

IN THE MATTER OF AN ARBITRATION UNDER 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 INVESTMENTS

-and-

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-

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

- - - - - x  
 :  
 In the Matter of Arbitration :  
 Between: :  
 :  
 GUARACACHI AMERICA, INC. (U.S.A.) and :  
 RURELEC PLC (UNITED KINGDOM), :  
 :  
 Claimants, : PCA Case No. 2011-17  
 :  
 and :  
 :  
 PLURINATIONAL STATE OF BOLIVIA, :  
 :  
 Respondent. :  
 :  
 - - - - - x Volume 2

HEARING ON THE MERITS

Wednesday, April 3, 2013

International Chamber of Commerce  
112 avenue Kleber  
Bosphorus Conference Room  
Paris, France

The hearing in the above-entitled matter came on, pursuant to notice, at 9:36 a.m. before:

- DR. JOSÉ MIGUEL JÚDICE, President of the Tribunal
- MR. MANUEL CONTHE, Arbitrator
- PROF. RAÚL EMILIO VINUESA, Arbitrator

Registry:

MR. MARTIN DOE RODRIGUEZ  
MS. AMANDA JIMÉNEZ PINTÓN

Court Reporters:

MR. DAVID A. KASDAN  
Registered Diplomate Reporter  
Certified Realtime Reporter  
Worldwide Reporting, LLP  
529 14th Street, S.E.  
Washington, D.C. 20003  
+1 (202) 544-1903

SR. VIRGILIO DANTE RINALDI  
D.R. Esteno  
Colombres 566  
Buenos Aires 1218ABE  
Argentina  
(5411) 4957-0083

Interpreters:

MS. SILVIA COLLA  
MR. DANIEL GIGLIO

APPEARANCES:

On behalf of the Claimant:

MR. NIGEL BLACKABY  
MS. CAROLINE RICHARD  
MR. FRANCISCO ABRIANI  
MS. BELINDA MCRAE  
MS. GISELA MATION  
MR. KATHERINE IBARRA  
MR. CÉCILE ROCHE  
Freshfields Bruckhaus Deringer U.S. LLP  
701 Pennsylvania Avenue, N.W.  
Suite 600  
Washington, DC 20004  
(202) 777-4500

MR. NOAH RUBINS  
Freshfields Bruckhaus Deringer  
65 Fleet Street  
London EC4Y 1HT  
United Kingdom

MR. JEFFERY COMMISSION  
Freshfields Bruckhaus Deringer U.S. LLP  
601 Lexington Avenue  
31st Floor  
New York, New York 10022

SR. RODRIGO RIVERA  
SR. RAMIRO GUEVARA  
Guevara & Gutiérrez S.C.  
Calle 15 No. 7715  
Esquina Calle Sánchez Bustamante  
Torre Ketal, Piso 4, Oficina No. 2  
Casilla Postal 9332  
La Paz, Bolivia

On behalf of Rurelec PLC:

MR. PETER EARL  
MS. ELIZABETH SHAW  
MS. SUSAN LAKER  
MS. MARIA BRAVO

APPEARANCES: (Continued)

On behalf of the Respondent:

DR. HUGO MONTERO LARA  
DRA. ELIZABETH ARISMENDI CHUMACERO  
DRA. IDRA PENNYCOOK  
Procuraduría General del Estado

MR. EDUARDO SILVA ROMERO  
MR. JOSÉ MANUEL GARCÍA REPRESA  
MR. ALVARO HERNÁN GALINDO CARDONA  
MR. JUAN FELIPE MERIZALDE URDANETA  
MS. ANA CAROLINA SIMÕES E SILVA  
MR. ANTONIO MARZAL YETANO  
MS. KATTIA HERNANDEZ MORALES  
MS. LAURA GHITTI  
MS. CELIA CAMPBELL  
MR. JEREMY EICHLER<sup>6</sup>  
Dechert (Paris), LLP  
32 rue de Monceau  
75008 Paris, France

## INDEX

ITEMS	PAGE
PRELIMINARY MATTERS: QUESTIONS FROM THE TRIBUNAL	271
WITNESSES:	
PETER R.S. EARL	
Direct examination by Ms. Richard	292
Cross-examination by Mr. García Represa	299
Redirect examination by Mr. Blackaby	367
Recross-examination by Mr. García Represa	375
Questions from the Tribunal	376
PETER R.S. EARL (recalled)	
Questions from the Tribunal	396
JAIME ALIAGA MACHICOA	
Direct examination by Ms. Richard	402
Cross-examination by Mr. Merizalde	408
Redirect examination by Mr. Blackaby	450
Recross-examination by Mr. Merizalde	457
Questions from the Tribunal	461
JUAN CARLOS ANDRADE	
Direct examination by Mr. Commission	468
Cross-examination by Mr. Silva Romero	472
Questions from the Tribunal	496

1 P R O C E E D I N G S

2 PRESIDENT JÚDICE: Well, good morning. I hope you  
3 slept well, not very at work during the night.

4 We have some questions by the Tribunal. Dr. Conthe  
5 will be the first one to ask you some questions, and then  
6 Mr. Vinuesa, and finally myself.

7 I will allow you to answer immediately or afterwards,  
8 depending on your own decision. Then let's start. Okay.

9 QUESTIONS FROM THE TRIBUNAL

10 ARBITRATOR CONTHE: Then if you allow me, I will put  
11 two questions to the Claimants and later on to the Respondents.  
12 As to the Claimant, the first one is a general financial one.  
13 Just taking the overall picture, if we consider the entire  
14 investment, it's clear that back in 1995, the original  
15 investor, TBU, invested \$47 million, and if we neglect the 2003  
16 transaction, in 2005, early 2006, Guaracachi, Rurelec, rather,  
17 bought that equity for 35 million euros--dollars, sorry.

18 So, I don't know what the dividends were in that  
19 period, in that 10-year period, but it's obvious that the  
20 return on equity was negative.

21 Now, assuming Rurelec were to get an award from the  
22 Tribunal, which was exactly what the Claimants are asking, you  
23 will be getting \$77 million just for the principal plus the  
24 additional claims, which means that with an investment of  
25 \$35 million in early 2006, four years later you will be getting

09:38 1 close to \$100 million, which would mean that the Rate of Return  
2 would be relatively high. I don't know whether astronomical or  
3 not, but anyway very high.

4           And then my question is: What would account for that  
5 difference in performance in the investment in the first 10  
6 years and in the subsequent four years under Rurelec  
7 management? And that's the first question.

8           The second one concerns marginal pricing because I  
9 take it that, as you explained, it's a very efficient system to  
10 promote new investment and make new investments profitable, but  
11 at the same time don't you see the scope for this system to be  
12 taken advantage of by potential energy generators in case they  
13 have market power and they postpone the installation of new  
14 capacity so that that marginal cost of the least efficient  
15 generators remains in place so that they get windfall, as  
16 claimed by the Respondent?

17           Those are my two questions.

18           MR. BLACKABY: Thank you.

19           Just as a question of sort of process because, of  
20 course, obviously these are technical issues and we are not  
21 technical people ourselves, and we might need to think about  
22 some of the issues, would it make sense, and I throw this out  
23 as a proposal to Respondent as well, since we do have closings  
24 now, whether it might be an appropriate moment to address these  
25 questions that come up in the course of the hearing as part of

09:40 1 the closing? We can do it before, so at the Tribunal's  
2 discretion, whatever might make sense, but the question was  
3 really whether or not it makes sense to do it so that we get a  
4 chance rather than answering the off the top of our heads to  
5 think about the issues as a team. I'm seeing sort of an  
6 approbatory note from counsel for Respondent. It may be  
7 helpful for everybody to collect these issues.

8 MR. SILVA ROMERO: Thank you, Mr. President.

9 Yes, Bolivia would rather have a group consultation to  
10 answer the various questions, and also make a comment on the  
11 questions that Mr. Conthe has also posed for the Claimants.

12 PRESIDENT JÚDICE: Counsel, decide whether you want to  
13 answer now, to ask for later on answers to be provided by  
14 expert witnesses or even by fact witnesses if the case happens,  
15 and/or at last final pleading. My idea is that if we put some  
16 questions that, from our point of view, need to be addressed or  
17 addressed in a different or more deep way, it may be helpful  
18 for the work of both Parties. I think that this is a solution  
19 that both Parties can take advantage of. We are going to ask  
20 you the questions, and then if it is necessary, if you would  
21 like, you can answer, otherwise, you can delay the answer.

22 ARBITRATOR CONTHE: I have two other questions.

23 MR. SILVA ROMERO: I think, Mr. President, if I  
24 understood correctly the proposal by Mr. Blackaby, both  
25 Parties' opinion is that the proper time to answer your



09:41 1 questions would be when we actually do our Closing Statements,  
2 so that there is no disorganization in the way we answer. And  
3 it is very useful, by the way, to know at this stage the  
4 questions you may have about the case, but if I understand  
5 Mr. Blackaby correctly, it would be better, as far as possible,  
6 to answer the questions in the Closing Statements.

7           PRESIDENT JÚDICE: That's okay, but if at some point  
8 the Parties understand that in the direct examination to an  
9 expert they have a great opportunity to answer our point of  
10 view, there is no problem; you can go ahead and do that. But I  
11 do understand the final pleadings would be the right time to  
12 answer our questions.

13           ARBITRATOR CONTHE: I think that is a great time  
14 because some of those questions may be for the experts. In the  
15 case of Bolivia, I have two other questions. The first one is  
16 that Capacity Payments, and Capacity Payments of the law,  
17 Law 49, then become--Article 49 then become an annotate, so I  
18 understand that in connection with Article 49 and the standards  
19 applied a discount rate, and that discount rate, if I  
20 understand correctly, is 12 percent. That is the rate applied  
21 by the Government of Bolivia, so I wonder the logic behind that  
22 12 percent.

23           As accepted by the Government of Bolivia because now  
24 the rate is much higher.

25           The other question is just a technical question in the

09:43 1 Profin report that we heard through Bolivia was done with an  
2 independent expert, I don't know if you remember each of the  
3 phases of the study. This is document 254 of the Respondent.  
4 I haven't had an opportunity to make copies for all of you, but  
5 in my opinion there is a phrase that is quite clear, and I  
6 don't know if this is consistent with Bolivia. We consider  
7 that this is a confidential document of Bolivia, and the parts  
8 of this document or the document as a whole should not be  
9 communicated, should not be disseminated, and this is a  
10 strategic document.

11           So, I don't know if that statement by the consultant  
12 is consistent with Bolivia's assertions that this was a  
13 completely independent consultant that made a report that was  
14 good for Bolivia and good for Guaracachi.

15           And, finally, another question--that is not actually a  
16 question. It's just an assertion, just to make sure that I  
17 understood Mr. García Represa when yesterday, when referring at  
18 176, Slide 176, of the IRR, at some point he said that Rurelec,  
19 in presentations mentioned in South Africa had requested a  
20 minimum Rate of Return of 20 percent, so I understand that that  
21 was a return on equity rather than a weighted average cost, and  
22 at that point it was not comparable with 19.85 of the weighted  
23 average cost of the WACC; rather, the 27.77 percent of the IRR  
24 that Econ One uses to determine the WACC of 19.85 percent.

25           I don't know if I understood correctly what Mr. Garcia

09:45 1 Represa said. At some point I thought that he was mixing IRR.

2           It was just a clarification, and I'm sure that  
3 throughout the hearing you will be able to address it, but it  
4 is not necessary to hear an answer.

5           ARBITRATOR VINUESA: Mr. President, thank you very  
6 much. I had a series of questions that I am going to reserve  
7 for the date prior to the Closing Argument, probably Friday,  
8 and hoping that I will not have to ask you questions so as not  
9 to give you additional work to get concern about something that  
10 might get answered throughout this week.

11           However, there is a general conceptual question, and I  
12 would like to hear the comments of both parties, and this has  
13 to do with an assertion by the Claimants yesterday morning, in  
14 the sense at about 11:23 in the morning, and looking at  
15 Page 123, the corporate structure of Guaracachi, something that  
16 is repeated later on, and it was presented by the Claimants.  
17 If we look at the corporate structure, the first impression or  
18 the first question I have is whether there is no overlap of  
19 claims in the presentation by Rurelec and Guaracachi.

20           Reference was made to the Abaclat Case. Abaclat is  
21 very clear in the sense that each Claimant has their own claim,  
22 but here more than similar claims, there seems to be just one  
23 claim. So, at one point, I would like to hear some comments by  
24 the Parties and the possibility to have an overlap of claims  
25 between Rurelec and Guaracachi taking into account the

09:48 1 corporate structure charter.

2 Thank you very much.

3 PRESIDENT JÚDICE: Then I have two questions for each  
4 Party or probably for both parties. One of them is a matter of  
5 information. Document R-44 speaks of an expropriation  
6 insurance policy that has been negotiated with OPIC. I'm not  
7 sure if whether this has been clarified by the parties, if the  
8 insurance policy is still applicable or not.

9 A second question--do you want to--

10 MR. BLACKABY: That is a very simple factual question.  
11 That policy was with regard to a former Shareholder. That was  
12 never a policy that we had and is not in force and has not  
13 been--I mean, has nothing to do with the Party to this. Just  
14 to be clear because I know that it was sort of mentioned, and  
15 it may not have been clear.

16 PRESIDENT JÚDICE: Thank you.

17 The second point is the following--well, the idea is  
18 the following: Why the 1 percent less efficient or 2 percent  
19 less efficient production could disappear by natural death and  
20 not by euthanasia, meaning that it would be acceptable, not  
21 be--it would whenever capacity would do--would no more be  
22 called for excessive production, but starts it is to not decide  
23 based on public interest not to have it called any longer, and  
24 why Guaracachi did not react to in 2001 when it excluded  
25 "generación forzada" and "reserva fría."

09:50 1           Why the 1 percent less efficient production could  
2 disappear as to the calculation of Spot Prices referred by  
3 natural death and not through euthanasia, meaning that it would  
4 be acceptable not to be included whenever that capacity would  
5 no more be called for excess of production, but energy State  
6 entities could not decide based on public interest no more if  
7 it's called.

8           Another question is the following: Why not react if  
9 it was the case to ROME 2001 when excluded "generación forzada"  
10 and "reserva fría"?

11           A second question is the following. This relates to  
12 additional 20 percent. It has been included, to the best of my  
13 knowledge, in August of 2001 and, therefore, after the  
14 privatization, after ROME '95 and after ROME 2001. Why should  
15 it be considered a right of the Claimant even if the economic  
16 rationality for that 20 percent increase disappears? I'm not  
17 saying if it disappeared or not. The question is if the  
18 20 percent increase is no longer necessary from an economic  
19 point of view, shall the Claimant be entitled to it or not?

20           Now, more for the Respondent, now referring to the  
21 investments with liquid capital contributions or debt. Now, if  
22 you had liquid capital contributions and this could lead to the  
23 modification of the equity ratio of the Party, that is to say,  
24 if Rurelec made an investment in capital debt, that could lead  
25 to that capital to be 80 percent or that equity to be

09:52 1 80 percent or higher. So, how does this affect the rate, the  
2 equity ratio?

3           Second, what is the economic rationale of not  
4 considering a percentage to determine the Spot Price but using  
5 the least-efficient units to provide power to the system.

6           The last question has to do with the dignity tariff.  
7 The dignity tariff is a logic in the capitalistic, from the  
8 capitalistic perspective. Now, is this a good idea, or is it  
9 just a political agreement to obtain other advantages? For  
10 example, I would like for the Parties to think of Articles 4,  
11 5, 7, and 8. They have not been mentioned in the memorials by  
12 the Parties, and I would like for you to consider whether there  
13 is any equilibrium or balance among these clauses. Clause 8  
14 establishes a six-month period to find a solution to the  
15 accumulated pending debt, and I think that this dignity tariff  
16 from 2010 continues to refer to this, and this may not have  
17 been solved, but think it would be a good idea to determine  
18 what happened in this connection not only in relation to  
19 Clause 8, but also to the other four or five clauses that I  
20 mentioned as a whole.

21           Thank you.

22           MR. GARCÍA REPRESA: If you allow me, and prior to  
23 what the experts might say later on in connection with your  
24 second to last question--that is to say, what would be the  
25 reason to maintain some inefficient units in the power offer as

09:54 1 opposed to the energy offer, there are two different claims  
2 here. One thing is the energy needs or the capacity needs, and  
3 the energy need or the power need and the capacity need. So,  
4 capacity has a different concept. When you think of capacity,  
5 you're thinking of reserve, and that is different from the  
6 power that you actually dispatch.

7           So, that is something that we also need to make clear  
8 in this case to establish the difference between these two  
9 factors.

10           MR. BLACKABY: Just with regard to the question that  
11 was raised yesterday by the President, you will recall that we  
12 had prepared to answer today, so maybe, since that was before  
13 this decision, maybe it will be helpful if Mr. Rubins just  
14 responded to that, and then we can move to the new method of  
15 response--

16           MR. RUBINS: Thank you, Mr. Blackaby.

17           Mr. Chairman, you note--you mentioned during the  
18 Opening Statement that I had not addressed in my discussion of  
19 the discount rate the documents related to the approval of a  
20 project before the United Nations, and also the South African  
21 project that I referred to in the pleadings; and I would like  
22 to address that in the sense that we actually did hear quite a  
23 lot about them, and it fits very closely into the discussion  
24 that we had during my part of the opening statement about the  
25 difference between an Internal Rate of Return and a discount

09:56 1 rate, and actually the documents that we were shown very much  
2 illustrate what I was trying to say.

3           So, do you have the slides of Dechert? Not my slides,  
4 but the slides of Bolivia? If you have that, you can open up  
5 to 172--171, which was the main document that we were talking  
6 about. It's this Hichens document, which relates to that  
7 United Nations approval, and if you look at the description of  
8 the IRR, you can see at the bottom it's the highlighted text.  
9 It says, "The benchmark IRR for an equity investment in Bolivia  
10 is likely to be between 25 and 30 percent." All right?

11           Now, that's exactly what I was saying: The IRR is the  
12 rate that's chosen as a threshold or a benchmark in order to  
13 decide whether to invest or not ex ante. When you're looking  
14 at an opportunity for a project, how do you decide? You take  
15 the cash flows and you discount them at whatever rate will  
16 bring all of the future cash flows to zero because if it's any  
17 more than that, it means it's worth something, and it's worth  
18 doing.

19           So, here it's saying precisely benchmark--the  
20 benchmark--and I'm not entirely sure why all the emphasis on  
21 benchmark from our colleagues on the other side--

22           PRESIDENT JÚDICE: Because this is the minimum.

23           MR. RUBINS: Yes, precisely so. It always is. An IRR  
24 is always a breaking point. It's a breaking point between  
25 invest or not invest, negative or positive. But at the IRR, up



09:58 1 here it's 25 to 30 percent, you are going to get to zero. Zero  
2 is the value of the project at the IRR.

3           So, you should also remember that, in this document,  
4 it points out very specifically, as Mr. Conthe was getting at  
5 in one of his questions today, this is equity IRR. Equity IRR  
6 is only about the equity; right? So, that's where cash flows  
7 to equity will be equal to zero if you discount them at that  
8 rate. Okay?

9           Now, how does that compare to a discount rate? Only  
10 in one way. You know it has to be higher for a project that  
11 goes forward. If a project is underway, well, then, there must  
12 have been a calculation that the IRR would be greater than  
13 zero, and, therefore, the cost of capital is less than that.

14           So, how much less than that? Well, we don't know  
15 that. It's a completely different analysis. And if you go  
16 back to, I think it was R-170, whatever this last document from  
17 Professor Damodaran is that was submitted by the Respondents,  
18 you will find in that document some interesting case studies  
19 that show some various possible interrelationships between the  
20 cost of capital after a project goes forward and the IRR, the  
21 benchmark rate, and you will see some of them have a very wide  
22 gap between IRR and cost of capital, and some of them have a  
23 relatively small one, and some of them go negative, in which  
24 case, Professor Damodaran says, that is not a project you ever  
25 want to get involved in.

09:59 1           If you flip the page to 170--oh, sorry, one other  
2 thing on that slide, by the way.

3           In the middle of the slide, you can see where Hichens  
4 is talking about how we get at this IRR, this breaking point  
5 rate, and it says in the middle, "considering the political  
6 climate in Bolivia, with the current perception, albeit  
7 incorrect, of nationalization of the energy sector," and then  
8 it goes on to say that this threshold rate should be higher.  
9 Now, in the literature and in the case law, one thing you will  
10 find is at the very least the cost of capital should exclude  
11 nationalization risk because that's precisely what is protected  
12 against by the BITs, the rights of the Claimant.

13           Flipping forward to 178, we can look at the South  
14 African project; and on 178, the excerpt itself that's blown up  
15 is, in a sense, sufficient to get the same point. The group  
16 intends to identify and enter into projects which will achieve  
17 a project IRR of no less than 20 percent. That's exactly what  
18 I was saying. It's trying to identify projects where at a rate  
19 of 20 that you pick, that's what they picked, 20, the cash  
20 flows discount to zero. Of course, they will hope and they  
21 will expect that it will be something more than zero and,  
22 therefore, that the cost upon capital will be less than zero.  
23 They, in fact, may expect it's going to be much less costly in  
24 terms of cost of capital.

25           And if you look at the underlying document and you

10:01 1 read it carefully, you will see what kind of exercise goes into  
2 an IRR, and the IRR, most importantly, is, as my colleague  
3 across said, it's a benchmark. In other words, it is not  
4 project-specific. It's a general breaking point yes or no,  
5 binary yes or no. The exercise of the cost of capital and the  
6 discount rate is project-specific. The experts agree on that.  
7 You build it from the bottom-up, not from the top-down, and the  
8 result will always be for a normal project, and the Parties  
9 agree that this was a profitable project. The only question  
10 was, was it profitable enough? Is it a profitable project, the  
11 discount rate will always be lower than the IRR.

12 PRESIDENT JÚDICE: Thank you very much.

13 MR. GARCÍA REPRESA: Thank you, Mr. President, and  
14 obviously this is, you know, somewhat the first time we hear  
15 some of the things that we just said, for example, that the  
16 cost of capital should exclude the nationalization risk because  
17 BITs which would mean that all companies in the world will be  
18 at the same time operating in countries and running BIT  
19 arbitrations because that's the only way that you would caveat  
20 that risk, so that's absolutely nonsense. But again, we will  
21 reserve the right to supplement that answer when we get to the  
22 closing.

23 Now, I think my colleague is not fully understanding  
24 the concept of IRR, and I leave that to the economists, but  
25 there are two things that I think we're both saying which are

10:03 1 right, which is that an estimated IRR will give you an NPV of  
2 zero, but that doesn't mean it doesn't contradict what I'm  
3 telling you, which is that the discount rate is the minimum  
4 IRR.

5           Now, why is that? Because if everything that you are  
6 going to put in a project, it's simply the cost of putting  
7 together capital and debt to fund the project is not recovered,  
8 no one will put a cent into that project.

9           Now, obviously, you do not invest just to recover your  
10 costs. You have a higher expectation, and I think we're now  
11 saying different things; hence, the difference between the  
12 benchmark IRR equal the discount rate and the expected IRR of a  
13 project which may be different.

14           Now, again, why are we looking here and in these  
15 slides all the time the reference to this is the minimum, the  
16 threshold, the benchmark to invest? Because they're not  
17 telling the market, look, this is the IRR that I'm expecting in  
18 a project. They don't need to say that. They don't need to  
19 tell the United Nations this is how much money I want to make.  
20 The only thing they need to tell the United Nations is, but for  
21 the carbon credits, this is not a viable project. So, the  
22 minimum I need to get, and this is why I need your carbon  
23 credits, is this: This cost of equity we're talking about--and  
24 we were very clear yesterday that cost of equity of 25 to 30 is  
25 entirely consistent with the 27 percent cost of equity

10:05 1 estimated by Dr. Flores.

2           So, we're not saying a lot of different things, we're  
3 just talking about two different concepts of the minimum  
4 threshold IRR and the expected IRR.

5           Now, I just heard something very surprising now, which  
6 is that IRR is not country-specific. That means you would  
7 enter into a project, but you will have no idea what you're  
8 expecting from that project, so you would just, you know, do 10  
9 projects and hope that you will somehow achieve something  
10 without estimating an IRR. If you are on the slide at Page 178  
11 of our presentation, and I'm reading, "The group intends to  
12 identify and enter into projects which will achieve a project  
13 IRR of no less than 20 percent."

14           And--sorry, I'm not sure why I'm doing this in  
15 English, by the way. I just realized that. Maybe I'm just too  
16 concentrating on what's coming next. Sorry about that.

17           PRESIDENT JÚDICE: It was possible to speak English or  
18 Spanish.

19           MR. GARCÍA REPRESA: I'm sorry. My colleagues from  
20 Bolivia have to listen to me through a translator.

21           This may be an answer to your question, Dr. Conthe.  
22 I'm not sure you are referring to this slide. I will review  
23 the record for the actual number. Now, you were referring to  
24 176, but we will get to that in the closing.

25           It was this one? Okay. Because I think if it's this

10:06 1 one, to us there is a difference. When the text is explicit,  
2 it says, you know, we're looking at the, as you saw in the  
3 prior slide that you were shown, Slide 173, the benchmark IRR  
4 for an equity investment, that is one thing that would go to  
5 the cost of capital, and 178, where we see a project IRR.

6 Now, the different question is how you finance that  
7 project, through capital and debt and which percentage,  
8 relative percentages. That's why in our view, and we will look  
9 at it in more detail, that could be considered as equivalent to  
10 the discount rate.

11 Thank you.

12 PRESIDENT JÚDICE: Thank you.

13 MR. RUBINS: Mr. Chairman, I will only--I'd only like  
14 the chance to clarify one thing.

15 PRESIDENT JÚDICE: Very briefly. The idea is not to  
16 begin final pleadings at this stage.

17 MR. RUBINS: I understand, and the rest will go into  
18 closing.

19 Obviously, with respect to the South African document,  
20 that obviously is talking about a project-specific IRR. That's  
21 not what I was talking about. I was talking about Slide 173 or  
22 172. Both of the documents related to Bolivia talk about  
23 projects in Bolivia. It's not a project-specific. So,  
24 obviously, there are project-specific IRRs, and precisely in  
25 that Damodaran document you will find case studies that are

10:08 1 project-specific IRRs. That's not the point.

2           The point is, as we've now agreed, the IRR, whether  
3 it's project-specific or whether it's country-specific or  
4 industry-specific, brings the cash flows to zero, so obviously  
5 any interest in projects the cost of capital has got to be  
6 lower. It has to be, by definition. And Damodaran talks all  
7 about this. You can read it in the materials that are in the  
8 record, and I don't believe that Dr. Flores is going to  
9 disagree on this one.

10           PRESIDENT JÚDICE: Thank you very much.

11           Just very briefly?

12           MR. GARCÍA REPRESA: Very brief, and also I must  
13 protest. I need to remind my colleagues that as Respondent, we  
14 have the last word, and we've had this debate in the past, so I  
15 must use as our last word, if you don't mind.

16           I think again, they're confusing the concept of the  
17 expected IRR for a project and the minimum IRR of a project,  
18 and again, we'll insist on that. You have the record. The  
19 experts will be able to talk about that.

20           On the point of the letter in 173 of our opening not  
21 being a project-specific IRR, well, that's puzzling. I thought  
22 this letter was to sustain the combined cycle project before  
23 the United Nations. So, if that's not a project-specific IRR,  
24 someone will have to explain that.

25           Thank you.

10:09 1           PRESIDENT JÚDICE: Mr. Conthe?

2           ARBITRATOR CONTHE: Yes, I don't want to get lost in  
3 this debate on the IRR. Why don't we talk about return on  
4 equity and WACC, Weighted Average Cost of Capital, so we go to  
5 Page 178 of the presentation of the Claimant--of the  
6 Respondents. When they talk about a 20 percent IRR, what  
7 they're really talking about is a return on equity and not a  
8 weighted average cost. That's what I wanted to say, so this  
9 20 percent, if I remember correctly, compares to 27 percent of  
10 return on equity of Econ One and not with the 19.85 percent  
11 WACC. And that was my question.

12           PRESIDENT JÚDICE: Let us move on to the next stage.  
13 We have Mr. Earl who is going to be examined.

14           MR. BLACKABY: One administrative point. Before  
15 yesterday you will recall we talked about the magic key which  
16 has room-loads of documents on it in an easy-to-use click  
17 format. We've managed to agree with Respondents on the  
18 comments and made the corrections, and so for the ease of  
19 everybody and to help your back and luggage limits in the  
20 aircraft, we will be circulating this. We think it might be  
21 helpful just for two minutes just to show you what it looks  
22 just to navigate.

23           PRESIDENT JÚDICE: And you return not for equity, but  
24 for other proposals--

25           MR. BLACKABY: I'm quite happy to make zero return on



10:11 1 this because it's intellectual. It will be helpful.

2 MS. RICHARD: While my colleague Cathy Ibarra is  
3 distributing the USB keys, I have a screen shot of the USB key  
4 up on the screen. Hopefully you have--and so I will keep this  
5 very short.

6 When you open the USB key, you will see a folder  
7 called, "Electronic Hearing Bundle." Once you double click on  
8 that, it will open, and you will see four indices and four  
9 folders. The folders are called "Pleadings," "Witness  
10 Statements," "Expert Reports" and "Global Exhibits." That  
11 includes all the exhibits.

12 You then see four indices which correspond to those  
13 four folders. You have an index; actually you have an index of  
14 pleadings, Witness Statements, and expert reports, an index of  
15 Legal Authorities, and two indices of factual exhibits, one in  
16 chronological order and one in sequential order, so one  
17 following C-1, C-2, C-3, R-1, R-2, R-3.

18 So, there are two ways to access documents. You can  
19 either go directly to the folders, for instance, pleadings and  
20 choose directly which pleading you want. You can go into  
21 merits, and there you will see the Notice of Arbitration, the  
22 Statement of Claim, et cetera.

23 However, a more convenient way to access the documents  
24 is to click directly on an index. So, let's say, for instance,  
25 the index of factual documents in sequential order, this will

10:13 1 open up, and you will have a full index of all the exhibits.

2           You can click anywhere on this specific exhibit,  
3 whether it's on the date or the number, and it will ask you if  
4 you would like to open it up, and it will open up directly, and  
5 so hopefully that's a convenient way to access all of the  
6 documents. And you can do that from any of the indices,  
7 whether it's the index of exhibits, Legal Authorities, or  
8 pleadings.

9           If you have any question, please let us know.

10          PRESIDENT JÚDICE: For the time being, I know for sure  
11 it's very clear. Thank you very much for your help.

12          Then now I think we may proceed with Mr. Earl.

13          PETER R.S. EARL, CLAIMANTS' WITNESS, CALLED

14          PRESIDENT JÚDICE: Can we start now?

15          (Discussion off the record.)

16          PRESIDENT JÚDICE: Good morning, Mr. Earl. It's a  
17 pleasure to have you here. I'm sure you are aware of what is  
18 at stake in this case. I ask you if you can identify yourself  
19 very briefly, and afterwards, if you are kind enough to do so,  
20 you have in front of you some kind of document that we will ask  
21 you to read, and after to read in a more open way for us to  
22 hear, okay?

23          THE WITNESS: Thank you. My name is Peter Earl. I'm  
24 Chief Executive of Rurelec Plc. I was also, until May 2010,  
25 President/Ejecutivo of Empresa Guaracachi.

10:17 1 PRESIDENT JÚDICE: Now, if you may look to the paper  
2 you have in front of you, and if you agree, please read it.

3 THE WITNESS: I solemnly declare upon my honor and  
4 conscience that I will speak the truth, the whole truth, and  
5 nothing but the truth.

6 PRESIDENT JÚDICE: Thank you very much. Mr. Earl.

7 Now, you know all the rules. Mr. Blackaby or somebody  
8 on this side of the bench will put you some quick questions for  
9 15 minutes, more or less, and afterwards you will be crossed by  
10 the other bench, and it may happen that some redirect or  
11 recross may happen, and the Tribunal may also put some  
12 questions to you.

13 THE WITNESS: Indeed, thank you.

14 MR. BLACKABY: Ms. Richard will be leading the direct  
15 on this particular witness. Thank you.

16 DIRECT EXAMINATION

17 BY MS. RICHARD:

18 Q. Mr. Earl, before we begin, you should have in front of  
19 you the copies of the two witness statements that you submitted  
20 in these proceedings. Can you please confirm that those are  
21 your statements and that it is your signature that appears at  
22 the end of each?

23 A. I confirm the First Witness Statement, and I confirm  
24 the second.

25 Q. Is there anything in those witness statements that you

10:18 1 would like to change or correct at this stage?

2 A. Yes. In the Second Witness Statement, Clauses 39 and  
3 42. In the case of Clause 39, I refer to a letter which I sent  
4 to the then-Minister of Hydrocarbons, and that letter was  
5 actually dated 2008. In fact, that was a typo. It should have  
6 been dated 2009.

7 ARBITRATOR VINUESA: Sorry, could you identify it  
8 again, please.

9 THE WITNESS: Clause 39 on Page 21 of the Second  
10 Witness Statement.

11 The other points that I make are all correct, but that  
12 specific letter was dated May 2009, not May 2008.

13 And in the case of Paragraph 42, I referred to sending  
14 a letter sent to Minister Coca. There were actually four  
15 Ministers of Hydrocarbons in a two-year period, and it was  
16 Minister Vincenti to whom I sent that letter, not  
17 Minister Coca. Mr. Vincenti took over at the beginning of the  
18 year from Mr. Coca.

19 Those are my only corrections.

20 BY MS. RICHARD:

21 Q. Thank you, Mr. Earl.

22 Could you please briefly describe your academic and  
23 professional background as well as your roles at Rurelec and  
24 Empresa Electrica Guaracachi.

25 A. Yes. I'm a graduate of Worcester College, Oxford,

10:19 1 where I read greats. I was awarded a Kennedy scholarship in  
2 1977 to study development economics at the Graduate School of  
3 Arts and Sciences at Harvard. While I was at Harvard, I also  
4 was a tutor at Elliott College, where I taught Greek. Around  
5 about that time I was seconded to the staff of Senator Kennedy,  
6 where I worked on economic matters.

7           And immediately following Harvard, I joined Boston  
8 Consulting Group. At the Boston Consulting Group, my  
9 specialization was working on State-owned enterprises and  
10 reorganizing them.

11           From Boston Consulting Group, I became an investment  
12 banker where I focused on mergers and acquisitions,  
13 cross-border mergers and acquisitions, and I wrote for  
14 Euromoney while I was working in cross-border acquisitions,  
15 their standard text on international takeovers.

16           During my time as an investment banker, I focused  
17 increasingly on the Electricity Sector and was involved in the  
18 takeover of a number of power companies, and that culminated,  
19 then, in my forming, with the former Minister of Energy from  
20 the United Kingdom, Independent Power Corporation, which became  
21 in 2003 the technical operator of Empresa Guaracachi.

22           I had previously served as a non-executive Director of  
23 Empresa Guaracachi at the request of the GPU from 1995, at the  
24 time of the capitalization, but it was in 2003 that I became  
25 President Ejecutivo of Empresa Guaracachi, so I had been

10:21 1 involved in Guaracachi for many years.

2           And then in 2006, Rurelec acquired a controlling stake  
3 in Guaracachi.

4       Q.   And can you explain how you first became involved with  
5 the capitalization process in Bolivia.

6       A.   Yes.  It was whilst running the corporate finance  
7 operations of field stay and which specialized in the power  
8 sector that I was sent on secondment initially to UNDP and then  
9 to the World Bank to assist the Bolivian Government at the  
10 request of the World Bank with restructuring ENDE, since that  
11 was part of my background, and it was my job to put together  
12 all of the presentations to attract foreign investors to invest  
13 in the power sector, but specifically in generation.  And so I  
14 was responsible for making presentation to 25 of the 31 power  
15 companies who came to Bolivia to participate in the competitive  
16 process for capitalizing the three power generation companies  
17 which were spun out of ENDE in 1994, and which were then  
18 capitalized in 1995.

19           So, I was an adviser.

20           I first went to Bolivia, though, in 1993, at the  
21 request of the IMF, with whom I had worked on on a number of  
22 Central Bank roles, so my first presence in Bolivia was  
23 actually on secondment in 1993 to the Central Bank of Bolivia  
24 at the request of the IMF.

25       Q.   Mr. Earl, Bolivia contends that Rurelec did not invest

10:23 1 in Empresa Guaracachi and that it made no contribution to the  
2 Bolivian power-generation sector. What is your view?

3 A. Well, I think Bolivia's view seems to fall into two  
4 parts. The first is, I think there's some dispute as to  
5 whether Rurelec ever owned a controlling stake in Guaracachi;  
6 and, to that part of the question I can only say that it was a  
7 matter of public record that in December 2005, Rurelec issued  
8 shares on the London Stock Exchange to raise the funds to  
9 acquire a controlling stake in Guaracachi, and that capital was  
10 provided by a blue chip group of British institutional  
11 investors who wished to see development of the power sector in  
12 Bolivia, and the remit which those shareholders of Rurelec gave  
13 to me as the Chief Executive was to ensure that Rurelec brought  
14 about the development of new high efficiency clean tech power  
15 facilities in Bolivia to replace some of the older machines  
16 which were coming to the end of their life.

