UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

LS ENERGIA INC, a Florida corporation; and LS ENERGIA INC, a Panamanian corporation,

Plaintiffs,

vs.

REPUBLIC OF ANGOLA, a foreign state; MINISTRY OF ENERGY AND WATER, a political subdivision of a foreign state; and EMPRESA PÚBLICA DE PRODUÇÃO DE ELECTRICIDADE, EP (PRODEL), an agency or instrumentality of a foreign state,

Defendants.
_____/

COMPLAINT

Plaintiffs, LS Energia Inc, a Florida corporation ("LS Florida") and LS Energia Inc, a Panamanian corporation ("LS Panama") (collectively, "LS Energia"), sue defendants the Republic of Angola ("Angola"), the Ministry of Energy and Water ("MINEA") and the Empresa Pública de Produção de Electricidade, EP ("PRODEL") (collectively referred to as the "Defendants"), and allege as follows:

NATURE OF THE ACTION

1. This is a civil action brought by LS Energia against Angola, a ministry, and an agency or instrumentality of the foreign state, who are not immune from this suit under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.* ("FSIA"). The purpose of this action is to recover substantial amounts (in excess of US$52 million) due to LS Energia by Defendants arising out of certain contracts and extensions for the purpose of generating

electricity for the citizens and residents of Angola. Specifically, LS Energia built, operated, and maintained several power generation facilities for Defendants in Angola. Defendants have materially and repeatedly defaulted on their obligations to compensate LS Energia for the power generation services it provided, currently in an amount in excess of US$52 million, plus interest. Defendants have not complied with LS Energia's demands for payment despite having acknowledged, through the course of the parties' contractual relationship, the existence of PRODEL's mounting and substantial indebtedness to LS Energia. Based on the repeated promises and failures to pay, which have resulted in serious financial harm to LS Energia over the course of more than three years, LS Energia seeks assistance from this Court to make the company whole.

THE PARTIES

2. Plaintiff, LS Florida is a corporation constituted under the laws of the state of Florida with its principal place of business in Plantation, Florida.

3. Plaintiff, LS Panama is a corporation constituted under the laws of the country of Panama with its principal place of business in Panama City, Panama.

4. Defendant, Angola, is a "foreign state" within the meaning of 28 U.S.C. § 1603(a).

5. Defendant, MINEA, a ministry of the government of Angola, is a political subdivision of the foreign state of Angola. Accordingly, MINEA is a "foreign state" pursuant to 28 U.S.C. § 1603(a).

6. Defendant, PRODEL, a subsidiary entity of a ministry of the government of Angola, is an "agency or instrumentality" of Angola pursuant to 28 U.S.C. § 1603(b) because (1) as a public company, it is a separate legal person; (2) it is an organ or political subdivision of the

foreign state; and (3) it is not a citizen of any state of the United States as set forth under 28 U.S.C. § 1332(c). Accordingly, PRODEL is a "foreign state" pursuant to 28 U.S.C. § 1603(a), which includes an "agency or instrumentality of a foreign state" as defined under 28 U.S.C. § 1603(b).

JURISDICTION AND VENUE

7. This Court has jurisdiction over this cause pursuant to 28 U.S.C. § 1330(a), which provides that "[t]he district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state" within the meaning of 28 U.S.C. § 1603(a).

8. Accordingly, this Court has jurisdiction over Angola pursuant to 28 U.S.C. § 1330(a) and 28 U.S.C. § 1603(a).

9. This Court has jurisdiction over MINEA pursuant to 28 U.S.C. § 1330(a) and 28 U.S.C. § 1603(b).

10. This Court has jurisdiction over PRODEL pursuant to 28 U.S.C. § 1330(a) and 28 U.S.C. § 1603(b).

11. Defendants are not immune from the jurisdiction of this Court in this case under 28 U.S.C. § 1604 for the following reasons:

a. Pursuant to 28 U.S.C. § 1605(a)(2), Defendants performed acts in the United States in connection with a commercial activity elsewhere; and

b. Also pursuant to 28 U.S.C. § 1605(a)(2), Defendants have taken acts outside the territory of the United States in connection with a commercial activity, and said acts have caused a direct effect in the United States.

