

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")

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**PROCEDURAL ORDER NO. 8**

**9 October 2012**

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**A. RESPONDENT'S REQUEST AND THE ARBITRAL TRIBUNAL'S RESPONSE**

1. Pursuant to Procedural Order No. 7, the Arbitral Tribunal decided to modify the schedule for submissions on the merits. However, such extension did not apply to the schedule for submissions on jurisdiction foreseen in Procedural Order No. 6.

Accordingly, the schedule for submissions on the merits as well as on jurisdiction was set as follows:

- a) On 5 October 2012, the Respondent shall file a Response on the merits;
- b) On 15 October 2012, the Claimants shall file a Counter-Memorial on Jurisdiction;
- c) On 31 October 2012, the Respondent may file a Reply on Jurisdiction;
- d) If a Reply has been filed, the Claimants may file a Rejoinder on Jurisdiction on 15 November 2012;
- e) Once the Parties have fully pleaded the jurisdictional issues in accordance with the above schedule, the Tribunal will decide whether (i) to bifurcate the proceedings and hold specific hearings on the jurisdictional issues, (ii) to refuse the requested bifurcation and therefore to decide on its own jurisdiction following the scheduled hearings on the merits, or (iii) to decide on its jurisdiction without the need for any hearing;
- f) On 4 January 2013, the Claimants shall file Reply on the merits;
- g) On 13 February 2013, the Respondent shall file a Rejoinder on the merits;
- h) 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.

2. By letter dated 4 October 2012, the Respondent, following unsuccessful negotiations with the Claimants, requested an extension of 10 days, until Monday, 15 October, to the deadline to file its Response on the merits. According to the Respondent, its request is justified by the following facts: (1) the Respondent is obliged to respond to new claims filed in an untimely manner by the Claimants, which claims are highly technical, making it impossible for its expert to finish his work; and (2) the Respondent only received the electronic damages model prepared by the Claimants' expert on 29 August 2012. Consequently, its expert has only had one month and one week to prepare the corresponding reply report. The Respondent also notes that the requested extension would not interfere with the Claimants' preparation of their Counter-Memorial on Jurisdiction and, finally, the Respondent states that it would be willing to give up 10 days for the preparation of its Rejoinder, in the event that the Arbitral Tribunal were to reject the request for bifurcation of the proceedings.
3. By e-mails of the same date, the Arbitral Tribunal acknowledged receipt of the Respondent's request and communicated its decision to accept, as a strict and final extension, the Respondent's request and the consequences suggested by the Respondent with respect to the reduction of the period for filing its Rejoinder.

#### **B. CLAIMANTS' ANSWER AND REQUEST**

4. By subsequent e-mail dated 4 October 2012, the Claimants regretted that they were not given the opportunity to comment on the Respondent's extension request before the Tribunal decided upon it. In that regard, the Claimants noted that: (1) the Respondent has had the Statement of Claim since 1 March 2012 and was also aware of the mutually-agreed schedule for submissions since December 2011; and, (2) the four extensions requested by the Respondent for the filing of its Response have required the cancellation of various meetings scheduled by the Claimants resulting in additional costs and inconvenience.
5. On the other hand, the Claimants note that, in accordance with the prior schedule set forth in Procedural Order No. 7, they would have received the Response 10 days before their Counter-Memorial on Jurisdiction was due. Therefore, they requested that the Arbitral Tribunal grant an extension of 10 days from receipt of the Response, i.e., until 26 October 2012. The Claimants argued that this extension would not affect any subsequent deadlines.

#### **C. RESPONDENT'S RESPONSE TO THE CLAIMANTS' REQUEST AND RESPONDENT'S SECOND REQUEST**

6. By e-mail dated 4 October 2012, the Respondent observed that, contrary to the Claimants' allegation, granting the extension requested by them would indeed affect subsequent deadlines as, in accordance with Procedural Order No. 6, the Respondent must file its Reply on Jurisdiction on 31 October 2012 (5 days after receiving the Counter-Memorial on

Jurisdiction according to the date proposed by the Claimants), whereas the Respondent should be granted until Monday, 9 November 2012 to file its Reply on Jurisdiction. However, this would be impossible due to the Respondent's representatives' attendance at a hearing taking place from 8 to 17 November. Thus, the Respondent requests that, should the extension be granted to the Claimants, the Arbitral Tribunal grant it until 23 November 2012 for the filing of its Reply on Jurisdiction.

#### **D. CLAIMANTS' RESPONSE TO THE RESPONDENT'S SECOND REQUEST**

7. By e-mail dated 5 October 2012, the Claimants informed the Arbitral Tribunal that they did not object to the Respondent's proposed date for the filing of the Reply on Jurisdiction, provided that the deadline for the filing of the Claimants' Rejoinder on Jurisdiction was extended until 17 December 2012.

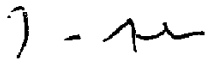
#### **E. DECISION**

8. In view of the Parties' comments, the Arbitral Tribunal decides to accept, as a strict and final extension, the Respondent's request that the deadline for the filing of its Response be extended until 15 October 2012, together with the consequences suggested by the Respondent with respect to the reduction of the period for filing its Rejoinder. Likewise, the Arbitral Tribunal accepts the compromise reached by the Parties with respect to the extensions for the filing of their submissions on jurisdiction. Accordingly, the new schedule for submissions on the merits as well as on jurisdiction, shall be as follows:
  - a) On 15 October 2012, the Respondent shall file their Response on the merits;
  - b) On 26 October 2012, the Claimants shall file their Counter-Memorial on Jurisdiction;
  - c) On 23 November 2012, the Respondent may file a Reply on Jurisdiction;
  - d) If a Reply has been filed, the Claimants may file a Rejoinder on Jurisdiction on 17 December 2012;
  - e) Once the Parties have fully pleaded the jurisdictional issues, as set forth in the above calendar, the Tribunal will decide whether (i) to bifurcate the proceedings and hold specific hearings on the jurisdictional issues, (ii) to refuse the requested bifurcation and therefore to decide on its own jurisdiction following the scheduled hearings on the merits, or (iii) to decide on its jurisdiction without the need for any hearing;
  - f) On 13 January 2013, the Claimants shall file Reply on the merits;
  - g) On 13 February 2013, the Respondent shall file a Rejoinder on the merits;
  - h) 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.

9 October 2012



José Miguel Júdece  
(President of the Tribunal)