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)

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In the Matter of Arbitration
Between:

GUARACACHI AMERICA, INC. (U.S.A.) and
RURELEC PLC (UNITED KINGDOM),

Claimants,

and

PLURINATIONAL STATE OF BOLIVIA,

Respondent.

--- x --- Volume 3

HEARING ON THE MERITS

Thursday, April 4, 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 9:37 a.m. before:

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MR. MANUEL CONTHE, Arbitrator

PROF. RAÚL EMILIO VINUESA, Arbitrator
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<table>
<thead>
<tr>
<th>Witness Name</th>
<th>Examination Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>CARLOS PEDRO MARCELO BLANCO QUINTANILLA</td>
<td>Direct examination by Ms. Richard&lt;br&gt;Cross-examination by Mr. Silva Romero&lt;br&gt;Redirect examination by Mr. Blackaby&lt;br&gt;Recross-examination by Mr. García Represa&lt;br&gt;Questions from the Tribunal</td>
</tr>
<tr>
<td>JOSÉ ANTONIO LANZA</td>
<td>Direct examination by Mr. Commission&lt;br&gt;Cross-examination by Mr. García Represa&lt;br&gt;Redirect examination by Mr. Blackaby&lt;br&gt;Recross-examination by Mr. García Represa&lt;br&gt;Questions from the Tribunal&lt;br&gt;Further recross-exam. by Mr. García Represa</td>
</tr>
<tr>
<td>CARLOS QUISPE LIMA</td>
<td>Direct examination by Mr. Merizalde&lt;br&gt;Cross-examination by Mr. Blackaby&lt;br&gt;Questions from the Tribunal</td>
</tr>
</tbody>
</table>
MR. SILVA ROMERO: Thank you very much, Mr. President.

Good morning, Members of the Tribunal.

There was an issue that was pending after the submissions made during the first day of the hearings, had to do with the reaction of Bolivia vis-à-vis the statements made by Claimants in connection with the withdrawal of the claim related to the Worthington engines. In our last presentations we were saying that this claim was moot, in our opinion, because in February 2013, EGSA had sent a letter to Energais for them to come and pick up the engines, and conversations between EGSA and Energais had taken place, and there had been a meeting, and Mr. Blackaby made reference to this meeting.

Mr. Blackaby--this is Day 1 of the transcript Pages 70 and 71--indicated that, after the meeting that the Parties held, there was an initial inspection of the engines on the basis of which they appeared to be complete. He stated that Claimants withdrew the claim related to the Worthington engines and accepted the return of the engines for the reasons...
indicated by Mr. Blackaby, in the understanding that there were three conditions that were to be met, and Mr. Blackaby mentioned them. And if I am misconstruing the words of Mr. Blackaby, he will correct me:

First, that the engines had to be complete;

Second, that no spare parts be withdrawn from the
09:39  1 engines;
2           And, third, a formal confirmation by Bolivia of these
3 first two points.
4           Now, after speaking with Mr. Paz, who is an engineer
5 and he's a Manager of EGSA, and after obtaining express
6 authorization by the Attorney General of the State, Bolivia
7 can formally confirm the following:
8           First, that the engines are complete;
9           Second, that no spare parts have been or will be
10 withdrawn from them or removed from them;
11           And, third, EGSA is waiting for Energais to come
12 and pick up these engines.
13           I understand that the discussions are ongoing.
14 Mr. Paz, the Manager of EGSA, in this capacity he has stated
15 that the return of the engines be done in the presence of a
16 notary so that everything is evidenced; and, I understand,
17 on the basis of the statements of Mr. Blackaby, the Tribunal
18 may consider that the third claim, new claim of the Claimants,
19 been withdrawn.
20           Thank you very much, Mr. Chairman.
PRESIDENT JÚDICE: Mr. Blackaby.

MR. BLACKABY: On behalf of the Claimant, on the basis of the representations made by counsel for the Plurinational State of Bolivia, and on those conditions, we confirm the withdrawal of the claim, and also on the additional condition
or the additional concept that the motors be withdrawn before a notary public to make a full note of what has actually been taken away and the state of the motors, et cetera. But I think on that basis we can close the Worthington chapter. Thank you.

PRESIDENT JÚDICE: Thank you very much, gentlemen. I think that from our side we will wait for the new developments, and afterwards, you inform us if you want us your own agreement or if you don't need from our side anything related thereto.

But we are not going to look in detail on this specific relief; and, therefore, we appreciate this effort of both parties. We thank you very much the effort made by those Parties to try and reduce the Disputes. Thank you very much. Therefore, we can move on to the examination of the next witness, which is Mr. Blanco.

CARLOS PEDRO MARCELO BLANCO QUINTANILLA, CLAIMANTS' WITNESS, CALLED

PRESIDENT JÚDICE: Good morning. I think your name is Carlos Pedro Marcelo Blanco Quintanilla.

THE WITNESS: Yes, good morning, Mr. President. My
name is Carlos Pedro Marcelo Blanco, but I use the name Marcelo only.

PRESIDENT JÚDICE: You have been identified, so I'm going to ask you to read the piece of paper you have on your desk. Please read it out loud so it can be recorded.
THE WITNESS: I solemnly declare upon my honor and conscience that I will tell the truth, the whole truth, and nothing but the truth.

PRESIDENT JÚDICE: I don't know if you have been in proceedings like this before, but the lawyers to my left are going to ask questions. The lawyers to the right are going to ask questions of you as well. Perhaps the lawyers will also pose questions later on, and the Tribunal, us, may also pose questions to you if we deem necessary. Thank you very much for your cooperation in these proceedings. We are ready to listen to your answers to the questions.

DIRECT EXAMINATION

BY MS. RICHARD:

Q. Good morning, Mr. Blanco. Before we begin, I just want to confirm that you have in front of you a copy of the three witness statements that you have submitted in these proceedings. If you could just take a moment now to check that those are, indeed, your statements and that it is your signature at the end of each statement. You should have the original Spanish version.

A. Yes, that is correct.
22 Q. And is there anything in those statements that you
23 would like to change or to correct?
24 A. Yes, I would like to amend the Second Statement. I
25 think, if memory serves, it's Paragraph 16, second paragraph
09:47  16, when I say that Guaracachi in 2010 and 2011 continued to
  2 obtain loans from Banco Credito Mercantil--and Mercantil,
  3 that's a mistake. The rest stands, but I just wanted to
change
  4 Banco Credito and Banco Mercantil Santa Cruz.
  5               PRESIDENT JÚDICE: So, we have to delete those two
  6 bank names?
  7               THE WITNESS: Yes, Mr. President. That's correct.
  8               BY MS. RICHARD:
  9               Q. Thank you.
10               Would you please briefly summarize for the Tribunal
role
11               your academic and professional background, including your
12               at Empresa Eléctrica Guaracachi.
13               A. I graduated magna cum laude--
14               (Lost interpretation.)
15               A. I graduated from Vermont. I have an MBA. I have a
16 magna cum laude degree that I got. After that, after my
17 graduate studies, I worked for CIML in Santa Cruz de la
Sierra.
18               This was a company that worked in wood particulate materials.
19               Then after working for CIML, I worked in the Embassy of
Bolivia
20               in Argentina. I worked to Argentina because of medical
21 reasons, one of my daughters.
In Argentina, I did a Master's degree specialized in business administration. Then I went back to Bolivia, and I worked for a Banco Mercantil Group. I was a General Manager. I was looking at the investments of the group. Banco Mercantil
Group is one of the most important banks in Bolivia. After that I worked for the UNDP, the United Nations, as consultant for administration and management. I was a consultant there. Then I was invited by the World Bank to work as a consultant in administrative matters in connection with education. After that, I was invited to participate in a competitive examination for a position in Santa Cruz. It was a French company, it was called GeoServices, it was one of the largest companies in Bolivia, and I did get that position, and a number of executives offered me the opportunity to work in Empresa Eléctrica Guaracachi. From '99 to 2002 I worked as the Administrative Financial Manager of Guaracachi. Then I started working for Sánchez de Lozada, the former President's administration, and I was the Minister of Energy until 2004, then Mr. Lozada stepped down. Then I went back to Santa Cruz. I worked again with Mr. Earl. I worked in the rural electrification project. Then I came back to Guaracachi as a Financial Manager, and after that I was appointed Financial Director of that company.
Q. Thank you.

