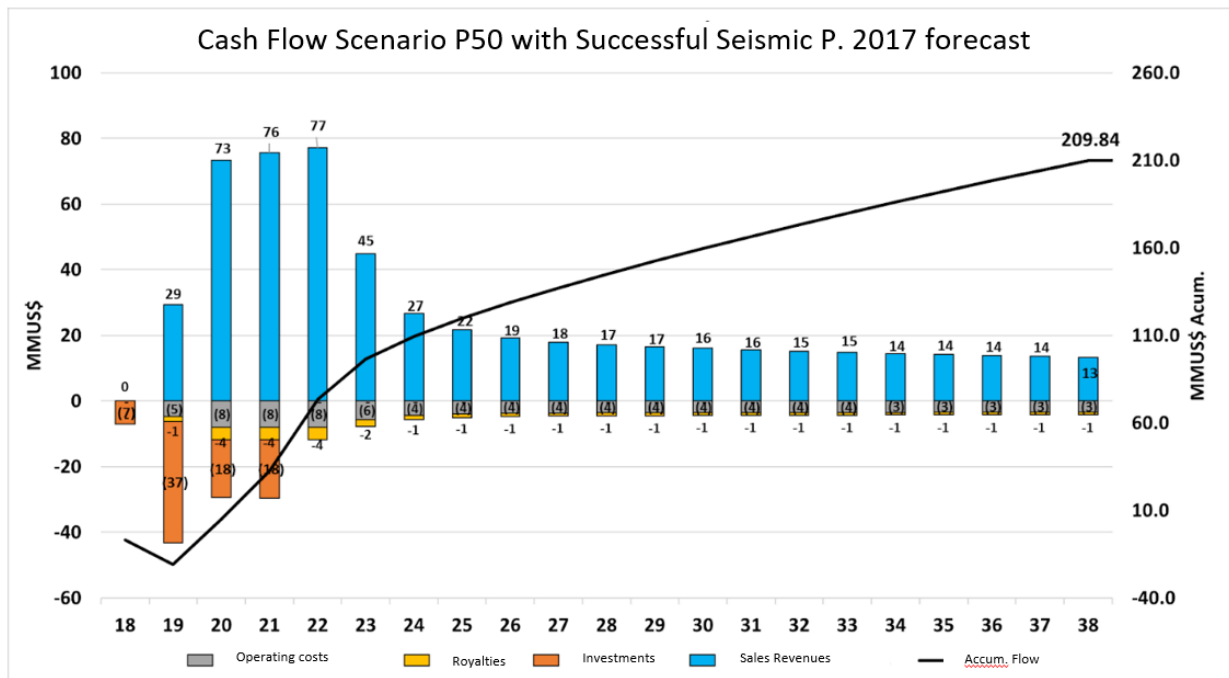
575. In addition to the investments described above, Hidrocarburos considered the operating costs of producing these estimated volumes. These costs include fixed costs, such as payment of personnel, and variable costs per barrel, such as extraction (lifting) costs for the transportation by road from the field to the Ucayali River and by barge to the Pucallpa Refinery. Hidrocarburos estimated fixed costs on the basis of Maple’s existing cost structure for its existing oil operations, and the variable costs based on Hidrocarburos’ experience and data from analogous fields. Hidrocarburos also took into account applicable taxes and royalties.⁷³⁷

576. Taking into account the estimated future revenues and deducting the above investment and operating costs, taxes and royalties, Hidrocarburos calculated the free cash flows for Block 126, totaling \$209.8 million. These cash flows are shown in the figure below.

⁷³⁵ Hidrocarburos Report, at para. 161.

⁷³⁶ Hidrocarburos Report, at para. 14-15; 23-25.

⁷³⁷ Hidrocarburos Report, at p. 77 (Table 32).