17 All of our presentations at the time that we raised  
18 the capital, and it was 35 million dollars of capital that  
19 was raised, all of our presentations were focused on an active  
20 role in the sector in Bolivia. We were not simply going to sit  
21 passively and take dividends from existing capacity. My  
22 remit was to have a significant increase on the capacity in  
23 Bolivia, and that was what Rurelec invested in when it acquired  
24 Guaracachi.

25 So, once Rurelec was a shareholder, it changed the

10:25 1 policy of the previous administration; and, instead of running  
2 the business for cash and not making any further commitments  
3 other than those which had been made at the time of  
4 capitalization in 1995, since Guaracachi had made no new  
5 investments since 1999.

6           My job actively was to roll out new capacity. And so,  
7 in 2006, we installed four Jenbacher machines in Sucre at the  
8 request of the local senators from Sucre. We then installed in  
9 2007, a 71-megawatt 6FA, like the ones which GPU had installed  
10 in the Nineties. F technology so they're high-efficiency gas  
11 turbines.

12           We then installed another three Jenbachers to meet  
13 demand in Sucre, and those came in in 2008, but our biggest  
14 project was the 96-megawatt nominal addition of the steam turbine  
15 to the two original 6FAs installed by GPU in order to bring  
16 about the first combined-cycle plant in Bolivia, and that plant  
17 was due to come on stream in 2010, around about the time of the  
18 nationalization.

19           So, our record of investment under the ownership of  
20 Rurelec was 185 megawatts at a cost of \$110 million.

21           It's worth pointing out, too, at the time that Rurelec  
22 became a shareholder there was \$15 million of cash which was  
23 available for investment, reinvested within Guaracachi.  
24 Instead of that being dividended, it was invested in new  
25 capacity, and we continued to invest during my period as



10:27 1 President.

2 Q. Mr. Earl, Bolivia has argued that Guaracachi had too  
3 much debt. What is your view?

4 A. I find this an extremely strange argument. I think I  
5 told you in a past life as an investment banker, I was  
6 responsible for the acquisition of 5,000 megawatts, which is  
7 five times the installed capacity of Bolivia, and I was  
8 responsible for the acquisition of two of the largest  
9 distribution businesses in the United Kingdom.

10 Typically, in the power generation business, you see  
11 debt-equity ratios of more than 2:1. Typically, a  
12 power-generation unit is geared 70 percent debt/30 percent  
13 equity. In the case of Guaracachi in 2010, at the time of the  
14 nationalization, our debt was \$92 million, our equity was  
15 \$140 million. So, we weren't even geared 1:1.

16 Had we been geared on a normal ratio instead of there  
17 being less than a hundred million dollars of financial debt,  
18 there would have been \$325 million, so we had a very strong  
19 balance sheet. And, for that reason, we enjoyed the highest  
20 possible ratings from Fitch and Pacific Capital Ratings in 2009  
21 and 2010, which was after the financial crisis, which if you  
22 recall was a time in all of the rating agencies were very  
23 nervous about having overrated companies and nations with debt.  
24 We enjoyed I think it was--we certainly had the best rating of  
25 any power company in the sector, and the comment from the

10:29 1 rating agencies was that we had strong cash flow and an easy  
2 ability to pay down debt. So, we were undergeared, not  
3 overgeared.

4 Q. Thank you, Mr. Earl.

5 I believe counsel for Bolivia will now have some  
6 questions for you.

7 MR. SILVA ROMERO: Mr. Chairman, Mr. García Represa  
8 will conduct the cross-examination.

9 CROSS-EXAMINATION

10 BY MR. GARCÍA REPRESA:

11 Q. Thank you. Good morning. This is not first time; we  
12 met earlier. I'll introduce myself properly. My name is Jose  
13 Manuel García Represa, and I'm counsel for Bolivia, and I will  
14 be asking you some questions during this morning, and maybe in  
15 the early part of the afternoon, I apologize. I will be taking  
16 you to some documents that will be distributed now in a blue  
17 binder, which is something like this, and depending on how it  
18 goes, we may not have to go through all this paper, but it's  
19 already printed, so we might as well.

20 (Pause.)

21 Q. Now, just for the sake of good order, if there is any  
22 question which you do not understand or want me to reformulate,  
23 please feel to do so, and also if you can speak up just for the  
24 transcribers and also the recording, that way, you know,  
25 everything will be fine.

10:30 1           Now, if you allow me, and arising out of your direct  
2 examination, the answers you just gave to our colleagues, there  
3 are a couple of terminology points that I want to have clear  
4 with you.

5           Now, when you refer to Guaracachi, I understand that  
6 you're referring to Empresa Guaracachi S.A., the Bolivian  
7 entity; is that correct?

8           A.   That's correct, yes.

9           Q.   So, also I forgot to say for the sake of good order,  
10 please wait until the question is finished. I will try to do  
11 the same thing until the answer is finished, and that way we  
12 will not be overlapping.

13           So, I was asking you whether when you referred to  
14 Guaracachi you were talking about the Bolivian entity Empresa  
15 Electrica Guaracachi S.A.; is that correct, sir?

16           A.   That's correct. In all my statements about  
17 Guaracachi, I'm referring to Empresa Guaracachi S.A. When I  
18 refer to Guaracachi America, Inc., which is the holding company  
19 established in 1995 as a requirement of the capitalization  
20 process, to hold specifically only the Shares in Guaracachi, I  
21 refer to GAI, Guaracachi America, Inc., so in my terminology,  
22 there's a difference.

23           Q.   Okay. And I see that, I think we clearly heard that  
24 answer, but just to be clear--

25           MR. BLACKABY: It's not helpful to have comments by

10:32 1 counsel on the response.

2 MR. GARCÍA REPRESA: Mr. Blackaby, I'd like not to be  
3 interrupted. We have been patient.

4 PRESIDENT JÚDICE: Let's proceed.

5 BY MR. GARCÍA REPRESA:

6 Q. Now, for the sake of good order, if you can keep your  
7 answers short. I was trusting you would know that by now, but  
8 if you if you make that short, it will make everyone's life  
9 easier.

10 Now, the second terminology point that I wanted to  
11 check with you, you said in response to my colleagues, and  
12 that's at the uncorrected transcript Page 31, Line 15,  
13 Independent Power Corporation, which became in 2003 the  
14 technical operator of EGSA.

15 Do you want to correct that, sir?

16 A. Subsidiary of Independent Power Corporation,  
17 Independent Power Operations Limited in 2003 became the  
18 technical operator.

19 But Independent Power Corporation is regarded by  
20 multilaterals as a group which is qualified. And in all of our  
21 Independent Power Corporation propaganda we talk about the  
22 group's technical qualifications, so that was shorthand. I  
23 apologize if I caused offense.

24 Q. It did not cause offense. I think it was just  
25 imprecise. That is a point.

10:33 1           So, I take it, and just to get the record straight,  
2 the answer to my question was yes, I should have said IPOL, and  
3 we are going to be talking about IPOL here, which is not the  
4 same thing as IPC, although it's part of the same group; is  
5 that your answer, sir?

6       A.    That is correct.

7       Q.    Thank you.

8           Now, a third point of clarification arising out of  
9 your direct examination, you mentioned a correction to  
10 Paragraphs 39 and 42 of your Second Witness Statement. Do you  
11 recall that, sir?

12       A.    Yes.

13       Q.    And you also said that but for the corrections that  
14 you made, I quote you, "the other points I made are correct."  
15 That's at--I haven't asked you a question yet. And that's for  
16 the record at Page 30, Line 10. Now, sir, did you want to  
17 correct that correction? Yes or no. And that's going to be  
18 simple. Do you want to make the correction to what you told  
19 counsel for Claimants, yes or no?

20       A.    I believe I do not.

21       Q.    Okay. So, let's go, then, to your Second Witness  
22 Statement, and let's go to Paragraph 40, and that's on Page,  
23 the long paragraph, so you can go directly to Page 22. And  
24 there is a Subsection A to that paragraph.

25       A.    Yes.

10:35 1 Q. And by way of introduction, I assumed that when you  
2 signed this statement you carefully reviewed its contents;  
3 correct?

4 A. Yes.

5 Q. So, when you made this statement, you were convinced  
6 but for that type of new date, that what you were saying was  
7 correct. Is that a fair statement?

8 A. Yes.

9 Q. Thank you, sir.

10 Now, if we look at this Paragraph 40(a), you refer  
11 there to a June 2008 change to the electricity pricing regime,  
12 and I understand that you're referring to what we know here as  
13 the Spot Price regulatory change; is that correct, sir?

14 A. I believe that's correct.

15 Q. And you go on to state in the same Paragraph 40(a)  
16 that, and I quote you--it's the seventh line from the top--"As  
17 the Government was sitting down to negotiate the sale and  
18 purchase of a portion of Rurelec's shares, the Government was  
19 altering the Spot Prices as well. One could be forgiven for  
20 questioning the timing of those measures."

21 Do you see that, sir?

22 A. I do.

23 Q. So, just to be clear, are you suggesting that the Spot  
24 Price regulatory change was somehow related to ongoing  
25 negotiations for the State to acquire EGSA, sir?

10:36 1 A. I do.

2 Q. Do you want to correct that statement before we move  
3 on, sir?

4 A. No, I'd like to expand on it, if I may.

5 Q. You will have an opportunity in redirect, if you want.

6 Now, that same paragraph, if we keep going up, and we  
7 are going to see what the background for that paragraph is, is  
8 at the top of Page 22; and, there you say that in the course of  
9 these discussions which spanned from 2008 until a few days  
10 before the nationalization in May 2010--do you see that, sir?

11 A. Yes.

12 Q. So, you're referring to negotiations with the State  
13 starting in May 2008 for the State to acquire a significant  
14 participation in EGSA; correct?

15 A. June 2008, not May.

16 Q. Well, so this is a new correction that you're making?

17 A. The timing is important. In June 2008, I was  
18 approached by Peter Vonk of CAF, who has been--

19 PRESIDENT JÚDICE: Sorry? Who?

20 THE WITNESS: CAF, Corporación Andina de Fomento, who  
21 in July 2008 was supposed to be signing the 20 million-dollar  
22 agreement with us. Peter Vonk was the head of banking based in  
23 Caracas, and Peter Vonk, in first week or so in June 2008, had  
24 had a Minister--had a meeting with Minister Villegas where he  
25 had been informed that the Government intended to recover I

10:38 1 think is the euphemism that was used, as opposed to  
2 nationalize, Guaracachi. And this was a matter of concern to  
3 CAF, since they were about to sign an important agreement  
4 relative to the combined cycle project.

5           And so, I requested that the team from Santa Cruz led  
6 by Jaime Aliaga should visit Minister Villegas for a  
7 clarification on this.

8           And so, on the 19th of June 2008, there was indeed a  
9 meeting with Minister Villegas to discuss the Government's  
10 intention for the sector. And since that was followed by a  
11 statement on the 5th of July, from Vice Minister of Electricity  
12 Alarcón that Guaracachi was to be nationalized, and that was 20  
13 days before CAF was due to sign the agreement.

14           We had a number of meetings--

15       Q.    If I may, I have to interrupt you.

16           PRESIDENT JÚDICE: Just a moment. I want to have the  
17 witness finish. Do it as quick as possible, but with all the  
18 information you wish to provide.

19           THE WITNESS: For that reason, I would characterize  
20 that that was the time when discussions with the Government  
21 started vis-à-vis their intentions to recover the sector. I  
22 would argue that we never had negotiations with Bolivia because  
23 no one ever made a proposal to us to buy any of Rurelec's  
24 interest in Empresa Guaracachi, but we did have discussions  
25 starting in June 2008. That is correct.



10:39 1 BY MR. GARCÍA REPRESA:

2 Q. Okay, so I'm sure you have forgotten my question right  
3 now.

4 A. You asked did I want to correct this statement. I do  
5 not.

6 Q. That's fine. I haven't asked you anything.

7 Now, all of that which you just said is new. It was  
8 not in your statements; correct? You never mentioned in your  
9 statement any meeting with any CAF member in June or any  
10 discussion in June 2008, any meeting with any Minister of  
11 Bolivia in June 2008. All of that is new, sitting here today;  
12 isn't that correct?

13 A. Well, it's an amplification of the statement which I  
14 made. And I haven't listed every single meeting that we had,  
15 and neither has the Government.

16 Q. And I put it to you, sir--

17 PRESIDENT JÚDICE: Please try, when possible, just to  
18 answer the questions, and the Tribunal will be prepared to  
19 understand why you did this or you did that.

20 Thank you very much.

21 THE WITNESS: Very good.

22 BY MR. GARCÍA REPRESA:

23 Q. And I put it to you, sir, that in your statement,  
24 you're trying to find something to suggest that a change in the  
25 regulatory regime in June 2008 had something to do with

10:40 1 negotiations, and at that time you thought it was a great idea  
2 to mention a letter that you had sent, but that you wrongly  
3 dated May 2008, and that was very convenient for your  
4 statement.

5 Now, in Bolivia's Reply, you were alerted to that  
6 mistake because we submitted the complete document which the  
7 opposing party hadn't, and now you're telling us a different  
8 story, which is, well, okay, all of that did not exist, but  
9 there was a different meeting.

10 Now, question for you in relation to what you just  
11 said, is it your testimony, sir, that the nationalization  
12 threat was known to you since June 2008? Yes or no?

13 A. I wouldn't characterize it as a nationalization  
14 threat.

15 Q. Just strike threat. Nationalization. Was that  
16 foreseeable as of June 2008? Yes or no.

17 A. The Government's intention to recover the sector was  
18 how it was phrased, and, yes, that was foreseeable, and that  
19 was characterized in July of 2008, on the 5th of July 2008, by  
20 a speech by Evo Morales followed by Ministerial Alarcón. But  
21 ENDE was to be the most important part of the sector, and,  
22 therefore, any private interest in the private sector was going to be  
23 secondary or to that. We didn't take that, Rurelec perhaps  
24 incorrectly, that we were going to be 100 percent nationalized,  
25 but we were very clear that there was going to be a

10:42 1 renegotiation of the way in which we operated and that we would  
2 no longer as a foreign company be permitted to own the  
3 controlling stake.

4           And so, we reacted to that by coming up with proposals  
5 which I made from June 2008 onwards that we wished to stay as  
6 an investor in the sector. We did not wish to leave Bolivia  
7 because of being nationalized, and that was a point we made  
8 clear to the Government.

9           MR. GARCÍA REPRESA: Again, Mr. President, I'm sorry  
10 to have to insist on that point, but my question was very  
11 simple. I have a right to an answer here, and I got a  
12 five-minute speech on how thing great things were. I would  
13 please ask--

14           PRESIDENT JÚDICE: I understand your point, but I also  
15 understand the need for the witness to clarify some aspects,  
16 and I ask both of you to try from one side to allow some more  
17 clarification from the witness, and to the witness to be more  
18 specific and answer directly to the questions that have been  
19 put by counsel to you.

20           THE WITNESS: Thank you.

21           BY MR. GARCÍA REPRESA:

22           Q. Now, Mr. Earl, when at Paragraph 39 you placed  
23 Minister Coca in May 2008?

24           PRESIDENT JÚDICE: Second Witness Statement?

25           MR. GARCÍA REPRESA: Yes, we are still at the Second

10:43 1 Witness Statement, Paragraph 39.

2 BY MR. GARCÍA REPRESA:

3 Q. Eighth line down you referred to Minister Coca  
4 contacting Aliaga in May 2008. That was the wrong Minister;  
5 correct?

6 A. That was the wrong Minister. And that arose as a  
7 result, I'm afraid, at the typo on the letter. The letter that  
8 I wrote actually said May 2008, but it was written in May 2009.

9 Q. I thought you had excellent relations with the various  
10 Energy Ministers, sir.

11 A. Yes.

12 Q. So, it did not strike you as odd to place Minister  
13 Coca, with whom you had excellent relation, one year, almost  
14 one year before he took office?

15 A. Could I explain?

16 Q. Well, I would like an answer to my question first, and  
17 then you can explain.

18 A. In 2008, we had excellent relations with Minister  
19 Ávalos, who was the successor to Minister Villegas, and with  
20 whom I met in November 2008 in La Paz.

21 My letters to Minister Ávalos are not on the record,  
22 for some reason. I would inform the Tribunal that when  
23 Guaracachi was nationalized, I was not given access to my  
24 personal records, and my personal records were in Santa Cruz,  
25 Bolivia. They were not in London.

10:45 1 Q. Thank you, sir.

2 Now, if we can go to Paragraph 35 of your Second  
3 Witness Statement, do you see that paragraph, sir?

4 A. I do.

5 Q. Could you read it for the record.

6 A. "Finally, I would also like to clarify the corporate  
7 relationship between IPOL and Rurelec. Contrary to Mr. Paz's  
8 suggestion, IPOL is not controlled by Rurelec, and Rurelec has  
9 never owned shares in IPOL."

10 Q. Thank you, sir. Now, to be clear, the purpose of that  
11 paragraph was to clarify the corporate relationships between  
12 IPOL and Rurelec; correct?

13 A. I think it was to clarify a misapprehension of  
14 Mr. Paz.

15 Q. I just read out your statement, sir. Would you mind  
16 answering the question. The purpose of that was to clarify the  
17 corporate relationship between IPOL and Rurelec?

18 A. Correct.

19 Q. And would it not have been appropriate to clarify for  
20 this Tribunal that Rurelec and IPOL are both controlled by IPC  
21 or an IPC group company?

22 A. No, that's not correct.

23 Q. That's not correct, they're not?

24 A. They're not.

25 Q. They were not controlled by IPC at this time either?

10:46 1 A. They were not at this time.

2 Q. Okay. Now, if you can please turn to your First  
3 Statement at Paragraph 10, and that's on Page 4.

4 A. First Witness Statement?

5 Q. And before we move on, when you say, "at this time,"  
6 what time are you referring to?

7 A. At no time has IPC ever controlled Rurelec.

8 Q. It's never been a shareholder of Rurelec?

9 A. For a brief period, it was a shareholder in Rurelec. It  
10 was not a controlling Shareholder. Rurelec is controlled by  
11 or--until nationalization, Rurelec was controlled by 14 blue  
12 chip U.K. institutional shareholders from the largest insurance  
13 company down.

14 Q. Okay.

15 A. And it had an independent Board of Directors.

16 Q. Okay. If you can please go to Paragraph 10 of your  
17 First Witness Statement, third line, IPC's subsidiary Independent  
18 Power Operations Limited.

19 So, IPOL is a subsidiary of IPC; correct?

20 A. Correct.

21 Q. Good. And if you keep going down, in 2004, IPC  
22 created Rurelec.

23 A. Yes.

24 Q. Where you still act as CEO?

25 A. Correct.

10:48 1 Q. You see that, sir?

2 A. Yes.

3 Q. So, when we go back to Paragraph 35 of your Second  
4 Witness Statement, there is no mention to IPC when you're  
5 trying to clarify the corporate relationship between IPOL and  
6 Rurelec?

7 A. No. All of those statements are correct. IPC did not  
8 control Rurelec. It created Rurelec by forming or arranging  
9 for it to be formed, and it to be owned independently, but IPC  
10 was never a shareholder in Rurelec at the time of the creation.  
11 Rurelec was formed to do rural electrification projects outside  
12 of the SIN completely independent of Guaracachi.

13 Q. And IPC you say today is independent of Rurelec?

14 A. Today, IPC has Shareholders in common; 50 percent of  
15 IPC is owned by a British institution called Sterling Trust.  
16 Sterling Trust today, since 2011, owns 50 percent of Rurelec  
17 and is the largest single Shareholder, but that's  
18 post-nationalization.

19 Q. I think we have your Paragraph 35; it's rather clear  
20 there.

21 Now, let's go, if you will, to your Second Witness  
22 Statement where we were, but we're now going to go to  
23 Paragraph 16. There you're talking--and this is in the  
24 title--about the decommissioning and sale of inefficient  
25 generation units.

10:50 1 Do you see that, sir?

2 A. I do.

3 Q. And in the third line from the top, you say, "As a  
4 result of the investments in new and efficient power generation  
5 capacity, Guaracachi's old and inefficient engines and turbines  
6 which it had inherited from ENDE at the time of the  
7 capitalization, had been displaced from the Spot Market in what  
8 were uneconomical to maintain."

9 A. Correct.

10 Q. This was the case--I haven't yet finished, sir.

11 This was the case for the seven motors of the Aranjuez  
12 plant known as ARJ-1 through ARJ-7 and the turbine in the  
13 Karachipampa plant in Potosi."

14 Simple question: Do you want to correct that  
15 statement, sir?

16 A. No.

17 Q. Thank you.

18 Now, if you turn the page, we will go to Paragraph 26.  
19 Now, there, as we can see in the title, you refer to the  
20 process to release the pre-payment of Guaracachi's carbon  
21 credits; is that correct?

22 A. Yes.

23 Q. And the Clean Development Mechanism that the United  
24 Nations has put in place is basically a tool for companies to  
25 find as projects that help reduce CO2 emissions; right?



10:51 1 A. Right.

2 Q. And in order to be registered by the United Nations,  
3 the sponsor has to demonstrate that but for the carbon credits,  
4 the project would not be economically feasible; right?

5 A. Right.

6 Q. And the process for registration you said begun in  
7 2006 and culminated with the registration of the project in  
8 early May 2010; correct?

9 A. Yes.

10 Q. Now, as part of the paperwork to get the project  
11 registered, the State has to issue what is called a letter of  
12 approval. The State--by this I mean the Bolivian Government,  
13 the designating authority, has to issue a letter of approval;  
14 is that right?

15 A. That's correct. The DNA has to issue a letter of  
16 approval.

17 Q. And DNA so that we don't get confused is the--  
18 (Overlapping speakers.)

19 A. DNA is the national authority--

20 Q. Let me finish the question. DNA is the designated  
21 national authority; right?

22 A. Correct.

23 Q. Now, do you recall the date of that letter of approval  
24 by the Bolivian Government?

25 A. I do. It was the 19th of June 2008, and it happened

10:52 1 immediately after we contacted Minister Villegas. Minister  
2 Villegas applied some pressure on the Minister of Planning who  
3 was responsible for issuing the letter, and--but it had taken  
4 some time to get to that point. It had taken two years to get  
5 to that point after careful negotiation.

6 Q. So, it had taken two years because you started the  
7 process in 2006; is that basically what you're saying?

8 A. Yes.

9 Q. Now, before that project could go on, there were two  
10 convenios interinstitucionales signed with the State?

11 A. Correct.

12 Q. So, the last one of which--

13 A. Yes. There were two documents required from the State  
14 to release pre-payments for carbon credits. The primary  
15 approval from the Government consenting to the use of carbon  
16 credits for our project was granted in June 2008.

17 Q. Okay. Let's take it step by step because I think  
18 you're moving forward.

19 To be clear, the letter of approval by the State was  
20 issued on 19 June 2008. You said it took some time, and I want  
21 to draw your attention to the existence of the second convenio  
22 interinstitucional of May 2008. And for the record, that's Paz  
23 Annex 36.

24 So, from May to June, that's the time it took to get  
25 the letter after the convenio interinstitucional; right?

10:54 1       A.    I think we started the negotiations in 2006, because  
2 we came to an agreement whereby we would share the benefits of  
3 carbon credits with the people of Bolivia, which was only  
4 correct, and the Agreement we came to involved investing in  
5 rural electrification projects as well as then making various  
6 cash payments out of future cash flows once the carbon credits  
7 were being issued when the combined cycle plant was fully  
8 operational, and it took some time to get the consent of the  
9 DNA to the deal which would then allow them to sign the  
10 convenio.

11       Q.    And now that we are on that topic, a couple of points  
12 of clarification.  That sharing of revenues with the people  
13 that you say that was part of the convenio interinstitucional;  
14 correct?

15       A.    Yes.

16       Q.    And are those documents that you provided to your  
17 experts in this case when they prepared the First Expert  
18 Report?  Yes or no.

19       A.    I believe so.

20       Q.    Thank you.

21               And just a point of clarification.  I want to  
22 understand your statement before we move on to other documents.  
23 Are you suggesting, sir, that Bolivia delayed your-- EGSA because  
24 I'm going to refer to EGSA as the Bolivian company-- EGSA's  
25 receipt of the pre-payment of carbon credits; is that your

10:55 1 testimony, sir?

2 A. Yes, it is.

3 Q. Thank you.

4 So, let's look--we were talking about the letter of  
5 approval, and that letter, as I understand it, completed the  
6 paperwork that you needed from the State to register the  
7 project before the United Nations, and I'm just talking about  
8 registration of the project with the United Nations; is that  
9 correct?

10 A. I believe that is correct.

11 Q. So, the paperwork that you needed from the State for  
12 registration was ready by 19 June 2008; right?

13 A. It was. That was the primary paperwork, but the  
14 carbon credits only have use if you can actually use them for  
15 financing the project, and the additionality test to which you  
16 referred, the but-for test, does presuppose that you're going  
17 to use money. The way in which you use that money is by a  
18 pre-sale of carbon credits and receiving a pre-payment, and  
19 it's that part that was delayed.

20 Q. Okay. And before we get to that part, I understand  
21 that there were certain amendments and corrections that were  
22 requested by the United Nations after you submitted a first set  
23 of papers for registration, and those corrections were  
24 requested in early 2010; correct?

25 A. Correct.

10:57 1 Q. And to be clear, those amendments and corrections had  
2 nothing to do with the State; correct?

3 A. I believe that is correct.

4 Q. Now, do you recall when the validator, or that called  
5 TÜV SÜD," the German company in this case, submitted the  
6 validation report that's required for validation for  
7 registration to the United Nations? Do you recall the date?

8 A. My memory is that it was the end of 2009 that that was  
9 first submitted, but the process is that they then asked for  
10 clarifications and corrections. In this particular instance,  
11 when we were dealing in uncharted territory, because until this  
12 application, there had never been any carbon credits issued  
13 under the Clean Development Mechanism for converting from open  
14 cycle to combined-cycle, so it was a whole new methodology that  
15 had to be put together. So, there weren't a lot of precedents  
16 at the United Nations, and they kept on asking for  
17 clarification, and it was a very slow process.

18 Q. Okay. And that process, that back and forth between  
19 the Validator asking you for documents and the United Nations  
20 seeking clarification was going on in late 2009 and early 2010;  
21 correct?

22 A. Yes.

23 Q. And I will ask again my question, do you recall the  
24 date in which TÜV SÜD submitted the final Validation Report  
25 required for registration of the project before the United

10:58 1 Nations?

2 A. The final, final, final one, 7th of April 2010.

3 Q. Thank you. That will spare me some documents here.

4 And do you recall when the project was registered by  
5 the United Nations?

6 A. Yes, 14th of April 2010.

7 Q. 13, maybe?

8 A. I know it as 14.

9 Q. We can check it, but it's not a big deal.

10 Now, when was that registration notified to EGSA?

11 A. That's an interesting point, if I may. It's clear  
12 from some e-mail traffic that we were notified around about the  
13 20th of April informally by TÜV SÜD that the formal letter was  
14 going to be sent. The formal letter only arrived on the 3rd of  
15 May, which was after--or the 4th of May after nationalization.  
16 But it's clear from correspondence that we had been told that  
17 we met all the hurdles by the 20th of April.

18 Q. Okay. And the 20th of April is 10 days before the  
19 nationalization?

20 A. Yes.

21 Q. And the 4th of May is four days after the  
22 nationalization; correct?

23 A. Yes.

24 Q. Okay.

25 A. So--

10:59 1 Q. We will take it step by step.

2 Now, we were going through Paragraph 26 of your Second  
3 Statement, and I invite you to go to the last line there on  
4 Page 15. There, and the penultimate line you refer to CAF and  
5 KfW, and in the last line you refer to the Agreement that you  
6 had to share the proceeds of these carbon credits with the  
7 Bolivian Government through cash and contributions.

8 And to be clear, KfW and CAF are sort of the early  
9 buyers of those carbon credits. You had a pre-sale agreement  
10 with them; correct?

11 A. Correct.

12 Q. And part of that agreement was a pre-payment as soon  
13 as the project was registered; correct?

14 A. That was a condition of the pre-payment. It was  
15 something which they said could be waived, and we were from the  
16 very beginning of 2010, since we knew that registration was  
17 going to happen, subject to the final filing, we were  
18 negotiating with them for the early release because that was  
19 their condition. That wasn't something which was normal.  
20 Other buyers had other procedures.

21 Q. So, you're telling me that registration by the United  
22 Nations could be waived as a condition for them to pre-pay  
23 carbon credits?

24 A. Yes.

25 Because the project was registered.

11:01 1 Q. Just to be clear, I'm talking about the registration?

2 A. The registration.

3 Q. And you talk and you think about what's called the  
4 modalities of communication for it, so let's take it step by  
5 step. Is it your testimony, sir, that before the United  
6 Nations registered the project, CAF and KfW could have waived  
7 the condition precedent of the United Nations registration and  
8 pay EGSA--pay EGSA carbon credits for a project not even  
9 registered?

10 A. That is my belief, yes.

11 Q. And there is no document that shows that in the  
12 record, just to be clear?

13 A. I was telephoning CAF and suggesting it at the time.

14 Q. And did CAF accept it?

15 A. CAF stated clearly that if we could obtain the consent  
16 of the Bolivian Government so that they would be registered as  
17 a project participant, that, in principle, they were willing  
18 to waive it for the good of the project because they were also  
19 a lender to the combined cycle project.

20 Q. And at the time when you had that telephone  
21 conversation, when was that?

22 A. I had a number of conversations with Peter Vonk in  
23 Caracas between January and February.

24 Q. 2010?

25 A. 2010, because we were also in negotiations with CAF at



11:02 1 the time for CAF to finance a new project in the West of the  
2 country called the Huaricana project, which the Bolivian  
3 Government had asked us to consider developing and where we had  
4 already bought the land to install 127 megawatts, and CAF was  
5 willing to lend against that project.

6           So, our relationship with CAF actually extended not  
7 just to the purchase of carbon credits, but to a number of  
8 projects.

9           Q. Thank you, sir.

10           Now, are you correcting the first sentence at  
11 Paragraph 27 of your statement, sir? I would like to know  
12 that.

13           A. Yes.

14           Q. You are correcting that statement?

15           A. I'm not correcting it.

16           Q. Well, you now say that the condition of registration  
17 is not a condition. It could be waived?

18           A. It could be waived, and we were asking them to make  
19 conditions which were in the Contract which were conditions  
20 precedent, conditions subsequent, and I think there is  
21 correspondence on file which shows that I was contacting CAF,  
22 asking them to make changes from condition precedent to  
23 condition subsequent.

24           Q. Did CAF or KfW waive those conditions precedents  
25 before nationalization? Yes or no.

11:03 1 A. They did not release the funds to us.

2 Q. That's not my question, sir.

3 Did CAF or KfW waive those conditions precedents  
4 before nationalization? Yes or no.

5 A. They did not.

6 Q. And, for the record, in case the Tribunal is  
7 interested, the pre-payment contracts are at Exhibit C-178 and  
8 C-179, and the condition precedents for release of funds under  
9 those contractor are established at Section 2.01, titled  
10 "condition precedents." And the particular one we're looking  
11 at is Condition M in Page 10 of Exhibit C-178.

12 MR. GARCÍA REPRESA: I will be changing topics, so  
13 maybe that's a convenient time for a break.

14 Just for the good order, could you give direction to  
15 the witness not to discuss during the break?

16 PRESIDENT JÚDICE: Pardon?

17 MR. GARCÍA REPRESA: I think Bolivia would appreciate  
18 a direction from the Tribunal to the witness not to discuss  
19 during the break anything other than yesterday's game.

20 PRESIDENT JÚDICE: During the break and up to the end  
21 of your testimony, you're not allowed to speak with anybody  
22 related to this room or others working for each one of the  
23 Parties.

24 THE WITNESS: I understand that, and I promise to  
25 obey.

11:05 1 (Brief recess.)

2 PRESIDENT JÚDICE: You may proceed, please.

3 MR. GARCÍA REPRESA: Thank you, Mr. President.

4 BY MR. GARCÍA REPRESA:

5 Q. Mr. Earl, I would like to now talk briefly about some  
6 documents that you will find in the tab--in the binder, sorry.

7 Now, first of all, to be clear, Rurelec is a listed  
8 company in the U.K.; correct?

9 A. Correct.

10 Q. And as such, it has some reporting duties to the  
11 public; right?

12 A. Correct.

13 Q. And it would obviously not want to mislead the public as to the  
value  
14 it reports in its Financial Statements, would it?

15 A. No, absolutely not.

16 Q. And, for example, it would not record the value of the  
17 investments that result only from accounting procedures that do  
18 not reflect economic reality; correct?

19 A. We would report our accounts in the way in which we  
20 are required to under United Kingdom accounting practices,  
21 which are typically IFRS.

22 Q. Okay. I will put again my question, and you let me  
23 know whether under IFRS that is or not.

24 Is Rurelec allowed to record the value of investments  
25 resulting from accounting procedures only and that do not

11:27 1 reflect economic reality? Yes or no?

2 A. Well, that's--that requires a detailed answer, if I  
3 may.

4 Q. Let's take your word for that.

5 PRESIDENT JÚDICE: Is there a problem, Mr. Blackaby?

6 MR. BLACKABY: It was just a note that the witness is  
7 not an accounting expert. He noted that the accounts were  
8 prepared in accordance with the IFRS. I mean, he could give  
9 his understanding, but he's not an accounting expert. Just  
10 an--

11 PRESIDENT JÚDICE: He was aware of that, and sorry,  
12 obviously some question you feel not prepared to answer, you  
13 will not answer. You are obliged to tell the truth but not to  
14 speak about matters you're not aware of.

15 Anyway, you may proceed with your questions.

16 MR. GARCÍA REPRESA: Thank you, Mr. President. Maybe  
17 that's just to lay the foundation.

18 BY MR. GARCÍA REPRESA:

19 Q. You were an investment banker; correct?

20 A. I was. And actually I was hoping to answer the  
21 question, but I wasn't give given an opportunity, if I could  
22 complete my answer.

23 PRESIDENT JÚDICE: All right.

24 BY MR. GARCÍA REPRESA:

25 Q. Do you mind if I re-ask the question?

11:27 1 A. Please do.

2 Q. And then you complete the answer.

3 Now, under IFRS, is Rurelec allowed to record the  
4 value of investments that results solely from accounting  
5 procedures and that do not reflect economic reality? Yes or  
6 no?

7 A. That answer cannot be yes or no. Let me explain how  
8 it works under IFRS.

9 Under IFRS, which the United Kingdom introduced 'round  
10 about 2005, every year the Board of Directors is supposed to  
11 review the value of its investments and see if there is an  
12 impairment. And so the answer is, we have to give a true and  
13 fair view not only of the profit-and-loss statement, but also  
14 of the balance sheet. So if there is a reduction or increase  
15 in the valuation, that has to be reported.

16 And under IFRS, Rurelec actually appointed independent  
17 valuers, called Levin Global, who would actually advise the  
18 Board on whether or not the Investment Values shown in the  
19 accounts were a true and fair view or not. That is different  
20 from just taking historical book accounts. That's how IFRS  
21 works, and that's what I want to answer.

22 Q. Thank you. I know that's what you want to answer, I  
23 have no doubt of that.

24 Now, let's apply what I'm asking you about to a  
25 particular case. EGSA, as you know, reported under Bolivian

11:29 1 accounting rules, some monetary adjustments, inflationary  
2 what's called the UFVs, to simplify, "Unidad de Fomento de la  
3 Vivienda."

4 Now, Rurelec consolidated fully EGSA; correct?

5 A. Correct.

6 Q. Now, when Rurelec consolidated EGSA, is it not true  
7 that it recorded only the value of the cash flows adjusted  
8 downwards to eliminate the impact of UFVs?

9 A. When we reported, we reported under IFRS, we did not  
10 report under Bolivian accounting standards which required the  
11 UFVs. That's why you've got two sets of accounts.

12 Q. Thank you, sir. I will ask the question again.

13 Is it true, is it not, that when Rurelec consolidated  
14 EGSA's cash flows, it did so adjusting downwards the value  
15 reported under Bolivian standards to eliminate the impact of  
16 UFVs? Yes or no?

17 A. It would report without the UFVs, and that could be  
18 upward or downward adjustment depending on the circumstances.

19 Q. So the answer is basically yes, you would adjust  
20 downwards or upwards but it will eliminate the effect of the  
21 UFVs? Yes or no?

22 A. We would not take into account the UFVs, we would  
23 adjust to report under IFRS.

24 Q. Okay. Now, let's look at the 2007 Annual Report of  
25 Rurelec, and that's at Tab 33. And I will direct your

11:31 1 attention to Page 50.

2           And for the sake of timing, I will not go through the  
3 litany of questions whether you have seen the document, et cetera.  
4 I assume you've seen it. And if that's not the case, let me  
5 know.