And can you briefly describe Guaracachi's financial situation in the months prior to the nationalization.

And if you can just wait?

A. The financial situation of Guaracachi during the years, I held a position in the company was robust. It was
The word "robust" has been translated, but the correct word should be "creditworthy," and/or "solvent." It was a solvent company.

At one point there was a loss because of a problem with one of the turbines. It was an accident, really. I found out about it. It was a national problem but during the years in which I worked for Guaracachi, the company always got profits, according to the accounting regulations.

Q. In your statements you mentioned that Guaracachi had limited liquidity in the months prior to the nationalization. Can you briefly explain the reasons for that limited liquidity.

A. The reasons have to do--and the reasons for the liquidity problems and, of course, I reiterate, there were liquidity problems. It would be foolish not to state that. It had to do with increases in the combined-cycle project and the cost of the combined-cycle project, this in connection with the raw materials that had come up and the costs of the generator.

Also, the contributions had to do with the dignity
19 tariff. This was a solidarity measure, an equity measure, 

20 as in my understanding. There were other measures that were taken 

21 the reduction in the Spot Price and the basic Capacity Price. 

22 Other things that had an impact on liquidity was 

23 we were waiting for pre-payments of the CAF, and this was 

24 done because of a series of paperwork issues that were 

25 up with the National Government, and these were some of the
factors that impacted the liquidity of Guaracachi.

Q. And just prior to the nationalization, what was your future perspective for the company?

A. Well, this was an ambitious project, the combined cycle was, and we were going to double our EBITDA. We're looking at the Financial Statements now of the current administration of Guaracachi, and we can see that the increase was going to be very important. The income was going to be higher. We actually discarded all the thermal units, and we were sure that this was going to be a success; otherwise, we wouldn't have undergone and done a project such as this with the magnitude of the combined-cycle project.

Q. Thank you. I have no further questions. I believe counsel for Bolivia will now have some questions.

PRESIDENT JÚDICE: Thank you very much.

Bolivia, you have the floor.

CROSS-EXAMINATION

BY MR. SILVA ROMERO:

Q. Good morning, Mr. Blanco.

A. Good morning, sir.

Q. My name is Eduardo Silva Romero. I am one of the lawyers of the counsel team that defends your country in these
proceedings, and I am here to ask you some questions. Do you understand the process?

A. Yes, I do understand it, sir.
Q. It is possible that during my examination, Mr. Blanco, I may resort to some documents, and my colleagues are going to give you, Claimants’ counsel, and the Arbitrators a set of documents, which is in a binder that contains a number of documents that we are maybe going to examine together.

A. Very well.

Q. Thank you.

Before moving on to the questions that I have prepared for you, I wanted to ask you three questions in connection with the answers that you gave the lawyer, your lawyer.

First question: You said that you graduated magna cum laude. What kind of field?

A. Business administration.

Q. And you got a magna cum laude because you got good grades, and you got a thesis? So, please let me finish the question.

PRESIDENT JÚDICE: Yes, it is necessary for the transcript to be accurate to avoid any overlaps, so please give you a moment for Mr. Silva Romero to ask the question, and then can answer.
BY MR. SILVA ROMERO:

Q. Mr. Blanco, I was asking, you graduated magna cum laude because you got good grades? Yes or no.

A. Yes.

Q. So, this had nothing to do with a thesis or a
dissertation at the end of your studies that you got this magna cum laude degree?

A. Well, I don't know if you're familiar with the proceedings here in the United States, but the bachelor's is what we call a "licentiate" in Spanish. It doesn't necessarily require a thesis, but each course that you take you have to do a mini thesis for, so I had many mini theses, but I didn't have to submit a final thesis.

Q. My second question has to do with something that is included in your second statement. You just made a correction to your Second Statement. I understand that this was Paragraph 16 that you corrected?

A. Yes, sir.

Q. Perhaps you would like to refer to Paragraph 16, and in Paragraph 16 you wrote, "Secondly, like what Ms. Bejarano states, the Audited Financial Statements of Guaracachi for 2010 and 2011, indicated that the company continued to obtain financing by Banco de Crédito, Banco Mercantil de Santa Cruz, et cetera."
If I understand your correction correctly, we have to delete from this paragraph the words "Banco de Credito and Banco Mercantil de Santa Cruz?"

A. Yes, for that period, yes.

Q. So, it means that Ms. Bejarano was right in her statement; correct?
A. Well, she was right--well, she wasn't right. When she says that there were no loans, she's not right because there were other loans from the Banco de Ser, Banco de Ganadero, was a Canadian company, so Ms. Bejarano is not right.

Q. But according to you she's right in connection with Banco de Credito and Banco Mercantil de Santa Cruz?

A. Mr. President, we should refer to Ms. Bejarano's statement.

Q. That's not necessary. I'm going to move on to a different question. The third issue--

PRESIDENT JÚDICE: Just one moment. Well, if you want to, we can do it, but the lawyers for Rurelec may have the opportunity later on to ask questions in connection with this, if they see fit.

BY MR. SILVA ROMERO:

Q. Finally, and this is my third preliminary question, Mr. Blanco, you made reference to the word "robust." You remember this; right?

A. Yes.

Q. And you said that when you say "robust," we should read "solvent" or "creditworthy."
A. I cannot say what someone else is saying, but when I say "robust," "robust" is creditworthy or that has the ability to pay.

So, to me, robust means creditworthy.
Q. But you used the word "robust," "robusto" in Spanish?

A. Yes.

Q. So, you're correcting this, so you want us to understand that the word "robusto" or "robust" means creditworthy; right?

A. Mr. President, I think this is an issue that has to do with meaning. At the end of the day, the meaning is the same, but to be clear, the word is creditworthy, "solvente" in Spanish, but the intention in the text in this word is the same. This is just a matter of semantics.

Q. I don't think it's a matter of semantics, Mr. Blanco, because you said it was a translation problem. You said that this was a translation problem. Yes or no?

A. Yes, that's what I said.

Q. What language did you write your statement in?

A. In Spanish.

Q. Then if you wrote it in Spanish, what is the translation problem, Mr. Blanco? Can you explain it?

A. I already explained it.

Q. I don't think you have explained it?

A. I think I have.
22 In my opinion, the word is solvente in Spanish or
23 creditworthy in English. The right word should be
24 creditworthy.
25 Q. Then, Mr. Blanco, if I understand you correctly, we
are referring to a translation from Spanish to Spanish.

A. If that's your understanding, that's your own issue.

Q. I am not interpreting anything, Mr. Blanco. I am trying to understand how you prepared a statement that you submitted before this international arbitration Tribunal, and you come here to say that where you say robust, we should understand creditworthy because of a translation issue. I understand that you wrote your--I could understand that if you wrote your statement in English and that it was translated into Spanish, but you're telling me that you wrote it in Spanish, so I would like to know where the translation problem is.

A. Mr. President, if you have any problem with the interpretation of the word, in my opinion creditworthy and robust is the same. But if this is an issue for the lawyer representing Bolivia, I have no issue with having robust.

PRESIDENT JÚDICE: The Tribunal has a clear understanding of your interpretation of robust and creditworthy, but Mr. Silva Romero has a different question, whether your statement was written in Spanish and translated into English or it was written in English and translated into Spanish. But this is a little bit of a different issue, and,
if possible, you can answer it. There is no problem if it was written in dear Portuguese or in English or in Spanish.

