

**THE ARBITRATION INSTITUTE OF THE
STOCKHOLM CHAMBER OF COMMERCE**

**GARDABANI HOLDINGS B.V.
INTER RAO UES PJSC
TELASI, JSC**

Claimants

v.

**GEORGIA
MINISTRY OF ECONOMY AND SUSTAINABLE DEVELOPMENT OF GEORGIA
STATE SERVICE BUREAU LTD**

Respondents

SCC Arbitration V2018/039,
administered by ICSID as ICSID Case No. ADM/18/1

FINAL AWARD

Members of the Tribunal

Mr. Henri C. Alvarez KC, President of the Tribunal
Professor Stanimir Alexandrov, Arbitrator
Professor Zachary Douglas KC, Arbitrator

ICSID Legal Counsel

Mr. Alex Kaplan

Date of dispatch to the Parties: 9 September 2022

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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THE PARTIES	2
III.	PROCEDURAL HISTORY OF THE PROCEEDINGS.....	3
IV.	CLAIMANTS' APPLICATION IN RESPECT OF GARDABANI'S LOSSES	7
	A. Mr. Peer's Approach.....	10
	B. Dr. Moselle's Approach	11
	C. Tribunal's Analysis.....	13
V.	COMPENSATION OWED TO TELASI FOR THE [REDACTED] [REDACTED]	14
	A. Disagreement 1: Valuation Date.....	15
	i. Mr. Peer's Approach.....	16
	ii. Dr. Moselle's Approach.....	22
	iii. The Tribunal's Analysis.....	30
	B. Disagreement 2: the Components of FCFF	33
	i. Mr. Peer's Approach.....	34
	ii. Dr. Moselle's Approach.....	36
	iii. The Tribunal's Analysis.....	39
VI.	CONCLUSION	40
VII.	INTEREST	41
	A. The Claimants' Position	41
	B. The Respondents' Position	43
	C. The Tribunal's Analysis	44
VIII.	COSTS	45
	A. The Claimants' Position	46
	B. The Respondents' Position	49
	C. The Tribunal's Analysis	53
IX.	CONCLUSION AND ORDERS.....	55

LIST OF ABBREVIATIONS

Abbreviation	Definition
1H 2021	The first six months of 2021
2006 Energy Policy	Resolution of Georgia’s Parliament on the main directions of Georgia’s energy sector policy; in order to attract investments and development competition, electricity distribution companies had to be privatized, and provided different types of tariffs to protect consumers from monopolistic prices and permit long-term sustainable growth (RL-0006)
2006 Tariff Resolution	[REDACTED]
2007 Memorandum	[REDACTED]
2010 Memorandum	[REDACTED]
2011 Memorandum	[REDACTED]
2012 Temporary Memorandum	[REDACTED]
2013 Memorandum	[REDACTED]

Abbreviation	Definition
2011 Methodology	8 June 2011 NERC’s Methodology for Electricity Tariff Calculation (CL-0081)
2014 Amended Methodology	10 August 2017 NERC Resolution No. 20 substantially amended the 2014 Methodology
2014 Methodology	30 July 2014 NERC’s new tariff methodology for Distribution Tariffs and Consumer Tariffs; did not specifically exempt companies that had specific tariff agreements (CL-0084)
2H 2021	The last six months of 2021
AES	AES Mtkvari LLC; [REDACTED] [REDACTED]
CEO	Chief Executive Officer
Claimants	Collectively, SCC Arbitration Claimants and ICSID Arbitration Claimants
Consumer Tariffs	Maximum rates that a distribution company (in this case, Telasi) can charge to its customers, and which form the revenue component of a distribution company’s business; comprise the sum of the WAPT and the Distribution Tariff
COPS (also known as ESCO)	Commercial Operator of Power System / Electricity System Commercial Operator; Georgian State-owned company responsible for operating the electricity market
Cost-Plus	Tariff methodology in force after [REDACTED] and until the 2011 Methodology; [REDACTED]
CPI	Consumer Price Index; average annual inflation rate published by the National Statistics Office of Georgia
DCF	Discounted cash flow
Discounting Rate	Rate at which free cash flow to the firm (FCFF) is discounted
Distribution Tariff or Distribution Margin	Computed for different voltage levels as the distributor’s forecast per unit cost, calculated on a regulatory basis; not rates charged to customers, but rather they represent a distribution company’s margin on a tetri per kWh basis
EBITDA	Earnings before interest, tax, depreciations and amortization are paid
EC	European Commission

Abbreviation	Definition
Electricity Balance	Before the start of each year, the GSE prepares, and the MOE approves, the electricity balance; includes a general forecast of the output of each generating plan, an estimate of electricity imports and exports, and a forecast of total electricity sales by each distribution company (CL-0073, Article 23.1)
Energo-Pro	Energo-Pro is one of Georgia’s three electricity distributors, along with Telasi and Kakheti
Enguri	Enguri HPP LLC, along with Vardnili, are the two largest HPPs generation companies in Georgia and are State-owned
ESCO (also known as “COPS”)	The Electricity System Commercial Operator (also known as the Commercial Operator of Power System); State-owned balancer of electricity on the market by trading the volume of electricity delivered into the network by generators and importers which is not purchased under direct agreements with distributors
EU	European Union
FCFE	Free cash flow to equity is used to determine losses at the shareholder level, and measures how much cash is available to equity-holders of a company after changes in net borrowings and interest is paid
FCFF	Free cash flow to the firm is used to determine losses at the local level, and measures the financial performance of a company by expressing the amount of cash generated by a firm after considering expenses, taxes, and changes in net working capital and investments
<div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> (The Claimants/ Peer) Mr.	<div style="background-color: black; width: 200px; height: 15px; display: inline-block;"></div> : the period for the calculation of the <div style="background-color: black; width: 40px; height: 15px; display: inline-block;"></div> period’s losses
Gardabani	Gardabani Holdings B.V.
GACG	General Administrative Code of Georgia (RL-0005)
GCC	Georgian Civil Code (RL-0009)
Generation Tariffs	The rates that can be charged by each company for the sale of the energy it generates
GEL	Georgian national currency Lari
<div style="background-color: black; width: 30px; height: 15px; display: inline-block;"></div>	<div style="background-color: black; width: 150px; height: 15px; display: inline-block;"></div>
The Government or Georgia	Georgia (collectively the Respondents: Georgia, Ministry of Economy, and State Service)
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Abbreviation	Definition
[REDACTED]	[REDACTED]
GSE	Georgian State Electrosystem; State-owned entity which has been designated as the transmission system operator (TSO)
[REDACTED] (The Claimants/ [REDACTED])	[REDACTED] the period for the calculation of the [REDACTED] losses
HPP/HPP Chain	The Hydro Power Plants or Chain of Hydro Power Plants referred to in the [REDACTED] and [REDACTED]
HPPs	Hydropower plants
ICSID Claimants	Collectively Silk Road and Gardabani
ICSID Respondents	Collectively the Government of Georgia, Ministry of Economy, and State Service
Inter RAO	Inter RAO UES, PJSC
IPO	Initial public offering
Kakheti	Until 2017, Kakheti Energy Distribution supplied electricity to Kakheti, the eastern region of Georgia, and was one of three electricity distribution companies, along with Telasi and Energo-Pro; in 2017, it was acquired by Energo-Pro
Khrami-1	JSC Khrami-1
Khrami-2	JSC Khrami-2
Khrami Companies, the	Collectively Khrami-1 and 2.
Khrami SPA	[REDACTED]
kWh	Kilowatt hour
Law on Electricity	Law of Georgia on Electricity and Natural Gas, adopted in 1997 and amended in June 2017 (and passed in May 2018); separates and allocates the ownership, commercial and regulatory functions between the MOE and the NERC (CL-0073 / RL-0001)
Law on INRAs	Law on Independent National Regulatory Authorities; governs NERC (RL-0004)
Ministry of Economy	Ministry of Economy and Sustainable Development of Georgia
MOE	Ministry of Energy and Sustainable Development; implements Georgia's energy policy; Second Respondent

Abbreviation	Definition
NERC	Georgian National Energy and Water Supply Regulatory Commission; national electricity regulator and monitor
NERC Annual Energy Plan	NERC sets an annual plan, based on the Electricity Balance approved by the MOE, indicating how much energy each distribution company will acquire from each generator on a month-to-month basis over the course of a year
NERC Resolution No. 3	[REDACTED]
NERC Resolution No. 5	[REDACTED]
NERC Resolution No. 23	[REDACTED]
NERC Resolution No. 33	[REDACTED]
NERC Resolution No. 48	[REDACTED]
[REDACTED]	[REDACTED]
NPV	Net present value
NWC	Net working capital
OB	Opening balance – data at the beginning of the period
OPEX	Operational Expenses: expenses related to the operation and maintenance of the electricity distribution grid, and other current expenses related to the regulated activity (2014 Methodology, CL-0084)
Partnership Fund JSC	Georgian State-owned company, [REDACTED]
Purchase Portfolio	Allocation of energy purchases from different generators to a distributor; each distributor’s purchase portfolio includes a combination of more and less expensive sources of energy for the year; NERC’s Annual Energy Plan for each distribution company identifies, for each month, the generation companies from which a particular distribution company must purchase electricity, and in what volumes
RAB	Regulatory Asset Base (2014 Methodology, CL-0084)

Abbreviation	Definition
RCB	Regulatory Cost Base (2014 Methodology, CL-0084)
Revised Valuation Date	[REDACTED]
[REDACTED]	[REDACTED] to cover [REDACTED] in accordance with section 5.2 of the 2013 Memorandum (Appendix 1, C-0034)
SCC Claimants	Collectively Inter RAO, Telasi and Gardabani
Scenario 1 (But-For) (Claimants/Peer)	Takes into account Telasi’s Consumer Tariffs and Khrami Companies’ Generation Tariffs, calculated in accordance with 2013 Memorandum for both the [REDACTED] and [REDACTED]
Scenario 2 (Actual) (Claimants/Peer)	Takes into account Telasi’s actual Consumer Tariffs determined by NERC in [REDACTED]; for [REDACTED], takes into account Telasi’s Consumer Tariffs calculated in accordance with the 2014 Amended Methodology
Silk Road	Silk Road Holdings B.V.
State Service Bureau	Georgian state-owned entity; Respondent
[REDACTED]	[REDACTED] was a Georgian branch of an international company which was often engaged by Georgia in other projects; [REDACTED] prepared [REDACTED] (C-0009)
Telasi	JSC Telasi, [REDACTED] [REDACTED] [REDACTED]
Telasi SPA	[REDACTED] [REDACTED]
Telmiko	Telmiko LLC, the new Inter RAO Group Company which took over Telasi’s electric supply activities effective 1 July 2021.
Tetri	1 Tetri is equal to 0.01 GEL
[REDACTED]	[REDACTED]
TOTEX	Allowed distribution revenues
TPPs	Gas-fired thermal power plants
TSO	Transmission system operator


