

PCA CASE Nº 2019-46

**IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE
TRADE PROMOTION AGREEMENT BETWEEN THE REPUBLIC OF PERÚ AND THE
UNITED STATES OF AMERICA**

- and -

THE UNCITRAL ARBITRATION RULES 2013

-between-

THE RENCO GROUP, INC.

-and-

THE REPUBLIC OF PERÚ

PROCEDURAL ORDER NO. 2

The Arbitral Tribunal

Judge Bruno Simma (Presiding Arbitrator)
Prof. Horacio Grigera Naón
Mr. J. Christopher Thomas QC

3 June 2020

1 Procedural History

- 1.1 Paragraph 9.1 of Procedural Order No. 1 provides that “[a]fter consultation with the Parties, including based on a pre-hearing organization conference call, the Tribunal shall issue, for each hearing, a procedural order convening the meeting, establishing its place, time, agenda, and all other technical and ancillary aspects, further to the rules set forth below.”
- 1.2 In accordance with the PCA’s letter dated 27 February 2020 and the Parties’ respective e-mails of 28 February 2020, the Tribunal fixed Saturday, 13 June 2020 as date on which to hold the Hearing on Article 10.20.5 Objections and Bifurcation in Washington DC (the “**Hearing**”).
- 1.3 By respective letters dated 15 May 2020, the Parties proposed that, given global public health regulations and travel restrictions, the Hearing take place by videoconference over a two-day period instead of one day in person in Washington DC as originally envisaged.
- 1.4 On 19 May 2020, the Tribunal proposed to hold the Hearing by videoconference on 12-13 June 2020 and circulated a draft of this Procedural Order for the Parties’ comments.
- 1.5 On 5 June 2020, the Parties and the Tribunal held a pre-hearing organization conference call in accordance with section 9 below.

2 Videoconference Platform

- 2.1 The Hearing shall be held by videoconference using the *Zoom* videoconference platform.
- 2.2 The log-in details for the videoconference shall be circulated by the PCA on the day prior to the start of the Hearing.

3 Participants

- 3.1 Access to the videoconference shall be restricted to the members of the Tribunal, the Parties’ representatives, PCA staff, court reporters, interpreters, and any further technical support personnel retained by the PCA in connection with the Hearing (the “**Participants**”). All Participants in the Hearing bear an ongoing duty to warn of the presence of any other person on the videoconference.
- 3.2 The Parties are each requested to provide a full list of the representatives who will attend the Hearing on their behalf by no later than **Friday, 5 June 2020**. Any person not included on the lists of representatives provided by the Parties will not be admitted to the videoconference, unless otherwise decided by the Tribunal upon request by any of the Parties.
- 3.3 Participants will join the videoconference through a “waiting room” to be managed by the PCA. Each Party shall identify all of its representatives at the opening of each day of the Hearing.¹ Any prospective participant who cannot be identified shall not be granted access to the videoconference, unless otherwise decided by the Tribunal upon request by any of the Parties.

¹ In order to facilitate identification of all attendees, Participants are encouraged to change their username on the videoconference platform to [First Name][Last Name][*please add “(Claimant)” or “(Respondent)” respectively*].

4 Internet Connection and Devices

- 4.1 The Parties are responsible for ensuring that each of their representatives connects to the video conference through a stable internet connection offering sufficient bandwidth and uses a camera, microphone, and speaker of adequate quality.
- 4.2 Participants should consider using a wired Ethernet connection instead of WiFi. Participants are also encouraged to keep a smartphone or tablet, having at the minimum a 4G data connection and mobile hotspot functionality, available as a backup internet connection at all times during the Hearing.
- 4.3 A dial-in telephone audio option shall be offered as a backup option for Participants experiencing difficulties with computer audio. Certain key Participants may wish to dial-in by phone in addition to connecting through their computer, so as to be able to switch seamlessly to telephone audio in case they should happen to be disconnected at any point.
- 4.4 Each Participant is encouraged to have at least two devices or screens available for use during the Hearing, one to connect to the videoconference and another for the transcription. Where possible, using a third device or screen to display evidence and demonstrative exhibits is recommended.

5 Language

- 5.1 In accordance with paragraphs 3.5 and 9.2 of Procedural Order No. 1, simultaneous interpretation between English and Spanish shall be organized by the PCA and made available through the videoconference platform.

6 Transcription

- 6.1 In accordance with paragraphs 3.5 and 9.2(c) of Procedural Order No. 1, live transcripts of the Hearing in English and Spanish will be organized by the PCA and made available on a separate text-streaming platform.
- 6.2 The PCA shall circulate the connection details for the transcript on the day prior to the start of the Hearing. Participants are encouraged to use a second device or a second screen for viewing the transcript. Final transcripts will be circulated by e-mail at the end of each day.