THE WITNESS: I wrote the statement in Spanish, Mr. President.
10:03 1    PRESIDENT JÚDICE: Is it clear, Mr. Romero?
2    MR. SILVA ROMERO: Not really, but given time
3  constraints, we are going to move on to other more important
4  issues.
5    BY MR. SILVA ROMERO:
6    Q. Mr. Blanco, you use in your statement the word
7  provisional or temporary; correct?
8   A. Yes.
9   Q. Is that word correct in Spanish?
10  A. In my opinion, it is.
11  Q. You're saying that liquidity problems with EGSA
12  were
13  temporary; is that correct?
14  A. In my opinion, it is.
15  Q. Well, Mr. Blanco, if we move on to Paragraph 1 in
16  your
17  First Statement, summing up, and also leaving aside your
18  tenure
19  as the Vice Minister, I understand that you were with EGSA
20  since May 2009 to May 2010; correct?
21  A. Yes.
22  Q. And I understand that you were a Minister between
23  2002
24  and 2004; correct?
25  A. Yes.
Q. Between May 1st, 2010, Mr. Blanco—and as I understand from your statement and later on and up until now you have been a Rurelec employee; is that correct? So, you're saying starting on May 1st, 2010?
10:05  1    A.   Yes.
2    Q.   So, I understand that you have a Contract with them; correct?
3    A.   Yes, sir.
4    Q.   Therefore, you have a monthly salary, don't you?
5    A.   Yes, I do.
6    Q.   Please wait for me to finish; otherwise, we're not going to have a clear transcript. Do we agree?
7    A.   Yes.
8    Q.   So, we can say that it is a temporary agreement. In addition to the salary that you received as a Rurelec employee, do you have any other agreement for compensation in connection with this arbitration?
9    A.   None.
10    Q.   Very well. If you agree, Mr. Blanco, why don't we talk about the
11    let's
12    regularly changes to Spot Prices and Capacity Prices, and
13    move on to Paragraph 21 in your First Statement.
14    Are you there yet?
15    A.   Yes.
16    Q.   In Paragraph 21, you are referring to Resolution 40, and later on you say that between May 2007, when the law became
23 effective, and May 2010, the effect on the revenues of
24 Guaracachi was immediate and substantial. Is that correct?
25 A. Yes, sir.
10:07 1 Q. So, we are agreed that that change became effective in May 2007; correct?

2 A. Yes.

3 Q. If we look at Paragraph 24 in your statement, toward the end of that paragraph you included a table. Do you see it?

4 A. Yes. Yes, sir.

5 Q. This is the one that you called Guaracachi's Financial Statements?

6 A. Yes.

7 Q. And, in this table, we can see that the net profits for 2007 equal 9,628,563.

8 A. Yes.

9 Q. The ones for 2006, 7,188,231.

10 In 2008, we see 10,245,011.

11 And, in 2009, we see a drop to 3,379,444.

12 You see those numbers; right?

13 A. Yes, I see that.

14 Q. And if we move to Paragraph 25, towards the end, you say: "In fact, in 2008, Guaracachi recorded its highest profit since its privatization in 1995."
21      Q.   It would seem, then, Mr. Blanco, that the impact on
22 Guaracachi's revenues because of Resolution 40 was not
23 immediate or significant.
24 A.   That is not correct because if the revenues would
25 have
been higher hadn't that measure been implemented and the impact
would have been lower.

Q. So, do you consider in your answer the existence of the Stabilization Fund?
A. The stabilization fund is different because the profits are booked differently. That is what we sell.

Q. So, you're telling me that in your answer, you did not consider the impact of the Stabilization Fund?
A. I am not saying that. You asked me a question, whether the measure implemented by the Government had an impact, and I am saying that it did have an impact; even though we have profits, profits would have been higher hadn't that measure been implemented. You just have to multiply that times 20 percent, so it's a very simple mathematical exercise.

Q. If we continue here looking at this table at Paragraph 24, Mr. Blanco, we can see that in 2006 the total liabilities for Guaracachi were 35 million, more or less; in 2007, it went over to 74 million; in 2008, 96 million; and, in 2009, 127 million; correct?
A. Yes, sir.

Q. So, we can see that from 2006 to 2009, the debt
22 increased by 92 million; correct?

23 A. Yes.

24 Q. And based on your understanding, this column in your

25 table for total liabilities is not adjusted based on the UFV?
10:12 1 A. But, if you allow me, Mr. President—

2 Q. Your answer is that the total liabilities were

3 adjusted based on the UFV?

4 A. Yes, of course. But if you allow me, Mr. President,

5 we cannot eliminate the context here. The lawyer is asking

me

6 to look at total liabilities that have increased

significantly,

7 but he's not asking me to look at the net worth and the

assets

8 that also increased significantly.

9 PRESIDENT JÚDICE: Don't worry. The Tribunal does

10 understand that.

11 BY MR. SILVA ROMERO:

12 Q. Now, if we look at net profits and total assets, we

do

13 have an adjustment based on UFV?

14 A. Yes, they are adjusted based on the accounting

15 standards that are accepted in Bolivia.

16 Q. And that includes Standard 3?

17 A. Yes, that includes Standard 3. That is part of the

18 current regulations in Bolivia, and that also implements the

19 payments of taxes.

20 Q. And Standard 3 has to do with the payment of taxes

and

21 adjusted by UFV?
22      A.  Yes.

23      Q.  And you are saying that the total liabilities is

24  also—are also adjusted based on the UFV; correct?

25      A.  Well, everything is adjusted based on UFV.
Q. Okay. We will see that later on:

In your first two statements, Mr. Blanco, you did not say that EGSA, in 2010, as you mentioned in your direct statement, had an illiquidity issue. You only say that in your Third Statement; correct?

A. Certainly.

Q. Why--

PRESIDENT JÚDICE: Certainly yes?

THE WITNESS: Yes, Mr. President.

BY MR. SILVA ROMERO:

Q. Why didn't you accept the liquidity situation in the First and Second Statement?

A. Because that was not within the context of my statement. It was a different context.

Q. If we move to your Third Statement—rather, the first one. Toward Paragraph 16, there, Mr. Blanco, you see a title Number 2, the financial performance of Guaracachi.

Do you see that?

A. Yes.

Q. The liquidity of the company in 2010 is part of the financial performance of Guaracachi, isn't it?
A. Yes. But once again, that was not part of the context of my statement.

Q. If we move on now to your Third Statement, dated January 21, 2013, and if we look at Paragraph 16, here we also...
see title Number 3. And I imagine that there is a context there, and it says Guaracachi's financial situation. Do you see it?

A. Yes.

Q. And at Paragraph 16 you say Ms. Bejarano contests that Guaracachi had a strong financial position or robust financial position. She refers to several communications by members of Guaracachi's management in 2009 and 2010, including my own, raising concerns with respect to the company's liquidity. Guaracachi did have limited liquidity shortly before the nationalization. The situation was temporary in nature and did not undermine the strong fundamentals of Guaracachi's finances as I explained below.

Do you see this paragraph?

A. Yes, I see that.

Q. Indeed, you are here recognizing liquidity problems because Ms. Bejarano introduced in the record your e-mails in which you acknowledge illiquidity problems in 2010; is that correct?

A. No, I don't know what e-mail correspondence you're
referring to, but if you would like to show it to me, that would be a good idea.

Q. If we move on to Paragraph 19, there you say the following: "Although Guaracachi's liquidity was rejected as a result of the above factors, this situation was temporary."
10:17 1 And then if we look at Paragraph 22, there you say, 
2 "Even though Guaracachi was facing temporary liquidity 
3 restrictions, there was never any question as to 
4 Guaracachi's 
5 robust financial structure."
6 To give context to what you say in your statement, now 
7 I understand that you base your position to say that the 
8 financial situation of the company was robust on three 
9 elements 
10 that I would like to analyze with you. 
11 First, you say that one of the sources of 
12 illiquidity 
13 was cost, the cost generated by the combined-cycle project; is 
14 that correct? 
15 A. Well, the increase in costs. 
16 Q. As a matter of fact, initially, you had budgeted 
17 $40 million, and it ended up being $68 million; correct? 
18 A. Yes. 
19 Q. And if we look at Paragraph 17 in your Third 
20 Statement, Page 11 and 12, there you say, "Guaracachi had 
21 limited liquidity prior to its nationalization for several 
22 reasons. First and foremost"--and this is the element I 
23 would 
24 like to analyze with you--"this was because it was dedicating
the bulk of its revenues to its large-scale investment in the CCGT project, which had an approved revised budget of $68 million, excluding taxes, financial costs, or accounting adjustments such as those under NA-3. It was more than 90 percent complete at the time of the nationalization as
Please provide the raw text content from the document.
23      A. Of course I am.
24      Q. And if we look at Page 5 out of 7, you can you see the small number at bottom of the page, to the bottom right-hand
corner, there is a third clause that refers to what EGSA said

in a note dated January 19, 2010, and EGSA there was telling the Authority that EGSA had completed the project by 96 percent.

A. Where?

Q. That is the third paragraph.

A. Yes, I can see that.

Q. That is to say, EGSA submitted a note saying that EGSA estimates that the project is complete—is 96 percent complete;

correct?