6       A.    I recognize this document.

7       Q.    Thank you, sir.

8           Are on Page 50?

9       A.    Not quite.

10           Yes.

11       Q.    Thank you.

12           And this is called a Segment Analysis.

13           Do you see that, sir?

14       A.    I do.

15       Q.    And here, Rurelec is breaking out the revenue stream  
16 derived from different geographical areas, basically, and you  
17 have Argentina, Bolivia, and the U.K. and Intra-Group; correct?

18       A.    Correct.

19       Q.    Now, obviously we are interested in looking at  
20 Bolivia. And if you look at the chart that says 12 months to  
21 31 December 2007, which is the top chart and there is a similar  
22 chart right below for 2006.

23           MR. GARCÍA REPRESA: On the top part, we look at 2007.

24 At that page it has two tables--

25           (No microphone.)

11:32 1 BY MR. GARCÍA REPRESA

2 Q. So I will direct your attention to the line that says  
3 profit and loss for the year, and for Bolivia you should find  
4 2.1 million pounds.

5 Do you see that, sir?

6 A. Yes.

7 Q. And just to be clear, by consolidating fully, this is  
8 100 percent--this considers 100 percent equity of EGSA?

9 A. I believe so.

10 Q. And if the document says--I don't want to--this is not  
11 a point of debate.

12 Now, if you turn the page, sir, you will find the  
13 exchange rates that were applied in these Financial Statements.

14 Do you see that, sir?

15 A. I do.

16 Q. And I would like to draw your attention also--because  
17 it's very simple for the calculations we will be doing--to the  
18 exchange rate in 2007 U.S. dollars to pounds.

19 Basically, 1 pound, 2 U.S. dollars; am I right in  
20 looking at this?

21 A. Correct.

22 Q. So, if we go back to where we were, where we were  
23 looking at the figure of 2.1 million for Bolivia. If we want  
24 to put it in dollars, it will give us \$4.2 million; correct?

25 A. That should be the calculation.



11:33 1 Q. I hope you will take my word for it.

2 A. Yes.

3 Q. Thank you.

4 Now, we've agreed 2007 you're reporting profits of  
5 EGSA of \$4.2 million, and I would like you to turn the tab--and  
6 this is going to be very simple--turn the tab where you would  
7 find Dr. Abdala's Rebuttal Report.

8 And to save a couple of trees, we tried to print only  
9 the relevant section, but you're welcome to consult the entire  
10 report, if you haven't seen it yet.

11 And if you turn the first page, you will get to  
12 Page 13 of Dr. Abdala's Table 2 entitled "Guaracachi's  
13 Financial Performance Prior to Nationalization in Millions of  
14 Dollars."

15 Do you see that, sir?

16 A. Yes.

17 Q. It's Page 13, it's Tab 34, yes, and there are only two  
18 pages.

19 Now, we were looking at 2007 before, can you tell me,  
20 sir, what the 2007 net income of EGSA is, according to Dr.  
21 Abdala's table?

22 A. 9.6 million.

23 Q. And you would agree with me, would you not, that 9.6  
24 is different from 4.2, is it not?

25 A. Yes.

11:35 1 Q. Thank you.

2 Now, if you turn the tab, please, you will find part  
3 of the Fourth Witness Statement from Ms. Bejarano. Do you see  
4 that, sir?

5 A. Yes.

6 Q. Have you seen this Statement before?

7 A. Yes.

8 Q. And I guess you've read it; correct?

9 A. Yes.

10 Q. Have you read it, sir?

11 A. I have.

12 Q. And you will find the last page of Ms. Bejarano's  
13 Fourth Witness Statement, where she reports at Paragraph 23 on  
14 what the accounts of EGSA would be without the impact of UFVs.

15 And could you please tell me what the net equity for  
16 Year 2007 is, according to Ms. Bejarano.

17 A. You're talking about not--you're talking about the  
18 profits?

19 Q. Yes, I'm talking about the profits.

20 A. Okay. The net profits, net income, 4.18.

21 Q. Would you would agree with me, would you not, that  
22 4.18 is pretty close to 4.2, isn't it?

23 A. I would agree.

24 Q. Now, I understand, sir, that Rurelec's management  
25 prepared a very detailed information and financial models for

11:37 1 Compass Lexecon in this case; is it true?

2 A. That's correct.

3 Q. And you're part of management, aren't you?

4 A. Yes, sir.

5 Q. Did you alert Dr. Abdala to this, sir?

6 MR. GARCÍA REPRESA: Would you mind  
7 not--Mr. President, it's the second question to which I hear  
8 Mr. Blackaby give an answer, leading the witness.

9 PRESIDENT JÚDICE: I didn't hear any answer anyway,  
10 but if he's answering, please restrain--

11 MR. GARCÍA REPRESA: I ask for silence.

12 MR. SILVA ROMERO: If there is an objection--if there  
13 is an objection, make it.

14 MR. BLACKABY: I apologize. I tend to be verbal.

15 BY MR. GARCÍA REPRESA:

16 Q. I will repeat.

17 You confirm that management of Rurelec prepared a very  
18 detailed information and financial models for Compass Lexecon  
19 in this case, and I was asking you whether you alerted Compass  
20 Lexecon to this, by "this" meaning the difference and the  
21 impact of the UFVs on the accounts of EGSA.

22 A. The answer to that is that we gave Compass Lexecon  
23 both our U.K. accounting and the Bolivian accounting, and in  
24 each instance we met the statutory requirements, and it's for  
25 Compass Lexecon to look at the cash flows from the businesses

11:38 1 and decide from the valuation purpose how they would place a  
2 value on those cash flows.

3           But did we give them all of our statutory filings for  
4 the United Kingdom which are referred to and for Bolivia the  
5 accounts on which we paid tax to the Bolivian Government based  
6 on UFVs? We gave them all the information.

7       Q.   Okay. And would you say that you gave Compass Lexecon  
8 all the relevant data to calculate those revenue streams?

9       A.   Yes.

10      Q.   Thank you.

11           Now, I would like to take you to your Second Witness  
12 Statement and in particular to Paragraph 15.

13           Excuse me, my mistake, it is not--it is. I'm not in  
14 the right statement.

15           Paragraph 15 starts at the bottom of Page 10 and goes  
16 on to Page 11, and I'm particularly interested in the treatment  
17 that you gave to the issue of dividends in this case. And in  
18 particular I see that on the fifth line from the top of Page 11  
19 you state that dividends were always distributed prudently, and  
20 by that you referred to dividends from EGSA. And you gave as  
21 an example the distribution voted to declare dividends for the  
22 2009 financial year.

23           Do you see that, sir?

24      A.   I do.

25      Q.   Now, do you recall what was the percentage of

11:40 1 dividends distributed compared to the net profits of the 2009  
2 year?

3 A. I believe that in 2009 we had an adjustment from the  
4 previous two years. If you look at 2000--and when we're  
5 talking about 2009, we're talking about the year ended 31st of  
6 December. So, any decision on dividends was taken in  
7 April 2010, based on the 2009 audited results.

8 In 2009, we declared a dividend, which caught up from  
9 the distributable reserves of 2007 and 2008, so we declared a  
10 dividend, which we then did not pay. We deferred it. And  
11 between 2007 and 2009, we declared dividends \$4 million less  
12 than the maximum we were permitted under Bolivian law.

13 Q. Thank you, sir.

14 And just for the record, my question was whether you  
15 recalled what was the percentage. That was all my question  
16 asked.

17 A. I do not recall--

18 Q. I haven't asked the question, sir. I'll appreciate if  
19 you answer my questions and don't interrupt me when I haven't  
20 asked you.

21 Now, let's take it step by step.

22 You mentioned at the outset of your response that, in  
23 2009, you did an adjustment for previous years. Let's analyze  
24 that. In 2009--

25 A. I thought that was the question.

11:41 1 Q. Well, a question ends with a question mark. You can  
2 look at the transcript, which you don't have.

3 PRESIDENT JÚDICE: It's normal that the witness does  
4 not hear always the question mark.

5 MR. GARCÍA REPRESA: I was referring to the witness's  
6 normally have a transcript, but in this case they don't.  
7 That's the issue.

8 BY MR. GARCÍA REPRESA:

9 Q. So, in 2009 you say there was an adjustment, you say.  
10 In 2009, the company distributed 100 percent of the  
11 net profits of that year; isn't that correct, sir?

12 A. We didn't actually distribute anything in 2009. We  
13 declared a dividend which we then did not pay, so we did not  
14 distribute, no.

15 Q. Sir, by "distribution"--

16 A. It's cash--

17 Q. No, sir. By "distribution," under Bolivian rules, it  
18 means you declare the dividends. Paying the dividend is  
19 payment. So, by "distribution," I will be referring to what  
20 you referred to the declaration of dividends. And if you want  
21 to look at the documents that say "distribution"--we could look  
22 at them, actually.

23 So, sir, to respond to my question, 2009, the company  
24 distributed a hundred percent of net profits in dividends;  
25 correct?

11:43 1 A. I believe that is correct.

2 Q. And, in addition to that, it distributed dividends  
3 corresponding to past years' net profits; correct?

4 A. As we were entitled to do.

5 Q. Right.

6 So, bottom line, in 2009, you distributed over  
7 100 percent of the net profits of that year; is that not  
8 correct, sir?

9 A. We did, and we did not pay them.

10 MR. GARCÍA REPRESA: And for the record, just so the  
11 Tribunal has it handy, you will find--

12 MR. BLACKABY: Can I make an objection here? This is  
13 quite an important objection.

14 The understanding of witness examination that we  
15 have--and I think it's commonly held by Bolivia--the questions  
16 are asked of the witness, and the witness responds.

17 Submissions made to the Tribunal as to which documents may or  
18 may not be relevant, such as we heard earlier on which I  
19 thought about interrupting but I let it go, is inappropriate  
20 submission from counsel.

21 The purpose of witness examination is a question and  
22 an answer, question and an answer. Insofar as there are  
23 relevant documents, they can be shown to the witness, the  
24 witness can be asked a question about them. It's not for  
25 counsel to make a summary of what point they're trying to make

11:44 1 to the Tribunal in the middle of a witness examination. They  
2 can make it in closing.

3 Now, if they want to ask questions about documents, by  
4 all means; but it's a question-and-answer session, so I really  
5 do object to making lists of documents or making submissions to  
6 the Tribunal which is inappropriate for a witness examination.

7 We will be obeying that rule in our examination. We  
8 would appreciate it if Bolivia could follow the standard rules  
9 as well.

10 PRESIDENT JÚDICE: Mr. García Represa, do you want to  
11 make some comment?

12 MR. GARCÍA REPRESA: Of course, Mr. President.

13 Now, first thing, I'm just trying to save time for  
14 everyone's convenience. Now, if you want--if you want, I will  
15 take the witness to the document, and we can do that right now.  
16 It's unfortunate that it will take time.

17 Second, I wish this cross-examination was just  
18 question and answer, question and answer, as Mr. Blackaby has  
19 said, and I think we have seen, some quite heavy pleading from  
20 the witness. I don't take that criticism--I don't think it's  
21 at all appropriate in the circumstance, and with that--I will  
22 take the witness to the documents I was referring to now and  
23 we'll waste a bit of time just to confirm what I--

24 PRESIDENT JÚDICE: Just a moment, please.

25 (Tribunal conferring.)



11:46 1           PRESIDENT JÚDICE: Okay. As always, the Tribunal  
2 wishes to have both Parties cooperating to the maximum or to  
3 the maximum extent; and, therefore, we are going, at least for  
4 the time being, and we will do the same with you, to give some  
5 openness to you, Mr. Represa, to refer to documents.

6           Please, when possible, refer that immediately before,  
7 but I understand in certain moments it's not possible because  
8 the answer calls your attention to certain documents. But if  
9 it's not the case, if the witness is expected to answer and  
10 some documents would be relevant, if you know that before, it  
11 would be better if you refer it. Then the Tribunal will use  
12 the discretion to allow, up to a certain point, in a liberal  
13 way, the possibility and the other side the same about documents  
14 for the record afterwards. But please restrain as doing it too  
15 much, or it will create more confusion and less understanding  
16 for the Tribunal. I think it's your intention is to have  
17 ourselves understanding the best your case, from your point of  
18 view.

19           Thank you.

20           MR. GARCÍA REPRESA: Thank you, Mr. President. I hear  
21 you, and I will follow those instructions carefully.

22           BY MR. GARCÍA REPRESA:

23           Q. Mr. Earl, if you can please turn to Tab Number 1 in  
24 your bundle, and you referred a moment ago to the fact that the  
25 distribution of dividends for 2009 would have occurred sometime

11:47 1 in early 2010.

2 MR. GARCÍA REPRESA: For the record, this is Annex 5  
3 to Ms. Bejarano's Witness Statement.

4 BY MR. GARCÍA REPRESA:

5 Q. And what you have here are the minutes of shareholder  
6 meetings which approved the distribution of dividends, among  
7 other things, for Years 2007, 2008, and 2009.

8 If you turn a few pages--and I can count them for you,  
9 but normally you should get to, on the left-hand side of your  
10 binder, a document entitled "Acta de Junta General Ordinaria  
11 de fecha 23 de Abril del 2009"--you need to turn three pages  
12 from the front.

13 A. I'm sorry? Document 1?

14 Q. Yes. Just take the page--this is one page; 1, 2, and  
15 3.

16 A. Ah. Okay, sorry.

17 Yes.

18 Q. There you have the minutes of a shareholders meeting  
19 held on 23 April 2009.

20 Do you see that, sir?

21 A. I do.

22 Q. And if you go down to the page, you see the items--the  
23 numbered items that were to be discussed at that meeting,  
24 Number 4, treatment of profits from 2008.

25 Do you see that, sir?

11:49 1 A. I do.

2 Q. If you turn the page, you will get to that Number 4,  
3 treatment of results, profits for Year 2008, and you have a  
4 description of the distribution of profits.

5 And do you recall what happened at this session, sir,  
6 at this general meeting?

7 A. I do. There was a debate on the issue of whether it  
8 was possible to declare a dividend, which we can do in the  
9 United Kingdom, but then not pay it. This was unusual by  
10 Bolivian standards.

11 Q. That was the only key debate that you recall at this  
12 moment?

13 A. Well, that was a debate which had taken place  
14 previously at the Board meeting. This is the meeting of  
15 shareholders.

16 Q. Um-hmm. And I was asking you about the meeting of the  
17 shareholders, sir.

18 A. I was not present at this meeting.

19 Q. Okay.

20 A. But I have read the document.

21 Q. Now, if you go--we were in a page that had a table or  
22 few figures at the bottom starting with the net profit for  
23 2008, 72 million. And it says at the bottom minus results  
24 accumulated to be capitalized in 2008, total dividends,  
25 49 million. And if you turn the page, you have the dividends per

11:51 1 share.

2           Now, if you keep going down that document, you will  
3 see that there is a discussion where the representatives of the  
4 pension funds holding 49.999 percent of EGSA did not want  
5 dividends to be distributed.

6           Do you recall that, sir?

7       A.    I do.  But--actually, I don't recall it because I  
8 wasn't there, but I do recall the discussion that I had with  
9 the members of the Board because they were represented on the  
10 Board of Guaracachi, and that's where I had an interaction with  
11 them.  I was not present at this meeting, so I cannot recall  
12 it.

13       Q.    Okay, fair enough.

14           If you turn one, two pages, we will get to the Minutes  
15 of the Meeting of Shareholders of 14 April 2010.  And this is just  
16 two weeks before the nationalization; correct?

17       A.    So, we're going from 2009, a meeting relating to the  
18 2008 profits, to 2010, relating to 2009; correct?

19       Q.    Yes.  Yes.  Although I'm not on cross, I will gladly  
20 answer that question.

21       A.    Yes.  I simply wanted to be clear.

22       Q.    Of course.  And as I said at the beginning, if  
23 anything's not clear, just feel free to ask.  There's no  
24 issue.

25       A.    I shall.

11:52 1 Q. Again, we have the ordinary general meetings of  
2 shareholders. This is April 2010. And in the list of items to  
3 be discussed, Item Number 4 is the treatment of the profits for  
4 2009.

5 Do you see that, sir?

6 A. Yes.

7 Q. Now, if you keep turning--turn one page, you will  
8 find--and here we have a page number, which is page number  
9 3--the treatment of the results for the Year 2009. And in the  
10 next page you have a table explaining how that distribution of  
11 dividends will be done. Top line you have the net profit of  
12 the year. That's 23.9 million, to simplify.

13 Is that correct, sir?

14 A. Yes.

15 Q. And the--you will have to go down a few lines, the  
16 total dividends distributed were at 31.9 million; correct?

17 A. Well, you were asking me a question in English, we  
18 declared the dividend, but we did not distribute because, in  
19 English, when we refer to it as "distribution," it's a payment.  
20 We did not make a payment. We declared the dividend, and  
21 that's what the junta de accionistas approved.

22 Q. Yes. Well, you see where I have the problem, I  
23 thought we had agreed on the language. I'm reading from a  
24 Spanish document that says distribute. This is why I use that  
25 word.

11:54 1           So, do we agree, sir, that when I refer--and you could  
2 do whatever you want, but when I refer to distribution, I'm  
3 talking about what you call declaration?

4       A.     But I do feel uncomfortable with the word  
5 "distribution" when you use it in English.

6           PRESIDENT JÚDICE: I think the witness was clear. You  
7 can see this, right or wrong, that when it is written  
8 "distribuido" does not mean to distribute but to declare.

9           THE WITNESS: Correct.

10          PRESIDENT JÚDICE: It's correct, not correct, is  
11 another issue.

12          THE WITNESS: That's my understanding.

13          MR. GARCÍA REPRESA: We are not talking about payment  
14 of dividends. I haven't used the word "paid," so it should be  
15 rather clear, but...

16          PRESIDENT JÚDICE: But the Tribunal understood the  
17 point of the witness and yours. We understood.

18          MR. GARCÍA REPRESA: Yes. Thank you, sir.

19          BY MR. GARCÍA REPRESA:

20       Q.     Going back to my question which you didn't answer yet,  
21 2009 net profits were 23.89 million bolivianos; correct?

22       A.     Correct.

23       Q.     Dividends declared, according to your language, a  
24 distribuir in the Spanish version, were 31.9 million  
25 bolivianos; correct?

11:55 1 A. Correct.

2 Q. And you will have to take my word for it, but you  
3 could do the calculation, if you will. The dividends are  
4 134 percent of the net profit for the year?

5 134, one-three-four.

6 Now, I could not help but see a difference between  
7 these three years. And we were looking at 2008 before; a  
8 reserve was made. There is no reserve on profits made in 2009;  
9 correct?

10 A. In 2009, no. Correct.

11 Q. And actually, in 2009, what is happening is that the  
12 full profits are being distributed and, as you said, there's an  
13 adjustment made for prior years--you distributed dividends that  
14 you had plenty of reserve from prior years; is that right?

15 A. That's right. We were averaging.

16 Q. I would like to take you now to your First Witness  
17 Statement, and at paragraph 43--Paragraph 43, sir, you say  
18 that, in August 2006, Rurelec successfully commissioned four  
19 new state-of-the-art Jenbacher 616 gas engines at Guaracachi's  
20 plant in Sucre.

21 A. Yes.

22 Q. And--

23 A. Sorry, I thought that was a question mark.

24 (Laughter.)

25 Q. And Guaracachi plant in Sucre is called Aranjuez;

11:57 1 correct?

2 A. Correct.

3 Q. Now, when you say Rurelec successfully commissioned,  
4 does that mean Rurelec bought these engines, or are you saying  
5 that EGSA bought these engines?

6 A. Guaracachi bought the engines. They were commissioned  
7 under the ownership of Rurelec because Rurelec treated  
8 Guaracachi as a subsidiary company.

9 Q. Okay. I understand. So Rurelec managed for EGSA to  
10 acquire the engines. Is that a fair statement?

11 A. I believe the acquisition of the engines occurred in  
12 2005, so that happened before Rurelec completed the purchase of  
13 its shareholding in Guaracachi in January 2006, but my  
14 statement is correct. In August 2006, Rurelec commissioned.

15 Q. Okay. We may do this short or long, we will see.

16 Is it true, sir, that the engines that you're  
17 referring to here were engines that Rurelec had bought before  
18 these were bought by EGSA? Yes or no?

19 A. These particular engines, no. The 2008, yes, there  
20 was one engine which was bought from Rurelec. Not 2006.

21 Q. So, these engines had not been previously bought by  
22 Rurelec; that's your testimony?

23 A. Rurelec acquired three engines for isolated generation  
24 prior to its ownership of Guaracachi, and it was a simultaneous  
25 sale and purchase. These particular--simultaneous purchases



11:59 1 you have seen from the documents happened with another company  
2 called European Power, which had planned to use them in the  
3 United Kingdom. These engines were purchased from European  
4 Power.

5 Q. These engines were purchased from European Power.

6 And did European Power purchase them from Rurelec?

7 A. It purchased them simultaneously at the same time that  
8 Rurelec acquired three. Technically, yes, it purchased them  
9 from Rurelec before Rurelec was a shareholder in Guaracachi.

10 Q. But at the time you were a director of EGSA?

11 A. Yes.

12 Q. And at the time at which IPOL was the technical  
13 advisor to EGSA?

14 A. Correct.

15 Q. And at the time in which you held a directorship  
16 position in the previous owner of Guaracachi America; correct?

17 A. Correct.

18 Q. Rurelec had bought nine Jenbacher engines; correct?

19 A. Correct.

20 Q. For a price of approximately 1 million pounds;  
21 correct?

22 A. Depends whether it was with VAT or without VAT.

23 Q. Okay. Let's go to Tab Number 10 in your bundle, and  
24 I'm following--Number 10.

25 MR. GARCÍA REPRESA: I'm following the President's

12:00 1 instruction.

2 BY MR. GARCÍA REPRESA:

3 Q. Now, these are the minutes of a meeting of the Board  
4 of Directors of EGSA dated February 2006; correct?

5 A. Correct.

6 Q. And you are presiding the Board; correct?

7 A. Correct.

8 Q. And since when had you been presiding the Board of  
9 EGSA, sir?

10 A. The very end of 2003, beginning of 2004.

11 Q. So, since beginning 2004 you have been the Chairman of  
12 the Board?

13 A. Yes.

14 Q. Now, this is a rather long document. I give it to you  
15 this is why we've added page numbers at the bottom for  
16 everyone's convenience.

17 And I put it to you, sir, that the issue--or one of  
18 the main issues of this discussion was to try to understand  
19 what potential conflicts of interest existed between the  
20 various companies in which you held positions and EGSA's  
21 acquisition of the Jenbacher engines.

22 Is that a fair portrayal of the discussion?

23 A. That's a fair portrayal.

24 Q. Now, we were talking about the price at which Rurelec  
25 had bought nine Jenbacher engines.

12:02 1           If you can please turn to Page 26 of this Tab in which  
2 we were--

3           PRESIDENT JÚDICE: Background?

4           BY MR. GARCÍA REPRESA:

5           Q. It's a document entitled "Background to Guaracachi's Jenbacher  
6 Engines, 2006."

7           I take it you have seen this document before?

8           A. I have.

9           Q. Who prepared this document, sir?

10          A. I believe that this was a document which I either  
11 prepared myself or had prepared.

12          Q. And that would explain why it's in English when the  
13 boards were held in Spanish; correct?

14          A. Correct.

15          Q. If you look at the bottom of Page 27, you have the  
16 information we were discussing before about the purchase  
17 price paid by Rurelec?

18          A. Yes.

19          Q. 1 million before the VAT. And if you turn the page,  
20 you will see that there is a discussion of costs that were  
21 involved, and you will see that the last line of that paragraph  
22 says the total cost of acquiring the nine engines is about  
23 2.6 million.

24          Do you see that?

25          A. I do.

12:03 1 Q. Now, if we just do the simple math, that's about--and  
2 I should have started with that, apologies.  
3 These engines are about 1.9-megawatt engines; correct?  
4 A. Yes, I think we thought they were 2 megawatts, but 1.9  
5 derated, so about around 2 megawatts.  
6 Q. Actually, I have done the math with 1.9, but it works  
7 equally well with--  
8 A. This document did the maths with 2.  
9 Q. Fair enough.  
10 With 1.1, the cost per megawatt would have been  
11 \$153,000; correct?  
12 A. Correct. We calculated it to 145.  
13 Q. Well, let me please finish.  
14 And with 2, it would be 145, 500 megawatts; correct?  
15 A. Correct.  
16 Q. Now, out of these nine engines, four ended up at EGSA,  
17 according to what you say in Paragraph 43 of your First Witness  
18 Statement; correct?  
19 A. Correct.  
20 Q. Do you know what price EGSA paid for them?  
21 A. Yes, and it's stated here in this document. It worked  
22 out at around 200,000 or \$195,000 per megawatt.  
23 But they were purchased at a later date from European  
24 Power Systems. And at the time that Rurelec bought its three  
25 machines, it was intending them to install in an isolated

12:05 1 generation project through its wholly owned subsidiary  
2 Energais, which was not part of the capitalized company  
3 Guaracachi at the time. It was only later that it was  
4 suggested that engines should be installed at Sucre.

5 At the time that Rurelec bought its three, there was  
6 no intention to install them on the interconnected system of  
7 the grid.

8 Just for clarification, gentlemen.

9 Q. Okay. So, your testimony is \$195,000 per megawatt,  
10 and we're talking about four engines and, according to you, it  
11 would be 2-megawatt engines; correct?

12 A. Yes.

13 Q. Now--

14 A. I'm sorry--

15 Q. How long did it take--yes?

16 A. I see from this document, in fact, it was 200,000, not  
17 195, based on 2 megawatts.

18 PRESIDENT JÚDICE: Where do you see that?

19 THE WITNESS: Over on the next page. This was an  
20 analysis which we prepared for the Board at the request of the  
21 Board Director, Gonzalo Rico, who had been the General Manager  
22 of ENDE and was on the Board of Guaracachi at the time. It was  
23 at his request that this document was prepared.

24 BY MR. GARCÍA REPRESA:

25 Q. So, the engines that were bought at 145,000 per

12:06 1 megawatt by Rurelec were then bought by EGSA at 200,000 per  
2 megawatt, and you're not considering here that there was a  
3 difference in the VAT because the 145,000 price includes VAT  
4 but not the \$200,000 price. If we compare apples to apples, we  
5 will have to compare 145,000 to 250,000--sorry, 200,000 plus  
6 VAT.

7 Apologies.

8 Is that correct?

9 A. Well, at the time they were purchased, the six which  
10 were purchased by European Power were purchased for a project  
11 in the United Kingdom, so VAT was paid on those engines because  
12 they were to be used at the Arreton project, that changed  
13 later. And the four turbines--sorry, the four engines which  
14 were actually bought from European Power were then not  
15 installed in the United Kingdom; they were installed by  
16 Guaracachi on the SIN, but that was not the intention. When  
17 Rurelec, which at the time of the acquisition only dealt in  
18 rural electrification, as its name suggests, and isolated  
19 generation, that was not the intention of the Parties when the  
20 machines were bought.

21 Q. And can you tell me how much time elapsed between  
22 Rurelec's ownership of this engine and EGSA's ownership of  
23 these engines?

24 A. Five months.

25 Rurelec--

12:08 1 Q. And--

2 A. Rurelec continued to own the three motors which it had  
3 bought and of which two were supposed to be installed in  
4 Yacuiba, which was not on the grid. They were supposed to be  
5 installed on the land which Rurelec, through Energais, its  
6 wholly owned subsidiary, had bought for a project which was not  
7 the grid project.

8 Guaracachi did only things on the grid and was not  
9 permitted by its constitution to be involved in isolated  
10 generation, which is why Rurelec--founded exclusively for  
11 isolated generation--at that time bought those machines.

12 Q. And the Contract by which EGSA purchased the engines  
13 was witnessed by your personal assistant; correct?

14 A. Yes, correct.

15 Q. And you gave a sworn statement saying that you never  
16 had any direct or indirect economic interests either as a  
17 shareholder or as a partner in European Power Generation  
18 Limited--or European Power Systems--

19 PRESIDENT JÚDICE: Where does it say that?

20 MR. GARCÍA REPRESA: Paragraph--sorry, document R-40.  
21 That's at Tab 4. And it's a two-page sworn statement by  
22 Mr. Earl, Point A-1 is what I was reading, sir.

23 BY MR. GARCÍA REPRESA:

24 Q. Do you have that document, sir?

25 A. Yes.

12:09 1 Q. Now, this is a sworn statement that you had given on  
2 7 April 2005.

3 Do you see that?

4 A. I actually think that was 7th of April 2006. And as  
5 you can see from the date at the bottom on the page where it  
6 was re-sworn in Italy.

7 Q. So, it's another typo in the date?

8 A. I'm afraid it's another typo in the date--

9 Q. Okay. So--

10 A. But that's very clear from the context.

11 PRESIDENT JÚDICE: Sorry, your opinion is that is 2005  
12 or 2006?

13 THE WITNESS: 2006.

14 PRESIDENT JÚDICE: The mistake is on the first page.

15 THE WITNESS: On the first page says 2005. That is  
16 incorrect. It should have been 2006. But on the second page,  
17 where my signature is, it says 2006, and that was the correct  
18 date because there was an addendum which was then sworn a day  
19 later, which has the correct date.

20 BY MR. GARCÍA REPRESA:

21 Q. Thank you. So, this is actually the addendum?

22 A. No, this actually the addendum. That is correct.

23 This was all for the report which was requested by  
24 Gonzalo Rico and for the AFPs to make sure that there had not  
25 been a related-party transaction which had not been disclosed.



12:11 1 Q. Right. And Mr. Earl, had you been a director  
2 of--strike that.

3 EPG, known as European Power Generation Limited, was  
4 formerly known as IPG, was it not?

5 A. That's correct. It was a shelf company which was  
6 formed by Independent Power Corporation.

7 Q. So, Independent Power Corporation being IPC, the  
8 company you founded in 1995; correct?

9 A. That's correct, yes.

10 Q. So, EPG was formerly IPG.

11 Had you held a directorship position at IPG? Yes or  
12 no?

13 A. I believe that I was the founding director at the time  
14 that the company was formed. As is required in the U.K., you  
15 had to be a director.

16 Q. And you were Director of IPG until 8 February 2005; is  
17 that correct?

18 A. That's right, yes.

19 Q. And IPG, later known as EPG, sold the Jenbacher  
20 engines to Rurelec--excuse me, strike that--to EGSA; correct?

21 A. That's correct, yes.

22 Q. And when you were asked to disclose any potential  
23 conflict of interest, what you said is, I never had any direct  
24 or indirect economic interest either as a shareholder or as a  
25 partner in EPG.

12:12 1 A. That's correct.

2 Q. But you did not say that you had been a director of  
3 EPG?

4 A. I think I actually clarified that later in a statement  
5 and said I had been a founding director to the formation--

6 PRESIDENT JÚDICE: Sorry, a little--

7 THE WITNESS: I actually believe somewhere in the  
8 documents relating to that particular meeting that I stated  
9 that at the time that the company had been formed and then used  
10 for the purposes of selling the Jenbachers to European Power  
11 Systems, that I had been a director for the formation purposes,  
12 but I never had any economic interest, that is correct.

13 BY MR. GARCÍA REPRESA:

14 Q. Okay. Now, we will go back to the topic with which we  
15 started on the basis of some comments you gave, which is the  
16 nationalization.

17 Now, could you please go to Paragraph 58 of your First  
18 Witness Statement. There, under Section 7, the May 2010  
19 nationalization of Guaracachi, you state, "In late April 2010,  
20 I heard rumors of impending acts of nationalization by the  
21 Government of Bolivia planned for 1 May 2010."

22 A. Correct.

23 Q. I put it to you, sir, that in this statement, no  
24 reference is made to any prior knowledge of potential  
25 nationalization before late April 2010; is that correct?

12:14 1       A.   Well, this goes back to what we discussed earlier, the  
2 difference between having discussions with the Government about  
3 recovery of State-owned enterprises which had been capitalized  
4 in the 1995 capitalization program and the way in which we  
5 worked in the future because the Government's policy changed  
6 between 2006 and 2010 from one where ENDE would be the primary  
7 mover in the power industry in Bolivia to one where ENDE was  
8 going to be 100 percent owner of enterprises.

9           And my version of nationalization is that shares or  
10 assets which you own are then nationalized by the State and you  
11 have no continuing interest in the business.

12           What we were discussing with the Government from 2008  
13 onwards through various--various--phases and interpretations of  
14 ENDE having the primary role was for Rurelec to continue to be  
15 an investor in power generation in Bolivia in partnership with  
16 ENDE.

17           So, as far as nationalization is concerned,  
18 absolutely. When the nationalization happened on the 1st of  
19 May, I was surprised because I thought we were coming to an  
20 agreement for a public-private partnership with ENDE where we  
21 would continue to use our expertise and our capital in the  
22 generation sector, but on a basis where ENDE took the lead and  
23 was the largest Shareholder in Guaracachi.

24           I had had meetings two weeks before the  
25 nationalization with then-Minister of Hydrocarbons,

12:16 1 Mr. Vincente, to talk about ways of achieving this, so, yes, I  
2 was surprised.

3 Q. Thank you, sir.

4 So, let's see if I understand the terminology because  
5 semantics are important.

6 A. Yes.

7 Q. So, you draw a distinction between negotiating for a  
8 Share Purchase Agreement with the State.

9 A. Partial, partial.

10 Q. Well, you either buy the share or not. That's in the  
11 Share Purchase Agreement. I'm not saying how many shares, sir.

12 So, you were discussing, on the one hand--and let's  
13 not complicate things--one thing is the State agreed to buy  
14 shares and pay for them in a commercial transaction, and on the  
15 other hand, a nationalization. Those are the two concepts;  
16 can we agree on using those concepts?

17 A. I'm not sure that we can.

18 And I would go back to what I said at the beginning.  
19 I wrote a textbook on international takeovers, and there are  
20 not just colors of black and white; there are shades of colors.

21 When you're talking about nationalization and a  
22 100 percent ownership, then yes, you are correct. But that was  
23 not the discussion from 2007-2008 in terms of public statements  
24 made by the Government. They were talking about recovery of  
25 control. It didn't necessarily mean majority ownership or a

12:17 1 100 percent ownership. And we explored with four different  
2 Ministers of Energy ways in which we would continue as a  
3 shareholder in Guaracachi or continue as a participant within  
4 the power generation industry as an investor who was dedicated  
5 to the development of the power sector there as per the  
6 original agreement in 2006 from Rurelec's Shareholders.

7           So, I do think it's not a simple yes or no. As all of  
8 the documents and the meeting notes which you have available to  
9 you show.

10       Q.    Thank you, sir. Are you finished?

11       A.    I am.

12       Q.    Thank you. So, can we at least agree that when we see  
13 the word "nationalization," we're talking about  
14 nationalization? Yes or no?

15       A.    We're talking about nationalization in the sense of  
16 purchase of a controlling stake or a 100 percent stake not  
17 necessarily with the consent of the Party whose assets you are  
18 nationalizing.

19       Q.    Let me put again the question. Can we agree that when  
20 we see the word "nationalization," we are talking about what  
21 occurred on 1 May 2010?

22       A.    Yes.

23       Q.    Yes or no?

24       A.    Yes, we agree on that.

25       Q.    Thank you.

12:18 1           So, we have the word "nationalization" is 1 May 2010.

2   That's clear?

3   A.   Yes.

4   Q.   Thank you.

5           Now, if we can please go--and just going back, when we  
6 were talking earlier today to what you knew as of 2008, do I  
7 understand your testimony to be that we were discussing about  
8 acquisition of shares, not nationalization; is that correct?

9   A.   Yes, sir.

10  Q.   Thank you.

11           Now, when is the first time that you heard a reference  
12 to nationalization before 1 May 2010?

13  A.   I would say 2007 because the Government was not as  
14 precise in the way in which it viewed the language as I am.  
15 And I apologize for that.  It's my background.

16           There were regularly rumors which took place from 2007  
17 onwards that the Government intended to recover ownership of  
18 the capitalized companies and, in some instances, it was  
19 intended to nationalize.

20           A very good example being Vice Minister Alarcón on the  
21 5th of August saying that the Government intended to  
22 nationalize Guaracachi, something which he then had to retract  
23 in a letter to CAF.

24           So, there were imprecise statements being made, but  
25 the overall intention now becomes clear, as we understood when

12:20 1 the Constitution was published, that ENDE being the dominant  
2 force in power generation really meant ENDE owning power  
3 generators.

4 I'm afraid I was blind to the true intention at the  
5 time because I thought I could rely on undertakings from the  
6 Ministers that we would be working in partnership with ENDE.

7 Q. Okay. So, is it your testimony, sir, that the first  
8 time that the nationalization was mentioned was after the  
9 Constitution of February 2009 was adopted? Yes or no?

10 A. That is the first time that we began to take the idea  
11 seriously, that the Government might be saying one thing to us  
12 and doing something different, that it was a genuine  
13 nationalization as occurred on the 1st of May.