577. The net cash flows shown above were discounted using a 10% discount rate, which is the weighted average cost of capital (WACC) that Hidrocarburos calculated for a project like Block 126. Based on these discounted cash flows, Hidrocarburos calculated the net present value of Block 126 to be \$99 million.⁷³⁸

b) Valuation of the Pucallpa Refinery

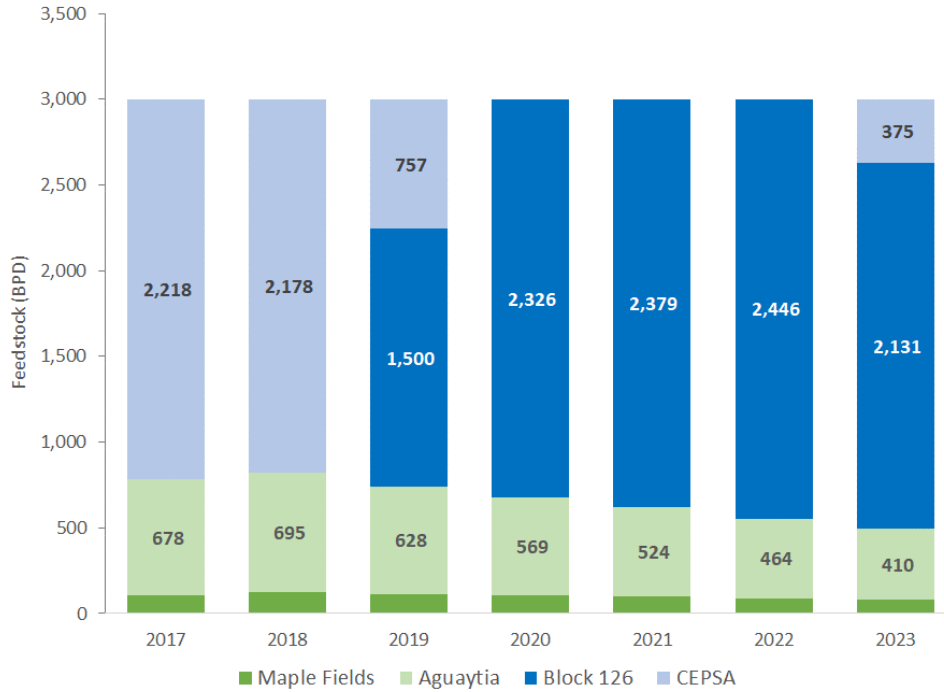
578. Compass Lexecon is one of the world’s leading economic consulting firms, with extensive experience in preparing valuation reports. Compass Lexecon calculated the future cash flows of the Pucallpa Refinery starting in 2017 based on projections of the Refinery’s sale of refined products.⁷³⁹ These projections are based on the capacity of the Refinery, the feedstock the Refinery would have had available absent Peru’s breaches of the Treaty, and analyses by Maple Gas in 2016 and 2017 regarding the yield of products for each type of feedstock.⁷⁴⁰

579. Absent Petroperú’s breaches, Maple Gas would have been able to access feedstock from Aguaytía Energy and CEPSA. These sources would have allowed Maple Gas to operate the Refinery at capacity even before production from Block 126 began. Given the feedstock available, Maple Gas would have operated the Refinery at capacity every year until the lease expired in March 2024, as shown in the figure below.