A. Yes, correct.

I'm sorry, but sometimes he's asking me to answer immediately, and he's sometimes asking me not to answer immediately.

PRESIDENT JÚDICE: Let's try to find middle ground.

THE WITNESS: I am just trying to follow his guidelines.

PRESIDENT JÚDICE: If you allow me, you said that you do not have much experience in this type of proceeding.

Things here have this type of energy, so it is normal for the lawyer
of Bolivia to be a little bit less nice with you than the other lawyers, and then the situation is going to change. These are the rules of the game, but you can say whatever you think, and the Tribunal is paying full attention to what you are saying.

THE WITNESS: Thank you very much, Mr. President.
BY MR. SILVA ROMERO:

Q. If we look at the following paragraph, Mr. Blanco, here the authority has their opinion; and, towards the end of this paragraph, the authority says that, based on the information provided by EGSA and the review of the accounting records, a conclusion was reached that the investment for the implementation of the generating unit GCH-12 and the conversion of GCH-9 and GCH-10 units that will operate under the combined-cycle method, attained 50.7 percent of the approved budget. At least by April 13, 2010, 50 percent, 50.7 percent of the budget had already been used.

A. I cannot tell you whether this is correct or not. I should consult the reports presented to the Board by Mr. Lanza, and he indicated that the progress made was over 90 percent. I do not know why the Electricity Authority had a different opinion. I did not have any communications with the Electricity Authority, but the progress of the combined-cycle project, as I have said before, and as Mr. Lanza has said before as well as the other witnesses, had reached over
90 percent.

So I imagine that when Mr. Lanza has to make a statement here, you can ask him how he can explain this difference in terms of his figure and the figure of the Electricity Authority.

MR. SILVA ROMERO: Well, the witnesses here seem to be
kicking the ball among themselves. Well, this looks like the Barcelona team.

PRESIDENT JÚDICE: I don't know about the witnesses, but the Barcelona players are really efficient.

BY MR. SILVA ROMERO:

Q. Now, if we move on to Paragraph 19, I get to the second element that I wanted to discuss with you in connection with the illiquidity situation or the so-called "creditworthiness" of EGSA; and in Paragraph 19 you say, "In addition, we had already—we were expecting to receive a payment of €3.3 million from the development banks that had agreed to extend those credits." But €3.3 million, Mr. Blanco,

you would agree with me, were not even enough to pay what you owed YPFB for gas supply.

A. One of the evidence introduced by Bolivia included an e-mail that I sent to Mr. Peter Earl, and I invited him to close the Financial Statement with that information from the project.

MR. SILVA ROMERO: Mr. Blanco, Mr. President, is not answering my questions. I will continue asking questions,
at some point I will ask the assistance of the Tribunal so that he's told that he has to answer my questions.

BY MR. SILVA ROMERO:

Q. I am going to repeat my question, Mr. Blanco.

PRESIDENT JÚDICE: You can say whatever you want in
10:27 your answer, Mr. Blanco, but, Mr. Blanco, try to be as direct
that

as you can because we can make progress, and also because

is not negative for you.

So, you can answer the question may be different,

but

please make an effort to answer properly the questions being asked by the lawyer.

THE WITNESS: I am going to repeat my answer.

Or can you ask me again the question?

BY MR. SILVA ROMERO:

Q. You were saying that you were receiving those

points—€3.3 million. My question is: The €3.3 million were

not even enough to pay YPFB what you owed for the gas supply;

is that correct?

A. We owed about $12 million to YPFB, and clearly this amount would not have been enough to pay because the priority

was to finish the project, but yes, we did owe YPFB more than

€3.3 million, but the idea was to use this amount on the project because if you allow me to continue, we never received

an official letter from YPFB indicating that they were going to
interrupt the service. We have had the debt since November,
and we were trying to make partial payments.

Q. Okay. You're saying that you owed about 12 million,
but if I tell you that the debt as of May 1st, 2010, was
about 14 million, do you agree or not?

A. There was another invoice that had an additional
10:29  1 period for payment, and that was 2.5 million.
2      Q. YPFB, is it a State-run company?
3      A. Yes, it is.
4      Q. And, clearly, this is going--the company's going to
5  finance as much as it can, the company that is providing
6  electricity to the population of Bolivia; correct?
7      A. Yes.
8      Q. Therefore, one way to finance the liquidity by EGSA in
9  2010 and part of 2009 was by delaying the payments to YPFB;
10  correct?
11      A. Yes.
12      Q. Mr. Blanco, when a company decides to stop paying
13  its providers--its suppliers, it's close to cessation of
14  payments; is that correct, Mr. Blanco?
15      A. Are you talking about--specifically about YPFB, sir?
16      Q. I'm asking in general.
17      A. It depends on the environment in general. When you
18  are in an important project such as the CCGT project, it's a
19  big project, and the payments were going to be resumed in
20  the regular manner.
21      In the case of Guaracachi, the only pending payment
that we had that was substantial in nature was the one to YPFB.

Q. In fact, Mr. Blanco, YPFB was the most important supplier of EGSA; right?

A. Yes, yes.
10:31 1 Q. Gas, in fact, is necessary for the engines of the turbines to operate; right?
2       A. Yes, that's correct.
3       Q. Apart from that 14 million debt or 12 million, according to your calculation, EGSA had other commercial debts that were around $20 million; right?
4       A. Yes, that they were not due--and that were not due.
5       Q. The other point that you mention to demonstrate the liquidity problems of EGSA were not as serious appears, if I read your statement correctly, on Paragraph 20. If I understand correctly, this has to do with the fact that EGSA was awaiting a new CAF loan; right?
6       A. It was not a new loan. It had to do with renegotiating the initial conditions of the loan.
7       Q. Yes, you're absolutely right. It was waiting to renegotiate the loan conditions with CAF; right?
8       A. Yes, that's right, sir.
9       Q. In fact, this was a loan whose funds were going to be used for the CCGT project exclusively?
10      A. Yes.
11      Q. In Paragraph 20 on Page 14, at the end, you say
it appeared, then, that CAF was ready to accept the conditions of the loan and accept our request.

A. Yes.

If you allow me to explain the reasons.
10:33 Q. Let me ask you the question, and then you can respond,

and then can you explain whatever it is that you want to explain if the Tribunal sees fit, if not, Claimants' counsel will ask you questions further on.

Do you or do you not know, Mr. Blanco, that CAF ended up rejecting this request?

A. Yes. I also know that it gave a waiver to the Government of Bolivia.

Q. Let us look at the communication because you have said--well, you haven't said I'm going to ask you--well, you've read the statements by Ms. Bejarano; right? And you have read the annexes to Ms. Bejarano's statements?

We're having problems with the question and answer, so please, in the transcript, so please come closer to the mike and wait until I finish my question to provide your answer. I will repeat the question because I see no answer.

Have you read the statements that Ms. Bejarano has submitted in this arbitration?

A. Yes, I have.

Q. Have you read the annexes to such statements?

A. Yes, I have read them.
Q. Why don't we go to Tab 24 and look at the document that's behind it.

I understand, sir, that you've read this letter.

A. Yes.
Q. This is Annex 19 to Ms. Bejarano's statement. This is a letter that CAF sent to EGSA, to the General Manager of EGSA, Jerges Mercado Suarez, and the letter states, first, that request made by EGSA is rejected, but it says, "however, CAF is ready and willing to accommodate to the specific needs of the company, and we will let you know that we are available to assess potential waivers that are temporary in connection with the three-month waiver of the conditions to the three-month fulfillment of the conditions, nor we were referring to another Guaracachi letter.

PRESIDENT JÚDICE: I'm going to ask the lawyers to let us know what letter this is, and if it's in the record.

MR. SILVA ROMERO: We're going to consult on this, and we're going to give you a reference.

MR. BLACKABY: The CAF's eventual response was one of the documents that was refused to be admitted into the record.

PRESIDENT JÚDICE: Okay, thank you.

(Comment off microphone.)
MR. BLACKABY: I won't make any comment.

BY MR. SILVA ROMERO:

Q. Let us move on now to EGSA's accounts, Mr. Blanco, if you see fit.

A. Very well.

Q. In particular, let's talk about the different loans.

And let's go to your Second Statement, Paragraphs 6 to
A. What paragraphs again?