Abbreviation	Definition
Twinning Initiative	[REDACTED]
Unbundling Regime	The reform of electrical supply and distribution activities and related changes in the tariff-setting regime of Georgia, which came into effect as of 1 July 2021
USD	United States Dollar
Vardnili	Vardnili HPP LLC, along with Enguri, are the two largest HPP generation companies in Georgia and are state-owned
WACC	Weighted Average Cost of Capital
WAPT	Weighted Average Purchase Tariff

DRAMATIS PERSONAE

Messrs Manuel A. Abdala & Julian Delamer	The Claimants’ regulatory experts on the issues of the regulatory changes in the allocation of Telasi’s electricity purchases; submitted three expert reports: First Abdala & Delamer Expert Report, dated 27 June 2018 (“ Abdala & Delamer I ”); Second Abdala & Delamer Expert Report, dated 1 March 2019 (“ Abdala & Delamer II ”); Third Abdala & Delamer Expert Report, dated 16 September 2019 (“ Abdala & Delamer III ”)
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Dr. Boaz Moselle	The Respondents' expert on damages; submitted four expert reports: First Expert Report, 23 November 2018 (" Moselle I "); Second Expert Report, 13 June 2019 (" Moselle II "); Third Expert Report, 22 November 2019 (" Moselle III "); Fourth Expert Report, 10 January 2020 (" Moselle IV ")
Mr. Michael Peer	The Claimants' expert on damages; submitted four expert reports: First Expert Report, 27 June 2018 (" Peer I "); Second Expert Report, 1 March 2019 (" Peer II "); Third Expert Report, 6 September 2019 (" Peer III "); Fourth Expert Report, 19 December 2019 (" Peer IV ")
Dr. Boaz Moselle and Mr. Michael Peer	Dr. Boaz Moselle and Mr. Michael Peer submitted a joint expert report on 3 October 2019 (" JER1 ") and a second joint expert report on 21 June 2021 (" JER2 ")
Dr. Paata Turava	The Respondents' Georgian law expert, particularly on the legal nature of the two contracts at issue in the Arbitration, the principles of contractual interpretation applicable to public law contracts, and the entitlement to lost profits under Georgian law; submitted two expert reports, dated 20 November 2018 and 12 June 2019

	
Mr. Dmitry Evgenyevich Volkov	Inter RAO's Head of Central Asia and Transcaucasus Assets Management Unit; Mr. Anatoly Markov is Sector Head within this Block
Mr. Andrey Zavrazhnov	December 2008–September 2011, Inter RAO's Head of Transcaucasia, Turkey and Middle East Geographical Division; participated in negotiations with Government regarding Inter RAO's investments in Georgia, including the 2011 Memorandum and the purchase of the Khrami Companies under the Khrami SPA; currently General Director of LLC TD SMK; submitted two witness statements dated 26 June 2018 and 25 February 2019

I. INTRODUCTION

1. This final award addresses the remaining issues relating to the quantification of damages flowing from the Tribunal’s previous awards in this matter: the Partial Award in on Liability, dated 19 April 2021 (the “**Partial Award on Liability**”), the Partial Award on Damages, dated 30 July 2021 (the “**First Partial Award on Damages**”), the Partial Award on Damages, dated 23 November 2021 (the “**Second Partial Award on Damages**”), as well as interest and costs.

2. As stated in the previous Partial Awards, this arbitration concerns a dispute submitted under the Rules of the Stockholm Chamber of Commerce (“**SCC**”), pursuant to the terms of the arbitration agreements contained in [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (the “**2013 Memorandum**”)¹ and [REDACTED]

[REDACTED]

[REDACTED] (the “**Khrami SPA**”).²

¹ C-0034 (Claimants’ Translation) / R-0028 (Respondents’ Translation), [REDACTED]
[REDACTED]
[REDACTED] (“**2013 Memorandum**”), Clause 9, “Arbitration Section”, which provides at Clause 9.3 that “[a]ny dispute ... shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.”

² [REDACTED]
[REDACTED]
[REDACTED] (“**Khrami SPA**”), Clause 8, “Dispute Settlement”, which provides at Clause 8.4 that “[a]ny dispute ... shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce....”

3. This is one of two arbitrations whose procedure the Parties have agreed to coordinate. This arbitration is referred to as the “**SCC Arbitration**”.

4. The other arbitration concerns a dispute submitted to the International Centre for Settlement of Investment Disputes (“**ICSID**”) under the Agreement on Encouragement and Reciprocal Protection of Investments between Georgia and the Kingdom of the Netherlands, which entered into force on 1 April 1999 (the “**BIT**” or “**Treaty**”), and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which entered into force on 14 October 1966 (the “**ICSID Convention**”). That arbitration is referred to as the “**ICSID Arbitration**”.

5. As discussed later in this Award, the Claimants’ claim for damages and the Respondents’ counterclaim overlap with their respective claims in the ICSID Arbitration.

II. THE PARTIES

6. The Claimants in this arbitration are PJSC Inter RAO UES (“**Inter RAO**”), a public joint stock company incorporated under the laws of Russia;³ Gardabani Holding BV (“**Gardabani**”), a private limited liability company established under the laws of the Netherlands;⁴ and JSC Telasi (“**Telasi**”), a joint stock electricity distribution company incorporated in Georgia.⁵

7. Gardabani owns 100% of Khrami HPP-1 JSC (“**Khrami-1**”) and JSC Khrami HPP-2 JSC (“**Khrami-2**”) (collectively, the “**Khrami Companies**”), which are electricity generation

³ Inter RAO’s address is: 27, Bolshaya Pirogovskaya Street, Building 2, 119435, Moscow, Russia; Netherlands Chamber of Commerce Business Register extract, C-0112. Inter RAO owns an indirect 100% interest in each of Gardabani Holdings BV (“**Gardabani**”) and Silk Road Holding BV (“**Silk Road**”).

⁴ Gardabani’s address is: Strawinskyalaan 655, 1077XX Amsterdam; The Netherlands Chamber of Commerce Business Register extract, C-0110.

⁵ Telasi’s address under the 2013 Memorandum is: 3 Van Street, Tbilisi 0154, Georgia, C-0034/ R-0028.

companies incorporated in Georgia. Telasi is a subsidiary of Silk Road Holdings BV, which owns 75.11% of Telasi's stock. Gardabani and Silk Road are subsidiaries of Inter RAO.

8. The Respondents in this arbitration are the Government of Georgia (the “**Government**”); the Georgian Ministry of Economy and Sustainable Development of Georgia (“**Ministry of Economy**” or the “**MOE**”); and the State Service Bureau Ltd (“**SSB**”), a Georgian state-owned entity.⁶

9. The Parties in the ICSID Arbitration are Gardabani and Silk Road, as Claimants, and Georgia, as the Respondent.

III. PROCEDURAL HISTORY OF THE PROCEEDINGS

10. The procedural history of these proceedings through 23 November 2021 is set out in the Partial Award on Liability, and the First and Second Partial Award on Damages.

11. In the First Partial Award on Damages, the Tribunal decided a number of issues relating to the calculation of damages, requested that the Parties' respective damages experts (“**Experts**”), recalculate damages on the basis of those findings and produce a new joint expert report on damages, and deferred the Parties' claims for interest and costs to the Final Award. In the Second Partial Award on Damages, the Tribunal determined the compensation owing to Gardabani through [REDACTED] in the amount of [REDACTED], and to Telasi for the period through [REDACTED], in the amount of [REDACTED]. The Tribunal also deferred the quantification of compensation due to Telasi for the period [REDACTED]

⁶ Georgia's official address and its address for receipt of notices under the 2013 Memorandum is: 7 Ingorokva Street, Tbilisi, Georgia, C-0034/ R-0028. The MOE's legal address set out in the Khrami SPA is 12 Chanturia St., Tbilisi 0108, Georgia. The SSB's registered address set out in the Khrami SPA is 12 Chanturia St., Tbilisi 0108, Georgia.

claim and were content with the period of one month from the date of the Claimants' submission to respond.

17. On 7 February 2022, the Tribunal granted the Claimants until 7 March 2022 to make their submission on their Claim for Additional Damages and granted the Respondents until 7 April 2022 to provide their response.

18. On 18 February 2022, the Tribunal requested an extension of the date for rendering the Final Award until 10 June 2022. On 24 February 2022, the SCC extended the date for the submission of the Final Award until 10 June 2022.

19. On 7 March 2022, the Claimants filed their Submission in Respect of Additional Gardabani Losses, together with the Fifth Expert Report of Michael Peer and supporting materials.

20. On 13 March 2022, the Parties jointly requested an extension until 22 March 2022 to submit the joint expert report on Telasi's losses during the [REDACTED] [REDACTED] [REDACTED]. On 14 March 2022, the Tribunal granted the Parties' request. On 22 March 2022, the Parties jointly requested an extension until 24 March 2022 to submit the joint expert report and the Tribunal granted the Parties' request on the same date.

21. On 24 March 2022, the Parties submitted the Fourth Joint Expert Report regarding the quantification of compensation owing to Telasi for the [REDACTED] ("JER4"). The Parties also subsequently submitted their respective experts' updated models and accompanying exhibits.

22. On 7 April 2022, the Respondents submitted their Response to the Claimants' Claim for Additional Damages. In their Response, the Respondents accepted that the tariffs in question had changed and suggested that the Parties' experts attempt to agree on the calculation of any additional damages by 15 May 2022. The Claimants accepted the Respondents' suggestion and

the Tribunal set the deadline for the submission of a new joint expert report (“**JER5**”) on 16 May 2022.

23. On 5 May 2022, the Tribunal requested from the SCC a new extension of the date for rendering the Final Award until 9 September 2022. On 13 May 2022, the SCC granted the Tribunal’s request and extended the deadline for rendering the Final Award until 9 September 2022.

24. On 16 and 19 May 2022, the Parties jointly requested an extension of the deadline for submitting JER5 until 6 June 2022. On 20 May 2022, the Tribunal granted the Parties’ joint request. Subsequently, the Parties jointly requested additional extensions, which the Tribunal granted.

25. On 9 June 2022, the Parties submitted JER5 which set out the Experts’ calculations relating to the Claimants’ Claim for Additional Damages.

26. On 13 June 2022, the Tribunal requested that the Parties provide their submissions on interest and their updated claims for costs by 30 June 2022.

27. On 29 June 2022, the Parties jointly requested an extension of the deadline for submissions on interest and updated costs until 5 July 2022. On 30 June 2022, the Tribunal granted the extension requested.

28. On 30 June 2022, the Claimants requested leave to submit in evidence two recent articles relating to the setting of Gardabani’s tariffs in November 2022.

