

PCA CASE NO. 2011-17

IN THE MATTER OF AN ARBITRATION UNDER

A. THE TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF BOLIVIA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT

-and-

B. THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF BOLIVIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

-and-

C. THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)

-between-

**1. GUARACACHI AMERICA, INC.
2. RURELEC PLC**

(the “Claimants”)

-and-

THE PLURINATIONAL STATE OF BOLIVIA

(the “Respondent,” and together with the Claimants, the “Parties”)

PROCEDURAL ORDER NO. 7

3 September 2012

A. RESPONDENT'S REQUEST

1. The Arbitral Tribunal decided, by Procedural Order No. 6, to maintain the calendar of submissions on the merits, established through common agreement in Procedural Order No. 1 as amended by Procedural Orders No. 2 and 3, and to establish a schedule for submissions on jurisdiction and for a decision on the potential bifurcation of the proceedings. In issuing its order, the Arbitral Tribunal indicated that it did not take into account the letter dated 29 August 2012, because it considered it to be untimely.
2. By e-mail dated 30 August 2012, the Respondent requested the reconsideration of the decision taken by the Arbitral Tribunal in Procedural Order No. 6 "taking into account the arguments submitted in good faith" in its letter dated 29 August, 2012. Alternatively, the Respondent requested an extension of 45 days, until Monday, 29 of October 2012, or whatever extension the Arbitral Tribunal may deem appropriate to file its Response "taking into account (i) the inclusion of new claims by the Claimants in the Statement of Claim, (ii) the recent hiring of the legal team of Dechert and (iii) that the Respondent has only received the electronic damages model of Dr. Manuel Abdala, a Claimant's expert, last Wednesday, 29 August 2012 (in an answer to a request made three days prior)." The Respondent explained that this extension should allow the dates of the hearings established in the Terms of Appointment and Procedural Order No. 1 to be maintained.
3. In its letter dated 29 August 2012, referred to in its e-mail dated August 30, 2012, the Respondent argued that the Statement of Claim contained new claims with respect to the Notice of Arbitration on which the agreement on the schedule set forth in the Terms of Appointment and Procedural Order No. 1. The Respondent submitted additional jurisdictional arguments for the bifurcation of the proceedings or an extension to file the Response, declaring the Tribunal does not have jurisdiction and that the new claims are inadmissible according to the following:

- a) None of the new claims made by the Claimants meet the conditions set forth in the United States and the United Kingdom treaties regarding the notification of a dispute and the cooling off.
- b) The Claimant's new claims are not claims founded on the treaties or international law. The Respondent argues that it is not enough to state that a claim has been filed under a treaty to establish the jurisdiction of an international tribunal. The new claims also relate to contractual matters relating to a Capitalization Contract with an arbitration clause; they are contractual claims "disguised" as international claims.
- c) The claim concerning the compensation for power or capacity was already submitted in the Bolivian courts ("*fork in the road*"). The Respondent emphasizes that this is a single dispute filed in two different, parallel forums.
- d) There is no international wrong with respect to two of the new claims. Even if the Arbitral Tribunal had jurisdiction over such claims, the claims related to the "spot" prices for electricity and the Worthington engines would be inadmissible for being premature.
- e) Rurelec does not have an investment in Bolivia protected by the Bilateral Treaty between the Bolivian Government and the United Kingdom for the promotion and reciprocal investment.

B. CLAIMANT'S ANSWER

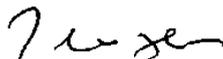
4. By letter dated 3 September 2012, the Claimants object to the Respondent's request and request that the Respondent follow the calendar established in the Procedural Order No. 6 as follows:
 - a) The Claimants assert that the Respondent has been in possession of the Statement of Claim for over six months, since 1 March 2012. The Respondent was fully aware of these new claims when it asked for the extension to submit its Statement of Defense which was granted in Procedural Order No. 3.
 - b) The Claimants state that the fact that the Respondent has only now obtained the services of external counsel, after two years of inaction, cannot be the basis for further delay. It would be unfair to ask the Claimants, who have already accepted a reduction in the time allotted to prepare the Reply, to accept a further reduction due to the Respondent's continued recalcitrance.

C. DECISION

5. From a formalistic point of view the Tribunal sees no need to grant an extension for the submission of the Respondent's Statement of Defense. The objections of the Claimants are understandable. However, the Respondent's request is made with the explicit statement that it is not expected that the dates of the final hearings will be postponed. The Claimants will not have any fewer days for their Reply (they will even have some extra days as the new schedule will include the holiday period). Therefore, the Tribunal prefers, albeit out of an abundance of caution, to afford the greatest opportunity possible for the Respondent to submit its Statement of Defense and to extend the deadline related thereto.
6. The Arbitral Tribunal hereby modifies the schedule of submissions on the merits. This extension does not apply to the schedule for submissions on jurisdiction, which is maintained as set forth in Procedural Order No. 6. The new schedule is set as follows:
 - a. On 5 October 2012, the Respondent shall file a Response;
 - b. On 4 January 2013, the Claimants shall file Reply;
 - c. On 13 February 2013, the Respondent shall file a Rejoinder;
 - d. On 14 March 2013, each Party shall provide, with a copy to the Tribunal and the PCA: (a) the names of the witnesses whose statement or report has been submitted by the other Party with the request that they be available for cross-examination at the hearing; and (b) as the case may be, a request for the Tribunal to permit the appearance at the hearing of witnesses whose statement or report has been submitted by the Party. The Tribunal shall rule on any outstanding issue in connection with the appearance of witnesses by, at or soon after the pre-hearing conference call.

The co-arbitrators have approved this order, signed only by the President.

3 September 2012



José Miguel Júdece
(President of the Tribunal)