Q. Six to eight, starts on Page 3, and the heading is Guaracachi's debt level—I'm sorry, Guaracachi's financial situation before nationalization:

I understand that in your First Statement you included an annex, Annex 1, with the financial debt of Guaracachi as of 30 April 2010.

A. Yes.

Q. You know that this table that you submitted has been corrected by Bejarano?

A. Yes, that is what I understand. She has submitted a different table.

Q. Who provided you this document, Mr. Blanco?

A. I prepared it on the basis of information that I had when I was in Guaracachi. I had a record of everything that we had in Guaracachi.

Q. After the nationalization, you took some company documents?

A. No, no, I didn't. I knew the loans that I had. It
was an Excel spreadsheet, and we knew the loans that had been taken and the loans that had not been taken.

Q. I suggest that we do the following: Let's take Annex 1 from Mr. Blanco's statement, which is the annex to his First Statement, and we have a book here. Let's go to Tab
Number 26, and we're going to compare these two charts. These two tables, actually.

When did you prepare this table, Mr. Blanco?

A. I don't remember. I would lie if I told you when exactly.

Q. Before or after nationalization?

A. I think I ended the preparations later, but I had it in my computer.

Q. So, this is a document that was prepared when you were working at EGSA, and you took it from EGSA?

A. I didn't take it. I didn't take anything. I had the table, and I'm sure it was in my computer. I don't think I did any harm by taking the table.

Q. I'm not saying that you did any harm. I'm just trying to understand the difference between these two tables. If I understand what you're testifying here, this is a table that you started preparing before nationalization?

A. No, no. We had it in Guaracachi. I that had in my office. This was under the control of all of the loans.

Q. But did you prepare it? Yes or no.
21      A.   Yeah, perhaps I populated this myself, yes.
22      Q.   But you're not sure if you prepared it yourself?
23      A.   Yes.  I prepared it myself with information I was
24        given.
25      Q.   Okay.  If you compare both tables, your table ends

the column named "Rate," tasa, T-A-S-A. But if we look at Annex 6 to Bejarano's statement, there is an additional table that says "Guarantee."

Do you see that?

A. Yes, yes.

Q. Why doesn't your Table contain this column "guarantee"?

A. Well, because it just didn't include the guarantee section.

Q. How can we explain that Ms. Bejarano submitted this table with this column called "Garantía"?

A. Well, because she's included guarantee, and I didn't.

PRESIDENT JÚDICE: If you allow me to say this, your document, did your document have the guarantee section or not?

THE WITNESS: I don't remember, Mr. President, to be honest.

BY MR. SILVA ROMERO:

Q. If I were to tell you, Mr. Blanco, that the 18 loans listed on this table, a substantial number of them is guaranteed on machines. Do you agree with me, or not?
A. Yes, because that is a requirement by the banks.

Mr. President, I would also like to say that a turbine is a nominal guarantee because this is a public service that cannot be attached, so this is what we know as a nominal guarantee.
Q. But the bank, in order to provide the loan required these guarantees?
A. Yes.

Q. And if I were to tell you that all of EGSA's engines were given as a guarantee, would you agree with me or not?
A. I would have to look at this, but yes, all the generation assets were given as guarantees.

Q. Do you or do you not agree with me, Mr. Blanco, that it would be difficult for EGSA to obtain new loans if EGSA had no other engines to provide as guarantees?
A. I don't agree.

Q. Let us now look at another point that I think is important in connection with the financial condition of the company. This is Paragraph 9 of your Third Statement.

PRESIDENT JÚDICE: Page 7?

BY MR. SILVA ROMERO:

Q. As I understand it, Mr. Blanco, here you talk about credit rating agencies and the positive assessment of EGSA by Fitch and Pacific Rating; right?
A. Yes.

Q. I understand, Mr. Blanco, that you failed to mention
that Fitch had downgraded the rating up until the Third
Statement.
A. I can explain you why--because Bejarano and Paz had
mentioned it in their statements. I didn't mention Fitch
because Fitch was not Guaracachi's official credit rating agency. Fitch rated the first bond issuance, and the second one was rated by Pacific. According to the legislation of Bolivia, although Fitch did not rate Guaracachi, we had to retain them for six more months, and we retained them for six more months according to the law, but these were not direct ratings to Guaracachi. They did not work for Guaracachi, but the regulation stated that we had to retain them for six months.

Q. There is a difference between international ratings by Fitch and Bolivian ratings by Fitch; right? But you don't say that in--

A. The answer was yes.

Q. But you don't say this in your statement?

A. No, I don't clarify that in my statement.

Q. Let's go to Paragraph 17 of your Second Statement. I'm sorry we are jumping from one to the next, but that's the only way to be exhaustive in my examination of you, Mr. Blanco?

A. Yes.

Q. It's my duty. Don't worry about it.
Paragraph 17, you say that it is necessary to state that when Bejarano prepared a report for the Audit Committee on the financial leverage of Guaracachi in April 2010, just before the nationalization, she did not state any of the concerns she now expresses. I understand from your statements that you
criticize Ms. Bejarano because she didn't tell you that the leaders of the company, look, there is a financial problem in the company.

A. Mr. President, she mentions a ratio that was not met, but all the other things that she says in her statement, payment of dividends, capitalization, liquidity, she does not mention that in the report. She only includes a ratio there that was not being met. But the rest of the things that were mentioned in her statement are not included in that Audit Report.

Q. If we go to Tab 11, Mr. Blanco, this is Annex 16 to Bejarano's statement. I understand that you have read this document.

A. Yes, yes.

Q. This is a report addressed to you?

A. Yes.

Q. If we go to the last page, which is Page 3, here Ms. Bejarano says, "According to the foregoing analysis, the net profit that has been accounted for is 12 Bolivian pesos originated by the updating of the UFV factor in connection with
the dollar, and we recommend to conduct a periodic analysis of the values and adjusted by UFV."

A. Well, it doesn't say here that the adjustment has to be made. It is recommended, the adjustment. It would be contradictory for her to establish the adjustment because she's
the one that approved Standard 3, and she was a member of the college of auditors.

Q. But Ms. Bejarano is saying, "Look, this adjustment does not reflect reality."

A. That is not what she's saying. I have to follow Bolivian GAAP, and Bolivian GAAP includes Standard 3. The Tax Law determines that taxes are to be paid on the basis of the UFV.

Q. What Ms. Bejarano is saying is that it is recommended that a periodic analysis be conducted of the values that arise out of UFV in order to have an equitable relation of the inventories and fixed assets.

A. Yes. It's an analysis. She could have gone to the Audit Committee and to the Board of Directors and to say that the Financial Statements that we were preparing did not meet regulations, but she never says this in any of her reports.

Q. Wasn't PriceWaterhouse retained in connection with analyzing UFV?

A. Yes, of course.

Q. And PriceWaterhouse was hired upon the recommendation
21 of Bejarano?

22 A. No.

23 Q. By the Committee of Auditors after the Committee of Auditors heard the recommendations of Ms. Bejarano.

25 A. No.
10:51  Q. Now, PwC made certain recommendations in connection with this adjustment according to UFV; correct?
      A. Yes, correct.
      Q. Now, PwC recommended that the results of that adjustment be included in the adjustment in the reserve.
      A. Sir, it doesn't say that the adjustment needs to be made. If that had been the case, when PwC, who were the external auditors of us audited the Financial Statements, if they had seen what you mentioned, they would not have approved the Financial Statements.
      Q. Let's go to 13, please, Mr. Blanco.
      ARBITRATOR VINUESA: Thirteen?
      MR. SILVA ROMERO: Number 13, Mr. Vinuesa.
      BY MR. SILVA ROMERO:
      Q. This is Annex 17 to Ms. Bejarano's statement. These are the conclusions of the PriceWaterhouse study on the UFV adjustment; is this correct?
      A. Yes, that's correct.
      Q. There are no page numbers on this report, but if you go to five, Roman numeral five, but I have a question before that.
The UFV adjustment, yields a profit; right? Or it can yield a profit?