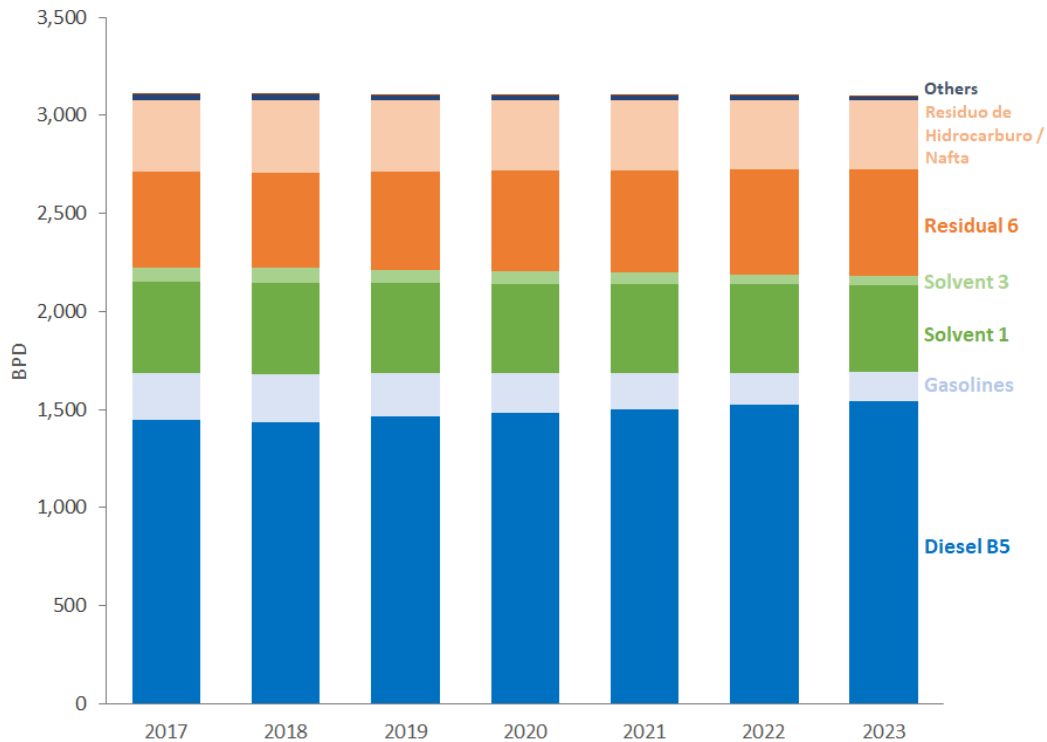
⁷³⁸ Hidrocarburos Report, at paras. 143-45; p. 77 (Table 32).

⁷³⁹ Because Peru’s unlawful acts related to the Pucallpa Refinery (namely preventing Maple Gas’s access to feedstock from CEPSA and Aguaytia]) impacted the Refinery during 2017, Compass Lexecon estimates the cash flows that the refinery would have generated in 2017 but for these unlawful acts.

⁷⁴⁰ Compass Lexecon Report, at paras. 55-61.



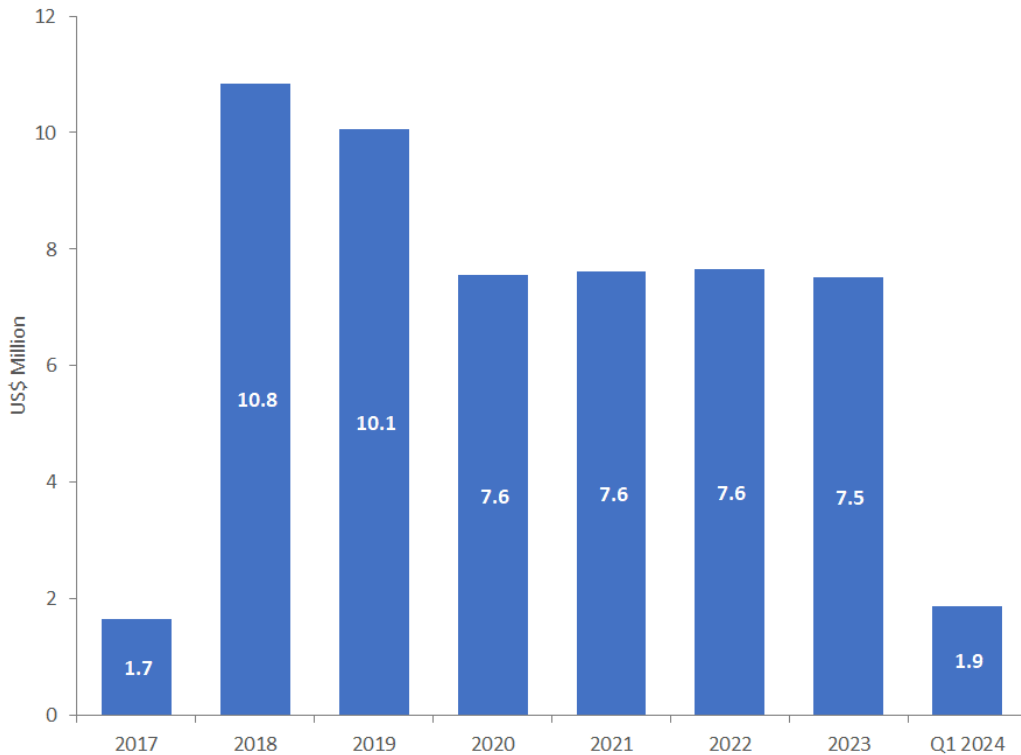
580. This mixture of feedstock would have produced the refined products shown below.



