

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. 9

23 November 2012

A. FACTUAL BACKGROUND RELATED TO RESPONDENT'S REQUEST FOR BIFURCATION

1. By letter dated 9 August 2012, the Respondent invoked the existence of objections to the Tribunal's jurisdiction and requested the bifurcation of the proceedings.
2. On 13 August 2012, the Tribunal issued Procedural Order No. 4 by which the Tribunal granted the Claimants until 23 August 2012 to comment on the Request for Bifurcation.
3. By letter dated 27 August 2012, the Claimants submitted their response to the Request for Bifurcation pursuant to Procedural Order No. 5 and an extension subsequently agreed between the Parties, opposing that the requested bifurcation be granted by the Tribunal.
4. Pursuant to Procedural Order No. 6 dated 30 August 2012, the Tribunal decided to modify the schedule of proceedings, with the exception of the dates set for the hearings, and set a schedule for the Parties to submit their pleadings on jurisdiction. Following the submission of the pleadings, the Tribunal would decide whether to bifurcate the proceedings. Furthermore, the Tribunal requested that the Parties indicate in their respective Memorials whether they would request a hearing on jurisdictional.
5. According to Procedural Order No. 7 dated 3 September 2012, the Arbitral Tribunal modified the schedule for the submissions on the merits, granting the Respondent an extension of 45 days for submission of its Response. However, this extension did not apply to the schedule for submissions on jurisdiction foreseen in Procedural Order No. 6 nor to the dates established for the hearing.
6. On 17 September 2012, the Respondent submitted its Memorial on Jurisdiction pursuant to the deadline agreed between the Parties and requested that the Tribunal "consider and decide the present exceptions to jurisdiction and admissibility as preliminary issues and bifurcate the proceedings, granting the State the possibility of pleading its case at a hearing on jurisdiction" (our translation).
7. Pursuant to Procedural Order No. 8 dated 9 October 2012, the Tribunal again modified the schedule for the submission of the Response by the Respondent. Extensions for the filing of submissions on jurisdiction were likewise also granted.

8. On 26 October 2012, the Claimants submitted their Counter-Memorial on Jurisdiction in accordance with the schedule set forth in Procedural Order No. 8. The Claimants disputed all the objections raised by the Respondent and requested the Tribunal to dismiss the Request for Bifurcation and join the Respondent's objections to the merits.

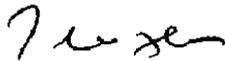
B. HEARING ON JURISDICTION

9. In view of the Parties' submissions on jurisdiction and the Respondent's request for a hearing on jurisdiction, the Tribunal considers that holding a separate hearing on jurisdiction could be beneficial in the present case, provided it does not entail any postponement of the hearings on the merits already scheduled from 1 April to 10 April 2013, to be held if the Tribunal were not to accept, or accept only in part, the objections on jurisdiction raised by the Respondent.
10. Accordingly, the only possible period in which a hearing on jurisdiction could be held would be between 21 January and 8 February 2013.
11. Nevertheless, pursuant to the schedule set forth in Procedural Order No. 8, the Respondent must submit its Rejoinder on the merits on 13 February 2013. Therefore, if a hearing on jurisdiction is to be held, the Respondent might encounter difficulties in complying with the deadline for submission of its Rejoinder.
12. Thus, the Tribunal requests that the Parties respond by **27 November 2012** to the following questions:
 - a) whether the Respondent, who has expressed a desire to hold a hearing on jurisdiction, maintains its position in light of the abovementioned circumstances regarding the submission of its Rejoinder;
 - b) the period of time the Parties would need for oral pleadings and cross examination; and
 - c) their availability and preferred dates to hold the hearing on jurisdiction within the proposed period from 21 January to 8 February 2013, as well as the dates on which they would not be available for such hearing.
13. If, after considering the Parties' responses to the questions set out in paragraph 12 above, the Tribunal decides to convene a hearing on jurisdiction, it would be held under the following conditions:
 - a) It would last a maximum of 3 days;
 - b) The deadline of 13 February 2013 for the Respondent's Rejoinder on the merits would be postponed by a period equivalent to the length of the hearing on jurisdiction;

- c) The deadline of 14 March 2013 set forth in Procedural Order No. 8 for each Party to 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 that they request be available for cross-examination at the hearing and (b) any request by a Party that the Tribunal permit the appearance at the hearing of witnesses whose statement or report has been submitted by that Party, would be postponed for a period equivalent to the length of the hearing on jurisdiction; and
- d) The final hearing on the merits, if any is held, would be shortened by a period equivalent to the length of the hearing on jurisdiction and the starting date of the hearing would be postponed by an equal period

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

23 November 2012



José Miguel Júdece
(President of the Tribunal)