A. Yes, it can yield a profit or a loss.

Q. Can it yield a profit?
10:53 1 A. Yes.

2 PRESIDENT JÚDICE: I'm sorry, the Tribunal hasn't really understood.

3 MR. SILVA ROMERO: I'm going to ask the question again.

4 BY MR. SILVA ROMERO:

5 Q. The UFV adjustment can yield a loss; correct?

6 A. Yes, and also a gain.

7 Q. I should have posed this question this way from the very beginning.

8 PRESIDENT JÚDICE: Yes, this may have been a good thing.

9 BY MR. SILVA ROMERO:

10 Q. If you look at Roman numeral four, we see that the recommendation of PwC is that this—that the adjustment by inflation and exchange differences can be recorded as a net reserve—net worth reserve as well as the—

11 A. I'm sorry, I got lost.

12 Q. This is Roman numeral five. It's called "the opportunities for change and improvement," and then it's called little Roman numeral four.

13 A. Yes, I understand. I understand what you mean by little Roman numeral four. I like that. The Mexicans say
24 that, but I like it.

25 Q. Here it says that the corporation may opt to register
as a reserve for net worth the adjustment for inflation and exchange differences.

A. Yes, I see that.

Q. So, one of the recommendations is that the company has the choice?

A. It's a choice. It can do it if it wants to do it.

Q. Yes, but what PwC is saying here is not binding for EGSA; correct?

A. Well, whether it did it or didn't do it, the Financial Statements have to be in accordance with Bolivian GAAP.

Q. But this reserve was never created; right?

A. As I was saying, this was not constituted-created.

Q. Was it constituted or not?

A. It wasn't created, Mr. President.

Q. The profit created by the UFV adjustment was distributed; correct?

A. No, it wasn't distributed. That's not correct.

Q. A portion of the profit was distributed; right?

A. The profit for 2007, well, part of it was distributed, but just a portion of it. In 2008, it was declared, but nothing was distributed, and in '09 it was declared, but it wasn't distributed.
Q. I think you are using Mr. Earl's terminology?

A. I don't know what Mr. Earl's terminology is, with all due respect. I don't know what Mr. Earl used as terminology.
Q. Have you spoken to Mr. Earl in connection with his statement? Yes or no.
A. No.

Q. If I were to tell you that 100 percent of the monetizable profit was distributed in 2009, would this be correct or not?
A. I don't know what you mean by monetizable profits. I don't understand what you mean by that. I have never heard of monetizable profit. Ms. Bejarano is trying to create a new accounting system. That does not exist.

Q. So, we cannot make a distinction between operating a profit, and a profit that results from a UFV adjustment?
A. Profits are the ones determined by the accounting regulations. Those are profits. Now, the ones defining--the ones determining how to distribute those profits are the Shareholders, and at that time ENDE was a shareholder, and it also made this determination.

Q. In '09, all of the profit was distributed? Yes or no?
A. No, it wasn't distributed. Part of the or a portion of the profit was declared, but nothing was distributed.
Q. So, declaring means that dividends are going to be
given to the Shareholders, but nothing will be paid.
A. Well, first, only a portion of the profit was
declared.
Second, the distribution of profits is a liability
the company, and certain conditions have to be met. But there were liquidity issues. It would have been irresponsible to distribute this if the company didn't have any money to construct the CCGT project.

Q. If you go to 10 of the document, Mr. Blanco. This is Annex 5 to Bejarano's statement, and I understand you've read this?

A. Yes. Before it was included, I was present at this meeting.

Q. Yes, of course. And you know the facts personally because you were in attendance at that meeting?

A. Yes, sir.

Q. If we go to the page right before the signatures, we see here how the profit and loss was dealt with for the '07 Financial Year.

A. Yes.

Q. And then we see the minutes for 23 April '09. It's not the following document. If we look at Item Number 4, we do not have a page number. There, you're going to see the results of 2008. Are you aware of what happened in this Special Meeting
21 of the Shareholders?

22 A. Well, I don't remember everything.

23 Q. And here a decision was made to distribute. As we can see at the end of Item Number 4, a recommendation was made to distribute 14.7 Bolivian pesos based on the following table;
11:01  1 correct?

2 A. Yes.

3 Q. And the net profits of 17.9 Bolivian pesos. There is a 5 percent legal reserve, and you have 68 million that's available dividends; correct?

4 A. Yes.

5 Q. Out of which, there are some accumulated profit and losses to be capitalized and 50 million Bolivian pesos are distributed?

6 A. No. This is part of the liabilities that could be distributed but, indeed, it was not distributed.

7 Q. A decision was made for that money to be given to the Shareholders, but the payment was delayed; correct?

8 A. Yes. You are right, by fulfilling certain conditions.

9 It's just not a matter of distributing. Some aspects and requirements had to be met. But that means--

10 Q. When you say that this was delayed, it means that EGSA had a debt towards the Shareholders; correct?

11 A. Correct.

12 Q. If we look now in the next two pages, we see in bold, which reads that, upon voting, the Special Meeting of
Shareholders decided by majority to approve the distribution of dividends by 50 million Bolivian pesos, approximately?

A. Yes.

Q. And towards the end, right before Item Number 5, it
11:03  1 says that Mr. Walter Morales Carrasco, who is a representative
2 of PVUVA, and Carlos Cadriga Visareyes (ph.) representing AFP
3 for Bolivia were not in agreement; correct?
4 A. I can explain the context.
5 Q. Let me ask you a question, and then you explain the
6 context. The question is: Did the Minority Shareholders
7 that were represented by these two individuals oppose or object
8 to the statement of the dividends?
9 A. They objected because of a liquidity issue. They
10 objected to this Declaration of dividends, and clearly there
11 was a liquidity problem, and that is the reason why they
12 objected to that Declaration of dividends. It would have
13 been really bold to say that there was no problem. There was a
14 problem. And with this or the other measure, they were
15 also a delay until certain conditions were met, and that's the
16 reason why the 2008-2009 dividends had not even been paid to date
17 by Rurelec.
18 But as you said, there was an indication to
19 capitalize
certain resources. That means not all of the profits were
distributed.

Q. If we move on to the previous page, you see A and B;
correct? Mid-page.

And then it says, next, Mr. Walter Morales Carrasco
took the floor as representative of PVUVA, and he expressed
that in payment of the dividends was helping support the
dignity tariff, but the Shareholders who were working on the
long-term support of the company thought that it was
necessary
to be consistent in connection with the maintenance of the
corporation. Therefore, they decided that the decision
should
be made after the corporation is in a situation to do so.
That
is
saying we have no money to pay the dividends; correct?
A. Yes, and they were not paid because the Majority
Shareholders said the same thing, we're not going to
distribute
them. They all agreed. The issue was how to record the
profits. The dividends could be declared or something else
could be done, but if they are saying that if it is not
going
to be distributed, they're not going to be distributed. It
had
to do with the way they were going to be distributed.
Q. Well, they couldn't be distributed because there
was
no money; right?
A. Well, it was beyond that. It was part of a very
important project, and it was important to conclude the
before we paid dividends to the Shareholders. That was the perception of the management. We have a project, there is a cost involved, and we have to pay. All of the Parties have to make an effort.

The Shareholders, who offered their money, and those Shareholders, Rurelec and the other Shareholder, also
contributed their money had been waiting at this time, and they all had to contribute to the financing of this.

Q. But the banks that had lent money to the company would have never accepted that those declared dividends were paid; correct?

A. With due respect, what you are saying is not true, because since we were able to obtain a waiver with Jerges Mercado for some additional loans, in our administration, we would have had the ability to obtain another waiver or change the ratios because ratios were established by CAF biased a 42 million-dollar loan rather than a project that ended up costing much more money. If we explained that to the CAF, clearly the ratios would have changed.

Q. The waiver that you just mentioned, Mr. Blanco, was granted in 2011; correct?

A. I don't know. I am not aware. I wasn't there. But I imagine there was a waiver because they got a loan for 5 million for Corani and Valle Hermoso, and the ratios were not met, so I imagine that this is a serious Government--the ratios must have been met, and the only way was to--by obtaining a
waiver by CAF.

Q. But the Shareholders in this meeting did address
the

bank issue, didn't they?

A. If you show me where.

Q. If we go back to Page--to the page right before
Item 5, the conclusion in bold, there is a condition there for the payment of dividends. That is based on the fulfillment of the commitments with the company Shareholders. That means it was not possible to pay dividends prior to fulfilling the commitments with Shareholders and banks.

A. Yes, but you could change the terms. The only commitment we had was with CAF. The loan and the ratios that CAF had established were based on a very small project with no additional indebtedness. But since the project grew, the debt also grew, and Peter Vonk, the Vice President of CAF, was in a position or was willing to review the situation because the project that started at 40-something million ended up at a figure that was higher than 60, so the project was larger, so we needed more money, and I have no doubts that CAF would have awarded a waiver, and they were always willing to change the ratio conditions.