29. On 5 July 2022, the Parties filed their respective submissions on interest and costs.

30. On 8 July 2022, the Respondents submitted their Response to the Claimants’ Request to Submit New Articles into Evidence. In their response, the Respondents submitted that the press articles that the Claimants sought to submit into evidence are not relevant [REDACTED]

[REDACTED]. Nevertheless, the Respondents stated that although the request for admission of the articles in question came late in the proceedings, they had no principled objection to the introduction of the articles into the record.

31. On 14 July 2022, the Tribunal accepted the Claimants' request and admitted the articles into the record.

IV. CLAIMANTS' APPLICATION IN RESPECT OF GARDABANI'S LOSSES

32. In the First Partial Award on Damages, the Tribunal determined that the compensation due to Gardabani for the period of [REDACTED] should be calculated on the basis that [REDACTED]

[REDACTED]⁷ In accordance with the Tribunal's directions, the Parties' Experts reached an agreed calculation on a free cashflow to equity ("FCFE") basis, using a valuation date of [REDACTED]. In their calculations, the Experts assumed that [REDACTED]

[REDACTED]. On the basis of the foreign-exchange-based adjustments, the Experts assumed in their third joint expert report, [REDACTED]

⁷ First Partial Award on Damages, ¶¶ 93-97, 168(a)(b).

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Source: MP 5, table 2.2 at p.6

33. In its Second Partial Award on Damages, dated 23 November 2021, the Tribunal accepted the Experts' agreed calculation and awarded compensation to Gardabani in the amount of [REDACTED]

[REDACTED]

34. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

35. [REDACTED]

[REDACTED]

[REDACTED]

36. [REDACTED]

[REDACTED]

[REDACTED]

37. In JER5, the Experts revised their assumption and calculated the additional damages to Gardabani. They agree on the calculation for the period [REDACTED] but disagree with respect to the period [REDACTED]. The basis for the Experts' difference [REDACTED]

[REDACTED]

38. With respect to the period from [REDACTED] the Experts agree that since the NERC has approved the tariffs for that period, no further adjustments to the tariffs are expected to take place. On that basis, they have calculated and agreed the additional damages owed to Gardabani in the amount of [REDACTED]

39. With respect to the period from [REDACTED], [REDACTED], [REDACTED], which will remain at the currently approved levels [REDACTED]. Therefore, according to him, the

⁸ NERC Resolution No.2, dated 24 February 2022, BM-60. The NERC's Resolution is effective for the period 1 March 2022– [REDACTED]. Nevertheless, in paragraph 1.3 of JER5, the Experts state that the period covered runs until [REDACTED].

⁹ NERC Letter of 8 December 2021, BM-62; Explanatory Notes to Resolution No. 2, BM-61.

[REDACTED]

[REDACTED] On the other hand, [REDACTED] is of the view the NERC will continue to [REDACTED]. Therefore, in his view, the [REDACTED] according to two possible scenarios.

40. The Experts agree that [REDACTED] the [REDACTED] [REDACTED] then the additional damages due to Gardabani amount to [REDACTED]. They also agree that if from [REDACTED], the NERC does not adjust the tariffs of the Khrami Companies [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁰

A. Mr. Peer's Approach

41. In Mr. Peer's view, neither expert is able to reliably estimate [REDACTED]. Based on the NERC's practice in light of [REDACTED] Mr. Peer considers it reasonable to assume [REDACTED]

[REDACTED], Mr. Peer refers to the following:

¹⁰ JER5, p. 4. The Experts also agreed to use [REDACTED] as the valuation date for the additional damages as this was the date fixed by the Tribunal for the purposes of JER3.

- a) The NERC's [REDACTED]
[REDACTED]
- b) The NERC's decision to apply [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- c) In calculating [REDACTED]
[REDACTED]
[REDACTED].

42. According to Mr. Peer, [REDACTED]
[REDACTED]
[REDACTED] at the currently approved level
throughout the relevant period. Further, in his view, assuming a change in the [REDACTED]
[REDACTED]
[REDACTED] does not, in fact, follow the Tribunal's directions precisely.¹¹

B. Dr. Moselle's Approach

43. Dr. Moselle considers it unreasonable to assume that the [REDACTED]
[REDACTED].

44. With respect to the [REDACTED] to Khrami-2's tariffs, Dr. Moselle states
that the [REDACTED]

¹¹ JER5, pp. 4-5.

NERC Resolution No. 2, dated 24 February 2022. By way of these [REDACTED]
[REDACTED]. On that
basis, Dr. Moselle sees no reason to assume that [REDACTED]
[REDACTED]¹² With respect to the [REDACTED] Dr.
Moselle states that the [REDACTED]
[REDACTED],¹³

45. In Dr. Moselle's view, [REDACTED]
[REDACTED]

46. Dr. Moselle calculated additional damages in two scenarios. In each of these, he assumed
that the adjustments [REDACTED]
[REDACTED]

[REDACTED]¹⁴ Dr. Moselle described his two possible scenarios as
follows:

- a) **Scenario 1:** Assumes that the [REDACTED]
[REDACTED] In this scenario
total additional damages to Gardabani amount to [REDACTED]
[REDACTED]
[REDACTED]

¹² JER5, pp. 5-6.

¹³ JER5, p. 5; Explanatory Notes to Resolution No. 2, BM-61; NERC Letter of 8 December 2021, BM-62. The Adjustment Date of 1 November 2022 is reflected in the Khrami SPA in Annex #1, Clause 2.2.

¹⁴ JER5, p. 6. According to Dr. Moselle, it is reasonable to expect that the [REDACTED]
[REDACTED]. If this is correct, then the additional damages of [REDACTED]
agreed by the Experts, [REDACTED]
[REDACTED] would increase.

b) **Scenario 2:** Assumes that the [REDACTED]

[REDACTED]
[REDACTED] In this scenario, the total additional damages to Gardabani amount to [REDACTED]
[REDACTED]
[REDACTED]

47. Dr. Moselle explains that the difference between the two scenarios is the assumption in respect of whether the NERC will apply USD-based adjustments as of 1 November 2022.

According to Dr. Moselle, [REDACTED]

[REDACTED] a conservative estimate of the additional damages [REDACTED]
[REDACTED]

C. Tribunal's Analysis

48. Having considered the Experts' views and calculations set out in JER5 in light of its previous Partial Awards on Damages, the Tribunal has concluded that the additional damages calculated by Dr. Moselle in his Scenario 1 [REDACTED] should be accepted. In the Tribunal's view, the approach adopted in this scenario provides greater certainty and finality.

49. In this regard, the Tribunal notes that the NERC is an independent agency which is not bound by the terms of this Award. [REDACTED]

[REDACTED] In light of this, the Tribunal is not sufficiently confident that [REDACTED]

¹⁵ JER5, p. 6.

¹⁶ JER5, p. 6.

[REDACTED]

[REDACTED]

[REDACTED] Accordingly, the Tribunal finds it more prudent to calculate damages on the basis that the [REDACTED] [REDACTED] consistent with the Tribunal's directions as of 1 November 2022. The Tribunal accepts Mr. Peer's opinion that this will not result in [REDACTED] [REDACTED] going forward and may choose to maintain these at the currently approved level until [REDACTED]

50. The remaining issue is whether [REDACTED] [REDACTED]. Mr. Peer says there is no basis to assume that [REDACTED] will do so, while Dr. Moselle says that [REDACTED] [REDACTED] the latest being in NERC Resolution No. 2 of 24 February 2022. In the Tribunal's view, it is reasonable to expect that the [REDACTED] [REDACTED] as it has done to date. Accordingly, the Tribunal finds that Dr. Moselle's Scenario 1 should be adopted. This yields a calculation of additional damages payable to Gardabani in the amount [REDACTED].¹⁷

V. COMPENSATION OWED TO TELASI FOR THE [REDACTED]

51. In JER4, the Experts identified two principal disagreements between them. The first disagreement relates to the appropriate valuation date for the calculation of damages owed to Telasi

¹⁷ In reaching this conclusion, the Tribunal has considered the two press articles which the Claimants submitted on 21 July 2022, C-0258 and C-0259. In the Tribunal's view, the articles are of limited relevance and been accorded no weight.

for the period [REDACTED]; the second disagreement relates to the appropriate approach for calculating damages and whether all components of free cash flow to firm (FCFF) or only four components of FCFF should be used. The Experts summarized the effect of their respective approaches to these two issues as follows:

Telasi and Inter RAO damages for the period from [REDACTED] to [REDACTED]

	Mr Peer	Dr Moselle
Valuation date	[REDACTED]	[REDACTED]
Approach for calculation	[REDACTED]	[REDACTED]
Telasi damages (USD 000's)	[REDACTED]	[REDACTED]
Inter RAO damages (USD 000's)	[REDACTED]	[REDACTED]

18

A. Disagreement 1: Valuation Date

52. The Experts differ on whether damages for the period from [REDACTED] should be calculated as of [REDACTED] or [REDACTED]. According to Mr. Peer, the actual financial data for the last six months [REDACTED] of Telasi and Telmico should be taken into account in the calculation of damages. This leads to the use of [REDACTED] as the valuation date.¹⁹ Dr. Moselle, on the other hand, considers that the appropriate valuation date is [REDACTED] and that it is unnecessary to take into account actual financial data for Telasi and Telmico [REDACTED].²⁰

¹⁸ JER4, ¶ 2.8. The Experts' calculations were provided on the basis of their approach to the valuation date and the components of FCFF. They did not provide a calculation of damages using the valuation date or the components of FCFF used by their counterpart or otherwise challenge the accuracy of those calculations.

¹⁹ JER4, ¶ 2.4(a).

²⁰ JER4, ¶ 2.4(b).

i. **Mr. Peer's Approach**

53. Mr. Peer summarized his approach as follows:

— Cash flows in the Actual scenario are calculated as of [REDACTED] for both Telasi and Telmico:

[REDACTED]. I believe that the Telasi damages (as calculated with due regard to the Unbundling Regime) cannot be reliably calculated as of [REDACTED]

[REDACTED]. This is also consistent with the practice of using the most recently available information for the calculation of the damages. It is also consistent with prior practice of using the most recently available information as to expectations of the future whereas using the [REDACTED] would be relying upon outdated projections prepared earlier.

— But-For scenario is calculated as of [REDACTED] as all elements of the calculations were agreed with Dr Moselle in the Second Joint Expert Report, so it is easier to stick with the agreed position. I explain below why updating the valuation date for the But-for scenario is problematic and it is preferable to keep the existing valuation date for same.

I do not use any actual information for [REDACTED] in my calculations in both the Actual and But-For scenarios, as damages for [REDACTED] in the Second Partial Award.

1.1. Actual scenario

From the valuation perspective the Actual scenario should be calculated as of [REDACTED] as both Experts and Tribunal agree that there was not enough information available regarding the [REDACTED]

— On 29 June 2021 NERC issued resolutions in relation to [REDACTED] of the Unbundling Regime, including the Telasi and Telmico tariffs and underlying tariff methodology. In 2021 NERC also introduced some future plans for development of the Unbundling Regime such as [REDACTED]

— The new Unbundling Regime has only operated since 1 July 2021 so using actual data for [REDACTED] allows the Experts to understand how it operates in practice.