12. Specifically, Angola, MINEA and PRODEL are not immune from the jurisdiction of this Court because they performed acts in this district by traveling to this district to meet with executives of LS Energia to negotiate agreements for the operation and maintenance of power plants in Angola. LS Energia representatives met in Miami, Florida between March 21, 2012, and March 24, 2012, with the following officials of the Empresa Nacional de Electricidade, EP ("ENE"), PRODEL's predecessor[1]:

a. Fernando Barros Gonga, President of the Board of ENE;

b. José Carlos Neves, General Director of ENE; and

c. Osvaldo Miguel, Project Manager of ENE.

13. The representatives of LS Energia and ENE also met with representatives of General Electric at that time

14. The purpose of the Miami meetings was to discuss, negotiate, and finalize the agreements central to this case that were for the installation, operation, and maintenance of power plants in Angola. These negotiations later resulted in the execution of the agreements and the subsequent operation of the power plants.

15. In addition, Defendants are not immune from the jurisdiction of this Court because they undertook acts that caused a direct effect in the United States, including, without limitation, the following ways:

a. Defendants agreed and were obligated to make payments to LS Energia for its contractually provided services in Angola, and said payments would have a direct and material adverse effect on LS Florida in the United States;

[1] As described more fully below, with the issuance of Presidential Decree No. 305/14 on November 20, 2014, ENE ceased to exist, and instead it was replaced by three entities, one of which was PRODEL.

b. Defendants acknowledged substantial amounts remained due and owing to LS Energia and Defendants represented that they would compensate LS Energia for its contractually provided services in Angola, and said promises of payment had a direct and substantial material effect on LS Energia in the United States;

c. Defendants continuously and repeatedly failed to make the full payments due to LS Energia for LS Energia's provision of services, and said failures had a direct, substantial, and material effect on LS Energia in the United States;

d. Defendants' failures to pay in full financially impacted LS Energia so severely that LS Energia was forced to reduce its U.S. workforce by more than 50 percent, causing a direct effect on LS Energia in the United States;

e. Defendants' failures to fully compensate LS Energia during the course of more than three years of service, as agreed by the parties, caused severe and substantial financial impact on the beneficial owners and the executive management team of LS Energia's entire global operations, all of whom are United States citizens residing in Florida, causing a direct effect in the United States;

f. Defendants' failures to substantially and fully compensate LS Energia have impeded its ability to carry out its investment plans, and have prevented it from being able to fulfill other planned projects, thus materially affecting LS Energia's plans for continued growth in the United States and causing a direct effect in the United States; and

g. Defendants' failures to fully—or even substantially—compensate LS Energia, resulting in the termination of the agreements central to this case, caused LS Energia to cease ordering and purchasing parts from U.S. manufacturers—many of them smaller companies depending on the business of such companies as LS Energia—for the operation and maintenance of the power plants at issue, resulting in a loss of approximately US$2-3 million per annum of injection of capital into the U.S. stream of commerce, causing a direct effect in the United States.

16. Supplemental jurisdiction exists over the state law causes of action pursuant to 28 U.S.C. § 1367.

17. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) and 28 U.S.C. § 1391(f)(1), in that a substantial and material part of the events or omissions giving rise to the Complaint occurred within this district.

18. Defendants are subject to service of process pursuant to 28 U.S.C. § 1608.

19. LS Energia has suffered damages as a direct result of the acts and omissions by Defendants asserted in this Complaint in excess of US$52 million.

GENERAL ALLEGATIONS

The Agreements for Power Installation, Management, and Services

20. LS Energia is a company dedicated to the business of designing, building, operating, and maintaining power generation facilities worldwide. LS Energia operates and manages power plants for customers around the world, having set up more than 60 power plants since the company's first project was awarded in 1988.