14 PRESIDENT JÚDICE: Sorry, Constitution of 2009 or  
15 2000? Because in the transcript there are differences.

16 MR. GARCÍA REPRESA: 2009, and I stand to be  
17 corrected.

18 PRESIDENT JÚDICE: That was my idea, but in the  
19 Spanish, I think--no, English--it was 2009, okay.

20 (Pause.)

21 MR. GARCÍA REPRESA: Thank you, Mr. President.  
22 Apologies for the time.

23 BY MR. GARCÍA REPRESA:

24 Q. Mr. Earl, so, the first time you began to take  
25 seriously that the Government could nationalize is after the

12:22 1 Constitution of 2009; correct?

2 A. Correct.

3 Q. Before February 2009, did you ever take seriously the  
4 possibility of nationalization?

5 A. Every time we saw a specific statement from a Minister  
6 who had the power, we took it seriously, and we asked for  
7 clarification. And that's why there were a number of meetings  
8 in 2008 when CAF was informed, for example, at the beginning of  
9 June, Peter Vonk, who is the Number 3 in CAF, phoned me from  
10 Caracas and said Minister Villegas has said you are going to be  
11 nationalized; we are concerned about this. And that was why  
12 we asked for clarification. We had a meeting on the 19th of  
13 June with Minister Villegas, and Minister Villegas said that  
14 CAF misunderstood everything, and Mr. Villegas was very  
15 positive about our continued role.

16 We then signed on the 25th of July an agreement with  
17 CAF. On the 5th of August, Vice Minister Alarcón made a public  
18 statement saying Guaracachi's going to be nationalized. So, we  
19 had to have another meeting because CAF said we thought that we  
20 had clarification you weren't going to be nationalized.

21 These things were happening from 2008 regularly to the  
22 point where, in November 2008, I flew to La Paz and had a  
23 meeting with the Energy Minister at the time, Mr. Ávalos, who  
24 said, We would like to explore with you buying a controlling  
25 stake so you remain as a shareholder but ENDE goes to control.



12:23 1           From that time onwards, we took discussions seriously  
2 for a public-private partnership.

3           I'm sorry to go on and describe this at length, but it  
4 is important because I do not have all of the meeting notes  
5 from that time, but I promise you the meetings took place and I  
6 promise you the various Ministers do have their own notes.

7           This is what happened. This was the reality.

8       Q.    Thank you, sir.

9           MR. GARCÍA REPRESA: Just for the record, this is the  
10 first time we hear these type of complaints. There have been  
11 ample opportunities for disclosure in this case. We've never  
12 had disclosure from opposing counsel covering these notes or  
13 meetings, so I want that to be clear on the record.

14          PRESIDENT JÚDICE: Just a moment.

15          MR. GARCÍA REPRESA: Can I finish the line?

16          MR. BLACKABY: You made an observation to the Tribunal  
17 and I'd like to make an observation directly related to that,  
18 and then I will be quiet.

19          If you will recall, the circumstances of the  
20 nationalization was that the company was immediately taken over  
21 on the 1st of May 2010, and at that moment, the offices were  
22 seized. That is to say, all of the computers and all of the  
23 notes and documents that were present on the premises at that  
24 time left the control of Rurelec and Guaracachi America to  
25 ENDE. So, as a consequence, there were a large number of

12:25 1 documents we had no access to because they were on the hard  
2 drives of the computers when we were thrown out of the offices.

3           That's a reason why some of the documents are under  
4 the control of Bolivia and not in our control. Just to be  
5 clear with regard to that issue.

6           PRESIDENT JÚDICE: I understand that. But I think  
7 what Mr. Represa is saying is that it would be probably  
8 possible to ask for these documents, if they are inside  
9 Rurelec's premises in Bolivia.

10           But anyway, I think you created the situation through  
11 your question.

12           MR. GARCÍA REPRESA: Thank you, sir.

13           And to be clear, my point was that there have been  
14 ample opportunities for Claimants to ask for documents which  
15 they haven't done. So, if they were missing some documents  
16 because they were in EGSA's office, well, they had, since they  
17 started this arbitration in November 2010, several months to  
18 request them, and they did request documents but not the ones from  
19 the Claimant. So Mr. Blackaby's explanation still  
20 doesn't answer why they did not ask for the documents.

21           PRESIDENT JÚDICE: Then let's proceed. We are clear  
22 about that.

23           BY MR. GARCÍA REPRESA:

24           Q. Thank you.

25           And we were talking about, sir, to put it back into

12:26 1 context, your testimony as to how surprising nationalization  
2 was when it occurred. And we were talking about what happened  
3 before nationalization, negotiations, et cetera.

4           So, when--at the time Rurelec made its investment, its  
5 alleged investment in Bolivia, December 2005, January 2006, is  
6 it your testimony that there was no risk whatsoever of  
7 nationalization?

8       A.    Yes.

9       Q.    So, nationalization could be ruled out from--at that  
10 time?

11      A.    May I expand on my answer?

12      Q.    Well, could you answer my question first?

13      A.    Why--yes. We didn't believe there was any possibility  
14 of nationalization of the Electricity Sector. And the reason  
15 for that was that--if I may, why did we believe it, because it  
16 now--

17      Q.    Sir, that's not the question.

18           PRESIDENT JÚDICE: Sorry. It's important, I think, to  
19 understand the reasons of your opinion, but do it very quickly.

20           THE WITNESS: Very quickly, yes.

21           You have to look back, in 2006, Evo Morales had gone  
22 on the record saying that he didn't actually view the  
23 nationalization plan of hydrocarbons as taking assets. He  
24 viewed that it was a renegotiation of contracts. Exactly as  
25 the United Kingdom had done on its North Sea contracts in 2005.

12:27 1 And in 2006, that was the model; it wasn't a nationalization of  
2 seizing assets. It was renegotiation--

3 PRESIDENT JÚDICE: And then--

4 THE WITNESS: -- of the contracts. That was our  
5 understanding.

6 PRESIDENT JÚDICE: That was your understanding.

7 THE WITNESS: It wasn't nationalization as I would  
8 term "nationalization."

9 BY MR. GARCÍA REPRESA:

10 Q. Okay. So, you would not use the term nationalization  
11 to refer back when Rurelec made its alleged acquisition in  
12 2005; correct?

13 You would you would not say that Bolivia may nationalize.  
14 Is that what you're saying?

15 A. That's correct.

16 Q. Thank you.

17 And just for the record again, do you recall the date  
18 of the acquisition? Of the Share Purchase Agreement? And we  
19 can look at it, if you want.

20 A. It was December--early December 2005.

21 Q. That's correct.

22 MR. GARCÍA REPRESA: If the Tribunal wants to look at  
23 it, at Tab 32, but I do not offer to go to it. Tab 32 you have  
24 the Share Purchase Agreement dated 12 December 2005 where  
25 Mr. Earl appears in his personal capacity also.

12:28 1 BY MR. GARCÍA REPRESA:

2 Q. So, right after this Share Purchase Agreement, Rurelec  
3 filed this document with the London Stock Exchange; correct?

4 A. Yes.

5 Q. It was actually the very next day, on 13 December  
6 2005, and you will find that at Tab Number 6.

7 A. Yes, sir.

8 Q. Now, if you can please turn to Page 23, at the bottom  
9 of Page 23, you will find a title "Industry-specific Risks,"  
10 and I will be looking at the third sentence, third line from the  
11 top of that regulation subsection, which states, "The  
12 possibility that a future Government of the country in which  
13 the group operates may adopt substantially different policies  
14 which might extend to the nationalization or appropriation of  
15 the company's or its suppliers' assets cannot be ruled out."

16 A. Yes.

17 Q. "In Bolivia, such risk of expropriation of assets may  
18 be mitigated by the 1988 Bolivia-U.K. Treaty."

19 Do you see that, sir?

20 A. I do.

21 Q. Thank you.

22 MR. GARCÍA REPRESA: No further questions.

23 PRESIDENT JÚDICE: Do you want to do redirect? At  
24 least one question was left for redirect.

25 MR. BLACKABY: I think any redirect was not limited,

12:30 1 but I mean, I won't be long. I won't keep you--

2 PRESIDENT JÚDICE: Remember that Mr. Represa stated  
3 that when part of an answer would be better suited for  
4 redirect. I don't remember now what it was.

5 MR. BLACKABY: I'm not sure I remember that one  
6 either.

7 (Laughter.)

8 MR. BLACKABY: I will--sir, just very few points.

9 REDIRECT EXAMINATION

10 BY MR. BLACKABY:

11 Q. We will be referring to some documents which obviously  
12 are not necessarily part of the documents that have been  
13 circulated by Respondent. This may be a good moment to try out  
14 the--the new electronic thing. If not, we can circulate and  
15 show up on the screen--

16 MR. BLACKABY: If we can show the relevant documents  
17 on the screen, that would be easiest.

18 BY MR. BLACKABY:

19 Q. Okay. Mr. Earl, you were asked about the date that  
20 negotiations started with the Government, and I would  
21 like in that regard for you to look at document R-59, which  
22 will be shown on the screen. You will have to be given a copy  
23 because we don't have a screen in front of you, which--or you  
24 can turn around. It's probably better if you look at the  
25 actual document, which will be given to you.

12:32 1 We hope this magic thing works.

2 Now, this is a document on the record, and then could  
3 you just review the--could you review this letter?

4 This is a letter on the record from the Minister to  
5 the General Manager of Guaracachi, Mr. Aliaga. Could you read  
6 the first paragraph of this letter and see if that helps you  
7 recall the time that negotiations started.

8 A. Do you want me to read it aloud, or just read it?

9 Q. Just read it.

10 A. I read it.

11 I think "conversations" is probably the best word  
12 rather than "negotiations," and it was 2008.

13 Q. Thank you.

14 Just to be clear--and you can put that away now, that  
15 document, thank you--you were taken to Rurelec's 2007 Financial  
16 Statements. That was, I think, at Tab 35. Do you recall that?

17 And you were asked a question at Tab 30--sorry,  
18 Tab 33--and you were asked a question about the reporting of  
19 the results of the group's operations in Bolivia.

20 A. Yeah.

21 Q. And you were then asked to compare that with a  
22 one-page extract from Mr. Abdala's Report at Tab 34.

23 A. Yes.

24 Q. Could you turn to Tab 34, please.

25 And could you just look at the document and the

12:34 1 source, and could you clarify on which Financial Statements  
2 those figures were produced.

3 A. It says Guaracachi's 2007 Financial Statements, C-216;  
4 Guaracachi's 2008 Financial Statements, C-217; and Guaracachi's  
5 2009 Financial Statements, C-183.

6 Q. Right. So, they were not based upon--they were not  
7 directly comparable with Rurelec's statements that you were  
8 shown before?

9 I withdraw the question.

10 You were--I just to want establish on which accounts  
11 those particular figures that--were based.

12 A. I did not notice this before, but these were not based  
13 on Rurelec's accounts.

14 MR. BLACKABY: Can we avoid comments from Respondent  
15 as well, please.

16 MR. SILVA ROMERO: We made an objection when the  
17 question was put before because the question was leading.  
18 Obviously, the witness already guessed the answer.

19 PRESIDENT JÚDICE: I'm sure that both of you--all of  
20 you are clearly prepared to understand these distinctions that  
21 have been called upon. I ask both counsel to restrain from  
22 these so-called "leading questions," all right in this case  
23 through a different way, the conclusion will be obtainable  
24 without any difficulty whatsoever. But I would rather prefer  
25 not to have this in situations in which that will not be the



12:36 1 case.

2 Thank you very much.

3 MR. BLACKABY: Thank you, Mr. President.

4 BY MR. BLACKABY:

5 Q. You were asked certain questions about a document at  
6 Tab 10. And you were asked in that context about the purchase  
7 of the Jenbachers by Guaracachi.

8 Do you recall those questions?

9 A. I do recall those questions.

10 Q. Do you recall what the market price was for a  
11 Jenbacher around, about the time of acquisition by Guaracachi?

12 A. Yes. The market price for a Jenbacher was somewhere  
13 in the region of 550, \$600,000 per machine.

14 No, pounds. Sorry, pounds. About 500,000 pounds per  
15 machine. These were roughly half the list price of a  
16 Jenbacher, and they had 500 hours on them each, so they were  
17 effectively new machines.

18 Q. Was the purchase of the Jenbachers addressed by the  
19 Audit Committee of Guaracachi?

20 A. Very clearly, yes.

21 Q. Which shareholders controlled the Audit Committee?

22 A. The Audit Committee consisted of three members; two of  
23 those members were appointed by the minority shareholders from  
24 the pension funds, and we had, as Rurelec, one representative  
25 out of three. So the Audit Committee was controlled by the

12:37 1 independent Directors.

2 Q. All right. Could you turn to Page 50 of the document  
3 that's in the bundle presented by Bolivia. Actually, maybe,  
4 first of all, Page 48.

5 A. I believe I have that, yes.

6 Q. And could you identify this document--sorry. Could  
7 you identify what this document appears to be.

8 A. It seems to be a report from the one non-member of the  
9 pension funds on the Audit Committee, Agustin Saavedra  
10 Zambrana.

11 Q. Right.

12 Could you turn to Page 50, please. And could you  
13 read--and I won't ask you to read out loud, but could you read  
14 the third paragraph on Page 50 that begins "En Primer Término."  
15 Maybe I will read it and then ask you a question.

16 (Translation from Spanish) "First, it is essential to look at the  
economic

17 aspects that make reference to the purchase of the four  
18 Jenbacher engines. The purchase has been made in order to  
19 improve the quality of service in the southern area. The price  
20 is very convenient, \$400,000 approximately per unit, and the  
21 total would be \$1.6 million. It is more economical to acquire  
22 them new of General Electric than to compare them with other  
23 accessible offers on the Internet where we could see that the  
24 prices for those engines at about \$700 per unit. In this case,  
25 we have saved \$1.2 million in the purchase of the four

12:40 1 Jenbachers for EGSA. It is evident that this has been a  
2 favorable transaction, and we have been able to comply with the  
3 provisions of the meeting of Directors of 21 May 2005."

4 From your review of this statement, what was the  
5 opinion of this member of the Audit Committee with regard to  
6 the purchase?

7 A. That it had been a terrific acquisition. We had saved  
8 \$1.2 million.

9 But I would also point out that he was referring in  
10 this paragraph to draw the attention of the new Directors who  
11 had only joined the Board as to previous decisions which had  
12 been taken by the independent Audit Committee when there had  
13 been different Directors.

14 And from 2006--

15 PRESIDENT JÚDICE: Sorry, where is it? I don't see  
16 it.

17 THE WITNESS: It's where it says that he's referring  
18 back to a meeting which took place in May 2005.

19 PRESIDENT JÚDICE: Thank you.

20 THE WITNESS: Because by now we are in 2006 with  
21 different Directors, and the one Director in particular who had  
22 requested an independent report to analyze whether this had  
23 been a good transaction or not was the former Manager of ENDE,  
24 Gonzalo Rico, who had been opposed to capitalization but who  
25 had been made a member of our Board of Directors to ensure full

12:41 1 transparency, and he did a very good job. He did that, which  
2 is why we have such detailed reports from this time, and the  
3 Audit Committee met twice a month, which was very unusual for  
4 any Bolivian or international company.

5 BY MR. BLACKABY:

6 Q. Thank you.

7 You were referred to a question--I'm trying to  
8 remember the tab--it was in Tab 6 of the bundle that Bolivia  
9 took you to. And you were referred, you will recall, at  
10 Page 23, to the bottom paragraph of that page.

11 A. Indeed.

12 Q. Do you recall that?

13 Could you turn over, and could you read out into the  
14 record, please, the second paragraph of Page 25.

15 PRESIDENT JÚDICE: What?

16 MR. BLACKABY: Political risk, Page 25.

17 MR. GARCÍA REPRESA: I will put a marker here. There  
18 is no question yet, so there's an objection, but I suspect  
19 where Mr. Blackaby is going.

20 MR. BLACKABY: No, no, no.

21 MR. GARCÍA REPRESA: And I just want to be clear that  
22 there has been no questions on cross-examination about discount  
23 rate, country risk, or any other component of discount rate.

24 PRESIDENT JÚDICE: The Tribunal will take notice of  
25 that.

12:43 1           MR. BLACKABY: Thank you. I just note in response to  
2 that that it says political and country risk. I believe  
3 nationalization is a political risk.

4           BY MR. BLACKABY:

5       Q. So, I will repeat the question and ask the witness if  
6 he could please read into the record Page 25, the second  
7 paragraph.

8       A. "The Directors believe that the Government of the  
9 countries in which it invests support the provision of power  
10 generation by foreign operators as owners of regional power  
11 companies. However, there is no assurance that future  
12 political and economic conditions in these countries will not  
13 result in their Governments adopting different policies with  
14 respect to foreign investment in electricity-generating  
15 assets."

16       Q. That's fine.

17           So, from that statement--how does that statement link  
18 in with the statements made in the end of Page 23 in order to  
19 give the--the overall view that's being painted here with  
20 regard to your investments in these countries?

21       A. You have to understand that this document was prepared  
22 to go to people who were going to invest in shares, and so we  
23 had to put in all of the risk factors, which is why it runs to  
24 four pages.

25           This was also the first time on the A market when an

12:44 1 electricity utility company was being floated, and it was also  
2 the first power generation company investing in emerging  
3 markets. And so, the investment bankers required us to put in  
4 a very extensive group of risk factors, and we were asked to  
5 give both the risks, but also the positive statement in the  
6 view of the Board of Directors whether we believed that we were  
7 investing in a country which welcomed foreign investment. And  
8 it was the view of the Directors at the time of the investment  
9 that our investment in Bolivia was welcome, which is why we  
10 made the positive statement in this paragraph.

11 Q. Thank you.

12 MR. BLACKABY: We have no further questions.

13 PRESIDENT JÚDICE: Thank you.

14 Then we have still time to continue, or you want to  
15 put some additional questions before?

16 MR. GARCÍA REPRESA: Just one.

17 PRESIDENT JÚDICE: One is okay.

18 MR. GARCÍA REPRESA: For clarification purposes. I  
19 don't think it will extend the debate.

20 RE-CROSS-EXAMINATION

21 BY MR. GARCÍA REPRESA:

22 Q. Mr. Earl, again, this will just be a short question.  
23 You were taken by my colleague to Tab 10, which is Exhibit  
24 R-136, and you were taken in particular to a report by you  
25 mentioned the name Agustin Saavedra Zambrana--

12:46 1 A. Yes.

2 Q. --on the Jenbacher engines?

3 A. Yes.

4 Q. Now, to be clear, Agustin Zambrana is--was a  
5 representative of Guaracachi America Inc., was he not?

6 A. He was.

7 Q. Thank you, sir.

8 PRESIDENT JÚDICE: Well, now we are proceeding for the  
9 second witness, okay.

10 Questions, sorry.

11 QUESTIONS FROM THE TRIBUNAL

12 ARBITRATOR CONTHE: My first question concerns the  
13 overall logic of the investment and to what extent you  
14 bought--well, actually, Rurelec bought the majority stake in  
15 Guaracachi at very favorable terms. Because as I was  
16 explaining in the question which I put before, the original  
17 investment amounted to \$47 million.

18 THE WITNESS: Right.

19 ARBITRATOR CONTHE: And then it was sold in 2003. And  
20 then, finally, Rurelec bought it from Integrated Energy  
21 Limited, which is a U.K. company, for just \$35 million.

22 So, if you exclude that intermediate investment by  
23 Integrated Energy Limited, overall, in 1995, there was an  
24 investment of \$47 million which came down to 35 million, 10  
25 years later. I don't know how much dividends were paid in the

12:47 1 meantime, but one can surmise that the return on equity of that  
2 investment for that 10-year period was negative.

3           And whereas, Rurelec invested \$35 million in--paid in  
4 early January 2006, and by the time of nationalization, assuming  
5 all your claims were to be accepted and granted by the  
6 Tribunal, you will be getting \$100 million plus. And on top of  
7 that, over those years, as we have been discussing extensively  
8 this morning, Rurelec got some dividends.

9           So, the actual return on equity ex post from that  
10 investment in December 2005, early 2006, would be huge. And,  
11 of course, you are an investment banker, and probably a very  
12 good investment banker, but nonetheless the contrast between  
13 the negative return on equity of the initial investor, the  
14 American GPU and Rurelec's ex post potential return on equity  
15 if its claim is granted is quite remarkable.

16           And how would you explain that huge gap between those two  
17 rates of return?

18           THE WITNESS: You have to see that what actually  
19 happened between 1994 when GPU made the decision that it was  
20 going to invest in Bolivia, which culminated in an investment  
21 in July 1995, and then the circumstances by 2006.  
22 Capitalization was too successful. The installed capacity of  
23 the generation park in Bolivia doubled with all these new  
24 efficient machines coming in and a number of old machines were  
25 phased out.



12:49 1 I don't think that GPU, when it made its original  
2 investments of 47 million, realized that power prices would  
3 actually reduce so much because of having much more efficient  
4 machines. And at the time that that they and Integrated Energy  
5 decided to sell, they were dealing with a mature business which  
6 was not in growth and where no decision had been made since  
7 1999 to install any new machines. Effectively it was being run  
8 as a cash cow, and it was not in growth mode.

9 We believed, Rurelec, that Bolivia was actually desperately in  
10 need of new capacity or there was going to be a power crunch.  
11 And that if it was possible to install new capacity based on  
12 the cash flows of the largest thermal power company in Bolivia,  
13 it would be possible to increase EBITDA. That was always our  
14 target.

15 We made the investment with a view to installing  
16 state-of-the-art equipment which would be to the detriment of  
17 those generators who were not investing. And it would serve  
18 them jolly well right that they were weren't going to get a  
19 return, because we were increasing our market share and we were  
20 producing electricity more efficiently than they were with old  
21 machines.

22 So, our plan in 2006 was to help the country by  
23 installing more capacity so as to avoid power cuts, which is  
24 what happened, but that we would also double our EBITDA in the  
25 period, which we did.

12:51 1           In the meantime, because we had a mature business with  
2 cash flows, we paid out on an average 5 dividend yield based on  
3 Bolivian Book Value, which, in a utility, is a pretty  
4 conservative approach for a cash-generating business. But our  
5 plan was always to install and develop new capacity, which was  
6 why we made the investment, so that we would get growth as well  
7 as dividend, which is exactly what happened.

8           ARBITRATOR CONTHE: Well, I'm not sure if I understood  
9 you because you said that the recapitalization was so  
10 successful that capacity increased and prices came down, and so  
11 ex post GPU didn't realize the ex ante return on equity that  
12 probably had envisaged at the time, but at the same time you  
13 didn't suffer the same fate. And if your claim--Rurelec's  
14 claim is granted, your ex post on equity would be much higher  
15 because that sort of curse which affected GPU would not have  
16 been due because prices would not come down as much?

17           Again, I'm not sure I quite understood why there was  
18 such a huge gap between the two rates of return on equity for  
19 GPU and for Rurelec if the claim were granted.

20           THE WITNESS: In 2005-2006, you had a GDP growth rate  
21 in Bolivia which was around 3 percent, 4 percent. And since  
22 electricity demand always runs at one-and-a-half times GDP  
23 growth, you were always looking at 6, 7 percent demand growth  
24 for electricity, which is exactly what happened.

25           And that meant that if no one, any of the generators,

12:53 1 installed any new capacity from 1999 onwards, this big  
2 30 percent reserve margin was going to drop, and then  
3 inefficient machines would be brought on and would generate at  
4 high margins.

5           So, people who hung on in the system would make  
6 windfall profits as Spot Prices rose. And it was the plan, I  
7 believe, of the other generators that they wouldn't invest,  
8 that but prices would rise as reserve capacity fell.

9           We believed that that was bad for the country, and  
10 that you needed to have proactive investment; and, that if we  
11 had invested in highly efficient, 42 percent thermal  
12 efficiency, 55 percent thermal efficiency equipment as opposed  
13 to the 24 percent Frame 5s which ENDE had owned at the time of  
14 capitalization which the other generators had, that we would be  
15 able to benefit from increased margins, while keeping  
16 electricity prices static, and that that was good for the  
17 country, but it was good for us. And those companies that did  
18 not invest would suffer from having an aggressive generator  
19 like us looking to keep prices stable, but on where we made a  
20 bigger margin because we'd invested in new equipment, which was  
21 the theory in 1995 at the time of capitalization.

22           It's just that the other players weren't playing the  
23 rules of continuing to invest. They made a one-off investment,  
24 and they stopped.

25           ARBITRATOR CONTHE: I don't want to take so much time

12:55 1 of the Tribunal, but you implicitly accepted a moment ago that  
2 producers, to the extent there were entry--barriers to entry,  
3 could game the system and make gains by not increasing capacity  
4 enough. And to the extent Rurelec or Guaracachi didn't  
5 decommission the three old engines in Aranjuez, which I'm not  
6 referring to the Spot claim because Bolivia argues that you  
7 left those three engines in place just to take advantage of  
8 those periods of peak demand in which the prices shot up to \$48  
9 per kilowatt as opposed to 18.

10           And to the extent that there is not enough competition  
11 in the market, it's true that this system of marginal costs can  
12 be taken advantage of by producers if there is not enough  
13 competition.

14           So, to what extent you don't think that Bolivia's  
15 argument is right; that they took this change in the definition and  
16 they excluded all engines with the low capacity out of the  
17 calculation of marginal costs precisely to prevent strategic  
18 behaviors on the part of producers like Guaracachi?

19           THE WITNESS: You make a very good point.

20           The theory of marginal cost dispatch is that you have  
21 the least-efficient machine coming on as the last machine.

22           The problem about marginal cost dispatch is where you  
23 get disparities in the transmission system.

24           And our plan had always been to invest in really big  
25 turbines, and that as the transmission lines were upgraded in

12:56 1 the country, so you would have centers of excellence with  
2 bigger power plants with more efficient machines like the  
3 combined cycle.

4           But as we found in 2005, 2006, when there were  
5 power cuts in Aranjuez, the power cuts were from line  
6 stabilization, and the inability to get electrons from Santa  
7 Cruz to Sucre or up to Karachipampa. And my plan had always been  
8 to replace all of the old inefficient machines and take them  
9 out of service as quickly as possible because then we would be  
10 the most competitive player. But we had real difficulty in  
11 persuading the Superintendency to allow us to take those  
12 machines out of service.

13           And a very good example is that we were trying to take  
14 out the--two of the Worthington machines really pretty much  
15 from 2008 onwards, when we installed the extra three Jenbacher,  
16 and we weren't allowed to take them off the License because  
17 CNDC was using them for line stabilization.

18           Our plan in 2010 was, when the combined-cycle plant  
19 came on, to recycle one of the Frame 5s to Sucre so that we  
20 would have efficient--more efficient power generation there to  
21 retire the Karachipampa Olympus where we couldn't get the parts  
22 anymore from Rolls Royce.

23           So we were permanently looking to have efficient  
24 machines, but in the context of transmission line constraints  
25 and CNDC dispatching machines and Superintendency refusing to

12:58 1 allow us to move them because they were nervous about the line  
2 itself, and that's in the records and you will be able to  
3 question CNDC when they come.

4           But our strategy was to replace old machines and to  
5 have the highest-efficiency thermal units in the country, and  
6 we installed 185 megawatts, seriously efficient capacity.

7           ARBITRATOR CONTHE: But then except for the problem of  
8 interconnections in the grid, you would have yourself decommissioned the  
9 three inefficient engines in Aranjuez if allowed by the--and to  
10 that extent, the price would never have reached \$40 per  
11 kilowatt.

12           And so, then the Spot claim that Rurelec is making in  
13 this case, is the question of more principle of departing from  
14 the marginal cost theory than from actual damage because you,  
15 yourself, would have been ready to decommission those three old  
16 engines. And that's one aspect.

17           And the other aspect is to the extent that the  
18 authorities forced you to keep in place those three old  
19 engines, at very high prices--producing energy at very high  
20 prices, because of the problem of interconnection, there are  
21 some grounds to say, well, this \$40 per kilowatts as a result  
22 of a hitch, a technical hitch and do not reflect the true  
23 marginal costs of provision of energy, and therefore should not  
24 be taken into account to remunerate energy throughout the  
25 country.

13:00 1           So, don't you see any question of fairness in paying  
2 all producers at the very high price just because you're  
3 producing in one particular area, in Sucre, with old engines  
4 because of an interconnection problem essentially?

5           THE WITNESS: The problem was that we owned and had to  
6 maintain machines which were on the License. If we took them  
7 off the License, we then didn't have the cost of operation and  
8 maintenance--let me rephrase that.

9           We owned machines where because they were attached to  
10 the grid and were on the generation License, that we then had  
11 to maintain them. And when we operated them, we had to operate  
12 them at the full marginal cost, but we weren't allowed to  
13 recover the cost. So, we were really being squeezed.

14           Had we been permitted to take those machines out of  
15 service, then we wouldn't have cost and no revenues. But the  
16 worst position was to have the cost and not to get the revenues  
17 when we ran, but to be told by CNDC you've got to run. And  
18 that's the basis of our Spot claim. From 2008 through 2010, we  
19 were running machines, and we had the cost of maintenance, and  
20 some of these old machines are really expensive to maintain.

21           That's the issue.

22           PRESIDENT JÚDICE: I'm sorry, but I understood that  
23 you were paid for, through a different scheme of this additional  
24 capacity that would arise to keep, or not?

25           THE WITNESS: We didn't get the Spot--the Spot

13:02 1 payment. And the way the system works was that--I'm afraid I'm  
2 not an expert on this part of the system; I can only tell you  
3 as Chief Executive how it operated in practice.

4           We weren't able to hit the amounts which we had  
5 budgeted, so our revenues actually fell from 2008 by 18 percent  
6 as a result of Spot and capacity effects, of the changes in  
7 regulation, which absolutely were not in place in 2006 when  
8 Rurelec invested. So, the rules of the game changed.

9           The Spot--our unhappiness about Spot is one part of  
10 that.

11           But the way in which you get around the problem is you  
12 invest in new machines and you decommission the old ones so  
13 that then you rely on being the most efficient, most  
14 competitive player in the market, and you don't have that risk.

15           But in 2008, 2009, and 2010, we had the cost of the  
16 investment in these new machines but we never got the benefit  
17 of the 68 million, 75 million with taxes that we spent on the  
18 combined-cycle plant, which was going to double EBITDA because  
19 we got nationalized before we could commission it.

20           So, we had the costs in the prior period, and we never  
21 got the benefit of our investment. But the theory was--because  
22 you're saying, Why were you so stupid as to invest in 2006 when  
23 other people were disinvesting from the sector? Our numbers  
24 were very clear. Our EBITDA from our investment was going to  
25 double by the time all of our investment was operating, and



13:03 1 then we could look at taking out, once and for all, the  
2 inefficient machines where we weren't recovering costs.

3           ARBITRATOR CONTHE: If I may continue now with returns  
4 on equity, because we discussed yesterday in your absence, your  
5 own views on other projects in South Africa and the policies  
6 applied by other investors on the return on equity in emerging  
7 economies. And then you're on record as arguing that a return  
8 on equity of 20 percent could be considered normal in emerging  
9 economies, whereas the Expert of Rurelec, Mr. Abdala and  
10 Compass, applies a lower--cost of equity, somewhere in the  
11 neighborhood of some 13 or 14 percent, 14-and-a-half.

12           So, how do you explain that gap? Isn't that too low,  
13 the 14 percent return on equity, for investments in an emerging  
14 economy like Bolivia?

15           THE WITNESS: You have to make a crucial distinction  
16 here between a project IRR, a return on the overall project,  
17 and the equity IRR.

18           I have gone on record in South Africa where--and I  
19 was, at the time, Chief Executive of a company which built the  
20 first combined-cycle plant in South Africa, the first gas-fired  
21 plant, and where investors from London and South Africa  
22 were putting capital into that project.

23           I went on record as saying the equity IRR minimum that  
24 we needed for the equity component was 20 percent, but the  
25 overall project IRR was probably closer to 11 or 12 percent

13:05 1 because you always have a debt component. And as I mentioned  
2 at the start of today, typically, projects are geared  
3 70 percent debt, 30 percent equity. If you have Power Purchase  
4 Agreements, as indeed we had in South Africa, it was possible,  
5 then to get an 80 percent debt, 20 percent component.

6           And I think you have to take my statements about  
7 project returns as referring to the equity in the project. In  
8 the case of Guaracachi, Rurelec was buying a dividend stream  
9 and, as I said, the dividends from the existing business where  
10 there was no project risk involved, where there was an existing  
11 cash flow which was available to Rurelec the day Rurelec bought  
12 its shares. That dividend stream we valued on the basis of a  
13 5 percent dividend yield, and that was why, over the five years  
14 of Rurelec's ownership, we tried to have a 5 percent distribution  
15 policy of the cash and profits of that continuing business.  
16 But that's different from a project IRR, where you're talking  
17 serious project risk and going out and building greenfield. In  
18 South Africa, it was the first of its kind; it was greenfield.

19           And when I--in other places where I talk about equity  
20 IRRs in emerging markets of 20 percent, 20 percent plus, it's  
21 the equity IRR, the after-tax equity IRR of a project, and the  
22 project which is typically 70 percent geared.

23           ARBITRATOR CONTHE: Yes, well, actually, I was  
24 referring only to equity because as, you know, the weighted  
25 average cost of your own expert is 10 percent; 14 percent is the percent on

13:07 1 equity.

2           So, it's 14 percent in Mr. Abdala's Report as compared  
3 to your 20 percent in South Africa and in other projects.

4           But by the way, what happened to the dividends which were  
5 distributed but not paid out in Guaracachi? Did Rurelec ever  
6 get them?

7           THE WITNESS: No. And I have to say it's a point  
8 which I have given our lawyers a very hard time about. We are  
9 shown in the books, in the audited accounts today of Guaracachi as  
10 being owed five-and-a-half million dollars; we are a creditor  
11 of five-and-a-half million dollars, quite apart from the  
12 investment. But for some reason, the valuation focus is just  
13 on what was the value. But we were a creditor in the books at  
14 the time and we have never been paid that five-and-a-half  
15 million dollars that we effectively lent back to Guaracachi to  
16 complete the combined-cycle plant.

17           ARBITRATOR CONTHE: If the President allows me, I have  
18 a few more questions.

19           The first one is the different fates of the  
20 nationalization of Valle Hermoso and Corani--yes.

21           I was saying that as Bolivia argues the  
22 nationalization of Guaracachi ended up in a very different  
23 outcome from the case of Valle Hermoso and Corani in which they  
24 settled for a positive price.

25           What was the difference? Why did Valle Hermoso and

13:08 1 Corani agree to a price with the Government, whereas Guaracachi  
2 did not? What are the reasons which is--the three cases apart  
3 from each other?

4 THE WITNESS: In the case of both Corani and Valle  
5 Hermoso, the shareholders at the time of nationalization were  
6 not the same shareholders at the time of capitalization. And  
7 you have to understand that after 2001, when Enron collapsed in  
8 the United States, every single U.S. utility that had been  
9 developing and owning power plants went home and told their  
10 shareholders they weren't going to take emerging market risk  
11 anymore.

12 So, the cost base of GDF Suez, who had bought  
13 Econergy, which itself was a smaller quoted company, that was,  
14 in the case of Corani, they were different from Dominion, who  
15 were the original investors from 1995. They were able to show  
16 in each instance a dividend stream, and they were not valued on  
17 a project basis; they were valued on the basis of the dividends  
18 which they were paying to their shareholders.

19 So, there was no question, then, of their having debt.  
20 They had deleveraged, but they had deleveraged at the expense  
21 of the country because they had not invested in new capacity.

22 Personally, if I had been the Government in 2009 and  
23 2010, I would have nationalized Corani and Valle Hermoso  
24 because they weren't investing in the capacity that the country  
25 needs. And, as the Government has said, it is the primary

13:10 1 obligation of a Government to ensure that its citizens have  
2 electricity.

3 I have firmly believed that since 1993 when I first  
4 went to Bolivia. We were investing to give them capacity. The  
5 owners of Corani and Valle Hermoso were not. And that's why  
6 they did not have debt. They were relying on a dividend stream  
7 from older machines which they weren't replacing.

8 ARBITRATOR CONTHE: Finally, two questions.  
9 Throughout your submissions and Rurelec's submissions, it's  
10 clear that--you're hinting, not saying clearly--that the  
11 Government was using the carbon credits, the authorization for  
12 carbon credits as a sort of bargaining tool just to--and they  
13 were mischievously delaying the Authorization as a bargaining  
14 tool in order to force Guaracachi into agreements with the  
15 Government.

16 Is that a fair interpretation of what is implicitly  
17 stated in the submissions?

18 THE WITNESS: As of 2010, yes. And you will see from  
19 the submissions that I and the Rurelec team in London had  
20 objected to re-signing the second dignity tariff in 2010  
21 because we felt that the Government had not complied with the  
22 bargain that we entered into in 2006 with the first dignity  
23 tariff.