1.2. But-For scenario

To avoid any contradictions with the Partial Award and other Directions of the Tribunal, I have not updated [REDACTED] But-For scenario as of [REDACTED]

Technically, the But-For scenario should be also calculated as of [REDACTED] which would include updates of the exchange rates, macroeconomic forecasts and sales volumes. However, an update of the But-For scenario as of [REDACTED] has a potential contradiction with the Partial Award in relation to Telasi damages for [REDACTED]

— In the Third Joint Expert Report the Experts agreed that there is no other way to calculate cash flows in the But-For scenario for a half of the year other than to assume that it equals 50% of the cash flows for the whole year. Such an approach ignores seasonal factors but is still appropriate because Telasi is entitled to compensation for damages for both [REDACTED]. The split into two awards was a technical exercise.

— If the cash flows for all of [REDACTED] in the But-For are updated, damages for [REDACTED] would not be consistent with the logic described above and therefore damages for [REDACTED] would need to be updated as well. However, the update will consider any over/under performance [REDACTED] which is ignored in the Actual scenario.

Therefore, a potential solution for this situation is to calculate the damages of [REDACTED] and set-off the amount in the Partial Award for [REDACTED]. I have not done so as the Tribunal has not instructed such a calculation although such an approach would result in [REDACTED].²¹

54. Mr. Peer gives a number of reasons for his disagreement with Dr. Moselle's approach.

These include the following:

- a) Dr. Moselle uses different sources for [REDACTED] in the Actual Scenario. In this regard, Dr. Moselle uses a valuation date of [REDACTED] (which is the same valuation date as in JER2, dated 21 June 2021), and the tariffs set out in NERC Resolution No. 83 dated 29 December 2020 [REDACTED]. [REDACTED] However, he has changed the source of [REDACTED]. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

²¹ JER4, pp. 5-6. This alternative to Mr. Peer's approach would involve [REDACTED] already awarded in the Second Partial Award on Damages for [REDACTED] in the Tribunal's award for the balance of [REDACTED]. Mr. Peer states that although this alternative approach would result in [REDACTED] he has not calculated damages under this approach since the Tribunal has not requested it.

████████████████████. According to Mr. Peer, the use of ██████████
██████████ is not permissible under international valuation standards.
According to Mr. Peer, a consistent approach requires using one of two options:
██████████ from NERC's Resolution No. 83 if the valuation date is set at ██████████
██████████ or, NERC's Resolution No. 27 from 29 June 2021 which
effectively means the valuation date must be set at ██████████. Mr. Peer
uses the second option, which, according to him, allows for the ██████████
████████████████████²² Dr. Moselle's approach
affects damages for ██████████ which have already been awarded by the Tribunal
in the Second Partial Award on Damages. In JER3, Dr. Moselle calculated
Telasi's damages ██████████
██████████ set in Resolution No. 83 dated 29 December 2020. In JER4,
Dr. Moselle changed the source of the ██████████
████████████████████. This results in the calculation of a
████████████████████ used in JER3, while the valuation date
remains the same. According to Mr. Peer, this change affects the total damages
for ██████████ and automatically affects the damages awarded for ██████████
According to Mr. Peer, Dr. Moselle continues to use the same valuation date of
██████████ as was used in JER3, but also uses information which

²² JER4, pp. 5-6.

became available in [REDACTED]. According to Mr. Peer, his approach does not affect damages awarded for [REDACTED].²³

- b) Mr. Peer disagrees with Dr. Moselle’s view that the Tribunal determined the [REDACTED] in its Second Partial Award on Damages when it determined that the appropriate date was [REDACTED]. According to Mr. Peer, the Second Partial Award on Damages provided directions in relation to the valuation dates for historical damages [REDACTED] only. In his view, the Tribunal selected [REDACTED] as the valuation date for this period since there were limitations related to updates of the But-For scenario as of [REDACTED]. This is not the case for damages relating to the [REDACTED] for which the [REDACTED] is appropriate and does not contradict the Tribunal’s decision in relation to historical damages.²⁴

- c) Dr. Moselle’s approach of using the valuation date of [REDACTED] unduly restricts consideration of all of [REDACTED], including:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

²³ JER4, p. 7.

²⁴ JER4, pp. 7-8.

²⁵ JER4, p. 8.

55. In response to Dr. Moselle's criticism of his approach, Mr. Peer made a number of points.

These can be summarized as follows:

- a) The criticism regarding the possibility of double recovery is purely hypothetical. Further, there is an equal chance of under recovery as over recovery of costs since neither the Experts nor the [REDACTED] [REDACTED]. According to Mr. Peer, his methodology allows for resolution of this issue since the [REDACTED] [REDACTED].²⁶
- b) Use of a [REDACTED] valuation date creates a higher chance of double recovery or under recovery of costs since Dr. Moselle's calculations use the [REDACTED]. According to Mr. Peer, his model takes into account the actual data for [REDACTED] and, therefore, considers any deviations in order to ensure correct withdrawals or compensations in [REDACTED].²⁷
- c) Regarding the criticism relating to potential double compensation of costs, this is said to result from a potential difference between the actual data and the planned data used to [REDACTED]. The potential double recovery raised by Dr. Moselle is said to occur as a result of including a deviation between costs [REDACTED] [REDACTED] in subsequent periods. However, both experts use the [REDACTED] [REDACTED] to [REDACTED] in the [REDACTED] in both the But-

²⁶ JER4, p. 8.

²⁷ JER4, pp. 8-9.

For and Actual scenarios. Since the [REDACTED] takes into account deviations between [REDACTED], the potential for double recovery when setting [REDACTED] for the next period is avoided. Further, and in any event, Mr. Peer considers that actual information is always more reliable than any forecast. With respect to the recovery of costs related to [REDACTED] [REDACTED] Mr. Peer is of the view that Dr. Moselle underestimates damages since he takes into account a [REDACTED] [REDACTED] [REDACTED] which are newly imposed and not compensated.²⁸

- d) Mr. Peer does not accept that [REDACTED] [REDACTED] is inconsistent with his selection [REDACTED] [REDACTED], Mr. Peer has used an [REDACTED] [REDACTED] the model prepared in [REDACTED] because the inputs in that model are equal to the inputs which influence [REDACTED] [REDACTED] Although it would be possible to calculate [REDACTED] [REDACTED] such an approach would be overly complicated and would ultimately arrive at the same result. Therefore, the use of [REDACTED] [REDACTED] is correct and consistent. Using a valuation date of [REDACTED] as Dr. Moselle

²⁸ JER4, p. 9.

does, does not permit the use of NERC's Resolution No. 27 and [REDACTED]

[REDACTED] Dr. Moselle's assumptions.²⁹

ii. **Dr. Moselle's Approach**

56. Dr. Moselle summarized his approach as follows:

My approach for calculating damages as of [REDACTED] is based on the following:

- For Telasi in the But-For scenario [REDACTED] that was available as of [REDACTED]

- For Telasi in the Actual scenario [REDACTED] I also use [REDACTED] For Telasi [REDACTED] I use the [REDACTED] were planned to be applied [REDACTED]

- For Telmico in the Actual scenario [REDACTED] I use macroeconomic and volumes data that was available as of [REDACTED] but use the [REDACTED]

1.1. Distribution of electricity

I believe that using information as of [REDACTED] for the distribution activity in both But-For and Actual scenarios is the most appropriate approach to calculate [REDACTED]

[REDACTED] with the Tribunal's decision from the Second Partial Award (para. 53) that "the appropriate valuation date for Telasi's and Inter RAO's damages [REDACTED]

- Also according to the Second Partial Award (para. 51), "In the Tribunal's view, the valuation date should be a date in respect of which relevant data is available for the Actual and But-For scenarios. As the latest updated [REDACTED] for [REDACTED] But-For scenario are [REDACTED] the Tribunal prefers the use [REDACTED] as the valuation date." As of the current date, the latest [REDACTED] from [REDACTED] still are those made as of [REDACTED] which are the same that were used in the calculation of [REDACTED] in the [REDACTED]

- The current [REDACTED] that apply to [REDACTED] were calculated by the [REDACTED] using information [REDACTED] (source: Exhibit BM-44). As I explain in point 3 below, basing the Actual [REDACTED]

²⁹ JER4, pp. 9-10.

scenario on the information that was used to calculate current [REDACTED]
important to prevent the possibility of double compensation of costs.

1.2. Retail of electricity

I believe that [REDACTED]
[REDACTED] is the most appropriate way to calculate damages [REDACTED]

- It is consistent with the Tribunal's decision from the Partial Award (para. [REDACTED]) to defer its final decision "until it has received additional information and submissions from the Parties regarding [REDACTED]", since this information was not available as of [REDACTED].

The current [REDACTED] that apply to [REDACTED] using [REDACTED] information that was available [REDACTED] (source: Exhibit BM-52). As I explain in point 3 below, basing the Actual scenario on the information that was used to calculate [REDACTED] is important to prevent the possibility of double compensation of costs...

8. Summary of my position

In summary, I consider that [REDACTED] should be used as date of valuation mainly because:

- It makes the current calculation of damages consistent with those already decided by the Tribunal in this arbitration.

- It prevents that [REDACTED] get compensated in the final award for [REDACTED]

- To prevent potential biases in the calculation of damages, both But-For and Actual scenarios need to be expressed as of a same date and using the same sources of information. If the date of valuation were [REDACTED] then the But-For scenario would need to be recalculated as of this date. This process is likely to be time consuming and would likely require the Tribunal to decide on the potential disagreements that the Experts may have, particularly on [REDACTED]

- My [REDACTED] does not require the use of [REDACTED] Mr Peer and does not impact the calculation of damages for [REDACTED]. To the contrary, current approach is consistent with the approach that both Experts followed in the calculation of damages for [REDACTED] and following the same approach is the only way to obtain damages for [REDACTED] I that correctly reflect the effect of [REDACTED]

³⁰

57. Dr. Moselle's comments on Mr. Peer's analysis are as follows:

³⁰ JER4, pp. 10-11, 15-16.