21. LS Energia's executive headquarters—where its CEO, owners, and senior management team are located—are in Plantation, Florida. The company's operations and logistics teams are principally located in Panama City, Panama. In addition, LS Energia maintains many regional offices in countries scattered throughout the world where it has operations, including Angola.

22. In Angola, LS Energia has invested significant time and resources for the provision of electricity to the country's people. LS Energia has provided a substantial amount of power in Angola through the operation of power plants. To better describe the extent of LS Energia's activities in Angola, in 2014, the company provided approximately 10 percent of the total electricity generated in Angola, for a total consumption of 9.4 million Megawatt hours (MWh), through the operation of two power plants.

23. In fact, during the preceding five years, LS Energia's operations in Angola have represented the company's principal source of income, or expected income. LS Energia has invested substantial time and money into developing its business activities in Angola.

24. LS Energia has had a presence and operations in Angola for approximately eleven years, directly and through its predecessor and affiliates, even prior to the commencement of the agreements central to this case. After having cultivated a very positive relationship with the Angolan government, LS Energia constructed and operated a laboratory in the country—the first of its kind in Sub-Saharan Africa—to test and analyze the performance of lubricants and fuel products for a variety of industries. The purpose of this laboratory has been to enhance productivity and maximize energy efficiency in an attempt to decrease energy shortages and blackouts in the region.

25. Specific to this case, in 2013, LS Energia entered into two agreements with ENE, a former public entity under the umbrella of MINEA, for the operation and maintenance of power plants, as follows:

a. The Agreement for the Operation and Maintenance of the Quileva Power Plant dated January 11, 2013 (the "Quileva Agreement"), between ENE and LS Energia (**Exhibit A**); and

b. The Agreement for the Operation and Maintenance of the City of Luanda Power Plant dated January 25, 2013 (the "CFL Agreement"), between ENE and LS Energia (**Exhibit B**) (both agreements collectively referred to as the "Agreements").

26. The Quileva Agreement was for operation of a plant near the town of Lobito in the Benguela Province, which is south of Luanda and situated on the Atlantic coast. Pursuant to the Quileva Agreement, LS Energia agreed to install and operate a 90MW power generating facility and sell the electrical output to ENE. The initial term of the Quileva Agreement was for 24 months and could be extended through a letter signed by both parties.

27. In the Quileva Agreement, the parties agreed that ENE would pay a monthly fee for the operation of the four gas turbines in the power plant, plus additional costs for the electrical output.

28. Likewise, pursuant to the CFL Agreement, which was for the operation of a plant near Luanda in the Luanda Province, LS Energia agreed to install and operate a 125MW power generating facility and sell the electrical output to ENE. The initial term of the CFL Agreement was for 24 months, and the agreement could be extended through a letter signed by both parties.

29. The CFL Agreement required ENE to pay US$480,000 at the outset of the contract. Similar to the Quileva Agreement, the CFL Agreement required ENE to pay a monthly fee for the operation of the three gas turbines in the power plant, as well as additional costs for the electrical output.

30. Pursuant to Presidential Decree No. 305/14, on November 20, 2014, ENE ceased to exist, and instead it was replaced by the following three entities: (1) PRODEL, (2) Empresa Nacional de Distribuição de Electricidade (ENDE-EP) ("ENDE"), and (3) Rede Nacional de Transporte (RNT-EP) ("RNT"). After this separation of entities and activities, PRODEL became the entity responsible for the production of energy throughout Angola.

31. Upon Presidential Decree No. 305/14, PRODEL assumed all of ENE's contractual rights and obligations under these LS Energia Agreements.

32. After the expiration of the initial 24-month period of the Quileva Agreement, PRODEL and LS Energia entered into a First Addendum to the Quileva Agreement, thereby extending the term of the contract until August 31, 2016. *See* **Exhibit C**.

33. Likewise, after the expiration of the initial 24-month period of the CFL Agreement, PRODEL and LS Energia entered into a First Addendum to the CFL Agreement, thereby extending the term of the contract until August 31, 2016. *See* **Exhibit D**.