MR. SILVA ROMERO: I only have two lines of questions, but if this is a good time for a break, I think that I can
pause here, and I just need a couple of minutes after the break.

PRESIDENT JÚDICE: Mr. Blanco, we are going to have a 15-minute break. Please do not discuss the case with anyone. You cannot talk to the people here in the hearing or with any other person that is outside or has any relationship with the case.
THE WITNESS: I will just stay here.

PRESIDENT JÚDICE: Well, it is not necessary. You can leave the room, but that is the condition.

THE WITNESS: Thank you, Mr. President.

PRESIDENT JÚDICE: Thank you.

(Brief recess.)

MR. SILVA ROMERO: Thank you very much, Mr. President, Members of the Tribunal.

BY MR. SILVA ROMERO:

Q. Good morning again, Mr. Blanco.

A. Good morning, sir.

Q. I just have one last question. I just wanted to clarify one of the issues that we were discussing, and then Mr. García Represa is going to ask other questions of you. A moment ago, you said that CAF did approve the ratio waiver; correct?

A. Yes. When we were there, the waiver was produced; Jerges Mercado was the Manager at that time.

Q. So, this waiver happened after nationalization; correct?

A. Yes, after nationalization, correct.
Q. So, after the--after the State intervened with the CAF to obtain the waiver?

A. I don't know if this was related to the note we sent or to another note that the government of Bolivia or the
administration of Guaracachi must have sent.

Q. Thank you very much, Mr. Blanco. This will be it more

A. Thank you, sir.

Q. Now, Mr. García Represa has the floor.

BY MR. GARCÍA REPRESA:

Q. Good morning, Mr. Blanco. Is it still good morning?

A. Yes.

Q. My name is José Manuel García Represa, and I represent the Plurinational State of Bolivia in this case.

I just wanted to ask you a few questions in connection with what you said in answering questions posed by Claimant this is morning.

You said that one of the reasons that the issue of liquidity was impaired had to do with the fact that you were waiting for a payment from the CAF related to carbon credits, and I think that you're making reference to the pre-payment; right?

A. Yes, that's correct.

Q. And this morning you suggested that that pre-payment got delayed because of the fault of the State.
A. I have not said that the State was at fault. I just said that the Government, through its pertinent agency, had to appoint as participants in the project to CAF and to KfW, and that communication never came from the Government of Bolivia.
Q. Let me see if I understand your testimony correctly. Is the State responsible—and just to be clear and to clear all doubts because there were doubts with the CAF letter, I am interested in the period before May 1st, 2010. Before May 1st, 2010, was the State responsible in the delay connected to the pre-payment of the carbon credits?

A. Can I put this in context?

Q. Please first answer my question, and then we'll go to context.

A. Partially, yes.

Q. So, your testimony is that the State is partially responsible for the delay.

A. Partially, yes.

Q. And by "partially" you say because this is for a brief period of time?

A. No, because the communication was also necessary from the Registry, then the Government of Bolivia had to appoint as participants those two banks.

Q. So, there were two conditions then?

A. Yes, that is correct.
Q. Let me ask you the question, and then you answer because otherwise things get messy.

There are two conditions that need to exist. The first a registration by the UN, and then a letter by the State, and then the pre-payment comes; correct?
A. Yes, you are correct, sir.

Q. Very well.

Do you remember the date of registration by the United Nations?

A. It was close to nationalization.

Q. Could you be more specific?

A. I cannot because I wasn't overseeing that issue.

Q. You don't know when the project got registered?

A. When the communication of the UN came, I don't know.

Q. I think it was at the end of April, if I'm not mistaken.

A. Yes, sir.

Q. And that was the most important project in the history of the company?

A. Yes, sir.

Q. And you have not seen the date of registration anywhere?

A. Sir, I had received 20,000 communications in connection with 20,000 different issues related to the project.

Q. I cannot know everything in the project.

A. Yes, I did.

Q. And here you see the registration date with the United

...
Nations.

A. Yes.

Q. I think—well, I'm sorry, I speak very fast, and I would like to apologize also because I'm speaking Spanish.
I was saying--well, I was asking you to confirm that you saw the annexes to Mr. Paz's statement; is that true?

A. Yes, that's true.

Q. Among those annexes, we see the notice provided to the company by e-mail that the project was registered with the United Nations; right?

A. Yes, sir.

MR. GARCÍA REPRESA: I have a doubt here, and I would like to consult the Tribunal in connection with this.

Would you want me to submit the document first and then ask the question, or would you want me to ask the question of the witness directly in connection with the date?

PRESIDENT JÚDICE: Well, sometimes the witness would like to see the document first, but for the Tribunal it's the same thing.

BY MR. GARCÍA REPRESA:

Q. Let's do this in a traditional manner. I am going to present this document to you, and I am going to ask you to please look for the binder that we submitted for Mr. Earl's
Statement. I think it's up there, and I'm going to give a copy to the Members of the Tribunal.

Now, once you find this binder, let's go to Tab 25 of this binder. This is Annex 34 of Paz's statement.

Mr. Blanco, when you find this, please let me know, and it's Number 25. I will wait until you find it to ask
11:42  1 questions of you.

2 As you can see, Mr. Blanco, this is an e-mail chain, and some of the references are in German. The reason why it is in German is the validater, tuv-süd is the one that registered the company.

5 A. Yes, sir.

6 Q. If you go from the top to the bottom, you see the third e-mail block where it says "fund of" in German, CCGT project registration, here you see the one--the name of the Parties sending the notice, and here it says "Montag, 3," which is Monday, the 3rd May 2010?

11 A. Yes, that is correct.

12 Q. That is the date in which the registration is notified?

13 A. Yes.

16 Q. Before this date, the company would not have received the pre-payment of the carbon credits; right?

17 A. No, that's not the case.

19 Even though this is one of the conditions, negotiations were being undertaken with the Government. This is what I understand because I wasn't in charge of the
22 negotiations with the Government. Mr. Earl was doing that.

23 And I'm not from Barcelona, but the Government was negotiating,

24 so that the letter could be getting--could be gotten from the

25 Ministry, and there was an e-mail sent by Mr. Earl, and we were
trying for this condition to be a condition to be applied after the moneys were paid, but what you're saying is correct. There was a negotiation taking place--and I'm giving you the context here, sir.

Q. I have no problems with context, sir, but first give me the answer and then you talk about the context. You said initially it's not correct, and then you said that it was correct after you gave context, so I would like to avoid all kinds of confusion.

Just to be clear, then, one thing is a reality, happened, and the other thing was what was being attempted.

A. Yes, that's right.

Q. What happened factually is the following: Isn't it true that at the time of the nationalization the pre-payment of the carbon credits could not take place?

A. Yes, that is true.

MR. GARCÍA REPRESA: I have no further questions.

Thank you.

PRESIDENT JÚDICE: Thank you, Mr. García Represa.

The team of Mr. Blackaby's is going to ask a few
questions.

REDIRECT EXAMINATION

BY MR. BLACKABY:

Q. Good morning, Mr. Blanco. I will just ask you a few questions that have arisen out of the questions that you have
heard from my colleagues representing Bolivia.

You were asked this morning various questions about the CAF ratios and Guaracachi's request to modify those ratios or get temporary relief.

Do you recall those questions?

A. Yes, I do.

Q. And I would also just ask you some questions concerning the origin of the eventual decision of the CAF, whether that was something that came as a consequence of a request from Guaracachi pre-nationalization or a consequence of Guaracachi post-nationalization.

Do you recall that as well? It was just very recent.

A. Yes, sir.

Q. Could you--first of all, I would like to go to--and obviously, of course, these documents have arisen, so we don't have them--not all of them, anyway--copied for the Tribunal, but we will put up on the screen Exhibit C-311. 

MR. BLACKABY: We can get a copy for the witness.

There is no screen within easy reach, one of the design faults of this building.