- a) Mr. Peer only uses information [REDACTED] [REDACTED] in the Actual Scenario. However, Mr. Peer's But-For scenario continues to be based on information as of [REDACTED]. Most of the parameters used in the calculation of the But-For scenario as of [REDACTED] [REDACTED] [REDACTED]. There are no more recent [REDACTED] sourced from [REDACTED] the But-For scenario. Mr. Peer bases his Actual Scenario [REDACTED] on various [REDACTED] provided by [REDACTED]. The use of different sources of information to calculate the But-For and Actual scenarios creates inconsistencies and potentially biases the calculation of damages.³¹
- The use of [REDACTED] as the valuation date results in an estimate of damages owing to Telasi for the period from [REDACTED] that is not directly comparable or additive to the damages that the Tribunal has already awarded for the period from [REDACTED], using a valuation date of [REDACTED]. Further, the use of [REDACTED] as a valuation date would require [REDACTED] [REDACTED] which has already been decided by the Tribunal in the First Partial Award on Damages (paragraph [REDACTED]).
- The use of [REDACTED] as a valuation date would imply that that year forms part of the [REDACTED] which contradicts the Tribunal's definition

³¹ JER4, p.11.

of that period, which, according to the Second Partial Award on Damages (paragraph [REDACTED]) ends at [REDACTED]

Dr. Moselle disagrees with Mr. Peer's statement that using actual information for [REDACTED] is consistent with the practice of using the most recently available information for the calculation of damages. In this regard, he notes that the Tribunal rejected the use of actual information for [REDACTED] when it awarded damages for the period from [REDACTED]. Although Mr. Peer is of the view that using the [REDACTED]

[REDACTED] As a result, Mr. Peer's approach is inconsistent because it mixes different sources of information ([REDACTED])

[REDACTED] as well as different dates for [REDACTED]

[REDACTED]³²

- b) Using a valuation date of [REDACTED] may result in double compensation of costs since the [REDACTED] that applies to [REDACTED] periodically provides for corrections [REDACTED]. As a result, if either [REDACTED], their future [REDACTED] will be adjusted to [REDACTED]

³² JER4, p. 11.

[REDACTED] Therefore, if damages are calculated using [REDACTED], [REDACTED] would receive [REDACTED]. In this regard, Dr. Moselle refers to [REDACTED] which state that [REDACTED]. Basing the Actual Scenario on the same information that was available when the [REDACTED] [REDACTED] limits the possibility of double or under recovery of costs. Dr. Moselle does not accept that in this case there is an equal chance of [REDACTED]. In his view, over recovery is a more likely scenario because Mr. Peer's calculations include, for example, [REDACTED].³³

58. In response to Mr. Peer's comments on his approach, Dr. Moselle comments as follows:

- a) [REDACTED] by Resolution No. 83 from 29 December 2020 is appropriate and does not rely on information that became known [REDACTED].

³³ JER4, pp. 11-13.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Therefore,

this fact was known as of [REDACTED] and does not involve the use of [REDACTED] in breach of international valuation standards.³⁴

- b) With respect to Mr. Peer’s criticism that his approach effectively impacts damages for [REDACTED], which have already been awarded by the Tribunal because in the calculation of damages from JER3 he (Dr. Moselle) had assumed [REDACTED], Dr. Moselle maintains that his approach is correct. In this regard, he says that the approach adopted in JER3 was agreed between the Experts and, therefore, Mr. Peer’s calculations in JER3 follow the same approach regarding [REDACTED]. In JER3, the Experts estimated damages for [REDACTED]
- [REDACTED]
- [REDACTED]

³⁴ JER4, p. 13. [REDACTED]

While this approach would provide only an approximation of the exact [REDACTED] [REDACTED] any deviation would be automatically corrected in the [REDACTED] provided a consistent approach in the calculation of damages is adopted. To be consistent, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] According to Dr. Moselle, this is the approach that he followed in his calculations in JER4.

- c) With respect to Mr. Peer’s view that the But-For scenario should be updated to [REDACTED] Dr. Moselle is of the view that this would be impractical and unnecessary. In this regard, many of the parameters that were used to calculate the But-For scenario as of [REDACTED] were sourced from the [REDACTED] [REDACTED] As there are no more recent updates of [REDACTED] an update would require the Experts to use [REDACTED] [REDACTED] and would require the Tribunal to potentially decide on [REDACTED] e. Further, since the Tribunal has decided that damages for the first part of the [REDACTED] [REDACTED] [REDACTED] [REDACTED] would create an unnatural break in the

calculations. Dr. Moselle disagrees with Mr. Peer's proposed solution to calculate Telasi's damages for all of [REDACTED] the amount awarded by the Tribunal in the Second Partial Award on Damages against that amount. In his view, this approach calculates damages [REDACTED] which is inconsistent with the Tribunal's decision to calculate damages for [REDACTED]. Further, if damages are calculated as of [REDACTED] they are not directly comparable to the damages in the Second Partial Award on Damages and, therefore, the portion corresponding to [REDACTED] cannot be directly set off against an amount calculated as of [REDACTED]. In Dr. Moselle's view, the simpler solution is to continue calculating damages as of [REDACTED]

d) Dr. Moselle disagrees with Mr. Peer's critique that his approach does not account for the effects of the [REDACTED] and that [REDACTED] is a better valuation date to fully account for the effects of the [REDACTED]. With respect to the additional financial costs to [REDACTED] attributable to the launch of the [REDACTED], these will be compensated by way of a [REDACTED]. Contrary to Mr. Peer's view, Dr. Moselle states that t [REDACTED]

[REDACTED] Further, as of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Therefore, in the calculation of damages
[REDACTED] and does not affect damages.
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] ³⁵

iii. The Tribunal’s Analysis

59. Having considered the Experts’ views set out in JER4 together with their supporting exhibits in light of its previous Partial Awards on Damages, the Tribunal prefers Dr. Moselle’s

³⁵ JER4, pp. 14-15.

approach and the use of [REDACTED] as the valuation date for damages during the [REDACTED].

60. In the Tribunal's view, the use of this date is consistent with its previous decision regarding the appropriate valuation date for Telasi's damages in the [REDACTED]. The latest available [REDACTED] for Telasi's But-For scenario remain those dated [REDACTED], which are the same that were used in the calculation of damages to [REDACTED]. Further, Telasi's [REDACTED] [REDACTED] using information available at that date.

61. With respect to [REDACTED] the Tribunal accepts that the use of [REDACTED] available [REDACTED] when the [REDACTED] came into effect is appropriate in light of the fact that it was not available as of [REDACTED]. Having considered Mr. Peer's concern that using information available as of this date will not fully account for the effects of the [REDACTED], as opposed to information available at [REDACTED] the Tribunal is satisfied that the effects [REDACTED]

62. In the Tribunal's view, this is the more prudent approach to avoid double compensation, which could result from an award of damages calculated using actual financial data and [REDACTED]

³⁶ See JER4, pp. 11-12, 14-15 and the sources cited by Dr. Moselle. In this regard, the Tribunal believes that it is reasonable to assume that [REDACTED]

63. The Tribunal has considered Mr. Peer's objection that Dr. Moselle relies on information that became known after the fact, in breach of international valuation standards. In this regard, Mr. Peer points to Dr. Moselle's use of Telasi's Distribution Tariffs for the period [REDACTED]

[REDACTED]

[REDACTED]

64. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Accordingly, it does not appear that Dr. Moselle relied on information that only became available after a valuation date of [REDACTED]. Further, it does not appear that Dr. Moselle relied on NERC Resolution No. 27 of 29 June 2021 [REDACTED]

65. In the Tribunal's view, Dr. Moselle's approach should be preferred since the use of the valuation date of [REDACTED] is consistent with a calculation of damages accepted by the Tribunal in its previous Partial Awards and avoids complexities and possible biases from the use of different dates and sources of information in the But-For and Actual Scenarios. The Tribunal accepts that the use of a valuation date of [REDACTED] would require the recalculation of the But-For scenario as of that date. As Dr. Moselle points out, this would likely be a complex and time-consuming task which could give rise to further disagreements between the Experts and require further intervention and decisions by the Tribunal.

66. The exercise undertaken by the experts to calculate damages for the [REDACTED] [REDACTED] [REDACTED] [REDACTED] is a complex task which is intended to provide the best estimate of damages to Telasi during the period in question. In the Tribunal's view, the use of [REDACTED] [REDACTED] as the valuation date provides a reliable and reasonable estimate of damages which it prefers to the [REDACTED] valuation date espoused by Mr. Peer.

B. Disagreement 2: the Components of FCFF

67. The second disagreement between the Experts relates to the approach for calculating cashflows in the But-For and Actual Scenarios. The issue is whether these cashflows should include all components of FCFF (“**Full FCFF**”) or the four specific components of FCFF (“**FCFF Components**”) used in this Experts' previous calculations and reports. If the additional components contained in Full FCFF, such as OPEX, CAPEX and net working capital, are included in the calculation, then this [REDACTED] the amount of damages.

68. Mr. Peer is of the view that all components of FCFF should be used in the calculation of damages since [REDACTED] [REDACTED] In his view, while the use of specific components affected by the [REDACTED] [REDACTED] was adequate, the effect of the [REDACTED] [REDACTED] are [REDACTED] such as to make [REDACTED].³⁷

69. Dr. Moselle continues to consider only the components of FCFF that he maintains are affected by the [REDACTED] [REDACTED]

³⁷ JER4, p. 16.

[REDACTED] In his view, there is no reason to assume that the other components of FCFF would be different between the Actual and But-For scenarios. Therefore, they should have no impact on damages.³⁸

i. Mr. Peer's Approach

70. Mr. Peer summarizes his approach as follows:

[REDACTED]

To account all differences caused by the [REDACTED] I have considered all FCFF components in my calculations and identified the following key differences between But-For and Actual scenarios:

— OPEX in the Actual scenario is higher due to the [REDACTED]

[REDACTED]

Initially a [REDACTED] h for calculation of damages was proposed by me in my First Expert Report. Before the [REDACTED] in the Actual and But-For scenarios and damages were in the majorly [sic] caused by [REDACTED]. The simplified model was easier to calculate and understand as well as being less prone to error. [REDACTED] additional changes to the business which should not be ignored in calculations. [REDACTED] and will result in erroneous calculations if assumptions as to the impact of [REDACTED], such as [REDACTED] in similar compensation as would be received [REDACTED]

³⁹

71. Mr. Peer considers that Dr. Moselle's FCFF Components approach could lead to an underestimation of damages. In his view, Dr. Moselle's calculation of [REDACTED] [REDACTED] various components of the

³⁸ JER4, p. 16.

³⁹ JER4, pp. 16-17.

such as: [REDACTED]
[REDACTED]. In Mr. Peer's view, these additional costs which are not applicable in the But-For scenario are compensated via revenue in the Actual Scenario which increase cash inflows. However, according to Mr. Peer, those additional costs are not considered as cash outflows in Dr. Moselle's calculations. As a result, there is an [REDACTED] in the Actual Scenario and [REDACTED].⁴⁰

72. Further, according to Mr. Peer, Dr. Moselle's FCFF Components approach does not include detailed calculations of the [REDACTED] in the Actual Scenario. Those calculations only reflect the impact on [REDACTED] caused by the FCFF components he considers [REDACTED]. Mr. Peer disagrees with Dr. Moselle's assumptions that [REDACTED] would have the same [REDACTED] in the Actual Scenario as [REDACTED] in the But-For scenario. In [REDACTED]
[REDACTED]
[REDACTED]. As a result, the FCFF Components approach does not comply with the Tribunal's direction to estimate the effect of the [REDACTED].