581. The price forecast used by Compass Lexecon for these resulting products is based on Maple Gas's actual average sales prices for each product in 2017. Using these actual prices, Compass Lexecon computed the spread (i.e., the difference in dollars per barrel terms) over the

2017 average price of Brent. Compass Lexecon assumed that this spread would remain constant in real terms in future years and was therefore able to calculate the prices of these products in the future based on the Brent forecast referenced above. Compass Lexecon then calculated the Refinery’s revenues each year based on the production in terms of barrels multiplied by the price per barrel for that year.⁷⁴¹

582. To calculate the cash flow resulting from these revenues Compass Lexecon subtracted the cost of goods sold. This included the cost of the feedstock and additives and operating expenses. Compass Lexecon made additional adjustments to take into account Maple Gas’s operating expenses, yearly capital expenditures, taxes and working capital needs.⁷⁴² The resulting cash flows totalled \$54.8 million and are shown in the graph below.



583. Compass Lexecon discounted these cash flows by using the appropriate WACC, which Compass Lexecon calculated as 7.9%.⁷⁴³ Applying this discount rate to the free cash flows results in a valuation of the Pacullpa Refinery of \$44.7 million. This value is reduced to \$37.3 million after deducting Maple Gas’s debts to third parties.⁷⁴⁴

c) Valuation as of the date of the award

584. As has been recognized by tribunals in investment cases, when a State unlawfully expropriates an investor’s asset, the investor has a choice of claiming compensation based on the

⁷⁴¹ Compass Lexecon Report, at paras. 62-64.

⁷⁴² Compass Lexecon Report, at paras. 65-59.

⁷⁴³ Compass Lexecon Report, at paras. 77-78.

⁷⁴⁴ Compass Lexecon Report, at p. 35 (Table 3).

value of the asset at the date of expropriation and the value of the asset as of the date of the award.⁷⁴⁵ The valuation at the time of the award is not limited to information available as of the date of the expropriation but instead takes into account relevant events, such as actual prices of oil, that have occurred up to the date of the award. While this is a different model than the model used by Hidrocarburos and Compass Lexecon, as a proxy, Maple Gas requested that the experts consider the effect on their valuation model of using actual Brent prices until today and forecasted Brent prices going forward.

585. Using these prices materially affects the valuation of Block 126 and, to a lesser extent, of the Pucallpa Refinery. The value of the Pucallpa Refinery increases to \$40.5 million as of today. The value of Block 126 increases to \$113.7 million as of today. These changes in the valuation show that the value of the Refinery and Block 126 on the date of the award may be higher than that calculated by the experts with expectations of Brent prices as of 31 December 2017. Accordingly, Worth Capital reserves its right to choose a valuation as of the date of the award.

2. Worth Capital Is Entitled to Pre- and Post-Award Interest

586. As explained above, the full reparation standard requires that Worth Capital receive pre- and post-award interest in order to restore it to the position it would have been in absent Peru's unlawful actions. Compass Lexecon has calculated Worth Capital's damages as of the valuation date of 31 December 2017. Thus, to be made whole, Worth Capital must be compensated for the delay in receiving these funds, i.e., the delay from 31 December 2017 until the date damages will be awarded in this arbitration.