34. Following the expiration of the Addenda to the Agreements, the parties agreed that LS Energia would continue to provide power generation output and services, and LS Energia did, in fact, continue to provide power generation output and services at the two power plants until April of 2017.

35. As mentioned, the CFL and Quileva power plants installed and operated by LS Energia represented approximately 10 percent of the electricity supplied in Angola. These plants served more than two million inhabitants of the areas surrounding the plants.

Acknowledgement of Debt and Continued Failures to Pay

36. While the Quileva and CFL Agreements (and their related extensions) were in force, PRODEL and MINEA (previously known as ENE) constantly remained in arrears of their payment obligations to LS Energia. As required under the Agreements, LS Energia timely and frequently submitted its invoices to PRODEL in the ordinary course of business. Unfortunately, despite making some random payments from time to time, the payment amounts were insufficient and Defendants were often in arrears. As a result, LS Energia routinely reminded Defendants of their obligation to pay and notified Defendants of their breaches of this obligation.

37. PRODEL periodically transmitted letters in which it acknowledged its calculation of the amounts owed to LS Energia pursuant to the Agreements. In the last of these letters, which is dated June 27, 2017 and signed by José António Neto, President of the Board of Directors, PRODEL acknowledged it owed a total of US$43,646,214.60.[2] *See* **Exhibit E**.

38. On many occasions while the Agreements were in force and during the time LS Energia was providing the required services, various representatives of the Angolan government acknowledged that payment was due and made promises to pay those amounts due to representatives of LS Energia, but mostly failed to follow through on those promises.

39. Finally, after having not received the vast majority of payment under these Agreements for the fixed and variable amounts charged on a monthly basis, LS Energia was left

[2] While PRODEL periodically submitted these letters in which it acknowledged the debts due and owing by PRODEL to LS Energia, PRODEL did not calculate the amounts of interest specified in the Agreements on the outstanding amounts owed, calculated at the rate of 5 percent per annum (although the interest rate changed to 2 percent under Angolan law), which accounts for the discrepancy between PRODEL's calculations and the calculations of LS Energia.

with no choice but to provide notice of its intention to suspend its operations. LS Energia provided notice in a letter dated April 28, 2017, which letter was addressed to Mr. Neto of PRODEL. *See* **Exhibit F**.

40. In the last PRODEL acknowledgement of Debt (*see* **Exhibit E**), signed by Mr. Neto, PRODEL proposed a meeting with LS Energia and with PRODEL's financial managers in an effort to resolve the debts due and owing to LS Energia. Again, unfortunately no payments were made after the submission of this letter and subsequent negotiations between the parties.

41. In sum, it is undisputed that (1) the Agreements remained in force for more than four years; (2) LS Energia installed the Quileva and CFL power plants, delivering power generation output and services for more than four years; (3) Defendants failed to make payment on the majority of the amounts due and owing under the Agreements despite repeated promises to do so; and (4) Defendants have acknowledged, verbally and in writing, that these substantial amounts remain due and owing, yet have failed to pay. The total amounts owed to date are **US$52,018,507.58**, which represents the principal amount of US$49,245,986.57 of unpaid invoices plus interest in the amount of US$2,718,621.01.

42. In a final attempt to collect the sums due and owing from Defendants, on October 20, 2017, LS Energia, through its attorneys, transmitted a demand letter to PRODEL (the "Demand Letter"), with copy to the U.S. Embassy in Angola, MINEA, and the Ministry of Finance. LS Energia demanded payment of the outstanding US$52,018,507.58 by October 30, 2017. In the event of non-payment, LS Energia notified Defendants of its intention to file a lawsuit before this Court in an effort to collect the amounts due.

43. None of Defendants responded to LS Energia's demand by the deadline. After the deadline, an attorney representing PRODEL has contacted the undersigned counsel. While

PRODEL'S counsel has not disputed PRODEL's indebtedness to LS Energia, the parties have not been able to reach an amicable agreement.