73. In response to Dr. Moselle's comments, Mr. Peer maintains that use of the Full FCFF approach would not lead to any double recovery of costs. The use of [REDACTED] that any [REDACTED] are reflected in damages. For this reason, Mr. Peer does not agree with Dr. Moselle's view that if the [REDACTED] compensates [REDACTED] this would lead to double recovery because [REDACTED] are already

⁴⁰ JER4, p. 17.

compensated by way of damages. According to Mr. Peer, future tariffs in the Actual Scenario will include an additional component for [REDACTED] which will [REDACTED].⁴¹

74. According to Mr. Peer, his calculations of [REDACTED] take into account any [REDACTED] [REDACTED] e, which are compensated or withdrawn in accordance with the [REDACTED]. Mr. Peer assumes that the [REDACTED] will continue to apply the same methodology into the future.⁴²

75. In addition, Mr. Peer states that both the FCFF Components and Full FCFF approaches should provide the same damages. According to him, in the Third Joint Expert Report, in which he applied Full FCFF and Dr. Moselle continued to apply the FCFF Components approach, the calculation was the same. Differences in the respective analyses now appear because Dr. Moselle

[REDACTED]
[REDACTED]⁴³

ii. Dr. Moselle's Approach

76. Dr. Moselle summarized his approach as follows:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁴¹ JER4, p. 18.

⁴² Ibid.

⁴³ Ibid.

[REDACTED]

I consider that the approach of using these [REDACTED] FCFF components is appropriate for the calculation of damages because: (i) it simplifies calculations and suffices for the calculation of damages, (ii) it limits the possibility of overcompensation, and (iii) prevents compensation via damages of concepts that are not related to the dispute. Below I explain in more detail each of these reasons.

1.1. My approach simplifies calculations and suffices for the calculation of damages

My approach excludes from the calculation of damages those FCFF components [REDACTED] in both But-For and Actual scenarios. As a result, this approach should lead to the same estimate of damages as if one were to include those excluded components. This approach also has the benefit that it simplifies calculations and reduces the need to use [REDACTED] component of FCFF. This is the approach that I have followed in the calculations in all my previous reports, as well as in the reports jointly written with Mr Peer.

My current calculations exclude [REDACTED] because, just like in previous calculations, I see no reason to assume that they should be different between the But-For and Actual scenarios. I note that, while in previous calculations, Mr Peer has calculated damages on the basis of all components of FCFF, his estimates of damages have been, until now, fully attributable to the [REDACTED] FCFF components that I consider. In other words, in Mr Peer's previous calculations, the excluded FCFF components (i.e., all FCFF components except for the [REDACTED] above) had no effect on damages because they were assumed to be equal in both But-For and Actual scenarios.⁴⁴

77. According to Dr. Moselle, the difference in calculation of damages is due, in part, to the fact that Mr. Peer uses different sources of information for the calculation of the But-For scenario [REDACTED] and the Actual Scenario [REDACTED]. In his view, the use of different sources in each scenario creates inconsistencies across scenarios and potentially biases the calculation of damages.⁴⁵

78. In Dr. Moselle's view, the use of [REDACTED] for the [REDACTED] in the Actual Scenario can lead to over recovery of costs since various costs incurred in that period will be [REDACTED]. In this regard, Dr. Moselle notes that [REDACTED] (both in the Actual and But-For scenarios) are calculated including

⁴⁴ JER4, pp. 18-19.

⁴⁵ JER4, p. 19.

[REDACTED]. Therefore, [REDACTED] are already recovering by way of their tariffs the expenses that compose the FCFF components that Dr. Moselle does not consider in his calculations. In this regard, Dr. Moselle refers to the potential double compensation relating to [REDACTED] flowing from [REDACTED] [REDACTED]. According to Dr. Moselle, Mr. Peer's calculation of damages [REDACTED] although, [REDACTED] [REDACTED]

79. According to Dr. Moselle, his use of the valuation date of [REDACTED] prevents the issue of double compensation since as of that date the FCFF components that he excludes from the calculation are [REDACTED] in both the But-For and Actual scenarios. As a result, the calculation of damages is not affected by the use of the [REDACTED]. However, in Mr. Peer's approach using the valuation date of [REDACTED] the consideration of all [REDACTED] is likely to lead to over-compensation of costs by way of damages.

80. In addition, Dr. Moselle refers to the possibility that the use of [REDACTED] may include in the calculation of damages items that are not related to the dispute between the Parties and which should be borne by [REDACTED]

[REDACTED] In Dr. Moselle's view, taking into account such a component is inappropriate and not in accordance with regulatory practices.⁴⁷

⁴⁶ JER4, p. 19.

⁴⁷ JER4, p. 20.

81. Dr. Moselle also notes that damages are equal under either the Full FCFF or FCFF Components approach when the valuation date used is [REDACTED]. In his view, if the Tribunal were to accept a valuation date of [REDACTED] and Mr. Peer's approach, then damages should be recalculated to avoid the issues arising from the use of the inconsistent sources of data, overcompensation and damages concepts unrelated to the dispute.⁴⁸

iii. The Tribunal's Analysis

82. For the reasons stated above, the Tribunal has determined that the appropriate valuation date is [REDACTED]. As Dr. Moselle notes, damages are equal under either FCFF approach if the valuation date of [REDACTED] is used.

83. In the Experts' previous joint expert reports, the [REDACTED] FCFF components used by Dr. Moselle were the sources of damages and the other FCFF components were assumed to be equal in both But-For and Actual Scenarios. Mr. Peer's most recent calculations use FCFF component [REDACTED] which are [REDACTED] in the But-For and Actual Scenarios and, therefore, his calculations using Full FCFF differ from Dr. Moselle's using FCFF Components. It appears that Mr. Peer's use of [REDACTED] for the calculation of the But-For scenario, sourced primarily from the [REDACTED], and of the Actual Scenario, sourced primarily from [REDACTED] explains why the excluded FCFF components are not equal to each other in his calculations.⁴⁹ According to Dr. Moselle, the use of [REDACTED] in each scenario creates inconsistencies between them and potentially biases the calculation of damages.⁵⁰

⁴⁸ JER4, p. 21.

⁴⁹ JER4, p. 19.

⁵⁰ JER4, p. 11.

84. The Tribunal prefers Dr. Moselle’s approach which uses the same, consistent sources of information for his calculations. Having determined that the appropriate valuation date is [REDACTED], this appears to the Tribunal to be the most reliable method of estimating damages.

85. The Tribunal also accepts that Dr. Moselle’s approach is more likely to avoid the possibility of over-compensation which could arise from the use of [REDACTED] since the costs incurred in that period as damages will also be compensated [REDACTED]

[REDACTED].⁵¹

86. Accordingly, the Tribunal finds that damages for the [REDACTED] should be calculated on the basis of Dr. Moselle’s Components FCFF approach.

87. Accordingly, the Tribunal finds that the compensation due to Telasi for the period from [REDACTED] is [REDACTED]

VI. CONCLUSION

88. For the reasons set out above, the Tribunal concludes that the additional damages owed to Gardabani with respect to the exchange rate adjustments for the period [REDACTED]. In the Second Partial Award on Damages, the Tribunal ordered the Respondents to pay Gardabani [REDACTED]. Taking into account the additional damages determined in this Final Award, the total amount payable by the Respondents to Gardabani is [REDACTED]

89. With respect to Telasi, for the reasons set out above, the Tribunal finds that the compensation owed to Telasi for the [REDACTED] [REDACTED] is

⁵¹ JER4, p. 19. It appears that [REDACTED] to acknowledge that these costs will be compensated by way of [REDACTED] period. See JER4, pp. 15, 19 and the sources cited there by Dr. Moselle.

██████████. In the Second Partial Award on Damages, the Tribunal ordered the Government of Georgia to pay ██████████ on account of damages for the period from ██████████ to ██████████. Taking into account the damages award in this Final Award to Telasi for the ██████████ ██████████ the total amount payable by the Government of Georgia to Telasi is ██████████

VII. INTEREST

90. Each of the Parties claimed interest on the amounts awarded in their respective claims and counter-claims. The Parties' Quantum Experts took pre-award interest into account in their calculations, without disagreement.⁵² Therefore, the relevant issue for determination is post-award interest.

A. The Claimants' Position

91. The Claimants say that the Tribunal should award post-award interest at a reasonable commercial rate.⁵³ The Claimants maintain that the Tribunal should adopt a post-judgment interest rate similar to that used by the Experts in their calculations in their Joint Expert Reports assessing losses. On that basis, the Claimants say that the appropriate interest rates for 2021 and 2022 are

██████████⁵⁴

⁵² Claimants' Memorial, ¶¶ 324-325; Claimants' Additional Submission on Interest and Costs, dated 5 July 2022, ¶¶ 4-11; Respondents' Submissions on Costs and Interest, dated 5 July 2022 ("Respondents Additional Submissions on Costs and Interest"), ¶ 17. In their Memorial, at ¶ 325, the Claimants stated that since their assessment of losses included interest as of the date of assessment, no separate pre-judgment interest is required.

⁵³ Claimants' Memorial, ¶¶ 326-328; Claimants' Additional Submission on Interest and Costs, ¶¶ 15-20.

⁵⁴ Claimants' Additional Submission on Interest and Costs, ¶17.

92. Alternatively, the Claimants submit that the Tribunal could award interest at an annual rate equal to [REDACTED]

93. In the further alternative, the Claimants say that if the Tribunal does not accept these alternatives, post-judgment interest should be set at [REDACTED]

94. The Claimants also say that interest should be compounded on a quarterly basis until payment in full.⁵⁷ The Claimants say that compounding on a quarterly basis reflects the commercial uses to which compensation could have been put if it had been paid in a timely manner. According to the Claimants, investment arbitration tribunals often award post-award interest on a compound basis and refer to certain awards in that regard.⁵⁸ With respect to the effective date from which interest should accrue, the Claimants say that their losses were assessed as of [REDACTED]

[REDACTED]. However, the first tranche of damages was awarded later, in the Second Partial Award on Damages, dated 23 November 2021, with the remaining portion to be awarded in the Final Award.

95. The Claimants say that the Respondents have not paid any part of the compensation awarded to them.⁵⁹ Therefore, the interest should accrue from the day after the valuation date,

⁵⁵ Claimants' Additional Submission on Interest and Costs, ¶18.

⁵⁶ Claimants' Additional Submission on Interest and Costs, ¶19.

⁵⁷ Claimants' Additional Submission on Interest and Costs, ¶ 20; Claimants' Memorial, ¶¶ 326-328, 337(b); Claimants' Reply, ¶ 270(b).