7 Recording

- 7.1 The PCA shall record the Hearing in both audio and video. No other Participants shall record any part of the Hearing, unless otherwise decided by the Tribunal upon request by any of the Parties.

8 Technical Problems

- 8.1 Each Party shall designate, by no later than **Friday, 5 June 2020**, one of its representatives to act as videoconferencing contact person (“**VC Emergency Contact Person**”) for purposes of addressing any technical incidents which arise during the videoconference.
- 8.2 The VC Emergency Contact Person shall be responsible for advising the Tribunal and the PCA on the videoconference if an essential Participant from their side is disconnected or otherwise cannot participate, such that the Tribunal is requested to suspend the Hearing. Otherwise, the VC Emergency Contact Person shall notify and address technical issues with Alejandra Martinovic

of the PCA (tel: +31 61 511 1429; e-mail: amartinovic@pca-cpa.org), without interrupting the Hearing.

- 8.3 The Tribunal may temporarily or permanently suspend the Hearing if it deems the functioning of the videoconference system to be inadequate or likely to prejudice the due process rights of any of the Parties or the integrity of the proceeding. The Parties are asked to bear in mind that full recordings and transcripts of the Hearing will be available, mitigating the prejudice arising from the failure of any given Participant to be able to follow the entire Hearing during the videoconference.

9 Pre-Hearing Videoconference

- 9.1 A Pre-Hearing Videoconference shall be held with the Parties prior to the Hearing in order to discuss the organization of the Hearing.
- 9.2 The Pre-Hearing Videoconference shall also serve to verify the proper functioning of the videoconference platform. All Participants shall strive to replicate the conditions under which they will participate in the Hearing:
- (a) To the extent possible, at least one Participant per device or connection to be used during the Hearing should attend the Pre-Hearing Videoconference;
 - (b) Each Participant should join the Pre-Hearing Videoconference using the same device(s) and internet connection from the same physical location that they intend to use during the Hearing; and
 - (c) The Pre-Hearing Videoconference shall include a test of each of the functions of the videoconference platform that is intended to be used during the Hearing (e.g. virtual break-out rooms, presentation of evidence via shared screen, and simultaneous interpretation).
- 9.3 In addition to the Pre-Hearing Videoconference, the Parties are invited to undertake further test calls with the PCA insofar as desired.

10 Schedule of the Hearing

- 10.1 Taking into account the different time zones of the various locations of Participants in the Hearing, the Hearing will start on each day at 6:00 UTC-7 (Vancouver), 8:00 UTC-5 (Lima), 9:00 UTC-4 (New York, Washington, DC), 15:00 UTC+2 (The Hague). There will be at least 2 breaks of 30 minutes each, and the Hearing will be adjourned at the latest at 11:00 UTC-7 (Vancouver), 13:00 UTC-5 (Lima), 14:00 UTC-4 (New York, Washington, DC), 20:00 UTC+2 (The Hague).
- 10.2 All Participants in the Hearing shall join the videoconference at least 30 minutes in advance of the start of each day. All Participants shall remain connected to the videoconference at all times for the duration of the Hearing, including during breaks. Private break-out rooms (within the main videoconference) will be made available for the exclusive use of the Tribunal and each side. The PCA shall be responsible for redirecting the Tribunal and each side to their respective break-out rooms at the commencement of each break.
- 10.3 The schedule for the Hearing is included in the **Annex** to this order and is subject to any changes that the Tribunal may deem necessary or appropriate to make during the Hearing. In particular, the Tribunal may adjust the schedule of the Hearing as necessary in the event of delays or other interruptions caused by technical problems in the functioning of the videoconference.

- 10.4 Two hours shall be reserved for Tribunal questions and procedural matters. In accordance with paragraph 9.1(c) of Procedural Order No. 1, each side will therefore have a total of 3 hours for its oral pleadings, who may allocate the use of such time as it so chooses according to a chess-clock system to be monitored by the PCA.
- 10.5 Any time spent on procedural matters or objections shall be charged to the Party who raised the matter, unless the matter in question is expressly decided by the Tribunal against the other side, in which case the time spent shall be charged to that side. Time devoted to address procedural matters or questions raised by the Tribunal will not be counted against the Parties' time.