24 In 2006, the other generators did not want to sign it,  
25 and I argued with them that we should sign it, and that it was

13:12 1 something which we should be doing voluntarily. And, in  
2 return, we were given assurances of stability in the system,  
3 the rules of the game would not change. And that was a bargain  
4 worth making in 2006.

5 In 2010, there was no such bargain. We were being  
6 effectively held hostage with a simple three-page form which  
7 was going to release \$5 million to us, which we needed and  
8 which we had always needed under the additionality test to get  
9 the carbon credits in the first place. And we felt that it was  
10 unfair that we were forced into a dignity tariff which, instead  
11 of costing \$400,000 a year, was going to cost a million dollars  
12 a year, when, in the meantime, our revenues had dropped by  
13 18 percent, and the only reason for signing was the--to get the  
14 CER funds released.

15 And I had extensive discussions with CAF about it at  
16 the time, and I said to the senior management in Caracas,  
17 If you want us to sign the dignity tariff, you have to release  
18 the CER money with conditions subsequent rather than conditions  
19 precedent. And as of April, I believed that CAF was going to  
20 lessen the requirement on us so we would get the \$5 million.

21 But were we being put under unfair pressure? I  
22 believe we were.

23 ARBITRATOR CONTHE: Just a question.

24 The first one is why did you change rating agency in  
25 2009 from Fitch to Pacific Credit Ratings? Because that's a

13:14 1 signal--maybe signal of disagreements and of sort of adverse  
2 selection in which insurers select the most lenient credit  
3 rating agency.

4 THE WITNESS: I wish.

5 You have to put yourself back to 2008 when all of the  
6 credit rating agencies were burned by having given AAA ratings  
7 to derivatives which then turned out to be worthless. And in  
8 2009, there was some question on whether Fitch was going to  
9 survive the scandal of the ratings that they had given  
10 internationally.

11 Pacific Capital Ratings had not actually given any New  
12 York mortgage loan AAA ratings on worthless derivatives, and I  
13 actually think that, from my recollection, the switch to  
14 Pacific Capital Ratings, which was a regional rating agency,  
15 rather than Fitch which maybe wasn't going to exist in 2009,  
16 was more credible in terms of the investor audience for the  
17 bonds we were issuing.

18 We weren't issuing bonds in New York to people who had  
19 been burned by Fitch. We were issuing bonds to pension funds  
20 and local investors for whom Pacific Capital Ratings was one of  
21 the local market leaders. That's my recollection.

22 ARBITRATOR CONTHE: Your point is as a backlash from  
23 the financial crisis, Fitch was being overpessimistic and you turned  
24 to a more regional local credit rating which, nonetheless, gave  
25 you--gave Guaracachi a better rating than the departing one,

13:15 1 Fitch.

2 THE WITNESS: I think my primary reason for agreeing  
3 to the switch was that I actually felt that Fitch,  
4 internationally, was compromised and that the Fitch brand was  
5 not one which people could have trust in; whereas, Pacific  
6 Capital hadn't issued a whole series of ratings which had then  
7 been downgraded on grounds which they should have known about,  
8 whereas, Fitch had.

9 Fitch, Moody's, and Standard and Poor's were coming  
10 under a huge amount of attack in Congress if you recall, at the  
11 time, in 2009, with all of the banking write-offs and Senators  
12 saying publicly, How is it that guys like Fitch can charge  
13 money and then don't do their job?

14 And that's--so, you have to see it in the context of  
15 the switch.

16 ARBITRATOR CONTHE: And my final question is, we have  
17 seen this morning before that some local investors, the pension  
18 funds, had some reticence to the distribution, the non-paid  
19 distribution of dividends. And don't you find it a bit weird  
20 that they were Institutional Investors? One would assume that  
21 they would be seeking money and inflows into their accounts,  
22 and nonetheless they would have been more prudent than yourself  
23 as representative of Rurelec?

24 How could you explain this gap between the attitudes  
25 of different shareholders?



13:17 1           THE WITNESS: You make a very good point. We're  
2 talking about 2009, April-May 2009, referring to the 2008  
3 dividends, which was the first time we declared but then didn't  
4 pay.

5           I have to say that they found it a novel move, and the  
6 debate we had at the Board was, Well, what's the point of  
7 declaring but not paying?

8           However, in May--in April of 2009, those pension funds  
9 knew that their shareholdings in the capitalized companies were  
10 going to be taken away from them later in the year. And,  
11 indeed, in September 2009, Previsión and Futuro de Bolivia both had  
12 their shares transferred to ENDE for zero compensation. And  
13 the representatives of the pension funds holding capitalized  
14 company shares who knew that they were going to have to hand  
15 them over to Government entities didn't want to take any  
16 decisions at all on the record that could be regarded as  
17 contentious.

18           But ironically, in their capacity as managers of  
19 private pensions, they bought our bonds then, and they  
20 continued to support us. And we did discover--it was ironic  
21 that the pension funds were great supporters of the combined  
22 cycle project, but they didn't want to be seen to be doing  
23 something new and unusual. And declaring but not paying the  
24 dividend--I think it was the first in Bolivia, when we  
25 did it; which is why it's caused such confusion in terms of the

13:18 1 technical terms for what we did.

2 ARBITRATOR CONTHE: I thank you, my colleagues as  
3 well, and particularly the Chairman for his patience.

4 ARBITRATOR VINUESA: I do have no questions.

5 PRESIDENT JÚDICE: We have no questions either.  
6 That's why I forgot. Sorry for that.

7 Thank you very much, Mr. Earl. It's a pleasure to  
8 have you here. I'm sure now you are allowed to stay, if you so  
9 wish.

10 And, therefore, I think this is a good moment to  
11 recess and return afterwards. We do one hour, as yesterday, or  
12 need more time?

13 MR. SILVA ROMERO: I don't know. Should we say 2:30?

14 PRESIDENT JÚDICE: Okay. Then 2:30, we will be here  
15 once more.

16 (Witness steps down.)

17 PRESIDENT JÚDICE: Thank you very much.

18 THE WITNESS: Yes, thank you.

19 (Whereupon, at 1:21 p.m., the hearing was adjourned  
20 until 2:30 p.m., the same day.)

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

AFTERNOON SESSION

PETER R.S. EARL, CLAIMANTS' WITNESS, RECALLED

QUESTIONS FROM THE TRIBUNAL

PRESIDENT JÚDICE: Sorry to ask you to come once more, but the Tribunal thought it would be a good opportunity to try to understand an issue that you will be probably the person more prepared to clarify.

It was stated that Rurelec bought the Bolivian--indirectly the Bolivian assets with a price of 42 million, the price which has been corrected to 35 million. First question.

Secondly, doubts arise about the payment of the amount of the 35 million as being made by Rurelec to--I think to Integrated Energy Limited, an English--United Kingdom company.

Then three questions: First of all, is it possible to explain why it comes from 42 to 35.

Secondly, did you actually pay the price and how and when and to whom of the assets?

THE WITNESS: Very good. The answer to the first question is that \$35 million was the price that was agreed with Integrated Energy, but you will see that the price in the books of Rurelec is--I think it's 41.2 or 41-something because that's the total cost of the acquisition after all of the professional fees and the cost of the new issue. In effect, it was treated by the Stock Exchange as the reverse as Rurelec had been

14:35 1 placing for the first time. And that's the discrepancy. It's  
2 the professional fees involved.

3 PRESIDENT JÚDICE: Second question was did Rurelec pay  
4 this amount of money to Integrated Energy Limited or to another  
5 entity?

6 THE WITNESS: I'm trying to remember who actually  
7 received it. I think - I mean the \$35 million was the price that was  
8 paid, and the receiving entity was as required. I would have  
9 to refresh myself in connection--

10 PRESIDENT JÚDICE: In accordance with the Share  
11 Purchase Agreement?

12 THE WITNESS: In accordance with the Share Purchase  
13 Agreement, yes.

14 PRESIDENT JÚDICE: But do you remember all the payment  
15 has been made through transfer, through check? In coins?

16 THE WITNESS: I'm not--no. 30 million was paid in  
17 January 2006, and a further 5 million was paid as a later  
18 payment. I think it was from memory six months later, against  
19 any potential undisclosed liabilities or any-anything that would  
20 have come up in due diligence.

21 PRESIDENT JÚDICE: You're sure payment has been made?

22 THE WITNESS: Absolutely, most definitely. But it was  
23 in two payments of 30 million and of 5 million.

24 ARBITRATOR CONTHE: And this is an additional one.  
25 Could you give us some context on the way in which GPU or First

14:37 1 Energy sold its stake to the British Integrated Energy in 2003  
2 before you and Rurelec--I meant in 2005 actually bought from  
3 Energy Initiatives?

4 THE WITNESS: Yes. The context is that in 2001, Enron  
5 went into bankruptcy; and at the time that that happened, it  
6 took with it, in practice, NRG and AES, which were the two  
7 other largest independent power producers in the United States.

8 In 2001 and 2002, you had a number of international  
9 players based in the United States who were investors in power  
10 companies all around the world, and I think it's probably true  
11 to say in 2001 and 2002 the most aggressive investors were  
12 American-based power companies. They split into two  
13 categories. The independent power companies like Enron, who  
14 had very high stock market ratings, and the traditional U.S.  
15 utilities, which were historically put on a much lower  
16 valuation because they were safe and boring businesses, and  
17 they operated in restricted regional territories.

18 A number of the U.S. utilities like Constellation, who came  
19 to Bolivia in capitalization, wanted to improve their earnings  
20 because they were in parts of the United States where there was  
21 stagnant growth, electricity demand was not going up, and there  
22 was nothing they could do, and they copied Enron, AES, and NRG  
23 by going international so they would have what they called  
24 unregulated income.

25 But when Enron, AES and NRG went bust, all of the

14:39 1 institutional shareholders in the United States said to the  
2 U.S. utilities like GPU, you must only invest in the United  
3 States. You must disinvest everywhere.

4           So, GPU, which had bought, I think, the fifth largest  
5 United Kingdom electricity company, when GPU merged with First  
6 Energy, they, the First Energy Board imposed a policy on  
7 getting rid of all international assets across the board, and  
8 so GPU divested itself of Guaracachi. It divested itself of  
9 its power plants in Colombia, and it divested itself of its  
10 power business in generation and distribution in the United  
11 Kingdom, which had been Midlands Electricity.

12           And I'm not sure that it was the wisest decision they  
13 could have taken, but that was the background.

14           ARBITRATOR CONTHE: And one subsequent question is, on  
15 the bank transfer of the 30 plus 5 million, to the best of my  
16 knowledge--

17           MR. SILVA ROMERO: I apologize, I just want to clarify  
18 what you said. He didn't say that there was any bank transfer.  
19 I didn't hear the witness say so.

20           ARBITRATOR CONTHE: Actually, that was my point  
21 because if there was a payment of 30 million plus 5 million,  
22 there should be some evidence of the bank transfer, and to the  
23 best of my knowledge, in the file there is no such copy of a  
24 bank transfer. Why is that so?

25           THE WITNESS: Because the money was taken in escrow by

14:41 1 the investment bank and the brokers. All of the money to pay  
2 for the shares came from institutional shareholders in the  
3 United Kingdom. You have seen a list of who they are. Legal  
4 and General, Foreign and Colonial, Black Rock, Black River,  
5 Henderson, and Gartmore--a "who's who" of investors based in  
6 the U.K. Their money was transferred to the stockbrokers who  
7 held the funds in escrow, and it was then released when the  
8 shares were ready to be admitted to the Stock Exchange.

9           So, from memory, I'm not even sure that the funds  
10 cleared through Rurelec's account. They went directly on  
11 behalf of Rurelec from the investment bank. But I'm sure in  
12 the next 24 hours I can get you copies of the transfers so that  
13 you can see, if that would be helpful.

14           PRESIDENT JÚDICE: Okay. That's all. Thank you very  
15 much, Mr. Earl. Now you can stay if you wish, but we are going  
16 to another witness.

17           Mr. Silva Romero has a communication or has a question  
18 as well.

19           MR. SILVA ROMERO: Thank you very much, Mr. President.  
20 I'm just a messenger. I've been informed from the members of  
21 my team that are there at the office; they've told me that the  
22 people from CNDC have come to Dechert's offices, and the  
23 question that they're posing is whether they can come to the  
24 hearing. So, I would like to give this permission from the  
25 Tribunal just to let them know that they are available. We

14:42 1 don't know these people from the CNDC. We have not spoken to  
2 them, but we are going to keep a distance from them to respect  
3 the fact that they are your witnesses.

4 PRESIDENT JÚDICE: Thank you very much.

5 Mr. Blackaby?

6 MR. BLACKABY: Yeah, I guess the bottom line would be  
7 that they--my understanding is that they have not participated  
8 in any way in these proceedings. The other people are not  
9 here. I don't see any particular reason why they need to  
10 listen to the factual evidence in the hearing. I think it  
11 would be probably fair and more consistent with their role as  
12 Tribunal witnesses that they--until it's necessary that they  
13 turn up, that they enjoy Paris in the springtime and come when  
14 they're requested by the Tribunal. That would be our  
15 preference.

16 I sense Mr. Silva Romero saying--it's in the  
17 Tribunal's hands. We don't have a strong view on this.

18 PRESIDENT JÚDICE: I have spoken to my co-Arbitrators.  
19 I would like to thank you for your offer, but they're going to  
20 come here whenever we are ready to hear them and not before, so  
21 I don't think we should see them before that.

22 MR. SILVA ROMERO: Yes, we are going to give this  
23 comment to them.

24 PRESIDENT JÚDICE: Thank you.

25 JAIME ALIAGO MACHICAO, CLAIMANTS' WITNESS, CALLED



14:44 1           PRESIDENT JÚDICE: Good afternoon, Mr. Jaime Aliaga.  
2 I think Spanish is your mother tongue, if we can say that.  
3 Thank you very much for being here, for cooperating with the  
4 Tribunal and with the Parties, and you are going to read a  
5 statement that is on that piece of paper, and I hope you agree.  
6           Please identify yourself for the record.  
7           THE WITNESS: Good afternoon, Members of the Tribunal,  
8 Parties. Good afternoon, counsel for the Parties. My full  
9 name is Jaime Aliaga Machicao.  
10           I solemnly declare upon my honor and conscience that I  
11 shall speak the truth, whole truth, and nothing but the truth.  
12           PRESIDENT JÚDICE: Thank you very much, Mr. Aliaga.  
13           I don't know if you're familiar with these kind of  
14 proceedings. You are going to be examined in direct  
15 examination by the lawyers to my right, and then you're going  
16 to be cross-examined by the lawyers to my left, and perhaps  
17 some of the questions are going to be posed by the Parties as  
18 well, and the Tribunal may be able to ask questions during your  
19 statement.  
20           When you are not speaking, please turn the microphone  
21 off, but never forget to turn it on when you are taking the  
22 floor. Thank you very much.  
23           MS. RICHARD: Thank you, Mr. President.  
24                                   DIRECT EXAMINATION  
25           BY MS. RICHARD:

14:46 1 Q. Good afternoon, Mr. Aliaga. Before we begin, I want  
2 to make sure that you have in front of you the two witness  
3 statements that you have submitted in this proceeding. Can you  
4 please check that those are your witness statements and that is  
5 your signature at the end of each of them?

6 A. Yes, indeed. These are the two statements that I  
7 prepared, 29 February 2012, and 21 January 2013.

8 Q. Is there anything in those Witness Statements that you  
9 would like to change or correct?

10 A. I saw no need to change anything in these statements.

11 Q. Could you please briefly summarize for the Tribunal  
12 your academic and professional background, including your role  
13 at Empresa Eléctrica Guaracachi.

14 A. Yes, of course.

15 I am an engineer. I'm a metallurgic engineer. I  
16 started at the National University of La Plata in Argentina;  
17 and, in 1971, I started working professionally in the country.  
18 I first started working in the field of engineering, my field  
19 of studies, and then I was involved in a stabilization task in  
20 the Institute of Standards and Technology of the Ministry of  
21 Industry. Then I was an independent consultant. I was a  
22 member of a consulting firm between '85 and '87.

23 And then I obtained a scholarship to conduct master  
24 degree studies in the United States, and I obtained a public  
25 administration Master's degree, international public

14:48 1 administration Master's degree in the United States, that  
2 allowed me to work in other fields.

3 I was also working in public institutions for  
4 development in Bolivia such as the Social Fund for Emergency,  
5 the Regional Development Fund, and then I worked for a regional  
6 international financial organization called Fonplata, and I was  
7 the person in charge of project valuation. Then, when the  
8 reforms took place in the 1990s, I was involved in a  
9 competitive examination for the transportation regulator that  
10 was created in the 1990s, and I was a Superintendent for  
11 Transportation from '98 to 2003.

12 After those five years, at the end of my position, I  
13 worked as a private consultant, and in 2004 I was invited to  
14 join the Board of Directors of Guaracachi Sociedad Anónima.  
15 And then in July '04, I was invited to manage the company.  
16 First I was an interim Manager, and then at a certain point in  
17 time I was the General Manager. I worked as a General Manager  
18 up until May 1, 2010, when the company was nationalized.

19 Q. Can you briefly describe to the Tribunal the power  
20 generation capacity that were undertaken during your tenure as  
21 General Manager.

22 A. Yes, of course. At the beginning I had to familiarize  
23 myself with the policies of the company, the policies that were  
24 implemented by the Majority Shareholder at the time. This  
25 policy included benefits for the company, but also for the

14:51 1 national interconnected system. New capacity was introduced in  
2 the interconnected system. This was done with cheaper, more  
3 efficient units that were environmentally friendly, and the end  
4 of all this was going to be a combined-cycle project which was  
5 a large project. This was a very good experience. It was a  
6 fundamental challenge for me in my career because the Board of  
7 Directors was to approve these new investments.

8           In 2004, we started to think about this idea of the  
9 combined-cycle project. It was something quite innovative in  
10 the country, and we created a methodology to try and obtain  
11 carbon credits under the Kyoto Protocol. And from 2004 to 2005  
12 we presented to the clean development mechanisms methodology  
13 that was accepted in order to convert two units from a single  
14 cycle to a combined cycle, and also a project of the Republic  
15 of Ghana. This, if memory serves, was called CM007, and this  
16 was something that spearheaded this very substantial  
17 investment.

18           Now, following on that policy that I mentioned, in  
19 2006, we included four high-efficiency engines. They were  
20 called Jenbacher 616. These are GE products, but they're  
21 manufactured in Austria, and we introduced them in our Aranjuez  
22 Plant.

23           In '07, we conducted another master project, which was  
24 the inclusion of a 70-megawatt nominal capacity turbine, which  
25 was a 6FA turbine similar to the one that Guaracachi America

14:54 1 had invested in '98 and '99, and then in 2008 we introduced  
2 another additional capacity with three 616 Jenbacher engines in  
3 the Aranjuez Plant.

4           In '08-'09, we started another substantial project  
5 that had to do with the construction of a new plant in the  
6 industrial park of Santa Cruz. This was later known as the  
7 Santa Cruz Plant, so the idea was to transfer a couple of  
8 turbines from the central--from the Guaracachi Plant that were  
9 going to be transferred to the new plant. These were GCH-7 and  
10 GCH-8.

11           And so, a new substation was to be built, and the gas  
12 pipeline had to connect to the main plant to a new plant, and  
13 this, of course, implies that we had to conduct--to construct a  
14 new plant.

15           I'm sure that the Members of the Tribunal know about  
16 the combined cycle, but for us this was a very substantial  
17 project, and it was even more important for the interconnected  
18 system because we were going to use the heat that escapes  
19 through the chimney--through chimneys, and we're going to be  
20 able to generate steam and obtain additional capacity for  
21 electricity generation purposes without spending more on  
22 natural gas, and we were going to have the benefits accorded to  
23 us by the CDM via the carbon credits, and I can give you more  
24 information and clarify this further, if you wish.

25           Now, meanwhile, of course, this was a substantial

14:56 1 project, and it was going to be the cheapest from the viewpoint  
2 of generation. The Government asked us to look at a certain  
3 initiative. We felt that we had a partnership with the  
4 Government. Well, there was a request to establish a plant in  
5 a very remote part of the country, in San Matías, and I was the  
6 General Manager. I worked in Guaracachi America and in  
7 Rurelec, and I also worked in the introduction of the new  
8 capacity to the system.

9 Q. Mr. Aliaga, can you explain how Guaracachi came to  
10 invest in San Matías.

11 A. As I mentioned, San Matías is a small town in the  
12 westernmost area of Bolivia in the Santa Cruz department. It  
13 is about 800 kilometers away from the capital city of that  
14 department. It is very, very far from the political capital of  
15 the country and very far also from ports as well. This was a  
16 population that was undergoing serious difficulties. First,  
17 power came from Brazil. The country Bolivia did not have the  
18 capacity to generate power. There was a small cooperative that  
19 provided the power, and its condition was critical because it  
20 bought energy at \$260 and it had to sell the energy to the  
21 inhabitants at \$250.

22 So, this was untenable. It was a crisis situation,  
23 and the Government and the Superintendency of Electricity,  
24 which at the time had been captured by the Government, asked us  
25 to save that cooperative and to try and generate a project to



15:00 1 BY MR. MERIZALDE:

2 Q. Thank you very much, Mr. President. My name is Juan  
3 Felipe Merizalde, and I am a lawyer of the Plurinational State  
4 of Bolivia. As you can imagine, I'm going to ask you on behalf  
5 of our clients some questions in connection with the contents  
6 of your witness statements. Is that okay?

7 A. Yes, of course.

8 Q. My colleague Kattia is going to give you a binder, and  
9 we are also going to distribute the binders to the lawyers for  
10 Claimants and also to the Members of the Tribunal.

11 PRESIDENT JÚDICE: I understood that it was the same  
12 we used for the other witnesses, but it's not the case, I  
13 guess.

14 BY MR. MERIZALDE:

15 Q. Mr. Aliaga, this binder has some tabs that I will ask  
16 you to look at in due course. I noticed that you realize that  
17 there is an index of contents on the very first page, but if  
18 you have any issues finding the document or understanding my  
19 question, please let me know.

20 Mr. Aliaga, could you please read the first phrase of  
21 your First Statement. I think that that is in the separate  
22 binder.

23 A. I thought that it was the statement that I have to  
24 read as a witness.

25 Q. No, I am referring to your statements in your books,



15:03 1 in the binder.

2 First Statement, the very first sentence there.

3 A. I currently work as a consultant to Rurelec--

4 (Pause.)

5 A. I, Jaime Aliaga Machicao, say as follows: I currently  
6 work as a consultant to Rurelec Plc--

7 Q. Okay. I'm sorry, to interrupt you, but that was the  
8 very end of my request.

9 So, as I understand you correctly, this is your only  
10 occupation currently; is that correct?

11 A. I'm sorry?

12 Q. This statement was signed on February 29th, 2012.

13 A. Yes. Yes, I am currently a consultant with Rurelec.

14 Q. If I understand you correctly, your only occupation is  
15 Rurelec's consultant?

16 A. Currently, yes. The answer is yes.

17 Q. I would like to elaborate a bit more on the word  
18 "consultant." Do you have a written contract with Rurelec?

19 A. Yes, I do.

20 Q. And how long have you had this Contract for?

21 A. I have had it since May 2010, when I was dismissed  
22 from Guaracachi through the Supreme Decree.

23 Q. Did the Decree actually say that you had to say  
24 dismissed?

25 A. Well, the stay of the employees is guaranteed except

15:05 1 for the executives.

2 Q. So, you are confirming to me that Mr. Lanza continues  
3 to be in Guaracachi; correct?

4 A. Executives. Well, I was an executive.

5 Q. Wasn't Mr. Lanza one of your managers?

6 A. He was a project Manager.

7 Q. Thank you.

8 Based on your Contract with Rurelec and to understand  
9 this relationship, are you paid a monthly salary? Are you paid  
10 by management task?

11 A. Well, we agreed on a monthly salary, based on the task  
12 that I developed back then.

13 Q. What were those tasks that you agreed on?

14 A. They ranged from representing Rurelec also during the  
15 initial discussions that we had with Bolivia after the  
16 nationalization, and clearly I needed to inform myself and have  
17 the data to attend several meetings, and I understand that in  
18 2010, July 2010, that's when I started, and I also started to  
19 work on some other additional tasks that Rurelec has in Chile,  
20 Peru, and a project in Argentina. There were several tasks to  
21 develop.

22 Q. And to better understand, I also understand that you  
23 live in Santa Cruz; correct?

24 A. Yes, I do live in Santa Cruz.

25 Q. Let me remind you that everything is being

15:06 1 transcribed, so you need to wait for me to conclude my  
2 questions so that you can start your answer, with your answer;  
3 correct?

4 A. Yes.

5 Q. I am going to repeat.

6 To confirm, you live in Santa Cruz; correct?

7 A. Yes, I do live in Santa Cruz.

8 Q. And I understand that you are Bolivian?

9 A. Yes, I am Bolivian.

10 Q. And this is your main place where you work as a  
11 consultant; correct?

12 A. Yes, it is in Santa Cruz.

13 Q. You just mentioned the meetings to negotiate after the  
14 nationalization, so I'm going to ask you to read Paragraph 53  
15 of your First Statement. Please go ahead, Mr. Aliaga.

16 A. I attended all of the meetings with the Government  
17 that followed the nationalization.

18 Q. Thank you very much.

19 And just to clarify and so that I do not have to  
20 interrupt you, if I say that it is a phrase, let's just read up  
21 to--if I just say sentence, it's up to the first period.

22 In Paragraph 53 and also up to Paragraph 58, you are  
23 describing in detail the meetings that you attended; is that  
24 correct?

25 A. Yes, that is correct.

15:08 1 Q. And I observe that, for example, at Paragraph 55 and  
2 54 you refer to a meeting held on July 5th, 2010; is that  
3 correct?

4 A. Yes, that is correct.

5 Q. Thank you. I see that you provided details in the  
6 last sentence towards the end of Paragraph 55. You're saying  
7 that all this was reflected in the minutes; is that correct?

8 A. Yes.

9 Q. And you're also referring to the minutes of the  
10 meeting at Footnote 44; correct?

11 A. Yes.

12 Q. That is to say that you take or you consider that the  
13 minutes actually really reflect what happened at the meeting?

14 A. Yes.

15 Q. I'm going to ask you to look at Tab 17 in the book  
16 that we gave you. This is Annex C-187. This is Exhibit C-187.  
17 Please look at the footnote on Page 1. Would you read it.

18 A. "This document is to be used for discussion and  
19 follow-up. Without prejudice to the rights of the Parties, it  
20 should not be used in any sort of arbitration or judicial  
21 proceeding, reserved, privileged, and confidential."

22 Q. Could you please confirm that that footnote is  
23 repeated on each of the pages?

24 A. That is correct.

25 Q. And let me ask you, Mr. Aliaga: You didn't think it

15:11 1 was inappropriate when you prepared your First Statement to  
2 introduce a confidential document such as this one and then  
3 refer to the negotiations and in particular as part of an  
4 arbitration proceeding?

5 A. I did not think of that when I referred to this letter  
6 in my statement. And in the minutes, you cannot see the  
7 signature of the people who actually attended the meeting, but  
8 you saw the people who actually signed were Javier Lopez, the  
9 Vice Ministers who did not even sign the minutes. At least the  
10 copy of minutes I have was not signed by the authorities.

11 Q. But these are the minutes that you presented; correct?

12 A. Yes.

13 Q. And these are the minutes that you just confirmed sum  
14 up the agreements reached at the meeting; is that correct?

15 A. Yes, that's what I said.

16 Q. Thank you.

17 Mr. Aliaga, let's discuss the preparation of these  
18 statements. I understand that the counsel for the Claimants  
19 has helped you with the drafting of the statement; is that  
20 correct?

21 A. Yes.

22 Q. And I also understand that you reviewed some of the  
23 documents to prepare these statements; is that correct?

24 A. Yes, I did review some.

25 Q. I also understand that you reviewed the fact exhibits

15:12 1 that Bolivia attached to the Counter-Memorial?

2 A. In the case of the Second Statement, I did, but  
3 obviously not for the first one.

4 Q. And did you review the 63 exhibits to the  
5 Counter-Memorial by Bolivia?

6 A. I understand that, yeah, of course, I reviewed them.  
7 I might not have done it thoroughly or as thoroughly as I could  
8 have.

9 Q. And that's your understanding or is that what you were  
10 told?

11 A. No. They just helped me draft, but it was my  
12 responsibility to assert what I wrote, to attest to what I  
13 wrote, and clearly I reviewed the exhibits to support my  
14 information or to refresh my recollection.

15 Q. Could you please be more accurate and tell me whether  
16 you reviewed the 67 exhibits?

17 A. The answer is yes.

18 Q. Did you also review the statements by Mr. Juan Carlos  
19 Andrade before coming to the hearing?

20 A. I reviewed statements, but I don't think I read them  
21 thoroughly.

22 Q. And did you review them when you were preparing your  
23 statements or one of them?

24 A. No, I did not.

25 Q. Just out of curiosity, did Mr. Andrade help you

15:14 1 prepare some of your statements?

2 A. No.

3 Q. Did he share any comments with you?

4 A. Not that I can recall.

5 Q. Did you review statements by the other witnesses put  
6 forward by the Claimant?

7 A. Yes, yes, I did review some of those witnesses, the  
8 ones that had to do something with my statement.

9 Q. For example, you reviewed both statements by  
10 Mr. Lanza; correct?

11 A. Well, the Claimants--

12 Q. No, up to the date?

13 A. Well, I didn't do it thoroughly.

14 PRESIDENT JÚDICE: I'm sorry, you said that you  
15 reviewed the Claimants' or the Respondent's.

16 THE WITNESS: I reviewed the Respondent's statements.

17 PRESIDENT JÚDICE: No, no, no. I'm sorry if I  
18 confused it.

19 BY MR. MERIZALDE:

20 Q. Thank you, Mr. President.

21 I'm going to ask it again to make sure that it is  
22 clear.

23 Did you review the statements by the witnesses put  
24 forward by the Claimants, and that is Mr. Blanco, Mr. Andrade,  
25 Mr. Earl?

15:15 1 A. Yes, I did review that.

2 Q. Thank you, Mr. Aliaga.

3 Could you please read the last paragraph, the last  
4 sentence of Paragraph 13 of your First Statement.

5 A. "Except as otherwise indicated, the facts and matters  
6 on which I testify in this statement are within my own personal  
7 knowledge. Otherwise, I will identify the source. Counsel for  
8 the Claimants has assisted me by drafting this statement based  
9 on interviews with me. I have carefully reviewed the text and  
10 then confirmed that this statement accurately reflects my  
11 testimony."

12 Q. Thank you.

13 So, the last sentence--that was my question  
14 originally, and just to confirm, it says, "I have carefully  
15 reviewed the text, and I confirm that this statement accurately  
16 reflects my testimony."

17 So, let's just read the last sentence, just the last  
18 sentence, Paragraph 3, Second Statement.

19 A. "I have carefully reviewed and finalized the text and  
20 confirmed that this statement accurately reflects my  
21 testimony."

22 Q. Thank you.

23 Can I then understand that, based on both sentences,  
24 you reviewed the statements, and that these reflect your  
25 testimony accurately?



15:17 1 A. Yes.

2 Q. Okay. We're going to come back to this later on.

3 Mr. Aliaga, could you please read the statement, the  
4 first sentence of Paragraph 4 of your First Statement.

5 A. First sentence, Paragraph 4, Second Statement?

6 Q. Correct.

7 A. So Guaracachi's investments in new power generation  
8 capacity--

9 Q. That's the title, isn't it?

10 A. Yes.

11 "Bolivia claims that, throughout my tenure as General  
12 Manager, a systematic process of disinvestment of Guaracachi's  
13 fixed capital was carried out."

14 Q. Thank you.

15 And there is a footnote; correct?

16 A. Yes, Number 1. It reads, "Statement of Defense."

17 Q. And I understand that this takes you to Paragraph 46  
18 of the Counter-Memorial.

19 Let's now look at Tab 21. Paragraph 46. Could you  
20 please read it?

21 A. "All of the increases in the capacity generation, in  
22 EGSA's capacity generation had been funded with loans  
23 undertaken by the company, and in parallel EGSA's Shareholders  
24 starting in 2001 have carried out a systematic disinvestment  
25 process of the fixed capital of the company."

15:19 1 Q. Thank you very much.

2 I understand that you were the General Manager of  
3 Guaracachi starting in July 2004 and up to the date of  
4 nationalization; is that correct?

5 A. Yes, it is.

6 Q. And we have just read that Bolivia states in the  
7 Counter-Memorial that the disinvestment started in 2001; is  
8 that correct?

9 A. Yes.

10 Q. Therefore, Paragraph 4 in your Second Statement is not  
11 very accurate; correct? Why not? Would you like to correct  
12 that paragraph?

13 A. What did I say? I said that while I was General  
14 Manager.

15 Q. If you need to read it, read it.

16 A. "While I was Guaracachi's General Manager 2004-2010.  
17 Guaracachi undertook significant investments which almost  
18 doubled Guaracachi's generation capacity. Between 2004 and  
19 2009, although Bolivian electricity demand increased  
20 significantly, Guaracachi was the only company in the country  
21 to invest in significant new generation capacity, thus averting  
22 blackouts."

23 Q. Agreed, but let me go back, and I am going to read the  
24 paragraph that you read from your statement that this is the  
25 statement that clearly reflects what you said. "Bolivia claims

15:20 1 that throughout my tenure as General Manager, a systematic  
2 process of disinvestment of Guaracachi's fixed capital was  
3 carried out."

4 Am I reading correctly?

5 A. Yes, you read correctly.

6 Q. And later on you're saying that the Counter-Memorial  
7 that you referred to is referring to a longer period of time.  
8 It's referring to a period of time that also includes 2001.  
9 Correct?

10 A. Yes. I am saying that I do not agree with that. He's  
11 saying that starting in 2001 or starting in 2001 there was  
12 disinvestment.

13 Q. Thank you for the explanation, Mr. Aliaga. I would  
14 like to determine that Bolivia said that the disinvestment  
15 started in 2001. Do we agree on that? Do we agree that that  
16 is what Bolivia said?

17 A. Yes, that is what Bolivia said at Paragraph 46, and I  
18 indicated that I was--I was not agreeing with that, correct.

19 Q. But I am saying that Bolivia did not refer to just  
20 your tenure. They're referring to a longer period. Did you  
21 read the statement by Mr. Paz prior to preparing this  
22 statement?

23 A. Yes, and I disagree with it.

24 Given that I started in 2004, I was aware of what was  
25 going on in the company; therefore, I do not agree with what

15:22 1 Mr. Paz is saying.

2 Q. Let's now talk about the disinvestment.

3 A. If you allow me, I did not agree with the term  
4 disinvestment.

5 Q. Mr. Aliaga, we do not have enough time. There have  
6 been some changes in the time allocated, so just please address  
7 my question.

8 Please read the first two sentences of Paragraph 5,  
9 Second Statement.

10 A. Paragraph 5: "Bolivia and Mr. Paz referred to the  
11 decommissioning and sale of several less efficient generation  
12 units which I mentioned in my First Statement." Paragraph 2.  
13 Footnote 2. "Mr. Paz refers to these as divestitures which he  
14 claims were detrimental to Guaracachi. Mr. Paz claimed that  
15 Guaracachi also failed to invest in the San Matías rural  
16 electrification project."

17 And if you allow me to continue, Mr. Paz's statements  
18 are inaccurate in several respects.

19 Q. Thank you very much, Mr. Aliaga.

20 I understand that you do not agree with Mr. Paz when  
21 he says that the divestitures were detrimental to the State; is  
22 that correct?

23 A. They were not detrimental to the company or to the  
24 State. That is a mistaken concept.

25 Q. You are saying that Paz says that they were

15:23 1 detrimental to Guaracachi, but Paz does not say that, and so  
2 now you can take a look at Paz's statement. He's saying that  
3 they were detrimental to the State, and you can look at  
4 Paragraph 40 later on tonight and see what Mr. Paz said.

5 I also understand that you disagree with Mr. Paz's  
6 statement in the sense that some of the investments by  
7 Guaracachi were not authorized by the State; is that correct?

8 A. I don't know what you're--some of the divestitures  
9 were not authorized by the State.

10 Q. Well, I don't know what you're referring to.

11 A. Whatever Mr. Paz refers to was authorized by the right  
12 agency.

13 Q. I am going to ask you the question more directly.

14 Mr. Paz says that this investment took place without  
15 State authorization. Do you agree with that? Yes or no.

16 A. No.

17 Q. Would you please read Paragraph 6 of your Second  
18 Statement, sixth line from the bottom to the top, and starts  
19 with the "License Contract."

20 A. "The licensed contracts for Guaracachi's four power  
21 plants provided that subject to the approval of the  
22 Superintendency of Electricity, known as the Autoridad de  
23 Electricidad since 2009, Guaracachi could relocate, sell, or  
24 dispose of generation units in certain circumstances, including  
25 when these units were no longer being called upon to dispatch

15:26 1 power to the system.