⁵⁸ Claimants' Additional Submission on Interest and Costs, ¶ 20; Hydro S.r.l. and others v. Republic of Albania (ICSID Case No. ARB/15/28), Award, 24 April 2019, CL-0235, ¶ 885; Crystallex International Corporation v. Bolivarian Republic of Venezuela (ICSID Case No. ARB(AF)/11/2), Award, 4 April 2016, CL-0024, ¶ 935.

⁵⁹ Claimants' Additional Submission on Interest and Costs, ¶ 13.

█. Otherwise, the Claimants say that they would be left with less money than they would have received had the Respondents paid compensation on the valuation date.⁶⁰

96. With respect to the Respondents' claims for interest, the Claimants say that no such interest is due since these claims were offset against the damages awarded to the Claimants. Since the balance is in favour of the Claimants, no amount is due to the Respondents.⁶¹

B. The Respondents' Position

97. The Respondents provided submissions on post award interest only, since pre-award interest was taken into account in the Experts' calculations.⁶² The Respondents say that any post-award interest at █ should be adopted as a reasonable commercial arbitration rate for post-award interest.⁶³ The Respondents say that the Tribunal should apply this rate as of █, the date that the sums awarded in the Second Partial Award on Damages fell due.⁶⁴

98. The Respondents say that interest should be awarded on a simple basis as there are no special circumstances justifying an award of compound interest in this case. Further, the Respondents say that the award of compound interest is not authorized under Georgian law.⁶⁵ According to the Respondents, the award of interest is not, as submitted by the Claimants, to

⁶⁰ Claimants' Additional Submission on Interest and Costs, ¶ 14.

⁶¹ Claimants' Additional Submission on Interest and Costs, ¶ 22. With respect to pre-award interest, the Claimants say that interest on the Respondents' Counterclaims could not have accrued before 25 November 2018 (the date of the Respondents' Counter-Memorial and Memorial on Counterclaims), since this was the first date on which payment of the █ was requested. See Claimants' Additional Submission on Interest and Costs, ¶ 23.

⁶² Respondents Additional Submissions on Costs and Interest, ¶ 17.

⁶³ Respondents Additional Submissions on Costs and Interest, ¶¶ 23-24. The Respondents say that since LIBOR is being phased out, arbitral tribunals have found that the SOFR is an appropriate replacement.

⁶⁴ Respondents Additional Submissions on Costs and Interest, ¶ 24.

⁶⁵ Respondents Additional Submissions on Costs and Interest, ¶¶ 19-20.

“incentivize” a party to satisfy an award. Rather, it is to provide full compensation and should not have a punitive function.⁶⁶ According to the Respondents, absent specific circumstances that would justify awarding compound interest, only simple interest should be awarded.⁶⁷ Further, the Respondents say that the Claimants have accepted that compound interest is not authorized under Georgian law and that in these circumstances, simple interest at a reasonable commercial rate is appropriate in this Arbitration.⁶⁸

C. The Tribunal’s Analysis

99. In the Tribunal’s view, post-award interest should accrue as of [REDACTED], the day following the date on which sums awarded by the Tribunal in the Second Partial Award on Damages fell due. The Tribunal is not persuaded that post-award interest should run from the assessment date of [REDACTED], as submitted by the Claimants.

100. With respect to the applicable rate of interest, the Tribunal finds that in the circumstances of this case, [REDACTED] proposed by the Respondents is a reasonable commercial rate for post-award interest. The Tribunal is not persuaded that awarding post-award interest in this case on a compound basis would be appropriate since, as the Parties have accepted, Georgian law does not envisage the award of compound interest in the circumstances of this case.⁶⁹ Accordingly, interest is awarded on a simple basis.

⁶⁶ Respondents Additional Submissions on Costs and Interest, ¶ 22.

⁶⁷ Respondents Additional Submissions on Costs and Interest, ¶ 26; Respondents’ Counter-Memorial, ¶¶ 408-411; Respondents’ Rejoinder, ¶¶ 468-471.

⁶⁸ Respondents’ Submissions on Costs and Interest, ¶ 20; Claimants’ Letter to the Tribunal, dated 29 June 2021, p. 3.

⁶⁹ Claimants’ Letter of 29 June 2021, p.3; Respondents’ Comments on Quantum Issues, dated 21 June 2021, p. 27; Respondents’ Submissions on Costs and Interest, ¶20.

VIII. COSTS

101. In this arbitration, the relevant rules on costs are Articles 49 and 50 of the SCC Arbitration Rules. Article 49 provides in relevant part as follows:

Article 49 Costs of the Arbitration

(1) The Costs of the Arbitration consist of:

(i) the Fees of the Arbitral Tribunal;

(ii) the Administrative Fee; and

(iii) the expenses of the Arbitral Tribunal and the SCC.

...

(6) Unless otherwise agreed by the parties, the Arbitral Tribunal shall, at the request of a party, apportion the Costs of the Arbitration between the parties, having regard to the outcome of the case, each party's contribution to the efficiency and expeditiousness of the arbitration and any other relevant circumstances.

Article 50 Costs incurred by a party

Unless otherwise agreed by the parties, the Arbitral Tribunal may in the final award, at the request of a party, order one party to pay any reasonable costs incurred by another party, including costs for legal representation, having regard to the outcome of the case, each party's contribution to the efficiency and expeditiousness of the arbitration and any other relevant circumstances.

102. In their submissions, the Parties also address the applicable rules under the ICSID Convention and ICSID Arbitration Rules. The relevant provisions referred to by the Parties are as follows:

ICSID Convention

Article 61 (1)

(2) In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.

ICSID Arbitration Rules

*Rule 28
Cost of Proceeding*

(1) Without prejudice to the final decision on the payment of the cost of the proceeding, the Tribunal may, unless otherwise agreed by the parties, decide:

(a) at any stage of the proceeding, the portion which each party shall pay, pursuant to Administrative and Financial Regulation 14, of the fees and expenses of the Tribunal and the charges for the use of the facilities of the Centre;

(b) with respect to any part of the proceeding, that the related costs (as determined by the Secretary-General) shall be borne entirely or in a particular share by one of the parties.

(2) Promptly after the closure of the proceeding, each party shall submit to the Tribunal a statement of costs reasonably incurred or borne by it in the proceeding and the Secretary-General shall submit to the Tribunal an account of all amounts paid by each party to the Centre and of all costs incurred by the Centre for the proceeding. The Tribunal may, before the award has been rendered, request the parties and the Secretary-General to provide additional information concerning the cost of the proceeding.

103. The Parties agree that the rules governing the award of costs under the SCC Arbitration Rules and the ICSID Convention and Arbitration Rules are similar and provide the Tribunal broad discretion in allocating costs. Although the Parties referred to different aspects of the procedure in both the SCC Arbitration and the ICSID Arbitration, they did not distinguish between the two arbitrations for the purposes of their claims on costs which sought a single award of costs covering both arbitrations.

A. The Claimants' Position

104. The Claimants say that the general basic principle is that costs should follow the event. Therefore, if they are the successful party in the arbitrations, even if only substantially successful, they should be awarded their full costs. The Claimants say that the successful Party should only be denied its costs if it has needlessly prolonged the proceedings or otherwise conducted itself improperly. The Claimants say that they have conducted the arbitration efficiently and acted in good faith. In this regard, they sought to maximize efficiency by agreeing to the consolidation of

the SCC Arbitrations and proposing a method of coordinating the ICSID and SCC Arbitrations. They also say that they advanced their full case from the beginning, thus ensuring a fair opportunity for the Respondents to develop a full defense at the appropriate stages of the arbitration.⁷⁰ In response to the Respondents' argument, the Claimants say that the commencement of parallel arbitrations was not an abuse of process and did not unnecessarily complicate or increase the costs of the arbitrations. According to the Claimants, they are distinct legal entities with rights under different instruments. Therefore, they were entitled to pursue a remedy in the forum designated in the relevant instrument: the 2013 Memorandum, the Khrami SPA and the BIT. In order to promote efficiency in time and cost, the Claimants say they agreed to consolidate the SCC Arbitrations and coordinate the SCC and ICSID Arbitrations. They say they were entitled to advance their claims under alternative liability bases and that they should not be denied costs for having commenced parallel claims.⁷¹

105. In response to the Respondents' argument, the Claimants say they did not cause unnecessary expense in their conduct of the arbitration by *inter alia*, bringing the Supplemental Claims in the ICSID Arbitration. They say these claims were appropriate and valid.⁷²

⁷⁰ Claimants' Submission on Costs, dated 16 January 2020 ("Claimants' First Submissions on Costs"), ¶ 16.

⁷¹ Claimants' Reply Submission on Costs, dated 30 January 2020 ("Claimants' Reply on Costs"), ¶¶ 7-8.

⁷² Claimants' Reply on Costs, ¶¶ 10-11. The Claimants say that their document production requests in respect of the [REDACTED] were legitimate and could not have generated significant costs. Further, the Tribunal ordered production in several of these requests and the Respondents agreed to search for and produce documents in relation to a number of items. Although the Claimants did not quantify their claim for the cost of [REDACTED] this represented a breach of [REDACTED] and the fact that it did not lead to a claim for additional damages is irrelevant. With respect to the claim relating to [REDACTED], the Claimants say that [REDACTED]

106. The Claimants also maintain that their document production requests were proper and consistent with the process agreed in the arbitrations. They say that the fact that the Respondents made fewer document production requests does not demonstrate an abuse of procedural rights.⁷³

107. With respect to the Respondents' claim for costs, the Claimants say that the Respondents should not be awarded costs even if they succeed substantially in the arbitrations. The Claimants allege that the Respondents' conduct was inefficient and uncooperative in a number of respects.⁷⁴

108. The Claimants also maintain that the Respondents' counterclaims unnecessarily increased the Parties' costs. In this regard, the Claimants say that the Respondents gave no indication that they would be advancing counterclaims in response to the Claimants' Request for Arbitration. In addition, the Claimants say they had to dedicate additional resources to respond to two separate counterclaims that were virtually identical in substance. They also allege that the scope of the Respondents' counterclaims changed drastically between the Counter-Memorial and the Rejoinder.⁷⁵

109. The Claimants' updated Statement of Costs provides as follows:

⁷³ Claimants' Reply on Costs, ¶¶ 12-15.

⁷⁴ Claimants' First Submissions on Costs, ¶¶ 17-21; Claimants' Reply on Costs, ¶¶ 16-17.

⁷⁵ Claimants' First Submissions on Costs, ¶¶ 23-25.