44. All conditions precedent to the bringing of this action either have occurred, have been performed, or otherwise have been waived.

45. LS Energia has retained the undersigned attorneys to represent it in the prosecution of this action, and is obligated to pay such attorneys their reasonable fees and expenses.

COUNT I – BREACH OF CONTRACT
Alleged Against All Defendants

46. LS Energia reaffirms and re-alleges paragraphs 1 through 44 above with the same force and effect as if fully set forth herein.

47. Pursuant to the CFL Agreement and the Quileva Agreement, LS Energia agreed to install and operate power generation facilities in Angola for the benefit of the people of Angola. *See* **Exhibits A** and **B**.

48. Defendants in turn agreed to make timely and sufficient payment pursuant to the terms of the CFL Agreement and Quileva Agreement.

49. Defendants materially breached their obligations to make timely payment and have acknowledged their multiple breaches of the CFL Agreement and the Quileva Agreement and have acknowledged the substantial debt due.

50. As a result of these breaches, LS Energia has suffered damages in the amount of US$52,018,507.58, plus interest, for sums due and owing under the agreements, additional home office overhead and demobilization expense, travel and lodging in connection with the extension and the attempts to obtain payment, extraordinary audit costs, and court costs and attorney's fees.

WHEREFORE, LS Energia demands judgment for damages against all Defendants, for compensatory damages, prejudgment interest, attorney's fees, costs, and all such other relief this Court deems just, fair, and equitable.

COUNT II – ACCOUNT STATED
Alleged Against All Defendants

51. LS Energia reaffirms and re-alleges paragraphs 1 through 44 above with the same force and effect as if fully set forth herein.

52. Prior to the institution of this action, LS Energia entered into the CFL Agreement and Quileva Agreement, pursuant to which Defendants agreed to make payment to LS Energia for the services and electrical output rendered.

53. LS Energia provided timely notice of the ongoing payment deficiencies for amounts due and owing.

54. LS Energia and Defendants agreed upon the balance due, and the Defendants explicitly promised to pay the amounts set forth in these statements.

55. As proof of the express acknowledgement of debt, PRODEL transmitted letters to LS Energia with its accounting of the amounts due and owing to LS Energia.

56. Defendants expressly and implicitly promised to pay LS Energia the amounts set forth in the statements.

57. Defendants had an obligation to make payment to LS Energia in the amount of US$52,018,507.58.

58. On or about October 20, 2017, LS Energia's attorneys sent a demand letter to PRODEL, MINEA, and the Ministry of Finance providing notice of the outstanding debt, following which not one of Defendants objected to the debt.

59. Defendants have not paid LS Energia all of the amounts owed under the account.

WHEREFORE, LS Energia demands judgment for damages against all Defendants, compensatory damages, prejudgment interest, costs, and all such other relief this Court deems just, fair, and equitable.

COUNT III – UNJUST ENRICHMENT
Alleged Against all Defendants

60. LS Energia reaffirms and re-alleges paragraphs 1 through 44 above with the same force and effect as if fully set forth herein.

61. Defendants wrongfully gained over US$52 million worth of power generation output and services without providing compensation to LS Energia for said services and output. Defendants would be unjustly enriched should they be allowed to withhold payment to LS Energia.

62. LS Energia conferred a benefit upon Defendants by providing power generation output and services for the people of Angola.

63. Defendants appreciated the benefit that LS Energia conferred upon them and upon the people of Angola, accepting the power generation output and services without providing compensation for the output and services.

64. It would be inequitable for Defendants to retain the benefit conferred—the substantial amounts of power generation output and services—without paying the value thereof.

65. LS Energia has no adequate remedy at law.

66. As a result of the foregoing, LS Energia has suffered damages.

WHEREFORE, LS Energia demands judgment for damages against all Defendants, compensatory damages, prejudgment interest, costs, and all such other relief this Court deems just, fair, and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues and claims so triable.

Dated: November 9, 2017

Respectfully submitted,

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