

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. 10
17 December 2012

A. THE RESPONDENT'S EXTENSION REQUEST

1. In accordance with Procedural Order No. 8, the Respondent had until 23 November 2012 to submit its Reply on Jurisdiction.
2. By e-mail dated 23 November 2012, the Respondent requested a three-day extension, until 26 November 2012, to submit its Reply on Jurisdiction. The Respondent also informed the Tribunal that the Claimants would not object to the abovementioned extension on the condition that they be granted a similar extension for the submission of their Rejoinder on Jurisdiction.
3. By subsequent e-mail of the same date, the Claimants confirmed that they would not object to the Respondent's request referred in the aforementioned e-mail.
4. By e-mail dated 23 November 2012, the Tribunal accepted the agreement reached by the Parties regarding the extension for the submission of the Reply on Jurisdiction. On 26 November 2012, the Respondent filed its Reply on Jurisdiction.

B. HEARING ON JURISDICTION

5. In Procedural Order No. 9, the Tribunal decided, *inter alia*, as follows:

"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."

(emphasis added)

6. In light of the above decision, the Tribunal requested that the Parties inform the Tribunal of their respective positions regarding the possibility of holding a hearing on jurisdiction within the period between 21 January and 8 February 2013. The Tribunal noted that "*if, after considering the Parties' responses [...] the Tribunal decides to convene a hearing on jurisdiction, it would be held under the following conditions.*" (emphasis added)
7. By letter dated 27 November 2012, the Respondent informed the Tribunal that in its opinion two days would be enough for a hearing on jurisdiction and that, without prejudice

- to its request that the proceedings be “truly bifurcated”, its representatives would be available for a hearing on jurisdiction on 4-5 February 2013, but neither before those dates (given a hearing on 31 January 2013) nor afterwards (given other commitments from 5-8 February 2013).¹ This means that, should more than two days prove necessary for the hearing on jurisdiction, including for reasons unrelated to the Parties’ availability, the hearing could only be held (or completed, as the case may be) in March 2013 at the earliest.
8. By letter dated 27 November 2012, the Claimants’ representatives informed the Tribunal that they would not be available to participate in a hearing on jurisdiction during any of the dates within the abovementioned period due to their participation in ICSID hearings scheduled for 21-25 January 2013, 31 January 2013, and 11-12 February 2013.
 9. The UNCITRAL Arbitration Rules allow jurisdictional objections to be raised until the submission of the statement of defence. The Respondent’s jurisdictional objections are therefore timely and the Respondent is entitled to have the Tribunal consider and decide them. The UNCITRAL Arbitration Rules do not, however, establish any right to (or even a presumption in favor of) bifurcation, leaving this to the discretion of the Tribunal in accordance with its duty to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the Parties’ dispute.
 10. The Tribunal considers that a separate hearing on jurisdiction “*could be beneficial*” and therefore potentially useful but not essential. A prior hearing on jurisdiction could simplify or eliminate the need for the April hearing on the merits were a decision concluding that the Tribunal lacks jurisdiction, wholly or partially, issued by March. However, most of the costs involved in the Parties’ pleading of the merits of this case would have already been incurred by the time of issuance of any decision on jurisdiction. The Respondent has indeed stated that “[h]olding a hearing on jurisdiction without suspending the proceedings on the merits would—rather than contributing to procedural efficiency—increase the costs of the arbitration, eliminating any practical benefit to bifurcation.” The Tribunal has been clear, however, that it would not postpone the proceedings on the merits and in particular the hearing on the merits scheduled over a year ago for 1 to 10 April 2013.
 11. Scheduling a hearing on jurisdiction for the dates of 4-5 February 2013 suggested by the Respondent would leave both sides with three days from the end of their previous hearings to prepare for the hearing on jurisdiction in this arbitration as well as little time to prepare for their subsequent commitments. Were the Tribunal to opt for the dates suggested by the Respondent in spite of the Claimants’ indication that they are unavailable during this period, this could potentially impose an excessive burden upon the Claimants’ representatives,² thereby giving rise to a potential violation of due process. On the other hand, not holding a hearing on jurisdiction does not deprive the Respondent of the

¹ That is, should these commitments commence on 5 February 2013, the only possible date left for a hearing on jurisdiction would be 4 February 2013.

² It must be acknowledged that a large burden would also be placed on the Respondent’s representatives, albeit one that they are prepared to assume.

opportunity of presenting its case on jurisdiction. The Respondent will enjoy such an opportunity at the April hearing.

C. DECISION

12. Having considered the responses submitted by the Parties to the questions posed by the Tribunal in Procedural Order No. 9, the Tribunal decides that no separate hearing on jurisdiction will be held. The objections raised on jurisdiction by the Respondent will be heard together with the merits during the hearing scheduled from 1 to 10 April 2013.
13. The Claimants shall have until **20 December 2012** to submit their Rejoinder on Jurisdiction.

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

17 December 2012



José Miguel Júdece
(President of the Tribunal)