Claimants’ Statement of Costs

Type of fees and expenses	Details/ Law firm/Expert	Total (in USD)	Total (in €)	Total (in RUB)	Total (in GEL)
[REDACTED]	[REDACTED]	[REDACTED]			
	[REDACTED]	[REDACTED]			
	[REDACTED]	[REDACTED]			
Advances on the costs of the Tribunal, ICSID and SCC	ICSID	450,000			
	SCC	100,000	[REDACTED]		
[REDACTED]	[REDACTED]	[REDACTED]			
	[REDACTED]	[REDACTED]	[REDACTED]		
	[REDACTED]	[REDACTED]			
[REDACTED]	[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]

⁷⁶

B. The Respondents’ Position

110. In their initial submissions on costs, the Respondents maintained that as the successful Party, they were entitled to recover of all their costs of the Arbitrations. In this regard, the Respondents submitted that tribunals have applied the principle of “costs follow the event” to

⁷⁶ Claimants’ Additional Submission on Interest and Costs, Appendix A. Footnotes omitted.

award the successful party all or a portion of its costs.⁷⁷ Where a claimant prevails on some, but not all, of its claims, the Respondents say that tribunals typically take into account the relative success of the parties' respective claims and defences in allocating costs.⁷⁸

111. The Respondents argued that should they prevail in the Arbitrations, there is no reason to depart from the principle of costs following the event. The Respondents contested the Claimants' allegations with respect to their response to document production requests, the timing and scope of their expert evidence and their counterclaims.⁷⁹ The Respondents also submitted that the Claimants should be ordered to bear at least part of the Respondents' costs, regardless of the outcome of the Arbitrations, because the Claimants caused the dispute to be unnecessarily complex and costly by: commencing three arbitrations against the Respondents; bringing duplicative contract and treaty claims based on the same underlying facts and challenged measures; and purporting to justify the difference between their duplicative contract and treaty claims by bringing a series of meritless treaty claims.⁸⁰

112. The Respondents also say that the Claimants increased the costs of document production by their overbroad requests for documents to support meritless claims.⁸¹ The Respondents also complained that the Claimants did not present their full case from the beginning, as alleged, but,

⁷⁷ Respondents' Submission on Costs, dated 16 January 2020 ("Respondents' First Submission on Costs"), ¶¶ 3-6; Respondents' Reply Submission on Costs, dated 30 January 2020 ("Respondents' Reply on Costs"), ¶¶ 2-4.

⁷⁸ Respondents' First Submission on Costs, ¶ 7.

⁷⁹ Respondents' Reply on Costs, ¶¶ 5-13.

⁸⁰ Respondents' Reply on Costs, ¶¶ 14-17.

⁸¹ Respondents' Reply on Costs, ¶ 18.

rather, raised new arguments in Mr. Peer’s direct presentation at the hearing, which required the Respondents to request leave to submit additional evidence from Dr. Moselle.⁸²

113. The Respondents also argued that the Claimants’ costs are unreasonable. In this regard, they say that the Claimants’ decision to bring duplicative contract and treaty claims greatly increased their costs, which the Respondents should not be required to bear. The Respondents also challenged the costs claimed with respect to the expert reports filed by Dr. Abdala and Mr. Delamer for the preparation of three expert reports in respect of the Claimants’ very small claim in connection with [REDACTED].⁸³

114. The Respondents changed their primary position in their updated submissions on costs in which they maintain that the Parties should each bear their own costs. The Respondents say that irrespective of the Claimants’ partial success in the SCC Arbitration, they should not be made to bear the Claimants’ costs in the two Arbitrations. In this regard, the Respondents say that the Parties’ disputes were caused in part by [REDACTED].
[REDACTED] Further, the Claimants did not prevail on all of their claims while the Respondents’ prevailed on their counterclaim.⁸⁴

115. Further, the Claimants unnecessarily complicated the quantum phase of the SCC Arbitration. After having presented a damages claim in the amount of [REDACTED] at the hearing, the Claimants maintained a claim for damages amounting to [REDACTED] after

⁸² Respondents’ Reply on Costs, ¶ 19.

⁸³ Respondents’ Reply on Costs, ¶ 23. The Respondents say that the Claimants claimed [REDACTED] in expert fees and expenses in respect of a claim for [REDACTED]. The Respondents say that the costs in question are unreasonable and should not be born by them irrespective of the Tribunal’s findings. The Respondents also challenged the claim for costs incurred by [REDACTED] which did not specify how they related to the Arbitrations. The Respondents say that any costs incurred in respect of [REDACTED] s on [REDACTED] was required under the [REDACTED] and would have been incurred by [REDACTED] in any event.

⁸⁴ Respondents Additional Submissions on Costs and Interest, ¶¶ 6-9.

the Tribunal had found in the Respondents favour with respect to several issues in the Partial Award on Liability. Therefore, the Claimants' updated damages calculations did not properly take the findings in the Partial Award on Liability, into account.

116. In addition, the Tribunal found in the Respondents' favour on the great majority of the disputed issues in the First and Second Partial Awards on Damages.⁸⁵ The Respondents say that in similar circumstances, arbitral tribunals have held that costs of the proceeding should be shared equally between the parties and that the parties should bear their own legal fees and expenses.⁸⁶

117. The Respondents also maintain that an equal apportionment of costs is particularly appropriate in the circumstances of these Arbitrations in which the Claimants caused the disputes to be unnecessarily complex and costly. In this regard, the Respondents refer to: the Claimants' commencement of three separate arbitrations against the Respondents and bringing duplicative contract and treaty claims based on the same underlying facts and measures; the Claimants' compelling the Respondents to expend an inordinate amount of time and resources to rebut the [REDACTED] which were largely unsubstantiated by any evidence; and the Claimants' use of document production to fish for non-existent evidence to support their meritless [REDACTED].⁸⁷

118. For these reasons, the Respondents maintain that they should not have to bear any of the Claimants' costs and request that the Tribunal order the costs of the proceedings to be shared equally between the Parties and that each Party bear its own legal fees and other costs.

119. The Respondents provided an updated Statement of Costs as follows:

⁸⁵ Respondents Additional Submissions on Costs and Interest, ¶¶ 9-11.

⁸⁶ Respondents Additional Submissions on Costs and Interest, ¶ 12 and the sources cited there.

⁸⁷ Respondents Additional Submissions on Costs and Interest, ¶ 13.

Category	Amount as at [REDACTED]	Additional Amount as at 30 June 2022	Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
SCC Costs	[REDACTED]	/	[REDACTED]
ICSID and Tribunal Costs	/	/	To be determined by ICSID in due course

88

C. The Tribunal’s Analysis

120. Having carefully reviewed the Parties’ submissions on costs and considered their conduct, the outcome of the various disputes addressed in the Partial Award on Liability, the First and Second Partial Awards on Damages and this Final Award in the SCC Arbitration, the Tribunal finds that the Parties should share the costs of the arbitration equally and that each Party should bear its own legal fees and other costs.

[REDACTED]

[REDACTED]

⁸⁸ Respondents Additional Submissions on Costs and Interest, ¶16. Footnotes omitted. These costs and expenses are in addition to the Tribunal’s fees and expenses, the fees and expenses of Professor Tercier and the administrative charges of ICSID and of SCC. The Respondents reserve their right to update their Statement of Costs should further significant costs be incurred after 30 June 2022, including, for example responding to the Claimants’ applications seeking to add certain documents to the record.

122. With respect to the Parties' conduct of the Arbitrations, they pursued their claims and defences vigorously, but did not exceed the bounds of appropriate, diligent conduct, particularly in light of the complexity of the issues in dispute. Thus, the Tribunal has determined that the Parties shall share equally the costs of the Arbitration and bear their own legal costs and other expenses.

123. Pursuant to Article 43 of the SCC Rules and Section 4 of Procedural Order No. 1, the Tribunal requested the Board of the SCC to determine the costs of the arbitration.

124. On 9 September 2022, the SCC fixed the costs of the arbitration as set out below. Though the arbitrators' fees were incurred in USD, the SCC has fixed the arbitrators' fees in the EUR equivalent as at the date of this Award.

a) For the Tribunal and the Administrative Secretary

- The fee of the President, Mr. Henri Alvarez amounts to _____ and compensation for expenses amounts to _____.
- The fee of Arbitrator Professor Stanimir Alexandrov amounts to _____ and compensation for expenses amounts to _____
- The fee of Arbitrator Professor Zachary Douglas amounts to _____ and compensation for expenses amounts to _____ =
- Expenses amounting to _____ for the payment of fees and expenses to the Administrative Secretary Ms. Elsa Sardinha.

* * *

The total of fees and expenses of the arbitrators and the administrative secretary amount to: [REDACTED] and [REDACTED].

b) For the Stockholm Chamber of Commerce

- Administrative fee EUR 60,000.
- Expenses amounting to [REDACTED] for the payment of fees and expenses to former chairperson Mr. Pierre Tercier in the preceding SCC Arbitration 2017/09.
- Additional expenses amounting to SEK 5,250.25 related to the shipping costs of certified partial awards to the Parties.

* * *

The total of fees and expenses of the Stockholm Chamber of Commerce amount to: EUR 77,760 and SEK 5,250.25.

c) For direct expenses

- Hearing expenses amounting to USD 41,300.
- ICSID's annual administrative fee amounting to USD 210,000 in total.

* * *

The total of direct expenses amounts to: USD 251,300.

IX. CONCLUSION AND ORDERS

125. For the reasons set out in the Partial Award on Liability, the first Partial Award on Damages, the Second Partial Award on Damages and as set out above in this Final Award, the Tribunal:

- a) Declares that the Respondents have breached their obligations [REDACTED]
[REDACTED] of the Khrami SPA;

- b) Orders the Respondents to pay to Gardabani [REDACTED];
- c) Declares that the Government of Georgia has breached its obligations under [REDACTED] the 2013 Memorandum;
- d) Orders the Government of Georgia to pay Telasi [REDACTED];
- e) Declares that the Government of Georgia is entitled to its fifty percent share of the [REDACTED] accumulated by Telasi between [REDACTED] (which has been taken into account in the calculation of the amount awarded to Telasi in paragraph d), above);
- f) Declares the amounts awarded in paragraphs b) and d) above are awarded on an after-tax basis;
- g) Orders the Respondents to indemnify the Claimants for any taxation liability that may arise in Georgia in relation to the amounts awarded in paragraphs b) and d), above;
- h) Awards the Claimants simple interest on the amounts awarded in paragraphs b) and d), above, [REDACTED] until payment in full;
- i) Orders that the Parties shall share equally the costs of the Arbitration detailed in paragraph 124, above, and amounting to [REDACTED] and bear their own legal costs and other expenses.

126. A Party may apply to amend the Award regarding the decision on the fees of the arbitrators. Such application should be filed with the district court within whose jurisdiction the arbitration had its seat within three months from the date when the Party received this Award.

Place of Arbitration: Stockholm, Sweden



Professor Stanimir Alexandrov
Arbitrator

9 September 2022

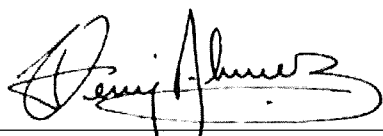
Date



Professor Zachary Douglas QC
Arbitrator
*Subject to the partial dissenting opinion
appended to the Partial Award on Liability*

9 September 2022

Date



Mr. Henri Alvarez QC
President

9 September 2022

Date