2 Q. Thank you, Mr. Aliaga.

3 To better understand, you're saying that Guaracachi  
4 would be in a position to relocate, sell, or dispose of these  
5 units, as long as they had State authorization. Do we agree?

6 A. Yes, we do agree.

7 Q. I'm sorry to ask you this, but it was really striking  
8 when I read your statement. What is the difference between  
9 disposing of something and selling something?

10 A. Well, one can dispose of something just to move it  
11 away or to withdraw it from the generation area. If the  
12 Arbitrators allow me--

13 Q. Well, my question is what is the difference between  
14 selling and disposing of something.

15 PRESIDENT JÚDICE: He was explaining it.

16 THE WITNESS: I was explaining it.

17 Well, one can dispose of something by renting it,  
18 putting it away, turning it down, turning it off, or selling  
19 it.

20 In a given situation--and you are referring to the  
21 well-known turbines that Mr. Paz would like me to agree with  
22 2001 to the beginning of my tenure, those turbines were not  
23 called upon to generate capacity. They were outside the market  
24 because there was an excessive reserve where Guaracachi had  
25 already introduced at the beginning all of the generators and

15:27 1 power that meant that in 2001-2003, we had 35 percent reserve  
2 level in the interconnected system, but at some other point  
3 there were restrictions, limitations, and not even the  
4 Superintendency or the company would dare remove from the area  
5 or the License a generator.

6           So, that was not the case. All of the cases mentioned  
7 by Mr. Paz as divestitures were cases in which the units were  
8 not called upon to generate. They were expensive to operate.  
9 They were too old. They were expensive. Therefore, they were  
10 not going to be called upon.

11       Q.   So, to clearly understand and also to answer my  
12 question, we can understand that selling and disposing may be  
13 synonyms?

14       A.   That's not what I said. I can dispose of something by  
15 doing different things.

16           MR. SILVA ROMERO: I'm sorry, Mr. President, I need to  
17 intervene. Mr. Blackaby--this is the second time Mr. Blackaby  
18 has done this twice. He has said twice no, and he's saying it  
19 again. This is unacceptable.

20           PRESIDENT JÚDICE: You don't have to intervene because  
21 I was already doing this.

22           MR. BLACKABY: The objection was that the witness just  
23 answered the question, and it was a complete  
24 mischaracterization of the Witness's response, and  
25 mischaracterization of a witness's response is a valid

15:29 1 objection.

2 Thank you.

3 PRESIDENT JÚDICE: I would ask, please. Object  
4 before--the President will object, if it's the case. Thank you  
5 very much.

6 MR. SILVA ROMERO: I'm sorry to interrupt with this  
7 business, but if there is an objection in this type of  
8 proceeding, the lawyer says, "objection." We all stop doing  
9 what we are doing, the lawyer explains the reason for the  
10 objection. The lawyer for the other Party responds, and then  
11 the arbitration President resolves the issues and opinion on  
12 that, but I don't want to hear the yes and no and the coming  
13 back and forth.

14 PRESIDENT JÚDICE: Yes, I understand the mechanism,  
15 but some of these questions that lead to a wild objection did  
16 not include an assertion by the witness, and it is often the  
17 case that we can see mistakes by the lawyers, by the members of  
18 the arbitration, and the Tribunal, and also by the witness.  
19 I'm not saying that they are synonyms. I'm just saying that  
20 sometimes the situation is difficult, but if it is an  
21 objection, don't do it beyond the idea of just presenting a  
22 simple objection.

23 MR. MERIZALDE: Thank you very much, Mr. President.

24 My question has to do with the fact that some of the  
25 units were not entirely sold or transferred. They were



15:31 1 dismantled. And I'm trying to understand if the authorization  
2 of the State was necessary to do that.

3 BY MR. MERIZALDE:

4 Q. Mr. Aliaga, the approval you just mentioned, if I  
5 understand it correctly, is reflected in the change of the  
6 operation license for the plant; is that true?

7 A. Yes.

8 Q. In Paragraph 6 of your Second Statement, and of course  
9 you can refer to it if you wish, if you go to Line 6 on Page 4  
10 you saying that the economic incentive for the generators was  
11 to transfer the inefficient units to a location where they  
12 would be called to dispatch more often or to replace them with  
13 more efficient units. Do you agree? Did I read this  
14 correctly?

15 A. Yes, you did read it correctly.

16 Q. Thank you very much.

17 Mr. Aliaga, is it correct to say that if a unit is  
18 inefficient, it would be foreseeable on the basis of these  
19 incentives that the Government would provide the authorization  
20 for their displacement, sale, or disposition?

21 A. Yes, undoubtedly the paragraph that I am looking at  
22 says it very clearly. There was an economic incentive in the  
23 current regulatory framework, and this was the basis for  
24 attracting investors. So, legal certainty should be afforded  
25 the investors, whether it be a national investor or an

15:32 1 international investor. We had to be more careful with foreign  
2 investors because of that need that existed, and that is why  
3 the reform was implemented.

4 Now, when a unit is inefficient, well, when is it  
5 inefficient? When it costs a lot of money to operate to  
6 generate one kilowatt hour.

7 Q. Can I ask you a question now?

8 A. Yes, of course.

9 Q. So, if it is inefficient, it is necessary to have the  
10 authorization by the State?

11 A. Yes, yes, of course.

12 Q. You also said, and I would like you to confirm this,  
13 that giving these incentives that you just mentioned, it would  
14 be perceivable for the State to grant authorization for this  
15 displacement or sale?

16 A. Yes, that is correct.

17 Q. Thank you very much.

18 Go to Tab 2, please. This is C-22. It is the License  
19 for the operation of Guaracachi.

20 A. Yes.

21 Q. It's Tab 2.

22 My apologies. This document doesn't really have  
23 documents, but you can see a Bates number, but also the number  
24 is handwritten. I don't know if you see it.

25 And I'm going to show you Page 4. There is a

15:35 1 handwritten four you're going to see here.

2 A. Yes, four.

3 Q. I'm going to ask you to go back to Tab Number 1. I  
4 think I made a mistake. It's actually Tab Number 1. And we're  
5 talking about C-22. And, as I was saying before, this is the  
6 License Agreement for the Guaracachi Plant. And now underneath  
7 the coat of arms here you're going to see Page 4. Could you  
8 please read (b), which is in Line 9.

9 A. Let's see now.

10 PRESIDENT JÚDICE: I can't see (b). Where is (b)?

11 MR. MERIZALDE: It's Line 9 of Section(b).

12 PRESIDENT JÚDICE: Oh, yes, (b).

13 THE WITNESS: So, "Guaracachi in this case, say, the  
14 holder, shall maintain all its generating units available and  
15 in operation permanently unless they become unavailable because  
16 of force majeure that is duly justified or if they are not  
17 available because of scheduled maintenance."

18 BY MR. MERIZALDE:

19 Q. That is what we're saying, that Guaracachi needed  
20 authorization to take these units out of the generation park;  
21 is that correct?

22 A. Yes, that's correct.

23 Q. Thank you very much.

24 A. Now, what unit are you making reference to, expressly  
25 speaking?

15:37 1 Q. Well, right now I'm talking about in general?

2 A. Yes, I understand.

3 Q. Okay. Very well, but I'm going to refer now to  
4 inefficient units. I'm going to ask you to go to the same  
5 document, and you're going to see Page 6 to the right,  
6 but--well, excuse me, it's Page 5. I'm going to ask you to  
7 look at (g).

8 A. "If during the term of this generation line or the  
9 extension of the License, as the case may be, one or more  
10 generation units are displaced from the economic dispatch and,  
11 thereby, unavailable for firm Capacity Payments, the holder  
12 shall be free to transfer, move, sell, or relocate or eliminate  
13 those units as it sees fit, and the holder shall ask for the  
14 change of the generation License, and the Superintendency shall  
15 modify the Generation License or the extension or grant the  
16 extension of the License, as the case may be, so as to reflect  
17 these changes in accordance with the Electricity Law."

18 Q. Thank you very much, Mr. Aliaga.

19 So from that, we can understand that if the unit is an  
20 inefficient unit, one can see that the Superintendence or AE as  
21 of '09 will authorize that modification; correct?

22 A. Yes, absolutely correct.

23 Q. Thank you very much. Units Aranjuez one to Aranjuez  
24 seven were inefficient units; correct?

25 A. At the time, yes, they were. From an economic

15:40 1 viewpoint, they were.

2 PRESIDENT JÚDICE: At what time are you referring to?

3 THE WITNESS: At all times.

4 BY MR. MERIZALDE:

5 Q. And since we're talking about that moment in time,  
6 Karachipampa one in '04 was also inefficient; right?

7 A. In '04 and in 2010, Karachipampa and at all times,  
8 well, Karachipampa was a unit that was designed to produce  
9 27 megawatts of capacity, and it was located in Potosi, 4,000  
10 meters over the sea level, and the yield was only 11 megawatts.  
11 From an economic viewpoint, it was evidently inefficient, but  
12 it was necessary to provide service in the area where it was  
13 located.

14 The interconnected system had a number of supply  
15 points. One of them was Potosi, and then the Sucre area, and  
16 these two shared the same network.

17 Q. Thank you very much for your explanation, but just to  
18 clarify, have you told me from that viewpoint that Karachipampa  
19 was an inefficient unit. Yes or no?

20 A. It was a unit that was expensive to operate and to  
21 maintain as well.

22 You know that the Karachipampa unit was a Rolls Royce  
23 turbine, and I'm sure Europeans know about this. This turbine  
24 was designed for Concord planes. Ultimately, this was not a  
25 very good airplane, so it was taken off the market, and for the

15:42 1 reason there weren't many Rolls Royce Olympus turbines in the  
2 market, and the same thing applied for parts. Every time that  
3 you have--every time that you had to maintenance to what you  
4 had to send the core to Great Britain, and so from the  
5 viewpoint of maintenance and from the corporate viewpoint, it  
6 was a very expensive unit to maintain.

7 Now, from the viewpoint of supply in the system and  
8 the viewpoint of the Potosi, it was necessary, but it was there  
9 in Santa Cruz. Instead of 27, it yielded 11.

10 Q. Just 11, okay. Thank you very much for your  
11 explanation.

12 Now we're going to talk about these two units, and  
13 we're talking about Aranjuez 4 and Aranjuez 7. Do you remember  
14 them?

15 A. Yes.

16 Q. Now, these plants were decommissioned in the  
17 Year 2000, December 6, 2000. Do you remember this?

18 A. Yes, that's what the records say. I wasn't there. I  
19 was at Guaracachi at that time.

20 Q. These units, as I understand, were transferred to a  
21 subsidiary called ESA, and now it's Energais at the beginning  
22 of '04; correct?

23 A. There was a similar operation, yes, to the one that  
24 you're mentioning.

25 Q. For the record, I'm talking about Paragraph 11 of your

15:43 1 Second Statement. That's exactly what I'm mentioning.

2 A. Yes, yes.

3 Q. So, please confirm that these units were transferred  
4 to ESA as the beginning of '04. Can you confirm this?

5 A. The transfer as such took place at the end of 2004 and  
6 early 2005.

7 Q. They were transferred to ESA. Can you confirm this?

8 A. Yes.

9 Q. I understand that under this transfer, apart from  
10 these two these two units, EGSA also wanted to transfer all  
11 dual engines, Aranjuez 1, 2, 3, 5, and 6 and also Karachipampa;  
12 correct?

13 A. Yes, I had knowledge of this.

14 Q. Yes, you mentioned this in Paragraph 2 of your  
15 statement. EGSA wanted to withdraw all these units from the  
16 interconnected system. Do I understand this correctly?

17 A. No, you didn't understand it correctly.

18 Members of the Tribunal, remember that I started in  
19 EGSA in July '04, and I had to know what was going on  
20 management-wise. There was a new administration, and the  
21 Shareholder had established a new action plan.

22 As I said at the beginning, the action plan had a  
23 purpose--had a purpose, which was to provide profits for the  
24 company under the conditions established in the License  
25 Agreement, and the reforms that were carried out, so there was

15:45 1 trust in a system as such.

2 Now, the transfer mentioned by the lawyer took place  
3 before I started working for Guaracachi, and they had a  
4 specific purpose: To generate benefits for the company.

5 As I understood the transfer process that was  
6 mentioned, the purpose of it was to optimize the system by  
7 introducing new resources in exchange for units that had a zero  
8 value in the books, like those dual-fuel engines.

9 Q. Mr. Aliaga, I think we are really far away from the  
10 base of our question because we don't have a lot of time.

11 PRESIDENT JÚDICE: Yes, of course. Sometimes you have  
12 to provide context, but when that is not the case, please  
13 answer the question that was posed to you. You have much more  
14 information than we do. It is natural, of course, that you  
15 would like to say some more things, but it is not necessary to  
16 do that.

17 THE WITNESS: Yes. Actually, Mr. President, I wanted  
18 to clarify all these things to you because you have less  
19 information. The lawyer has more information than I have been  
20 in the company, so my apology.

21 BY MR. MERIZALDE:

22 Q. Yes.

23 A. Rest assured that I have all the information.

24 Q. Yes, that's what I said.

25 A. Yes, but the lawyer and I have all the information.



15:47 1 Q. And I know we're talking about the time before you  
2 became management, but you know that the Government intervened  
3 because EGSA did not have the permits to transfer units  
4 Aranjuez 1, 2, 3, 5, and 6, and the Karachipampa units; is that  
5 correct?

6 A. Yes, it's correct.

7 PRESIDENT JÚDICE: Please remember just not to nod,  
8 but to say verbally.

9 THE WITNESS: Yes, that's correct.

10 MR. MERIZALDE: Thank you very much.

11 BY MR. MERIZALDE:

12 Q. Please go to Tab 3. For the record, this is  
13 Exhibit 12 or rather Annex 12 from Paz's statement. I'm going  
14 to ask you to go to the middle of the page and look at  
15 Subsection C. This is a letter by the Superintendency of  
16 Electricity sent to EGSA after the attempt of withdrawing these  
17 machines from the company, and this is dated 20 July '04.

18 A. The transfer of the property of these utilities  
19 without attending to their proceedings established by law is a  
20 non-performance by the holder of Clause 7 of the License  
21 Generation Contract and, consequently, it is a cause for  
22 revocation according to Clause Number 13.

23 PRESIDENT JÚDICE: Very well. This was a letter  
24 addressed to you, we see your name here, and you are informed  
25 that the transfer of the engines without any authorization from

15:49 1 the Government will lead to the revocation of the License; is  
2 that your understanding?

3 THE WITNESS: Yes, that is okay--yes, that is my  
4 understanding.

5 BY MR. MERIZALDE:

6 Q. Mr. Aliaga, did you transfer, yes or no, other units  
7 without the authorization of the Superintendency?

8 A. Did I transfer other units without the authorization?  
9 No.

10 Q. Let me remind you that we are talking about all of the  
11 units except for Aranjuez 4 and 7; correct? Is that correct?

12 A. Yes, that's correct.

13 Q. Isn't it true, then, on 24 November '06 when you were  
14 the General Manager, EGSA, represented by you, signed with  
15 European Power Systems a contract for the sale of the engines  
16 known as Aranjuez 5 and Aranjuez 6?

17 A. Yes.

18 Q. Now, to better understand the players in this  
19 transaction, European Power Systems was a Rurelec Group  
20 company; correct?

21 A. I have no knowledge of that, and in my understanding  
22 it was not a company linked to it, according to the rules in  
23 that regard.

24 Q. You said that you read the statements by Mr. Lanza.  
25 Can you confirm something to me. If EPC, is it the same

15:51 1 company that in 2005 sold for 616 Jenbacher engines Aranjuez 9  
2 and 12 to EGSA; correct?

3 A. Yes, correct.

4 Q. I'm going to ask you to read a paragraph that my  
5 colleague is going to give to you, which is the Second  
6 Statement of Mr. Lanza, but I'm sorry it's not in the bundle,  
7 but this question just occurred to me, and you could find it in  
8 the USB key.

9 PRESIDENT JÚDICE: The Second Statement? What  
10 paragraph?

11 BY MR. MERIZALDE:

12 Q. You have a Spanish and an English version. It's  
13 Paragraph 67, but I'm going to ask you to read it in Spanish so  
14 I can understand it better.

15 A. We have two versions here; right?

16 Q. Yes.

17 A. Sixty-seven you say; right?

18 In 2006, Mr. Lanza says--do you want me to read the  
19 whole paragraph?

20 Q. Yes, please.

21 A. "In 2006, Karachipampa commissioned four Jenbacher 616  
22 engines for the Aranjuez plant. Three years later, on 13  
23 August '08, Guaracachi installed an additional such engines of  
24 same plant. All seven engines were acquired from Rurelec.  
25 Each one of these engines has an installed capacity of 1.9

15:53 1 megawatts for a total increase in capacity of 13.3 megawatts."

2 Q. Thank you very much.

3 Mr. Aliaga, are you saying that Mr. Lanza is lying?

4 A. That phrase is wrong.

5 Q. Thank you very much.

6 Mr. Aliaga, you just told me that on 24 November '06,

7 EGSA, in an agreement that you signed, sold to European Power

8 Systems the engines known as Aranjuez 5 and 6; correct?

9 A. Yes.

10 Q. Isn't it true, Mr. Aliaga, that the request for the  
11 modification of the License of the Aranjuez Plant to withdraw  
12 these two engines was asked or was required of the  
13 Superintendency on 24 December '06?

14 A. Let's see. Allow me to read again what I have said.

15 Q. If you want, you can refer to Tab 9, to April '07?

16 A. Okay.

17 Q. Now, this is C-136, Exhibit 1--C-136.

18 A. Yes.

19 Q. And in the second paragraph of the whereas clauses  
20 they explained the following.

21 Just one moment.

22 But if you go to the second whereas on Page 2, it says  
23 that EGSA, through a 29 December '06 document, requested the  
24 modification, extension of the Generation License in the  
25 following terms, and then it mentions Aranjuez 5 and 6.

15:56 1           Let me ask you again, Mr. Aliaga.

2       A.    I didn't see the paragraph you read.

3       Q.    Well, it's the first paragraph on Page 2.  It's the  
4  whereas clauses.

5       A.    29 December '06; right?

6       Q.    Let me ask you again:  Isn't it true that the request  
7  for modification of this License was requested on  
8  29 December '06?

9       A.    It was requested on 29 December '06.

10      Q.    That is to say, Guaracachi asked for this License to  
11  be modified one day and one month and five days late after it  
12  had sold the engines; correct?

13      A.    Yes, indeed, that's correct.

14      Q.    You said to the Tribunal a few moments ago that when  
15  you were the Manager, Guaracachi had never sold units without  
16  having the necessary authorization.  Would you like to correct  
17  your assertion?

18      A.    I can assure you that we conducted this transaction in  
19  the understanding that those engines were not included in the  
20  economic dispatch.  Because of the relationship we had with the  
21  Superintendency, the Superintendency knew of this operation.  
22  We didn't have the chance to expand--well, they didn't dare  
23  approve or deal with issues such as this because of the  
24  experience that they had in the past with units that they  
25  erroneously thought were harming the State when the units were

15:58 1 the property of--

2 PRESIDENT JÚDICE: Well, but just to clarify, when you  
3 talk about "them," you're referring to the Superintendency.

4 THE WITNESS: Yes, the Superintendency.

5 PRESIDENT JÚDICE: So the Superintendency knew about  
6 the sale before authorizing it or did the Superintendency find  
7 out about this after it authorized it.

8 THE WITNESS: I don't understand that.

9 Well, it knew about this, but they didn't want to  
10 include this in the document. This was the background that I  
11 knew of because of the relationship I had with the  
12 Superintendency, and they issued this, and they didn't let the  
13 units out of the system.

14 I, and we were all convinced that, if you look at  
15 Paragraph 11--no, if you look at the obligations that arise out  
16 of the License agreement, we were able to conduct a transaction  
17 such as this.

18 Q. Well, I remind you that these are the ones that we  
19 just read. The obligation that we read included in Clause 6  
20 and the authorization that we had seen in Clause 10, well,  
21 these say that in spite of the fact that they're inefficient or  
22 that they're out of Commission, it is necessary to modify the  
23 License for them to be withdrawn from the generation park.

24 A. Yes, the Superintendency did give its approval to  
25 withdraw them from the License.

16:00 1 Q. Yes, but the approval was given after they were sold;  
2 right?

3 A. Yes, probably you can say from a formal viewpoint that  
4 this was approved after they were sold. They knew that they  
5 had been sold, and they had been leased, but they were still  
6 connected to the park.

7 Q. We're going to go back to Paragraph 11 of your First  
8 Statement--of your Second Statement. Could you please read the  
9 second sentence, Paragraph 11.

10 A. Even though these units were not--while the  
11 Karachipampa units were really being called upon to dispatch  
12 electricity in the detached system applicable to the SIN and  
13 thus not profitable units for Guaracachi, they were well suited  
14 to generate electricity in isolated systems in remote rural  
15 areas in which it is intended to operate.

16 Q. Let's analyze this in sections. You're saying that  
17 the Karachipampa unit was ready to generate electricity in  
18 isolated systems in remote rural areas. What is the capability  
19 of the Karachipampa unit?

20 A. This part could be mistaken in the sense that  
21 Karachipampa could be adapted to rural areas because it was  
22 very powerful, and this was more up for the Worthington pieces  
23 of equipment.

24 Q. So, please confirm to me that there is no isolated  
25 rural area that requires more than 1.5 as an injection or 1.6

16:02 1 without exporting?

2 A. Yes, maybe.

3 Q. Mr. Aliaga, since we have determined that Karachipampa  
4 would not be economical in an isolated system, the Karachipampa  
5 unit--and you're also saying this at Paragraph 11--was an  
6 inefficient unit; correct?

7 A. It was not economical to operate because we had losses  
8 in Karachipampa, and that is the information that I had from  
9 the business management office.

10 Q. So, just to confirm, you're telling me that money was  
11 lost with Karachipampa's operation?

12 A. Yes.

13 Q. Isn't it true, Mr. Aliaga, that during your management  
14 as General Manager EGSA requested the amendment of the License  
15 Contract in Karachipampa to remove the only generating unit;  
16 that is to say Karachipampa 1?

17 A. Yes.

18 Q. And based on the logic that I just mentioned at 10(g)  
19 of the License, wouldn't it be logical to say that the  
20 Superintendency AE would have approved of this request?

21 A. You're referring to the possibility of--here we have  
22 two options, to removing a unit from the generation park. One  
23 is when the units are not called upon to produce capacity based  
24 on--to generate revenue based on fixed capacity, and the other  
25 option is when, let's say, a year before you're requesting a



16:04 1 unit to be removed from the generation park, so you had two  
2 options. One was not to generate--was because they did not  
3 generate revenue for the capacity that they provided, and the  
4 second one was when there is at least a requirement or a  
5 request is made a year ahead of time.

6 Q. And the Superintendency then has the power within one  
7 year to accept or not that withdrawal. Thank you very much,  
8 you just taught me something that I did not know of.

9 And now I'd like for you to tell me that the  
10 withdrawal of the Karachipampa unit could have been anticipated  
11 at 365 days.

12 A. Well, not necessarily. We needed the approval of the  
13 Superintendency, but this is under--

14 Q. But in normal circumstances this would have been  
15 removed; correct?

16 A. Yes, it could be removed.

17 Q. Let's look at Tab 18. This is the statement by  
18 Mr. Paz.

19 A. Did you say 18?

20 Q. Yes, 18.

21 Let's look at Item Number 3 that reads, "Review of the  
22 authorization to withdraw the Karachipampa unit as provided by  
23 the former Board of Directors and approval of the maintenance  
24 for the unit," and then it says to cancel the request to  
25 withdraw the Karachipampa unit as stated in the minutes of the

16:06 1 Board 12010 dated January 27, 2010.

2           The meeting, the Board of Directors meeting took place  
3 after nationalization; correct?

4       A.    Yes.  That's the reason why I haven't read it, but--or  
5 rather, obviously I have read it, but this is a decision that  
6 was made after, afterwards.

7       Q.    So, let's assume that what I'm telling you is true.  
8 Therefore, Mr. Aliaga, I'm asking you:  If nationalization  
9 hadn't taken place and the new Board of Directors had not  
10 reversed the decision to remove Karachipampa, wouldn't you have  
11 anticipated that the Karachipampa License was going to be  
12 accepted, the modification of the License was going to be  
13 accepted by the Superintendency?

14       A.    No, I don't think so.  Obviously, Mr. Andrade is the  
15 Expert on the management of the wholesale market, but the  
16 decision to eliminate Karachipampa because of the financial  
17 reasons that I mentioned, and we were late in submitting our  
18 request.  We should have done that in August-September 2009  
19 because it had reached the end of the operational life after  
20 the maintenance that we conducted in 2005.  Obviously, it was  
21 risky to continue to operate a unit in those circumstances, and  
22 maintenance was also expensive.

23           In 2009, the person in charge of the Aranjuez Plant  
24 was analyzing options for maintenance, bids, and the issue of  
25 spare parts by Rolls Royce was a little bit complicated.  There

16:08 1 was an option, we got a bid, and we needed to make a decision.

2 We were late in presenting the request for the  
3 License, for removing the License, but the information  
4 presented to CNDC every six months for the upcoming period for  
5 the short- and medium-term program, we indicated that the  
6 unit--the plan was to remove it in August 2010, but it was not  
7 that we breached anything.

8 Q. No, I understand.

9 A. But the plan was in August 2002 to observe the  
10 possibility or the consequences of removing the License in  
11 Karachipampa, but it's starting in May 1st. We knew that CNDC  
12 and also the Superintendency had rejected that; therefore, the  
13 unit continued--was going to continue operational. It wasn't a  
14 decision as Mr. Paz mentioned; rather, CNDC introduced it to  
15 continue the operations.

16 Q. And how did you learn of what you just mentioned?  
17 That is to say, that CNDC would have rejected it?

18 A. Because as long as the Superintendency does not  
19 approve it, the unit continues to be considered as part of the  
20 generation park.

21 Q. In spite of the fact that Article 10 of the License  
22 says that the Superintendency has to approve it if it is  
23 inefficient?

24 A. Let me tell you that we removed the unit a year  
25 earlier, and you never know whether the Superintendency is

16:10 1 going to accept this within a year or not. We were going to  
2 tell the Superintendency it is dangerous to continue to operate  
3 with this unit, unless we have it die at the very end. So,  
4 that's why we had the goal of removing it in August and replace  
5 it.

6 Q. But when you offered me a couple of minutes ago about  
7 an explanation about the two options for the License, you also  
8 said that in both cases--that is to say, 365 days or the  
9 inefficient unit the Electricity Authority would approve the  
10 License?

11 A. They should. In many cases they could say just leave  
12 it there because there are some issues. Can you leave it? As  
13 I mentioned in my report, in my statement, at one point we  
14 thought we had a partnership with the Government, and we  
15 accepted several things.

16 Q. Mr. Aliaga, could you please read the first phrase,  
17 Paragraph 40. First sentence, Paragraph 40, first statement.

18 A. Are you referring to the challenge to Resolution 40?

19 Q. Yes.

20 Please read the first one to the very first period.

21 A. "On 22 March 2007, as legal representative of  
22 Guaracachi, I find a challenge to Resolution 40 in an  
23 administrative recourse before the Superintendency of  
24 Electricity."

25 Q. There you see Footnote 29 that sends you back to

16:12 1 document--it's rather Footnote 28 that sends you back to  
2 Exhibit 134, and that document is at Tab 8. Could you please  
3 read just the second line where it says Superintendent of  
4 Electricity, second line, the very first page.

5 A. As part of the appeal process--no, I am just saying  
6 below the Superintendent of Electricity submits evidence as  
7 well as content.

8 Q. Thank you very much, Mr. Aliaga. I'm not going to ask  
9 you legal questions. I understand that you are an engineer,  
10 but let me tell you that the document that you wanted to quote  
11 there is at Tab 7, and this is the appeal as presented and  
12 clarified.

13 MR. MERIZALDE: And this is dated February 15, 2007,  
14 for the record.

15 BY MR. MERIZALDE:

16 Q. That is to say this is the date of the appeal--the  
17 date of the appeal should be February 15, 2007; correct? In  
18 your statement. I am referring to your statement. It should  
19 read February 15, 2007.

20 A. Let me see.

21 The appeal that you're referring to is in connection  
22 with Resolution 40, and that one was submitted and signed, and  
23 I signed it on March 22nd, 2007.

24 Q. Mr. Aliaga, on April 3rd, 2008, you presented an  
25 appeal that is EGSA before the Supreme Court of Justice, and on

16:15 1 June 10, EGSA presented or submitted a second one; is that  
2 correct?

3 A. Yes.

4 Q. That means that up to the nationalization there would  
5 have been two years and less than a month since these appeals  
6 were submitted; correct?

7 A. So you're referring to 2007?

8 Q. 2008. April 3rd, 2008, and June 10, 2008.

9 A. So, we're thinking of April 3rd, 2008.

10 Q. So, we would have had two years and less than a month  
11 go by; right?

12 A. Yes, before the Supreme Court?

13 Q. Yes, correct?

14 A. Yes.

15 Q. And before the nationalization.

16 Do you think that that's an excessive period of time?

17 A. Yes, it seems excessive to me.

18 Q. Please, could we move to Tab 12.

19 MR. MERIZALDE: And, for the record, this is Exhibit  
20 R-93, minutes of the Board of Directors, 11/2009. Please move  
21 on to Page 7.

22 THE WITNESS: So you said seven?

23 Q. Yes, correct. I am--if you look at the bottom of  
24 Page 6, it says: "Mr. Jaime Aliaga took the floor to remind us  
25 that EGSA has submitted an administrative claim before the

16:17 1 Supreme Court of Justice in connection with the determination  
2 of the services of national taxes to--for repairs--for changes  
3 to the VAT appropriation, and then it says later on he also  
4 indicated that the administrative proceeding is ready to be  
5 decided and, however, based on the report by Mr. Jose Aguilera,  
6 the Supreme Court of Justice is just deciding on issues or  
7 publishing their decisions on issues of 2005. Therefore, it is  
8 not very likely to have an immediate position on this issue.

9 Mr. Aguilera, who was Mr. Aguilera?

10 A. He was one of the lawyers, one of the lawyers of  
11 Guaracachi and in-house lawyers.

12 Q. And Mr. Aguilera told you that a proceeding that  
13 started in 2005 and goes up to 2009 could take longer. Is my  
14 understanding correct?

15 A. Well, based on the information and his point of view,  
16 that was correct, that--but that's a legal issue.

17 Well, this is something that has nothing to do with  
18 one's rights.

19 Q. This delay has nothing to do with it, so it was  
20 expected, then, that by May 1st, 2010, these appeals that had  
21 been brought to the Supreme Court of Justice could have taken  
22 much longer?

23 A. Yes, they could take longer, but we thought that it  
24 was it not fair.

25 Q. Could it be expected? Yes or not?

16:19 1           A.    Back then we did not indicate whether it is something  
2 that could be expected or not.

3                    Then the Tribunal had no members, but there had  
4 already been an amendment by the Supreme Court, and there was a  
5 reform introduced, and there were new justices that could  
6 be--that could understand in these things, but could hear the  
7 issues, but I think that when we started with Mr. Aguilera  
8 there were only one or two justices, and I understand that in  
9 2009 they completed all of the Supreme Court body.

10                   PRESIDENT JÚDICE: Do you need a break?

11                   COURT REPORTER: Yes.

12                   (Comment off microphone.)

13                   MR. MERIZALDE: If you allow me, Mr. President, we  
14 only have one or two questions left to conclude with this  
15 issue.

16                   BY MR. MERIZALDE:

17           Q.    Mr. Aliaga, did you read the statement by Mr. Carlos  
18 Quispe?

19           A.    I did read his statements but not very thoroughly.  
20 Since you mentioned, I'm not a lawyer, and I may express my  
21 disagreement in connection with some of his statements, but I  
22 am not a lawyer.

23           Q.    Mr. Aliaga, thank you very much for your time.

24                   MR. MERIZALDE: I have no further questions.

25                   PRESIDENT JÚDICE: So, we're going to have a break 15



16:21 1 minutes.

2 MR. MERIZALDE: If you allow me, Mr. President, I'm  
3 going to ask the President to inform the witness of the proper  
4 conduct during the breaks.

5 (Comment off microphone.)

6 PRESIDENT JÚDICE: So, we're going to have a 15-minute  
7 break, and please do not talk to anyone of the legal team or  
8 anyone who is here in this in connection with this proceeding.  
9 This is an internal rule.

10 Thank you.

11 (Brief recess.)

12 PRESIDENT JÚDICE: Good afternoon, Mr. Aliaga, again.  
13 We are going to resume our session. Now you are going to  
14 answer questions posed by lawyers to my your left.

15 MR. BLACKABY: Thank you.

16 Members of the Tribunal, we took advantage of the  
17 break to copy a couple of exhibits from the record that would  
18 be relevant to the redirect to make it easier for you and to  
19 give one to the witness as well. Thank you.

20 PRESIDENT JÚDICE: Okay.

21 MR. BLACKABY: I just want to make sure that  
22 Respondent has a copy before I start.

23 Okay. Good.

24 REDIRECT EXAMINATION

25 BY MR. BLACKABY:

16:47 1 Q. Mr. Aliaga, you were asked various questions--and by  
2 the way, if you will respond in Spanish, I can ask the  
3 questions in English.

4 You were asked various questions about the withdrawal  
5 of ARJ-5 and 6. Do you recall?

6 A. Yes, I remember, yes.

7 Q. And you recall that you were referred by Mr. Merizalde  
8 to the date of the sale agreement which was the 24th of  
9 November 2006. Do you recall?

10 A. Yes, I do remember.

11 Q. Do you recall that an issue was raised about that date  
12 of the document pre-dating the date that the withdrawal was  
13 authorized? Do you recall?

14 A. Yes, I do remember that.

15 Q. Okay. Can we go to Tab 6 of the bundle that Bolivia  
16 has prepared for your examination, which is Exhibit C-124,  
17 which is the Contract for that sale.

18 A. Yes.

19 Q. Could you read the first numbered clause, just the  
20 first two lines.

21 A. Number 4?

22 Q. No, no. The first numbered clause, that is to say,  
23 Clause 1, exactly. Just the first two lines.

24 A. Okay. Are you referring to purpose?

25 Q. Yes.

16:49 1 A. Subject to the terms and condition of this Purchase  
2 Agreement--

3 Q. That's fine. I just want to get that point clear.  
4 Are you reading the English original and translating  
5 it?

6 A. I have this in English.

7 Q. Okay. Perhaps if you could read it out in English as  
8 the original document to avoid any questions on translation.

9 A. Clause 1, Purpose: Subject to the Terms and  
10 Conditions of this Purchase Agreement, seller shall sell and  
11 deliver and buyer shall purchase, pay, and accept the equipment  
12 items described in Annex A, Equipment.

13 Q. Thank you.

14 Could you now turn to Clause Number 5. What's the  
15 title of Clause Number 5?

16 A. Payment.

17 Q. And could you look to 5.1.2, and could you read 5.1.2.

18 A. U.S. dollars, 475,000 United States dollars via wire  
19 transfer within 10 days after receipt by the buyer of written  
20 confirmation that seller has received all necessary consent to  
21 sell the equipment within the territory of the Republic of  
22 Bolivia.

23 Q. Right.

24 So, when was full payment due for the plant?

25 A. Repeat the question?

16:50 1 Q. Under that--I will change to Spanish.

2 Under the terms of the clause, when did the buyer have  
3 to effect payment for the balance price?

4 A. After 10 days--well, 10 days of the receipt from the  
5 buyer of written confirmation that seller has received all  
6 necessary consents to sell the equipment within the territory  
7 of Bolivia.

8 Q. Okay. And can you turn to--could you please go to Tab  
9 Number 9 of the same document--well, actually of the same  
10 bundle.

11 A. Yes. This is Resolution SSDE 107?

12 Q. Yes.

13 Would this be the necessary consent?

14 A. This is a consent by the Superintendency to withdraw  
15 from the License Units ARJ-5 and 6. This is what we were  
16 requested.

17 When we examined the License Agreements--and if you  
18 allow me to go back to the clause the lawyer had mentioned in  
19 connection with the option to withdraw units, when they no  
20 longer dispatched power, one could just withdraw those units.  
21 I can go to the clause--

22 Q. Just in the interest of time, my colleagues--I'm happy  
23 if you do answer, but I think you answered my question.

24 A. Okay.

25 Q. I'm sympathizing with Mr. Merizalde.

16:52 1 (Laughter.)

2 MR. MERIZALDE: Thank you, Mr. Blackaby.

3 BY MR. BLACKABY:

4 Q. Okay. I would like for you to look at one of the  
5 documents that we have distributed. This is C-98, Exhibit  
6 C-98. It's a paper copy. I think you have it. And this is  
7 the Financial Statement of 2006 of Guaracachi.