11 Evidence and Demonstrative Exhibits

- 11.1 In accordance with paragraphs 6.4, 6.5, and 9.1(e) of Procedural Order No. 1, the Parties may make use of demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.), provided that those materials reflect and reference (with exhibit numbers) evidence on the record and do not introduce new evidence, directly or indirectly, without leave of the Tribunal.
- 11.2 The Parties shall provide electronic copies of any demonstrative exhibits to be displayed during the Hearing by e-mail or secure file-sharing platform to all other Participants (including the other side, the members of the Tribunal, the PCA, the court reporters, the interpreters, and further technical support personnel retained by the PCA) at least one hour prior to their use during the Hearing.
- 11.3 The presentation of any evidence, authority, or demonstrative exhibit shall be made through the screen-sharing function of the videoconference platform in order that the speaker and the relevant document can be seen simultaneously at all times. The Parties are encouraged to designate one person on each side (the "**Document Manager**") who shall be responsible for presentation of evidence, authority or demonstrative exhibit through the screen sharing function of the videoconference platform during the Hearing. The Parties may also seek assistance from the technical support personnel retained by the PCA (*Law in Order*) in presenting documents during the Hearing. The Parties shall notify the PCA whether they intend to use their own Document Manager for presentation of documents during the Hearing or if they prefer to rely on technical support personnel retained by the PCA, at the latest by **Friday, 5 June 2020**.

12 Etiquette

- 12.1 The Parties shall provide a list of the Participants from each side who will speak to each point on the day's agenda by e-mail to all other Participants (including the other side, the members of the Tribunal, the PCA, the court reporters, the interpreters, and further technical support personnel retained by the PCA) at least one hour prior to the start of each day.
- 12.2 The Parties should, insofar as possible, circulate any speaking notes to the court reporters and interpreters prior to the start of any relevant session.
- 12.3 All Participants without an active role at any given moment should mute their own audio and turn off their video.
- 12.4 Participants should join the Hearing from a location without background noise and with adequate lighting. Participants should also consider using a complete headset (headphones with integrated microphone) of good quality.

12.5 The above provisions on etiquette may be adjusted or supplemented by the Tribunal, in consultation with the Parties, in the course of the Hearing.

13 Post-Hearing Matters

13.1 At the conclusion of the Hearing, the Tribunal shall decide whether the Parties will file any post-hearing briefs, as well as the format, content, and timing of those submissions. In any event, any such submissions shall not contain new evidence, documents, sources, declarations, or expert reports.

13.2 The need and schedule for correction of the transcript will be discussed at the conclusion of the Hearing.

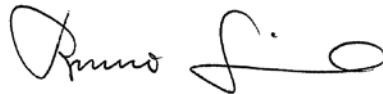
13.3 The Tribunal shall also consider whether and when the Parties shall file submissions regarding costs.

14 Transparency and Confidentiality

14.1 The PCA shall arrange for a public webcast of the Hearing.

14.2 Any Participant who intends to refer to confidential or protected information during the Hearing shall so inform the Tribunal prior to making any such reference. The Tribunal shall then direct the PCA to pause the webcast for the period of time that such confidential or protected information is being addressed.

So ordered by the Tribunal.



Judge Bruno Simma
(Presiding Arbitrator)

On behalf of the Tribunal

ANNEX: Schedule of the Hearing

In accordance with paragraph 10.4 above, each side will have a total of 3 hours for its oral pleadings, who may allocate the use of such time as it so chooses according to a chess-clock system to be monitored by the PCA. The time estimates for each step of the hearing provide below are indicative only.

DAY 1 – 12 JUNE 2020

9:00 UTC-4	Opening of Hearing [30 min]
9:30 UTC-4	Respondent's Opening Statement (Treaty Arbitration) [1h30m]
11:00 UTC-4	Break [30 min]
11:30 UTC-4	Claimant's Opening Statement (Treaty Arbitration) [1h30m]
13:00 UTC-4	Break [30 min]
13:30 UTC-4	Tribunal Questions [30 min]
14:00 UTC-4	Hearing adjourned

DAY 2 – 13 JUNE 2020

9:00 UTC-4	Opening of Hearing [30 min]
9:30 UTC-4	Respondent's Rebuttal (Treaty Arbitration) [30 min]
10:00 UTC-4	Break [30 min]
10:30 UTC-4	Claimant's Rebuttal (Treaty Arbitration) [30 min]
11:00 UTC-4	Respondents' Opening Statement (Contract Arbitration) [45 min]
11:45 UTC-4	Claimants' Opening Statement (Contract Arbitration) [45 min]
12:30 UTC-4	Break [30 min]
13:00 UTC-4	Respondents' Rebuttal (Contract Arbitration) [15 min]
13:15 UTC-4	Claimants' Rebuttal (Contract Arbitration) [15 min]
13:30 UTC-4	Tribunal Questions [30 min]
14:00 UTC-4	Hearing adjourned