587. The appropriate pre-award and post-award interest rate in this case is a commercial rate, i.e., the rates paid by corporations to obtain debt financing in the market. Since, the Refinery is in Peru, the cost of debt of the Refinery is an appropriate indication of what a reasonable commercial rate is in this case.⁷⁴⁶ Tribunals have recognized the appropriateness of pre-tax cost of debt as the rate for pre-award interest.⁷⁴⁷

588. Compass Lexecon has calculated the relevant pre-tax cost of debt as of December 2017 as 6.1%. This rate is consistent with a prejudgment interest based on LIBOR+4%.⁷⁴⁸ This interest rate must be compounded to ensure full reparation for Worth Capital's losses. Compound

⁷⁴⁵ See, e.g., *ADC Affiliate Limited and ADC & ADMC Management Limited v. Republic of Hungary*, ICSID Case No. ARB/03/16, Award, dated 2 October 2006, at para. 432, EX-CL-0008.

⁷⁴⁶ Compass Lexecon Report, at para. 82.

⁷⁴⁷ See e.g., *ESPF Beteiligungs GmbH, ESPF Nr. 2 Austria Beteiligungs GmbH, and InfraClass Energie 5 GmbH & Co. KG v. Italian Republic*, ICSID Case No. ARB/16/5 at para. 929 ("The rate of interest that most accurately captures the Claimants' losses is the Claimants' cost of debt, which FTI calculated using the 12-month Euribor plus a spread of approximately 4.0% on the Date of Assessment. The average rate was approximately 4.0% from January 2015 through November 2017. As this is the Claimants' actual cost of debt, this rate of interest best accords with the principle of full compensation."), Ex- CL-0103; *Mobil Exploration and Development Inc. Suc. Argentina and Mobil Argentina S.A. v. Argentine Republic*, ICSID Case No. ARB/04/16 at para. 292 ("[T]he appropriate interest rate to be applied to the date of payment should be average interest rate that the Claimant would pay when taking a loan from that date to the date of payment."), Ex- CL-0104.

⁷⁴⁸ Compass Lexecon Report, at para. 82.

interest “is based on the economic principle that interest proceeds can be reinvested at the prevailing interest rate.”⁷⁴⁹

589. Both experts used 6.1%, compounded annually, to calculate pre-award interest. Pre-award interest on \$136.3 million (the combined value of the Refinery and Block 126 as of 31 December 2017) totals \$39.3 million as of today.⁷⁵⁰

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590. As a result of Peru’s unlawful actions, Worth Capital has suffered significant losses. To ensure full reparation for Peru’s unlawful measures, Worth Capital is entitled to total damages of \$136.3 million, plus pre-award interest calculated as of the date of the award, as well as post-award interest.

⁷⁴⁹ Compass Lexecon Report, at note 77.

⁷⁵⁰ Compass Lexecon calculated pre-award interest to be \$10.6 million. Compass Lexecon Report, at p. 35 (Table 3). Hidrocarburos calculated pre-award interest to be \$28.7 million. Hidrocarburos Report, at p. 93 (second bullet).

VIII. REQUESTED RELIEF

591. For the reasons outlined above, Worth Capital respectfully requests an award:
- a. declaring that Peru failed to accord the minimum standard of treatment to Worth Capital's investment in breach of Article 10.5 of the Treaty;
 - b. declaring that Peru expropriated Worth Capital's investment in breach of Article 10.7 of the Treaty;
 - c. directing Peru to make full reparation to Worth Capital for any and all losses resulting from Peru's breaches of the Treaty, currently quantified at \$136.3 million, plus interest;
 - d. directing Peru to pay to Worth Capital costs associated with this arbitration;
 - e. directing Peru to pay pre-award and post-award interest on all sums due, at a rate of 6.1%; and
 - f. granting such additional and other relief as may be just.

Respectfully submitted,



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