8 A. Yes.

9 Q. It's all very clear here, but I would like for you to  
10 look at Page 59 at the bottom.

11 A. Yes.

12 Q. Please go to the second paragraph.

13 A. We consider important--are you referring to that one?

14 Q. Yes.

15 A. We consider that it is important to report to the  
16 Shareholders that as mentioned in the note to the Financial  
17 Statements in the last paragraph of the external Audit Report  
18 where, aforementioned, Worthington Engines 5 and 6 in the  
19 Aranjuez Plant are under a Generation License, and their  
20 transfer to the company known as European Power Systems AG is  
21 subject to the decommissioning of these engines from the  
22 License in the terms and conditions of simultaneous replacement  
23 of units and--that have more power, more installed capacity  
24 requested by the Superintendency in the note dated  
25 December 2007.

16:55 1 Q. Very well.

2 And as far as you can remember, the transfer of the  
3 engines was done according to this Note to the Financial  
4 Statements.

5 A. Yes.

6 Not only that, but it also was in agreement with the  
7 License Agreement, and it allowed the operator to withdraw any  
8 unit, and--that was in those conditions. That is to say, that  
9 it did not benefit from Capacity Payments. We had to  
10 communicate this to the Superintendency, so that they could be  
11 formally decommissioned. One could dispose of them before  
12 selling, renting them out, et cetera, and then communicate this  
13 to the Superintendency ex post or simultaneously for the  
14 Superintendency to authorize the decommissioning of the  
15 License.

16 Q. Very well.

17 And a number of questions were posed to you in  
18 connection with Karachipampa and the state of Karachipampa at  
19 the time of nationalization. Do you remember this?

20 A. Yes, I do.

21 Q. Very well.

22 Let's go to the other document that you have, which is  
23 Exhibit--or rather, Annex 8--Annex 8 to Mr. Paz's statement  
24 submitted by Bolivia. This is a document for the National  
25 Committee for the CNDC.

16:56 1           What is the date of this document?

2       A.    It's 30 April of 2010.

3       Q.    Was this before or after nationalization?

4       A.    It was one day before.

5       Q.    Could you please go to Page 10.

6       A.    Yes.

7       Q.    You have a list of plants here, and what is the

8 heading here?

9       A.    Capacity available as of late April 2010.

10      Q.    Is Karachipampa included in this list?

11      A.    Karachipampa 1, in connection with the thermoelectric

12 units, yes, you can see it here. It has a capacity of

13 1299 megawatts and high voltage of 1270.

14      Q.    Could you read, please, 4.2.

15      A.    Extensions and withdrawals of generation. According

16 to the information submitted by the agents and by the AE, which

17 is Note AE-359-DPT-432010, the capacity of generation will be

18 indicated in the graph according to the additions and

19 withdrawals.

20      Q.    And if you go to Page 11, you will see the list of

21 additions or withdrawals of units of generation.

22      A.    Yes.

23      Q.    Can you see Karachipampa there?

24      A.    There is no Karachipampa there.

25      Q.    According to your reading of this, what was the

16:58 1 position of the CNDC in connection with the withdrawal of  
2 Karachipampa before the nationalization of 30 April 2010?

3 A. As I explained to Respondent's counsel before, the  
4 Superintendency did not accept the withdrawal, and what Mr. Paz  
5 was saying was not in line with the truth.

6 Q. Thank you very much, Mr. Aliaga.

7 MR. BLACKABY: We have no further questions.

8 MR. MERIZALDE: I need 30 seconds, Mr. President. I  
9 don't know if I have a question or not. And I can ask  
10 Mr. Blackaby to use his chronometer to decide whether 30  
11 seconds have passed.

12 MR. BLACKABY: Any recross has to arise out of the  
13 redirect.

14 MR. MERIZALDE: Thank you very much.

15 RE-CROSS-EXAMINATION

16 BY MR. MERIZALDE:

17 Q. Mr. Aliaga, Claimants' counsel just submitted to you a  
18 document by the CNDC. Claimants' counsel has submitted to you  
19 the node price report of the CNDC published in April 2010.

20 A. Yes, that's correct.

21 Q. The CNDC is the authority of the State that authorizes  
22 the withdrawal of the unit?

23 A. The CNDC is the technical unit that, on the basis of  
24 the needs of the wholesale market, submits reports to the  
25 Superintendency for approvals.



17:00 1 Q. Excuse me, the CNDC--and you remember that we were  
2 looking at the License before--the CNDC is the agency that  
3 authorizes the notification of the License. Yes or no?

4 A. The Superintendency is the one that provides  
5 authorization.

6 Q. Thank you very much, Mr. Aliaga.

7 I'm going to ask my colleagues to show you Exhibit  
8 37--or, rather, Annex 37 of Mr. Paz's statement.

9 PRESIDENT JÚDICE: It's not here, is it?

10 MR. MERIZALDE: No. We need to look at the magic key,  
11 USB key that we were given by the Claimants.

12 PRESIDENT JÚDICE: Does it refer to a document or to  
13 the Witness's Statement--Witness Statement? What is it? Paz?  
14 Is the Witness Statement?

15 MR. MERIZALDE: This is Annex 37.

16 PRESIDENT JÚDICE: You're not talking about his  
17 statement, are you?

18 MR. MERIZALDE: No, I'm not.

19 BY MR. MERIZALDE:

20 Q. Would you please look at document--Page 45 of the  
21 document, and that would be Page 49 of the PDF document,  
22 Annex 37.

23 Would you please read the third paragraph,  
24 Section 5.1?

25 A. What document?

17:03 1 Q. Were you given Paz's annex?

2 A. No, I wasn't.

3 MR. MERIZALDE: Just a second, Mr. President. I  
4 understand that the witness does not have the document.

5 (Pause.)

6 BY MR. MERIZALDE:

7 Q. So, we are at Page 45, then.

8 ARBITRATOR VINUESA: Could you please repeat what  
9 document we're talking about.

10 MR. MERIZALDE: Yes, of course. This is Annex 37 to  
11 Paz. The document is the report on the mid-term schedule for  
12 the May 2010, April 2014, and in this document you have the  
13 projections carried out by CNDC based on the information  
14 provided by the actors in the energy market.

15 BY MR. MERIZALDE:

16 Q. If you go to Page 47, would you please read  
17 Paragraph 3 of the basic information of the background.

18 A. The second--on Page 45, the second part says--refers  
19 to the withdrawal of the same components based on the statement  
20 by EGSA and how this is going to be withdrawn from the  
21 generation park in connection with Units G, H, 4 of 20  
22 megawatts in Karachipampa, 13.8 megawatts, in May 2010 and  
23 August 2010 respectively.

24 Q. Thank you very much.

25 Let's move on to Page 70.

17:05 1 I'm sorry, let's just stay focused on my questions.

2 At Page 70 we have the firm capacity projections; and,  
3 as you know, this is related to 8(h) in this document, and we  
4 have the firm projections in megawatts. And the third column  
5 dated August 1st, 2010, has a Note Number 3.

6 Would you please read Footnote 3 under this table.

7 A. It says entry of ARJ-16 and withdrawal of KAR-1.

8 MR. MERIZALDE: I have no further questions.

9 THE WITNESS: Please allow me, I would like to clarify  
10 to the President of the Tribunal that when the counsel asked me  
11 whether we had requested the decommissioning of the  
12 Karachipampa unit from the Karachipampa Plant, as the agents  
13 usually do, and also as stated--as stated at 5.1 where it reads  
14 that EGSA stated that they would be removing the Karachipampa  
15 Unit from the park, but they would include in Sucre Unit  
16 Number 4 that has 20 megawatts as opposed to the 11 or 12.7  
17 that Karachipampa had, and that is--I just wanted to clarify.

18 So, that was in case there were obstacles with that  
19 generation.

20 MR. BLACKABY: Point of order. There was no question.  
21 The witness was asked to read passages from the document, and  
22 there were no questions asked, so I just wanted to know what  
23 the question was.

24 MR. MERIZALDE: At the very beginning of my question,  
25 I asked, could you please read, and that was the end of the

17:08 1 question.

2 PRESIDENT JÚDICE: The Tribunal has understood.

3 QUESTIONS FROM THE TRIBUNAL

4 ARBITRATOR CONTHE: Good afternoon. Thank you very  
5 much, Mr. Aliaga.

6 You have shown a great ability to read paragraphs that  
7 are part of texts that we are all seeing, so I'm going to ask  
8 you two questions.

9 The first one is the 20 percent addition to the--to  
10 the additional pieces of equipment was added in 2001 as a  
11 result of a report by a consultant. And then the  
12 Superintendency withdrew this in 2007 based on another report  
13 by another consultant, Bates & White, who said that because of  
14 the situation in 2001, and as a result also of the incredible  
15 shortage of--incredible reduction in price of the turbines,  
16 that was not going to take place.

17 And I understand--it was not going to make any sense  
18 to continue to add 20 percent, and that was the reason why the  
19 Superintendency in Bolivia used to explain why 20 percent was  
20 removed, and it was challenged by Guaracachi before the courts.

21 So, I would like to know why it was not reasonable the  
22 argument provided by the Superintendency in Bolivia had  
23 attached that additional percentage that was justified in 2001,  
24 but it stopped being justifiable in 2007.

25 THE WITNESS: Thank you very much, Member of the

17:10 1 Tribunal. I'm not an expert on the very small details of the  
2 wholesale market. Mr. Andrade is the person who can offer you  
3 the best answer.

4           Clearly, based on those recommendations, we used the  
5 mechanisms provided for in the law to abrogate a measure that  
6 was modifying the Regulatory Framework, the one that was used  
7 initially for the license, contracts, and investments, and it  
8 also breached strategic agreements amongst the industry  
9 companies and also the generators when we signed this agreement  
10 for a subsidized tariffs--tariff.

11           ARBITRATOR CONTHE: And the second question that I  
12 have on the same issue is the following: At some point in time  
13 EGSA at Guaracachi discussed with the Board of Directors the  
14 possibility of instead of resorting to the administrative forum  
15 before the court to go to some of the--to invoke some of the  
16 bilateral treaties with the United States and Great Britain to  
17 challenge this so-called "breach" of the international law.

18           THE WITNESS: As I mentioned before, the investments  
19 carried out were carried out within a reform, which had offered  
20 legal certainty, and the regulatory entity--and I was a  
21 regulator, as I mentioned before--had to be informed of the  
22 whole situation.

23           And the basic principle of Law 1600 and also all of  
24 the other sector laws such as 1604, the Electricity Law, were  
25 based on the independent nature of the regulator. The

17:12 1 regulator in all of the countries is in the midst of a  
2 triangle, and this is a triangle--

3           ARBITRATOR CONTHE: I think that you misunderstood my  
4 question. You're an engineer, you're not a person from the  
5 legal field, but my question is: When the measure was  
6 challenged that, in your opinion, was detrimental to the  
7 interests of the company, did you consider the alternatives,  
8 and did you consider to have--resort to the international  
9 bilateral treaties, or did you address that issue, or you  
10 just--I would just like to know whether you resorted to the  
11 domestic courts to challenge at the administrative level first  
12 and then the contentious level later the rejection of this  
13 appeal that you were presenting.

14           This was just a basic question. I wouldn't like to  
15 know in depth any other issues.

16           THE WITNESS: The loss of independence was the result  
17 of a political situation, the consumer or the company.

18           Back then, since we were a national company, EGSA,  
19 even though we had a foreign investor, we used the fora through  
20 the Bolivian legal system up to the Supreme Court. But I  
21 understand that the investor, given the reports--my report that  
22 showed a negative solution, a negative situation, analyzed the  
23 possibility of bringing a claim because the original agreements  
24 were not being respected.

25           ARBITRATOR CONTHE: I have another question, and I

17:14 1 hope it is easy enough, and this has to do with the withdrawal  
2 or the decommissioning of the less-efficient units and also the  
3 claim by the investor about marginal costs.

4           My question is: Why were units in Aranjuez 1, 2, and  
5 3, the simple fuel engines, why weren't they removed from the  
6 area and they were excluded from the marginal--for the  
7 estimation of the marginal cost?

8           My question is: This mechanism that was focused on  
9 increasing efficiency as it was explained by Mr. Earl and also  
10 as we heard about Rurelec, why wasn't this mechanism applied?

11           THE WITNESS: Well, the counsel did not allow me to  
12 elaborate, but I wanted to indicate that all of the units, 1  
13 through 7, were going to be decommissioned based on the  
14 operation that the counsel mentioned. And because of a  
15 procedural issue and because the authorization was not  
16 requested, I was asked to halt that operation. The idea was to  
17 try to eliminate the most expensive, the least efficient units  
18 and replace them with more-efficient units, and that is what we  
19 did in 2006 and onwards.

20           But we had inherited those units from ENDE. They were  
21 part of it. Reserves were not enough, and when no other  
22 investor had made any efforts, such as Guaracachi's, the demand  
23 continued to increase and there was no way to cover it.

24           And this is a basic economic law. This is the very  
25 basic business law. The most expensive power is the one that

17:16 1 is not produced. Therefore, if there is an engine that is  
2 already installed and it is expensive, I would rather pay  
3 instead of leaving the whole population without power. That  
4 was the basic principle, and not only in Bolivia, also in  
5 Argentina, Chile, and other countries.

6           ARBITRATOR CONTHE: So, if I understood you correctly,  
7 when IDG tried to decommission all of the dual-fuel engines,  
8 including this one, they did not get an authorization, but  
9 later on Guaracachi indirectly benefited from maintaining those  
10 inefficient units by obtaining very high marginal costs. And  
11 then, in 2008, the Superintendency said this continued to  
12 produce, but this is not going to have an impact on the other  
13 generators in the market.

14           THE WITNESS: The change of the rules of the game  
15 without observing the law in connection with the gentlemen's  
16 agreement implied that decisions were made without  
17 consultation. When we removed ARJ-7 and ARJ-5, we were given  
18 authorization. And our plan--the same applied to Number 6, and  
19 our plan was to continue with investments.

20           You can read that we had the responsibility, the  
21 responsibility of the State, demand was growing, and no one  
22 else wanted to invest. There were threats that something could  
23 happen, that they were to nationalize or that they were going  
24 to take most of the companies. They were changing the basic  
25 rules of the game. And Guaracachi America and Rurelec and the



17:18 1 other capitalized company got there. That's the reason why  
2 they got there.

3 But the difference is that the other companies that  
4 were capitalized managed, as they did normally, their business,  
5 but we agreed with the Government. We had the dignity tariff,  
6 and we had projects that benefited everyone, the Shareholders,  
7 and the interconnected system. There was no bad faith.

8 ARBITRATOR CONTHE: Well, this is my last question.  
9 In the end, Rurelec's claim in connection with the Spot Price  
10 is based on the fact that Rurelec should have benefited with  
11 the higher price as a result of the maintenance of other three  
12 older units, and Guaracachi tried to remove those units, to  
13 decommission those units, and if they had decommissioned, they  
14 wouldn't have obtained the benefit that they are claiming for  
15 right now.

16 THE WITNESS: The next inefficient unit would have  
17 been--would have gone through the same process.

18 You need to understand the role of the governing  
19 entity, of the person that was in charge, the authority. The  
20 businessperson wants to recover the investment, the customer  
21 wants power, and then the Government wants to be fair.

22 ARBITRATOR CONTHE: In 2007, Guaracachi EGSA had some  
23 issue, so did they ever mention to increase capital, to have a  
24 capital injection or a direct--or a financing by the  
25 Shareholders instead of resorting to bridge loans from Bolivian

17:20 1 institutions or arrears in payment to suppliers?

2 THE WITNESS: Clearly, you're aware of the critical  
3 period that we went through towards the end of the  
4 combined-cycle project, which was completed by 95-97 percent.  
5 We made great progress by the day. We had some liquidity  
6 issues, and the Shareholders did their share. It is not that  
7 they stopped or--they stopped receiving their dividends, but  
8 they accepted not to collect dividends for 2008 and 2009  
9 because they wanted to be cautious.

10 And also, if the Government continued to increase the  
11 deadline to sign the famous letter with the United Nations for  
12 the carbon credits, they were still waiting, and we were trying  
13 to solve those issues, and the cash flow was also going to be  
14 incredible with the combined-cycle project.

15 PRESIDENT JÚDICE: Just a question.

16 You referred to a gentlemen's agreement. Where were  
17 you referring to?

18 THE WITNESS: We signed three agreements with the  
19 Government to have a strategic partnership. We signed  
20 two--well, we had three agreements. I'm referring to  
21 agreements that were signed and that they were attached--they  
22 were attached to our reports.

23 PRESIDENT JÚDICE: Thank you very much. Thank you  
24 very much, Mr. Aliaga. I think that you are excused, but you  
25 can stay in the room or leave.

17:22 1 THE WITNESS: Thank you very much.

2 PRESIDENT JÚDICE: Thank you.

3 THE WITNESS: Thank you.

4 (Witness steps down.)

5 JUAN CARLOS ANDRADE, CLAIMANTS' WITNESS, CALLED

6 PRESIDENT JÚDICE: Good afternoon, Mr. Juan Carlos

7 Andrade. You're an engineer.

8 I would like for you to identify yourself very quickly  
9 and then to read the Witness Declaration. Please speak loudly,  
10 and then you're going to be examined by the attorneys.

11 THE WITNESS: My name is Juan Carlos Andrade.

12 I solemnly declare upon my honor and conscience that I  
13 shall speak the truth, the whole truth, and nothing but the  
14 truth.

15 PRESIDENT JÚDICE: Thank you very much.

16 Now, the lawyers to your left are going to pose  
17 question to you. Then the lawyers to your right are going to  
18 pose questions to you. Perhaps there are other questions by  
19 the lawyers, and that the Tribunal may also ask questions of  
20 you, if necessary.

21 DIRECT EXAMINATION

22 BY MR. COMMISSION:

23 Q. Mr. Andrade, good afternoon. I have a few questions  
24 for you. The first is, you should have two witness statements  
25 in front of you. Could you please review them to make sure

17:30 1 that they're complete and bear your signature?

2 A. Yes, I seen them. And they are my statements--

3 Q. Mr. Andrade, do you have any corrections to make to  
4 either of your witness statements?

5 A. None.

6 Q. Mr. Andrade, could you briefly describe your  
7 professional background for the Tribunal, please.

8 A. In 1976, I got a degree as a mechanical engineer in  
9 the City of La Paz. I worked for the Ministry of Industry and  
10 Trade for two years in the Department of Industrial Metrology.  
11 During the next three years I worked for a mechanic matters  
12 construction company--consulting company, rather, and in 1991 I  
13 worked for the National Directorate of Electricity.

14 At that time, this was the offer that regulated energy  
15 power in the country.

16 In 1993, I went to the national electricity company.  
17 I worked there. I had a number of positions in that  
18 organization. I was cost analyst, I was a customer relations  
19 assistant, and then I was the head of the commercial  
20 department. Then I was promoted to head of the commercial  
21 department in the first CNDC. I was working in the  
22 organization of the new CNDC as well.

23 In 1995, I was invited by Energy Initiatives to be  
24 involved in Guaracachi S.A. The seat of the company was in the  
25 City of Santa Cruz. I was the Business Manager and Development

17:32 1 Manager in 2003.

2 Then--up until 2003.

3 In 2003, there was a restructuring of the company.

4 Mr. Lanza took charge of the Development Directorate, and I was  
5 there until July 2010.

6 Q. Mr. Andrade, in your First Witness Statement, you  
7 discuss your involvement with the enactment of the Electricity  
8 Law and the regulations. What was your view as to the purpose  
9 of that reform in the capitalization program more generally?

10 A. Before the capitalization program, Bolivia had an  
11 electricity code. This was an obsolete piece of legislation,  
12 in my opinion. There was no CNDC at the time, and there were  
13 two large companies, ENDE and COBEE, and they had very serious  
14 problems in connection with the interconnection of the system,  
15 the setting of prices and the regulation of frequency, and also  
16 with the maintenance of the interconnection system.

17 There were a number of discussions that were held  
18 between the technical people from ENDE and from COBEE. At that  
19 time Bolivia was exiting a hyperinflation period, and experts  
20 on the matter indicated that that problem was largely caused by  
21 State-owned public companies. So, the position of the large  
22 financiers of electricity projects for organizations such as  
23 the IDB or the World Bank decided to stop lending money to  
24 ENDE. This brought Bolivia to restructuring its sector to  
25 attract private capital.

17:34 1 Q. Mr. Andrade, I only have two more questions for you  
2 this afternoon.

3 The first is, in your capacity as the representative  
4 for the electricity generators in terms of meeting with the  
5 CNDC, why did you object in 2008 when Resolution 283 that  
6 concerned the Spot Prices was proposed?

7 A. Our concern, as a generator--and I was made known of  
8 it--by the CNDC, well, at that time a resolution was drafted by  
9 the Superintendency of Electricity. Well, the marginal  
10 candidates were removed when they used liquid fuels in their  
11 engines.

12 This was discrimination. We thought it violated  
13 law--it violated the law, and the concept of setting of the  
14 marginal cost was distorted. This was provided for in the  
15 Electricity Law, and the generators had a right to it. This  
16 was our concern, and we made it known.

17 Q. Thank you, Mr. Andrade. I have one final question.

18 What was the reason for Guaracachi's proposal in early  
19 2010 for the withdrawal of KAR-1, the unit at the Karachipampa  
20 Plant?

21 A. The Karachipampa unit was an Olympus Rolls Royce unit.  
22 It had been in operation for over 20 years. We were officially  
23 informed by Rolls Royce that the production of these units was  
24 going to be discontinued, so they were no longer going to be  
25 manufactured.

17:37 1           Secondly, the operation of this unit was too expensive  
2 for the payment standards that the Bolivian system had, so the  
3 operation of this unit was quite expensive for us.

4           We also knew that it was necessary to provide for  
5 power generation in the southern part of the country, so we  
6 came up with a plan. We thought that the Frame 5 units of the  
7 Guaracachi plants were going to be displaced, this when the  
8 combined-cycle was going to become operational. So, we thought  
9 that we were going to move Unit 4 to Sucre. We were going to  
10 gain capacity because Karachipampa is located in Potosi, which  
11 is high up--it's 4,000 meters over sea level, and we were going  
12 to a install a different site.

13           We were not going to impair the system as such. We  
14 were going to improve the delivery capacity to the system, and  
15 we were going to remove the costly unit for our operations.

16       Q.    Thank you, Mr. Andrade. I have no further questions.  
17 I believe counsel for Bolivia will have some questions for you  
18 this afternoon.

19           PRESIDENT JÚDICE: Thank you very much.

20           You have the floor.

21           MR. SILVA ROMERO: Thank you very much, Mr. President.

22                                   CROSS-EXAMINATION

23           BY MR. SILVA ROMERO:

24       Q.    Good afternoon, Mr. Andrade.

25       A.    Good afternoon.

17:38 1 Q. Mr. Andrade, my name is Eduardo Silva Romero, and I am  
2 one of the lawyers representing your country, Bolivia, and I'm  
3 here to ask you questions. Do you understand this process?

4 A. Yes, I do, sir.

5 Q. Before beginning the examination process that I had  
6 prepared, you just answered your lawyers the so-called by you  
7 manipulations in connection with the Spot Price were a  
8 violation, a clear violation of the law. Do you remember this?

9 A. Yes, sir.

10 Q. In spite of this opinion that it was a clear violation  
11 of the law, I understand that EGSA never brought an  
12 administrative claim in connection with this; correct?

13 A. Correct.

14 Q. And it did not bring any claims in the Administrative  
15 Courts either; correct?

16 A. Yes, correct.

17 Q. Mr. Andrade, let's move on to our first--to your First  
18 Statement. And from the first paragraphs here I understand  
19 that you worked for EGSA from 1995 to 2010; correct?

20 A. Yes, correct.

21 Q. If we specifically look at Paragraph 5 of your First  
22 Statement, Paragraph 1 of your First Statement, which is on  
23 Page 2, you say the following: "I'm currently working as  
24 adviser to Rurelec Plc."

25 Do you see that?



17:40 1 A. Yes, sir.

2 Q. Tell me, Mr. Andrade, what does a consultant of  
3 Rurelec do?

4 A. I was hired as a part-time consultant--that is to say,  
5 I don't work full-time for Rurelec--and I was hired to provide  
6 advice in connection with all the matters that are being dealt  
7 with in this session.

8 Q. That is to say, the consultancy Contract has to do  
9 with assisting Rurelec in everything related to this  
10 arbitration proceedings; correct?

11 A. Yes, that's correct.

12 Q. Yes, I imagine that you get paid for this work.

13 A. Yes, sir.

14 Q. That payment, is it a fixed amount, is it an hourly  
15 rate, or do you have a success-based fee?

16 A. It is a fixed amount.

17 Q. Is it paid monthly?

18 A. Yes, monthly.

19 Q. Before we look at the merits of your statements, would  
20 you like for me to call you Mr. Andrade? I'm not going to call  
21 you Juan Carlos, but Mr. Andrade is fine?

22 A. Yes.

23 Q. Before delving into your statement, I wanted to look  
24 into some preliminary matters in order for me to understand  
25 your statement. The first issue has to do with Paragraph 11 of

17:42 1 your First Statement.

2           There you say: "In November 1995, on the basis of my  
3 experience at CNDC and ENDE, I was approached by the company  
4 that won the international bidding process," et cetera.

5           Do you remember that statement?

6       A.    Yes, I do.

7       Q.    Just out of curiosity, in Bolivia, when you go from  
8 the public sector to the private sector, is it done freely?  
9 Are there any incompatibilities or are there any rules to do  
10 that?

11      A.    No, there are no rules. I became available when I  
12 received an invitation by Energy Initiatives. I personally  
13 told the General Manager of ENDE that I was going to withdraw  
14 from the company, and that's what I did.

15      Q.    Very well. Let's go to Paragraph 53 of your First  
16 Statement as well. And looking at Page 17 in Spanish of the  
17 statements, you include there a graph.

18           Do you see that?

19      A.    Yes.

20      Q.    My question is the following: Was this prepared by  
21 you or does it come from another source?

22      A.    It is a graph that is commonly found in marginal cost  
23 texts.

24      Q.    What is the source of this graph?

25      A.    Well, I obtained it at a seminar.

17:44 1 Q. Didn't you think that it was advisable for Bolivia to  
2 be able, for this source, to indicate what the source was?

3 A. Well, I thought this was common knowledge for people  
4 generally using these literature, these texts.

5 Q. Now, if we go to Paragraph 17 of your First Statement,  
6 could you please read it out loud for the record, please.

7 A. "Except as otherwise indicated, the facts and matters  
8 on which I testify in this statement are within my own personal  
9 knowledge. When I refer to facts that are not within my own  
10 personal knowledge, I identify the source. Counsel for  
11 Claimants have assisted me by drafting the statement based on  
12 the interviews with me. I have carefully reviewed the texts  
13 and confirmed this statement accurately reflects my testimony."

14 Q. Thank you, Mr. Andrade.

15 Now, to have a full record, there is a similar  
16 provision, and I invite you to look at it so that you can have  
17 full knowledge of it, on Paragraph 5 your Second Statement.

18 In the interest of time, and given the hour, I don't  
19 think it's necessary for us to read this paragraph, Paragraph 5  
20 of the Second Statement.

21 Do you see it?

22 A. Yes, I do see it.

23 Q. Very well. The question is very simple, Mr. Andrade.  
24 Given these provisions that appear in both statements, I asked  
25 myself the following: Now, out of the things that Mr. Andrade

17:46 1 tells us in their statements or in his statements, what is part  
2 of his personal knowledge and what is not?

3 A. Well, everything I have studied, all the courses I  
4 have taken, my experience in other companies, all that makes up  
5 my personal knowledge. There are certain facts that are  
6 related to my company. The relationships between my company  
7 and the facts, that is my personal knowledge.

8 Q. Well, I would have thought that your personal  
9 knowledge are things experienced by yourself, and things that  
10 are not your personal knowledge are things that are being told  
11 to you or that were told to you.

12 A. Yes. Oftentimes that happens in general terms, but  
13 everything that I have gained as knowledge is part of my  
14 personal knowledge.

15 Q. Well, what you know personally may have a certain  
16 interest, and what you have been told has less interest.

17 A. Yes, I understand, but I don't fully comprehend.

18 Q. Let's go step by step. Why don't we go to  
19 Paragraph 62 of your First Statement to try to understand this.

20 Are you with me?

21 A. Yes.

22 Q. Here, the following is stated: Representative of  
23 Guaracachi's former management met with the Government several  
24 times after nationalization. I understand that...

25 So, you say, "I understand that." So, someone told

17:48 1 you that; right? Is that correct?

2 A. Yes, that is correct.

3 Q. Who told you that?

4 A. This was Mr. Aliaga, the engineer.

5 Q. Why didn't you identify the source?

6 A. I didn't see the need to do it.

7 Q. So, why did you say whatever it is that you say on  
8 Paragraph 17 of your First Statement?

9 A. Well, when I say, "I understand that," this can be  
10 interpreted as I had been informed that.

11 Q. But we don't know who the source of this information  
12 was; right?

13 A. Well, this was within my knowledge because of the  
14 communications I maintained with Mr. Aliaga.

15 Q. So, this is your perjury knowledge?

16 A. Yes, it's part of my experience. It's part of my  
17 experience, what I have lived through.

18 Q. Out of your statement, what comes from third party  
19 communications and what is your personal knowledge?

20 A. Well, these assertions are based on work that I  
21 performed, and that I--and in connection therewith, I received  
22 advice from lawyers of the firm, but everything that I have  
23 said here has been revised and has been compared with the facts  
24 that I have knowledge of, and that is why I have testified in  
25 that regard.

17:49 1 Q. Very well. Paragraph 63 on Page 19.

2 Then again you say, "I understand that there was a  
3 second meeting." Who told you?

4 A. Mr. Aliaga said this to me.

5 Q. So, who has been present in those meetings was  
6 Mr. Aliaga and not you?

7 A. Yes, he has been present in those meetings.

8 Q. In other words, you have not participated in those  
9 meetings.

10 A. In these meetings--let me see. Let me see. Just a  
11 moment.

12 I don't remember having been present in these  
13 meetings.

14 Q. If we go to Paragraph 64, it appears that you were  
15 present at this meeting, and you may have personal knowledge of  
16 it. It says, "I attended the third and fourth meetings between  
17 Rurelec and the Government." Apparently the last two.

18 A. Yes, that is correct.

19 Q. So, Mr. Earl was not present in those meetings; right?

20 A. No, he wasn't present in those meetings.

21 Q. If we go to your Second Statement--I'm sorry I have to  
22 go back and forth, but given your statements, it's impossible  
23 to know what is your personal knowledge and what has been told  
24 to you by a third party, so we will go to your Second  
25 Statement, Paragraph 14. You will see that this paragraph

17:51 1 says, "to my knowledge."

2 A. Well, this is my style of drafting. When I say "to my  
3 knowledge," it means that I know, I understand, I have  
4 knowledge of.

5 Q. So, it's impossible to know in your statements when  
6 you were directly involved with a fact and when you were told  
7 of that fact; correct?

8 A. As I said, this is the way I draft things. When I say  
9 "I understand," is "that I know," "that I comprehend"...

10 Q. Yes, I understand.

11 If we go to Paragraph 41 of your Second Statement,  
12 here you talk about the state of the Karachipampa Plant in  
13 2010.

14 Do you see the heading here?

15 A. Yes.

16 Q. At the end of Paragraph 41 you talk about the apparent  
17 disposition by the AE.

18 Do you see that?

19 A. Yes.

20 Q. What I understand when I make this distinction between  
21 personal knowledge and hearsay is that you don't know what the  
22 AE decided in connection with this; right?

23 A. Let me explain. In Guaracachi, we requested the  
24 withdrawal of the Karachipampa unit and that transfer of  
25 Guaracachi--Karachipampa 4 to Sucre, as I explained to counsel

17:53 1 for Claimant.

2 I was a Business Manager, and this was a routine  
3 matter. I had to inform the CNDC of the medium-term study and  
4 the node prices.

5 In the first study, the midterm node price study and  
6 this was included in the document of the CNDC, well, this  
7 information was used in exactly the way in which we had stated.

8 Q. If we go to the paragraph--

9 A. Let me finish, please.

10 Q. Well, my question was very clear.

11 MR. SILVA ROMERO: Well, if the Tribunal would like to  
12 hear the clarification, I have no problem. I wouldn't want to  
13 listen to the clarification.

14 PRESIDENT JÚDICE: Yes, please clarify, but very  
15 quickly.

16 THE WITNESS: In the next node price study, the  
17 information is not there as we stated it. Karachipampa is  
18 on-line and nothing was said about the transfer. This was a  
19 very common practice in prior years, in previous years.

20 What we did know of was the letter of the  
21 Superintendent reporting to the market the changes that had  
22 been accepted. I don't know why the Superintendents or the  
23 authority did not communicate this to us. So, we looked at the  
24 studies, and the AE used its powers and told the CNDC why  
25 didn't the CNDC listen to our statement. They haven't told us



17:55 1 whether they were going to give permission to withdraw or not.

2 BY MR. SILVA ROMERO:

3 Q. Do you know if the AE took any formal decision in  
4 connection with EGSA's request in April 2010 to decommission  
5 Karachipampa 1? Yes or no.

6 A. I infer from the documents that I have seen, and this  
7 is a deduction, that the AE made a decision to fail to accept  
8 the information submitted by Guaracachi in February 2010.

9 Q. What you're saying is that you would like to correct  
10 Paragraph 46 of your First Statement because I just asked a  
11 question reading literally what you, with the help of your  
12 lawyers, wrote in Paragraph 46. I'm going to ask you to read  
13 it, please.

14 PRESIDENT JÚDICE: Forty-six?

15 MR. SILVA ROMERO: Yes. Forty-six. It's the First  
16 Statement of Mr. Andrade. I'm sorry, the Second Statement,  
17 it's the Second Statement. Excuse me, it's the Second  
18 Statement, 46 of the Second Statement. Page 16.

19 THE WITNESS: In this paragraph, I'm making reference  
20 to the fact that--I make reference to the fact that I don't  
21 have the evidence. I have not seen the letter. If the letter  
22 existed, I have no personal knowledge of it, but I've analyzed  
23 the facts, and I deduct that there was an instruction, maybe it  
24 was a formal instruction, it may be verbal, but I don't know.

25 Now, the only agency with authority to change our

17:58 1 information, according to the commitments that we had, was the  
2 AE. That is the fact that I'm making reference to.

3 BY MR. SILVA ROMERO:

4 Q. So, you have no personal knowledge or no personal  
5 experience that a formal decision was made in this connection?  
6 Can we agree on that?

7 A. I don't know of it. I infer that something may have  
8 happened because otherwise it would be hard for me to explain  
9 how in two consecutive studies our proposal is completely set  
10 aside, this in connection with the information of  
11 February 2010.

12 Q. Very well. Let us now move on to Guaracachi's  
13 investments. That's what you're calling them. Now, let us now  
14 look at Paragraph 16 of your First Statement, Page 5.

15 Now, Paragraph 16 has Roman numeral three, where you  
16 say what your statement includes, it says: "the significant  
17 investments made by Guaracachi."

18 Do you see that?

19 A. Yes, I do.

20 Q. In the context of your statement, Mr. Andrade, when  
21 you talked about Guaracachi, you are referring to--Guaracachi,  
22 you referred to EGSA?

23 A. Yes, to Guaracachi S.A., yes, sir.

24 Q. If we look at the same statement, and we move on to  
25 Paragraph 35 on Page 10 of your First Statement, this is the

18:00 1 heading that is related to Roman numeral II. It says,  
2 "Guaracachi's Investments in New Generation Capacity."

3 Do you see that heading?

4 A. Yes.

5 Q. From Paragraph 35 of your statement, I understand that  
6 you start by describing the investments that were conducted  
7 from '95 to '99; correct?

8 A. Yes, that is correct.

9 Q. I have to ask you to clarify something, Mr. Andrade,  
10 in connection with Paragraph 38 of your statement. At the  
11 beginning of Paragraph 38 of your statement, you say, "During  
12 this period." Do you see that phrase?

13 A. Yes, sir.

14 Q. Are you making reference to '95 to '99?

15 A. Yes.

16 Q. I ask you this because perhaps there is thus confusion  
17 with Paragraph 36 because in this paragraph you make reference;  
18 it appears to go from 1990 to 1992.

19 A. Where exactly?

20 Yes, yes, I see it.

21 Q. Well, we both have the same problem, I see.

22 So, on Paragraph 35, you talk about a period going  
23 from '95 to '99, and then the subsequent paragraphs follow.

24 On Paragraph 38 you talk about during this period, but  
25 Paragraph 36, between 35 and 38, you make reference to a period

18:01 1 going '99 to 2002, where you were chosen as the electricity  
2 generator's representative. So, when you talk about, "during  
3 this period," are you making reference to '95 to '99 or '99 to  
4 2002?

5 A. Very well, let me look at these words in detail. You  
6 are asking me to look at these words in detail, if that's what  
7 you want.

8 Q. Yes, that's correct.

9 A. So, I start talking about the first period, which is  
10 '95 to '99. Then I talk about during this initial period; I'm  
11 talking about '95 to '99.

12 Very well, then I say that I was elected, the  
13 electricity generator representative, and I make specific  
14 reference to this period there. There are two different  
15 periods here and two different aspects here.

16 Q. If we go to Paragraph 39 at Page 12 of your statement,  
17 there you say the following: "In January 2006, Rurelec, a U.K.  
18 company focused on power plant developments and operation of  
19 power generation assets in Latin America, acquired 100 percent  
20 of Integrated Energy Limited, thereby becoming the 100 percent  
21 owner of the stock shares of Guaracachi America, Inc."

22 Do you see that statement?

23 A. Yes.

24 Q. If we look at Paragraph 40 now, there you say the  
25 following: "Rurelec continued Guaracachi's tradition of the

18:03 1 investment in state-of-the-art gas turbines and engines  
2 ensuring the reliability of Bolivia's power supplies. In 2007,  
3 in Santa Cruz, Rurelec introduced the GCH-11 and new General  
4 Electric 6FA turbine operating in open cycle similar to  
5 Guaracachi's newest existing turbines installed in 1999.  
6 Rurelec bought GCH-11 at 71-megawatt installed capacity turbine  
7 was purchased by El Paso Energy by Rurelec."

8 Do you see that?

9 A. Yes.

10 Q. I haven't asked you any other question.

11 You remind me of students who keep trying to say what  
12 they know.

13 When you are referring to Guaracachi here at  
14 Paragraph 40, we continue to understand that this is EGSA;  
15 correct?

16 A. Yes.

17 Q. And, in that paragraph, you say that Rurelec bought  
18 GCH-11. Do you confirm that?

19 A. Rurelec is not licensed to work as a generator. That  
20 was a controlling agency within Guaracachi, the controlling  
21 company. And as the controlling company, they led to the  
22 generation projects that are mentioned in this paragraph. That  
23 was the situation. And it couldn't be interpreted otherwise.

24 Q. So, you're telling me that Rurelec did not buy GCH-11?  
25 Yes or no.

18:05 1       A.   Rurelec was a Majority Shareholder back then;  
2       therefore, acquisitions and investments made were through  
3       Guaracachi. Guaracachi made them, and Rurelec was the  
4       controlling company with the highest number of shares.

5       Q.   Let us be clear: Rurelec did not contribute a single  
6       Bolivian peso, dollar, or euro or any other currency to buy the  
7       GCH-11; correct?

8       A.   In business management, when developing a project,  
9       unless you're asked to capitalize, the companies under their  
10      own management get loans and also use money that they manage to  
11      develop projects. The Shareholders are not the ones who  
12      directly execute the projects. The Shareholders are not  
13      licensed to generate energy, so they do not have the License to  
14      do so.

15      Q.   I wouldn't like to bore the Tribunal, but once again,  
16      Rurelec did not buy GCH-11?

17      A.   Given the explanation I just gave you, the answer is  
18      no.

19               PRESIDENT JÚDICE: The Tribunal understood that.

20               BY MR. SILVA ROMERO:

21      Q.   As you mentioned, Mr. Andrade, they did not buy  
22      GCH-11, so would you like to correct Paragraph 40 of your  
23      statement? Because you're saying that Rurelec bought GCH-11.  
24      How would you like to modify your statement, Mr. Andrade.

25               Mr. Andrade, you told the President of the Tribunal

18:07 1 that you are going to say the truth. Did they buy it or not?

2 A. No, they did not.

3 Q. Then we need to direct your statement?

4 A. Yes, it's okay, but Rurelec was the controlling  
5 company within Guaracachi, and back then, in those  
6 circumstances, that company bought the equipment GCH-11.

7 Q. And as Mr. Blanco, your colleague, said, who we will  
8 be meeting tomorrow morning, Rurelec conveyed the thrust to buy  
9 GCH-11. Is that what you are saying?

10 A. I wouldn't call it the thrust, but it was under the  
11 guidance of Rurelec that Guaracachi had an important task or  
12 carried out an important task at managing or developing  
13 electricity projects.

14 Q. Okay. We're going to analyze that together,  
15 Mr. Andrade. Do you remember how the purchase of GCH-11 was  
16 financed?

17 A. Well, to tell you the truth, first I worked in project  
18 development, and later on in the business sector, and in  
19 connection with the business sector and financing and  
20 acquisition of goods, I have global knowledge, but not accurate  
21 knowledge.

22 Q. So, those are no longer personal pieces of personal  
23 knowledge but what other people have told you?

24 A. Well, if you tell me that that this was financed as a  
25 loan and that we had the endorsement of one of the partners

18:09 1 within the company, I don't know. I do not have that  
2 information.

3 Q. However, that is not what the file in this case seems  
4 to say, and here I would like to ask my colleagues to give you  
5 a binder with documents. And given the answers provided, we  
6 just need to see one document so that nobody gets nervous about  
7 the size of these binders.

8 PRESIDENT JÚDICE: We never get nervous about the size  
9 of the binders.

10 MR. SILVA ROMERO: Well, just thinking of the  
11 environment, Mr. President.

12 BY MR. SILVA ROMERO:

13 Q. Mr. Andrade, if we look at Tab--if we look at Tab 11,  
14 this is the document that includes the minutes of the meeting  
15 held by the Board of Directors of the Empresa Guaracachi S.A.,  
16 7/2005, and this is Annex B to the--Annex 2 to the statement by  
17 Ms. Mártha Bejarano. Have you read her statement?

18 A. The answer is yes.

19 Q. So, you're aware of the annexes to that statement?

20 A. Yes.

21 Q. Very well.

22 If in this document we go to Page 5, you have Item 5,  
23 which is a title that reads, "project for the increase of  
24 generation capacity and Guaracachi selection of the most  
25 convenient option addressed by the Board of Shareholders."



18:12 1 Do you see that?

2 A. Yes.

3 Q. And if we look at the--and if we look at the second  
4 paragraph, it says, "Next a report was received by the Manager  
5 of business, Mr. Juan Carlos Andrade, who proceeded to explain  
6 the main technical characteristics of the CFA, GEC, 6FA and  
7 50Hz."

8 A. Yes, this is a turbine that is part of the turbines  
9 that the Guaracachi group had.

10 Q. Okay. And if we go two paragraphs below where it  
11 says, "Continuing with the explanation above, Engineer Andrade  
12 mentioned the financial evaluation taking into account capital  
13 expenses or investment estimated at \$15 million, out of which  
14 12.5 million dollars equaled the FOB value of the new 6FA  
15 turbine refurbished for operation at 50 HZ.

16 Do you see that?

17 A. Yes.

18 Q. And then it says, "Likewise, various options had been  
19 considered for the financing of the project, be it through a  
20 bank loan for \$13 million at an approximate interest rate of  
21 8.7 percent payable through eight years, and consequently the  
22 equity contribution by Guaracachi would equal \$2 million."

23 Do you see that?

24 A. Yes.

25 Q. So, I understand that the financing proposal was to

18:13 1 obtain a \$13 million loan and to pay 2 million through equity,  
2 EGSA's equity; is that correct?

3 A. Let me explain to you what I during this stage with  
4 the Board of Directors. As the Business Manager, I was  
5 responsible of guiding the Board in terms of the new  
6 investments. In other words, if the unit was going to be  
7 acquired, we needed to determine whether the return was going  
8 to be proper based on the investment, so my management office  
9 had to run the SLDP programs to try to determine the  
10 optimization of the program, try to determine power, capacity,  
11 compare that to the operational cost for that unit, and compare  
12 that to the investment information.

13 Investment, millions of dollars was just a piece of  
14 information, and I needed to determine the IRR and inform or  
15 report to the Board of Directors. That was my task.

16 Now, the issue of financing, that is something that  
17 pertained to the financial management of the company and how  
18 they were going to face the problem, be it through loan, debt,  
19 anything that has to do with finance management was in the  
20 hands of Mr. Blanco.

21 Q. So, you're telling me that that is a question that I  
22 need to address to Mr. Blanco?

23 A. Well, if you--that is your decision.

24 Q. If we move now, and now you can leave this huge binder  
25 behind, if we move to Paragraph 42 of your First Statement,

18:16 1 Page 12, please let me know when you see it.

2 Well, are you ready?

3 A. Yes.

4 Q. There you're referring to the newest project that is  
5 the combined-cycle gas-fired turbine.

6 A. Correct.

7 Q. And I have a very simple question: Wasn't this a  
8 project in which the technical portion was designed by IPOL?

9 A. Well, back then I was the business manager. Mr. Lanza  
10 was in charge of developing the projects. Therefore, all of  
11 the relations that our company had with IPOL were the  
12 responsibility of Mr. Lanza.

13 Q. So, you are basically kicking the ball towards Lanza?

14 A. Well, I'm not saying that. I'm just saying that what  
15 the responsibilities were within the company.

16 Q. And if we look at Paragraph 12 in your First  
17 Statement, there you say mid-paragraph, "I was responsible for  
18 development which included working with the technicians of  
19 Energy Initiatives and later Rurelec."

20 Aren't those the technicians that work with IPOL?

21 A. No.

22 I think that you have some confusion here. I just  
23 told you that I worked from the very beginning with Guaracachi  
24 up until 2003, and this is in writing. I was the Development  
25 Manager and Business Manager when Energy Initiatives was the

18:18 1 controlling company for most of the Shares within Guaracachi,  
2 the electricity plant.

3           But in December 2003, there is a change, and I have  
4 already highlighted that in my statement. There was a  
5 reorganization within the company, the development management  
6 under the leadership of Mr. Lanza was created with the goal to  
7 develop power generation projects, and I was reassigned the  
8 responsibilities under Business Manager position. This was my  
9 first stage, coordinating actions with technicians that worked  
10 with Energy Initiatives that later on became GPU International.

11       Q.   So, at Paragraph 12, we are referring to the period  
12 prior to 2003; correct?

13       A.   Yes.

14       Q.   And didn't Rurelec get to EGSA in 2006?

15       A.   I already told you my responsibilities as Manager of  
16 Business and Development were when the controlling company was  
17 Energy Initiatives. That was from 1995 to December 2003. In  
18 2003, there was a change. The company was restructured. The  
19 new controlling company that has the majority of the  
20 shareholding was called Bolivia Integrated that had 100 percent  
21 of the shares within Guaracachi America, and starting in 2006,  
22 Rurelec acquired 100 percent of the Shares held by Guaracachi  
23 America.

24       Q.   But I understand that in 2006 you were no longer  
25 working on technical issues?

18:20 1       A.    I don't know what you mean by that.  All I'm saying is  
2   that our development was of a technical nature.  We ran the  
3   programs.  We looked at the relation with TDA, we had a  
4   relationship with the client, so we participated in engineering  
5   and management in the area of business.

6       Q.    Then we're going to ask Mr. Lanza about it.

7            Let's move on to the last topic, Mr. Andrade.  That is  
8   what you call Capacity Payments.  There we can look at  
9   Paragraph 50 of your First Statement.  This is Page 15.  Are we  
10   on the same page?

11           And there it reads, "Consequently, in connection with  
12   Resolution 40, and subsequent resolutions, Guaracachi initiated  
13   two legal challenges to this reduction in Capacity Prices which  
14   have been pending before the Bolivian Supreme Court since 2008  
15   without resolution."  And once again, there you used your  
16   phrase, "I understand that."

17           Who was in charge of initiating those legal  
18   challenges?  Is this something that pertained to Mr. Lanza,  
19   Mr. Aliaga?

20       A.    Our relationship with the Superintendency of  
21   Electricity was coordinated by the General Manager and also our  
22   legal counsel.

23       Q.    So, you do not know whether a request was made to  
24   suspend those resolutions?

25       A.    Yes.

18:22 1 Q. So, was the suspension requested?

2 A. Yes, it was.

3 Q. In the Second Statement at Paragraph 24, on Page 10,  
4 you say, "Since I understand that many of Bolivia's contentions  
5 about the Capacity Payments claim will be addressed to the  
6 Claimants' Reply Memorial or into their legal nature, I will  
7 focus on those concerning the Regulatory Framework for the  
8 Electricity Sector as it relates to Capacity Payments."

9 How did you get to the conclusion that these claims  
10 are of a legal nature? What's the meaning?

11 A. In the first paragraph, when I was referring to the  
12 challenges, clearly I was aware of the fact that the challenges  
13 were initiated as challenges to the resolutions that were being  
14 submitted, but I also understand that throughout the challenges  
15 to the claims of Guaracachi, our company had to appear before  
16 the Supreme Court of Bolivia, and the Supreme Court of Bolivia  
17 has not issued a decision.

18 Q. And is that of a legal nature?

19 A. Well, what I understand is that all of the proceedings  
20 are of a legal nature, all of these proceedings that are  
21 underway as part of this process, of this proceeding.

22 Q. And when you say, "I understand," that means that  
23 someone told you that that is of a legal nature, or is that  
24 your personal experience because you're not a lawyer?

25 I think that you answered exactly; correct?

18:25 1 A. Yes, yes. The answer was exactly.

2 Q. Thank you, Mr. Andrade, for your patience.

3 MR. SILVA ROMERO: Mr. President, I have no further  
4 questions.

5 MR. COMMISSION: We have no questions for redirect  
6 examination.

7 PRESIDENT JÚDICE: Mr. Conthe. Please.

8 QUESTIONS FROM THE TRIBUNAL

9 ARBITRATOR CONTHE: Thank you, very much, Mr. Andrade.

10 First of all, we're going to look at Capacity Price,  
11 and what you called the Capacity Price in your First Statement,  
12 and there I had two questions. The first question is that what  
13 you call Capacity Price is the modification in 2007 of a  
14 measure that was taken in 2001. The well-known 20 percent  
15 increase to the price of complementary equipment, of additional  
16 equipment. So, that was not a measure in 2001 that had already  
17 been provided for in the Electricity Law of 2004. But this is  
18 regulation by the Superintendency, and it was necessary as a  
19 result of a report by a consultant called Renato Augurto to add  
20 that, and my first question is I understand that that measure  
21 that was later withdrawn in 2007 was adopted much or after the  
22 initial participation of GPU in Guaracachi's capital in 1995  
23 through the capitalization process, so this is not something  
24 the original investor had when the investment was made, but it  
25 was in 2001; that is to say a new addition was added,

18:26 1 20 percent to the Capacity Payment.

2           But once again the question is the following: GPU,  
3 the first investor in 1995 under the capitalization regime and  
4 the measure that was supported by EGSA at the administrative  
5 level was adopted in 2007, but to that end they had to modify  
6 something that was modified in--that was introduced in 2001.  
7 Is the timing the right one?

8           THE WITNESS: Well, no. I should say that with the  
9 first tariff and price regulation in 1995, there was already  
10 here a vacuum in terms of interpretation, because it was based  
11 on the reading of the article of the document.

12           So, this interpretation issue with that article was  
13 cause of concern for all of the participants, the  
14 Superintendency of Electricity as well as the generators.

15           And in order to clarify this issue, it was the  
16 Superintendency, the one that that hired Renato Augurto, and  
17 Renato Augurto advised the Superintendency to interpret turbo  
18 generation as different from the additional equipment, and that  
19 additional equipment should be considered at--between 15 and  
20 20 percent of the generation of the--of the generation  
21 equipment. This, the Superintendency, made it into a measure  
22 and became part of a resolution that was implemented and  
23 observed up to the moment when capacity was reduced.

24           So, this is prior to the investment, the investment  
25 buy GPU as the controlling company was made in 1999. And this



18:29 1 modification took place in 1996.

2 ARBITRATOR CONTHE: But you also said that there was a  
3 vacuum here, it was impossible to understand this, and this  
4 interpretation was finally achieved with this Resolution that  
5 helped interpret this based on the recommendation by Augurto,  
6 Renato Augurto.

7 THE WITNESS: Yes, but that took place in 1996. What  
8 you're saying is correct, but the timeline is different.

9 We're referring to an administrative resolution that  
10 helped determine 20 percent to estimate additional equipment.

11 ARBITRATOR CONTHE: So, the 20 percent goes back to  
12 1996 other than 2001?

13 THE WITNESS: Correct.

14 PRESIDENT JÚDICE: Very well. I ask the lawyers to  
15 look for that resolution of 1996, so you it bring it to us  
16 tomorrow. I don't have it right here.

17 ARBITRATOR CONTHE: Yeah. We haven't studied the full  
18 file enough, I don't think.

19 The next question is relating to this lease in 2007.  
20 In Spain, we say that we leave someone with honey on their  
21 lips; right? When someone is expecting something and the  
22 person doesn't get it.

23 On paragraph 49 of your First Statement, you criticize  
24 the Bates & White report on which the Superintendency relied to  
25 do away with the 20 percent.

18:30 1           So, apparently, the report was quite questionable, but  
2 that's it. That's all you say. So, I wanted to know more  
3 about it.

4           So, I would like you to tell us what the rationale  
5 behind all that is. You talked about questionable. This does  
6 not--this does not mean that it was arbitrary or absurd, so it  
7 means that it's questionable. So, your adjective, the one that  
8 you used, is not definite. So, the opinion by Bates & White  
9 was not absurd or arbitrary.

10           THE WITNESS: Well, I think it is. It was an opinion  
11 that was absurd and arbitrary.

12           Let me talk about three basic points, to be specific.

13           Bates & White does not include in its study any kind  
14 of evidence or substantiation or letters or photocopies that  
15 lead to the reduction of the 20 percent. The whole study is  
16 based on a study of percentages. There is a cost comparison,  
17 for example, in connection with the turbo  
18 generator--50 percent, for example, for fleet, for  
19 transportation, et cetera--and this is used in legislative--in  
20 the Bolivian legislation. So, and there is a comparison with  
21 the Peruvian legislation.

22           The fact is that a turbo generator has an FOB price  
23 according to the Peruvian legislation of \$10 million. So, Peru  
24 is different.

25           We're talking about two different units. GCH-8 use

18:32 1 formula is 40 megawatts, \$10 million. So, if we make an  
2 inference at that scale, it must be about 120 megawatts or  
3 more.

4           So, it is not a comparison. You're not comparing  
5 apples and apples, as it is said.

6           The third mistake by Bates & White is that it is quite  
7 evident that before this measure is taken and before this study  
8 is issued, the Government of Bolivia adopted an investment  
9 incentive policy with a reduction of duties. So, the duties  
10 for the turbo generating equipment was zero, and the  
11 transmission equipment duties were 5 percent.

12           So, in the face of such reduction, the Superintendency  
13 instructed a recalculation of the weighted rate of the duties,  
14 and operating normally; 14 does so. So, the duty is applied in  
15 an indexing factor 4 capacity that is applied monthly. So, the  
16 reduction has been applied.

17           So, Mr. Bates discovered the powder and reduces the  
18 effect of duties and reaches the 48 percent. In other words,  
19 that effect was already considered.

20           In my opinion, given that the reduction was  
21 20 percent, well--and this happened to be cut for some  
22 time--well, the effect has been charged twice to the  
23 generators.

24           ARBITRATOR CONTHE: Well, my adjective has been quite  
25 diplomatic.

18:34 1 THE WITNESS: Yes, quite diplomatic. But, in fact,  
2 this is what happened to us.

3 ARBITRATOR CONTHE: Well, I think I'm going to have to  
4 study this matter because I am not able to understand it very  
5 well. There are a lot of technical things here.

6 I have another question that has to do with the  
7 Stabilization Fund that was established in 2003.

8 MR. SILVA ROMERO: Well, excuse me, before you pose  
9 your question, sir, there are no claims in connection with the  
10 matter on the record. I want that to be very clear to the  
11 Tribunal.

12 ARBITRATOR CONTHE: In connection with the Capacity  
13 Price?

14 MR. SILVA ROMERO: No, about the issue that the  
15 Witness just put forth.

16 MR. GARCÍA REPRESA: It is an issue that has to deal  
17 with denial of justice and delay.

18 PRESIDENT JÚDICE: Well, I thank you very much, on  
19 behalf of the Tribunal, but we are now trying to understand  
20 things and we're not trying to make any decision.

21 ARBITRATOR CONTHE: Well, the second question has to  
22 do with the way in which the Stabilization Fund worked. It was  
23 established in 2003. I read your explanations in Paragraphs 25  
24 through 30 of your statement, Second Statement.

25 So, I wanted to confirm the interpretation of the fact

18:36 1 that the node price, the node price, which is the retail price  
2 that was paid by the users of the electricity and that the  
3 Superintendency stabilized during a six-month period, and the  
4 wholesale price that was charged by generators such as  
5 Guaracachi and others.

6           Now, I wanted to corroborate your interpretation of  
7 the matter. When the stabilization price, when the node price,  
8 was under the Spot Price, there was a credit generated, and the  
9 generators collected this. And when the stabilized price was  
10 over the Spot Price, as the consumers paid a price that was  
11 higher than the wholesale price, did that excess allow for the  
12 reimbursement of the loss felt by the wholesalers?

13           So, you were saying that the generators recovered some  
14 of those credits that were accumulated in that fund. It wasn't  
15 really a theoretical mechanism that never allowed for the  
16 collection of the funds, so, the generators recovered these  
17 credits from the fund.

18           Yes, Paragraph 28. Yes, paragraphs 25 to 28 of the  
19 First Statement.

20           THE WITNESS: Yes, your interpretation is completely  
21 correct.

22           Let me explain how this cycle worked in history. I  
23 think the Compass Lexecon study has a graph in connection with  
24 accounts payable and accounts receivable of generators,  
25 specifically for Guaracachi.

18:38 1           There has been a full cycle where we have accumulated  
2    receivables for about \$3 million, and then the whole thing  
3    reverted because we also had accounts payable for about the  
4    same amount of money. So, the system worked very well. There  
5    was a stabilization of the price, and the generators got the  
6    right to charge the true rights under the Spot Price provided  
7    for in the law.

8           ARBITRATOR CONTHE: So, the retail price was  
9    stabilized, but it did not permanently harm the generators who,  
10   before or after, could recover what they were--what they had  
11   been able to charge when the Spot Price was higher than the  
12   node price.

13           THE WITNESS: Yes, that is correct.

14           ARBITRATOR CONTHE: Now, let us look at another issue  
15   in connection with the Spot Price. This is Paragraph 32 of  
16   your Second Statement, if I remember exactly.

17           Now, to see if I understood this correctly, what you  
18   wanted to say in Paragraph 32 of your Second Statement where  
19   you say, after conversation with Guaracachi, you inherited the  
20   three Nordberg dual-fuel units from ENDE, it was certainly not  
21   our purpose to turn inefficient units into a business.

22           So, what you were trying to say by this is that you  
23   had no interest of deriving any kind of benefit from this, but  
24   if the Superintendency in '08 had failed to exclude them in  
25   connection with the marginal setting of prices, you would have

18:40 1 gotten some kind of benefit. Perhaps you didn't want--you  
2 weren't looking for it, but since the Superintendency forced  
3 you to keep them groundlessly, at the end of the day, this  
4 benefited you; right?

5 THE WITNESS: Let me explain this to you.

6 In '99, when the two 6FA turbines came into operation,  
7 they were completely excluded from participating in dispatch.

8 Now, the General Manager at the time told me that I  
9 had to realize all units. At the time, we hired a company  
10 called Beleya from the United States. And as a Bolivian  
11 market, we were very limited, so we looked for potential  
12 buyers. Ultimately, this company, Beleya, gave me a Final  
13 Report saying that the sale would be improbable and that it  
14 withdrew from the sale process.

15 So, the Board of Directors had the same question later  
16 on, many years later, and I wrote a memorandum to the Director,  
17 Board of Directors of Guaracachi, informing this--informing  
18 them of this position.

19 Now, in 2000, you see the complications that existed  
20 mechanically with Number 4 and Number 7, so we definitely  
21 withdrew them because it was more expensive to buy a new unit  
22 than to make 4 and 7 operational again.

23 In 2007, with the new management, we decided to change  
24 these units, and we told the Superintendency that we wanted  
25 withdraw 5 and 6, and they said no; they said, you have to

18:42 1 replace them.

2           The problem in Bolivia--and I want the Tribunal to  
3 understand it--is not an issue that had to do with the engines.  
4 The problem in Bolivia on the high costs has to do with the  
5 fact that, with the exception of Guaracachi, no generator in  
6 Bolivia made any investments.

7           So, in 2009, we arrived at a situation that was quite  
8 complicated. ENDE's project started in 2009--well, actually,  
9 the first half of 2010. So, there were no resources to  
10 maintain the electrical service. That is why the  
11 Superintendent, when we requested an expansion of the new  
12 project with the Jenbacher, he asked us to continue using the  
13 units up until the combined cycle becomes operational.

14           We said, we can do it, but we cannot do this  
15 indefinitely. And then we set a time limit, which was  
16 30 April 2010. And on 30 April 2010, we withdrew the License,  
17 and we weren't able to continue with the change because we were  
18 nationalized.

19           ARBITRATOR CONTHE: Okay, very well. But Bolivia  
20 diplomatically suggests that there was a certain malicious  
21 action by Guaracachi when they left those inefficient plants,  
22 so when there was a peak time--peak demand time, the price  
23 would be \$40 per kilowatt, and then this would create a  
24 windfall profit.

25           Now, you've reaffirmed the idea of other colleagues



18:44 1 that at some point in time Guaracachi itself tried to sell  
2 those engines and to replace them with others, but the  
3 Superintendency prevented them from doing so.

4 THE WITNESS: At the end of the day, when we talk  
5 about 5 and 6--

6 ARBITRATOR CONTHE: Well, but I'm talking about one,  
7 two, three--my question had to do with the three units that set  
8 the marginal price, and that were the subject of a Resolution  
9 passed in 2008 on which one of the claims of the investors is  
10 based.

11 THE WITNESS: What I would like to explain to the  
12 Tribunal is that although these Nordberg units had been in the  
13 market since 1995--well, let's see. In 1999, 2000, and 2001,  
14 when the system's reserves were over 30 percent, and these  
15 units have had no effect on the margin, no one complained.  
16 This was regular operations. And when these units became  
17 operational, it was just to keep the voltage level in the Sucre  
18 area. So, there was no problem at the time.

19 So, the problem arose when they started to mark  
20 prices. And they started to mark prices because--or to affect  
21 prices because there had been no investments because the end of  
22 project was substantially delayed. So, the dispatch has to  
23 resort to all the remaining units that were very inefficient  
24 and very expensive.

25 ARBITRATOR CONTHE: But shouldn't Guaracachi have

18:46 1 replaced these before they impaired the price?

2 THE WITNESS: Well, let's see. The situation in '99  
3 was for us to try to withdraw them from the market. We were  
4 unable to do so.

5 Now, in 2004, there was a shortage situation, and  
6 there was--there was a great shortage, and the Superintendency  
7 did not allow us to withdraw them. They said, although you  
8 have replaced new units, you have to keep the old units in  
9 operations--operation, although we didn't want this to happen.

10 ARBITRATOR CONTHE: Yes, I understand.

11 In Paragraph 33, you make a comment that I don't  
12 really understand in the light of what you, yourself, have said  
13 a moment ago in connection with the Stabilization Fund.

14 If I understand correctly, you said two things to us:  
15 First, that the functioning and the operations of the three  
16 plants--1, 2, and 3--and to the extent they increased the price  
17 and the difference between a wholesale and a retail price  
18 that--then that was recovered and the wholesaler Spot Price  
19 went up, this would harm the retailers because the  
20 Superintendents would not be able to lower the stabilized price  
21 of the node because the stabilization price was not a lost  
22 fund--the Stabilization Fund was not a lost fund, but it was a  
23 fund where the generators were able to recover money.

24 Now, you say something on 33 that I'm not really  
25 understanding. You said, Second, I don't understand how the

18:47 1 end-users in Bolivia would be prejudiced by the regulatory  
2 framework that was in place prior to the reintroduction of  
3 Resolution 283, as I understand Bolivia suggests.

4           As explained above, in 2003, the State created a  
5 Stabilization Fund to stabilize the electricity tariffs paid by  
6 end-users. That fund was established by Supreme Decree number  
7 whatever designed to prevent significant variations of the  
8 distribution rates.

9           And this is my doubt.

10           As a result, Bolivia's claim that the pre-existing  
11 regime, prior to Resolution 283, somehow prejudiced final  
12 consumers is mistaken.

13           In light of this, I would think the opposite; that the  
14 reasoning of Bolivia is correct because the fact that there is  
15 an artificially high Spot Price increased the credits of the  
16 generators against the Stabilization Fund and eventually would  
17 mean that the retail price would go down; right?

18           How would you respond to my argument that Bolivia's  
19 reasoning is correct?

20           THE WITNESS: Well, the impact of high Spot Prices in  
21 the short term were not going to impact Bolivia. If the Spot  
22 Price went from \$20 per megawatt or \$40 per megawatt, the  
23 difference was going to go to the fund. The end-user in the  
24 short term was not impacted.

25           ARBITRATOR CONTHE: What I want to say is in the short

18:49 1 term it wasn't going to impact, but in the long term it would  
2 harm the consumers because this was a credit that the  
3 generators had against the fund, and eventually they would  
4 collect on that fund.

5 THE WITNESS: It was a right that existed, and we were  
6 awaiting a return of those monies.

7 It's not that we looked for this. It was the shortage  
8 of the product that led us to use expensive units in the  
9 market.

10 ARBITRATOR CONTHE: I know that you're a  
11 businessperson, and you don't have a general vision of the  
12 company, but you were in Guaracachi from the very beginning  
13 from '91, and then in '95 hired by GPU.

14 So, from your partial business viewpoint of the  
15 company, if you had to make a comparison between the business  
16 model of Guaracachi since 1995 until Rurelec's entry and from  
17 Rurelec's entry until nationalization, what differences can you  
18 see in the business models that may have had an impact on the  
19 profitability of Guaracachi during these two different stages,  
20 from '95 to 2005, and from '06 until nationalization in  
21 May 2010?

22 THE WITNESS: In connection with management--if I'm  
23 allowed to say this, in connection with GPU International,  
24 well, this was a very conservative company. It came to invest.  
25 It made its commitments before its due timeline. It exceeded

18:51 1 the amounts. So, it was a company that was very aware of the  
2 commitments it made. But it didn't--but it didn't go beyond  
3 its commitments.

4 Rurelec introduced in the company a litany of projects  
5 and combinations to try and solve the problems of Bolivia. I  
6 talked about the Jenbacher engines. In Sucre, this was  
7 fundamental for generation purposes. No one had wanted to  
8 introduce generation in Sucre, and the problems were quite  
9 complicated.

10 Guaracachi 11 was actually fundamental to avoid a  
11 dramatic collapse in 2009 and 2010. No one had been ready to  
12 invest here. And we're talking about a combined-cycle project.  
13 This was the first project. It was an ingenious project. It  
14 was good, we were going to save gas, and the gas was going to  
15 be exported, and the Bolivian Government was going to benefit  
16 from this. Also there was the issue of the carbon credits.

17 And in our portfolio, we had the Huaricana project as  
18 well. And one of the most serious problems that La Paz has is  
19 that it isn't able to install turbines; or if it can install  
20 turbines, they're very, very expensive because it is 3800  
21 meters above sea level.

22 So, if we go to a valley, we can go to 2500 meters  
23 above sea level.

24 So, we had bought a plot of land, and we were going to  
25 implement this project. And all this was in our portfolio, and

18:53 1 there were many, many innovative resolutions on the part of  
2 Rurelec. That is my personal opinion.

3 ARBITRATOR CONTHE: This is my last question. I know  
4 you were not the Financial Director, but GPU was very  
5 conservative, you said, but things were not--but it did not  
6 fare very well in Bolivia.

7 In 2003, it was bought, and then it paid \$35 million  
8 in 2005, and--for something that a few years before it had paid  
9 45 million.

10 Why was the profitability so low for GPU?

11 THE WITNESS: Yes.

12 MR. SILVA ROMERO: The 35 million, I think I need to  
13 clarify that. That's disputed between the Parties. Because  
14 there are statements.

15 ARBITRATOR CONTHE: Well, claimants say they paid 35  
16 millions.

17 MR. SILVA ROMERO: If these statements are made in  
18 that way, Bolivia could interpret your statement as a  
19 conclusion that you have reached already.

20 PRESIDENT JÚDICE: The Tribunal has reached no  
21 conclusion. Mr. Conthe has not reached any conclusion either,  
22 but he was trying to do things faster.

23 ARBITRATOR CONTHE: Thank you, Mr. President.

24 THE WITNESS: Could you please repeat the question?

25 ARBITRATOR CONTHE: Yes.

18:55 1 I was saying that assuming--well, let's assume that  
2 the sale price in 2003 by GPU to the first U.K. company that it  
3 bought, Integrated Energy, was \$35 million. Let's imagine that  
4 that was the price that the Claimants say they paid when they  
5 bought Integrated Energy, the U.K. company.

6 You said GPU was an American company that was very  
7 conservative, and that it measured every single risk. But--I  
8 don't know if they got enormous dividends out of this, but it  
9 did not fare very well because it invested \$45 million and, 10  
10 years later, it only got out \$35 million or just about that  
11 figure.

12 How can you explain that this was so bad if that was  
13 the price that it collected in 2003 when it sold it?

14 THE WITNESS: Well, Bolivia has suffered a series of  
15 transformations, and a lot of private capital has come to  
16 Bolivia.

17 In 1999 until 2002, Bulo Bulo was installed with  
18 80 megawatts; Hidroeléctrica Boliviana with 90 megawatts; COBEE  
19 had a program with the Government with 60 megawatts.

20 So, there is capacity that was included in the system.  
21 More than necessary. That is why I was saying, in response to  
22 your other question, that is what the reserves showed, the  
23 difference between supply and demand. It was over 35. This  
24 was unheard of in Bolivia. That's Number 1.

25 Now, the competition amongst generators makes things

18:57 1 very aggressive.

2           Now, the gas market. Bolivia was in a situation where  
3 it had discovered large gas sources. There was a project to  
4 sell gas to Brazil, the gas pipelines were being constructed,  
5 but at that time there was no real sale taking place.

6           The producers of gas in Bolivia, instead of wasting  
7 the gas, they took the gas out. They took the liquids out, and  
8 then they reinjected them.

9           So, I could say the marginal cost for the price of gas  
10 was zero, okay? So, there was an environmental bonanza, and  
11 this led to a significant competition. So, the prices for the  
12 Fiscal Years were unimaginable. So, that is why we had to kill  
13 equipment. We had to sell 3 and 5. It was a question of  
14 survival, but the profitabilities were quite low.

15           ARBITRATOR CONTHE: Why was the environment so  
16 competitive, and why the profitability for the established  
17 competitors was lower than was expected?

18           Do you think that this environment of exacerbated  
19 competition and cheap energy disappeared starting in '06, '05,  
20 when Rurelec came? And do you think that this would have been  
21 sustainable in time?

22           THE WITNESS: I just wanted to say that generators in  
23 Bolivia do not have profits that are ensured. They can lose or  
24 they can win. There is no profit that is completely assured.  
25 It is a full-competition system.



18:59 1           Now, the changes that has occurred is that gas markets  
2 had opened up, to Brazil, to Argentina. Argentina needed gas  
3 enormously, so the gas was not for free anymore. The gas had a  
4 very specific value.

5           Now, the recession took place, and the generators  
6 suffered the impact of competition. So all the impetus kind of  
7 stopped, and the climate of confidence in Bolivia started to  
8 change, and nobody wanted to invest, and there were shortages.  
9 And that is what Rurelec had to go through.

10           PRESIDENT JÚDICE: I just have one question.

11           The investments made in the cooperative close to the  
12 border, why did EGSA make this investment instead of another  
13 service provider? Was this discussed? Was this a proposition  
14 by EGSA? Or was this a unilateral decision by the Government?

15           Why EGSA is my question? Because EGSA was already  
16 investing a lot, apparently.

17           THE WITNESS: Yes. EGSA was a company that had very  
18 dynamic investments. No one else wanted to invest. The  
19 Government came to us, and the Government said to us, I have  
20 this problem, please solve this problem.

21           So, we implemented this project to try to solve the  
22 problem that the Government had, as requested by the  
23 Government.

24           PRESIDENT JÚDICE: It wasn't very profitable?

25           THE WITNESS: No, it wasn't.

19:00 1           PRESIDENT JÚDICE: So, why didn't you say, okay, let  
2 us set up a cooperative of producers, for example?

3           THE WITNESS: Well, I think that Rurelec has always  
4 wanted to operate in Bolivia. It wanted to obtain the  
5 confidence, the trust, rather, of the Government. We knew they  
6 were going to lose, but we wanted to become more stable in our  
7 business and in our operations in Bolivia. That was the real  
8 intention that Rurelec had at that time.

9           PRESIDENT JÚDICE: I think that we're going to  
10 conclude today. Thank you very much. You can--you're excused.

11           (Witness steps down.)

12           PRESIDENT JÚDICE: Thank you very much. And tomorrow  
13 we are going to start at 9:30 as today or would you rather meet  
14 at 9:00?

15           MR. BLACKABY: 9:30.

16           MR. SILVA ROMERO: We are in agreement.

17           (Whereupon, at 7:02 p.m., the hearing was adjourned  
18 until 9:30 a.m. the following day.)

19

20

21

22

23

24

25

## CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

---

DAVID A. KASDAN