It wouldn't have happened when Mr. Silva Romero was
22 Deputy Secretary General.
23
24 MR. SILVA ROMERO: I'm afraid I participated in the Commission.
25 MR. BLACKABY: In this case, I reserve my rights.
11:47  1    PRESIDENT JÚDICE: If this is the problem, all the
2 rest is perfect. Including the food.
3
4       MR. BLACKABY: We're trying to get our computer
5 connected up to the projection screen.
6
7       PRESIDENT JÚDICE: Anyway, if the witness is handed
8 the document, if the other Respondents are aware of document,
9 please proceed because we will have here Mr. Conthe's
10 document,
11 and--
12
13       MR. BLACKABY: I don't know what is technically
14 preventing this happening. No one available to help
15 technically?
16
17       Okay. All right.
18
19       BY MR. BLACKABY:
20
21       Q. Okay. Well, this is a letter, C-311, written by
22 the
23 CAF to it Mr. Earl.
24
25       Do you see that?
26       A. Yes, I do.
27
28       Q. You will see--or perhaps I will read into the
29 record--a request from the CAF, (in Spanish): In connection
30 with your communication of 1st February 2010, I communicated
31 to
32 you that in order to extend the grace period or to
the Debt Covenant, the CAF has considered convenient to fully evaluate the loan of Empresa Eléctrica Guaracachi for $20 million. So, the CAF is going to have to restate its current situation, it's going to have to update its
projections, and it's going to have to consider the delays, et

cetera.

We would always be thankful if you could inform us

the conditions if you are going to require a modification

because there may be certain restrictions that are going to be

incorporated so the dividend policy into the future.

So, this is a letter of 12 March 2010. This is before

nationalization; correct?

A. Yes, sir.

Q. So, I will now move to Annex 19, Ms. Bejarano's

Statement.

MR. BLACKABY: And we're going to provide a copy to

the witness as well. It's Tab 24 of the bundle--

PRESIDENT JÚDICE: Talking about what we saw before?

MR. BLACKABY: Yes, we saw it before.

BY MR. BLACKABY:

Q. Okay. So, this is another letter from CAF dated

3 November 2010.

Do you see that?

A. Yes, I do.

Q. Could you please read this document.
And reference is made to different items of correspondence. I would like for you to make reference to the first one and whether this reference matches the reference on the previous letter, DAF0275.
A. Yes, sir. Yes, sir.

Q. What is the date of this document?

A. It is after nationalization. The CAF mentions as a justification for the waiver a note that was sent before nationalization, apart from other notes.

Q. At the end of the letter, I would like for you to read the last phrase, CAF is ready to--

A. CAF is ready and willing to accommodate the needs--the specific needs of the company; and, in this regard, we communicate to you our availability to assess potential waivers every three months to adjust to the conditions.

Q. I would like for you now to go to C-193, and I think we circularized this document, and C-193 is the Financial Statements of Guaracachi for 2011. I would like for you to look at Page 14.

Could you please read out loud subsection D, please.

A. Corporate modifications of transformations, amongst others. On 22 March 2011, the company received letter RB2532011 from CAF. In this letter, the institution confirms its knowledge of the non-performance of the ratio under
Subsection B(i) hereinbefore that was reported by the company.

It accepted the temporary waiver up until December 2010 with a modification of the financial ratio of the indebtedness for value less or open--less or equal to .75.

Q. So what was the answer of the CAF to this request?
11:55  1      A.   It was a positive answer.
        Q.   Now, let's move on now to a different issue.
        Mr. Blanco, you were asked a number of questions in
        connection with the re-expression of EGSA assets in constant
        monetary terms. Do you remember that?
        A.   Yes, sir.
        Q.   If we go to Tab 11 of your examination binder, we see
        a report here by Ms. Bejarano. This is Annex 16 to
        Bejarano's
        Statement.
        Did you find it?
        A.   Yes, sir.
        Q.   At the end, there were a number of recommendations.
        Do you remember that?
        A.   Yes, sir.
        Q.   And you remember that a recommendation was made to
        conduct a periodic analysis of the values that stem out of
        the
        adjustment according to the UFV in order to maintain an
        adequate valuation of the inventory and the fixed assets?
        A.   Yes, that's right.
        Q.   Please go to Tab Number 12 in the binder. This is
        the
        report by Martha Bejarano, and it is a report of activities
conducted in July '08. There is a chart here.

Have you found it?

A. Yes. Page 2 of 3?

Q. Yes.
11:57  1 No, no. It's actually--it's just an annex. It's
2 Annex 1.
3 A. Yes, yes, I see it. Annex 1.
4 Q. Yes, with all of the activities you conducted as of
5 that date.
6 A. Yes.
7 Q. Go to Number 8. This was sent to you in your
8 capacity
9 as Financial Director--or Finance Director. What was the
10 activity conducted?
11 A. A company was hired to valuate the assets. The
12 accounting value is not different from the study conducted.
13 Q. And here it talks about physical inventory; correct?
14 A. Yes.
15 Q. Was this a consequence of the conclusion and
16 recommendation provided by Bejarano? Do you remember this?
17 A. No, I don't remember. But these kinds of
18 allegations
19 or impairments were done annually. We had to do them
because
20 the external auditors required them of us.
21 Q. But if we look at Ms. Bejarano--
22 A. Yes, it had to do with what she said.
23 MR. SILVA ROMERO: Objection. Leading.
24 MR. BLACKABY: Well, he answered before I asked the
question.

PRESIDENT JÚDICE: All of the lawyers know the rules, but please let's conduct the proceeding as the witness doesn't.
we do it regularly. I want counsel to take care on these
issues.

MR. SILVA ROMERO: Mr. President, this is a very
sophisticated Arbitral Tribunal, with the exception of the
President, of course—that is not true. But when a leading
question is posed, I know that the Tribunal is going to
reach
the conclusions that—that are relevant.

PRESIDENT JÚDICE: That's why I'm asking both
Parties
to—well, sometimes I am the cause of the difficulty, but—

BY MR. BLACKABY:
Q. Well, I would like to know what the conclusion of
Ms. Bejarano was.
A. That there was no difference between what the hired
company prepared and what we had included in the accounts as
inventory.
Q. Thank you very much.
MR. BLACKABY: I have no further questions. Thank
you.
THE WITNESS: Thank you, sir.

MR. SILVA ROMERO: My colleague García Represa has
just one question in connection with the last question by
Mr. Blackaby.
MR. GARCÍA REPRESA: Thank you.

RECROSS-EXAMINATION

BY MR. GARCÍA REPRESA:
Mr. Blanco, you were called to look at--you were asked to look at Line 8. And there, there is reference to a report directed to the Financial Director, and that refers to the benefits; correct?--to the profit.

So, as Financial Director, do you know the difference between inventory and fixed assets on the balance sheet?

Inventory--yes, one thing is different from the other.

Please look at Line 15 in the same table. There is another report there that was addressed to the Financial Director. That would be you?

Yes.

And this report was subsequent to the one my colleagues mentioned; correct?

Yes.

Could you please read the reference, that is to say, the fifth column--I'm sorry to interrupt you, the fifth one starts with aspects.

Aspects to take into account for the updating of the UFV materials under way and the inventories, fixed assets, and net worth.
21 Q. And these are four different issues; correct?
22 A. Yes. They're interrelated. Net worth is connected to all of the accounts.
23
24 Q. If you now read the last column, the analysis of the fixed assets by the general management still pending.
A. May I continue to give you a context?

Q. No.

MR. GARCÍA REPRESA: There are no further questions.

PRESIDENT JÚDICE: What he was going to say might have been important, and they have very specific times, and now you can talk, and this is going to be against the Tribunal's time.

THE WITNESS: In the valuation of the assets, according to the Generally Accepted Accounting Principles is carried out once a year. There is a note that says that the impairment has been carried out, and that impairment was once a year, and it was reviewed by the auditors, and at no time did--we never received an unfavorable report.

PRESIDENT JÚDICE: But here it says that it is pending.

THE WITNESS: It was pending back then, but it has to be done once a year.

QUESTIONS FROM THE TRIBUNAL

ARBITRATOR CONTHE: Good morning. I'm going to ask you some questions. I'm going to try to be as slow as possible, and I'm first going to ask you about bonds--bond issuance for 2007 and 2009, and these are Guaracachi's bonds
and coupon for both emissions was different, 855 and 920.

And my question is whether the nominal CAPM was the actual yield on the bond.

THE WITNESS: They were at par, and if you wanted
12:04  1 know the difference, it's very easy.

    2 If you go—if you enter the information or if you look

3 at the information issued by the Central Bank with the interest

4 rate, you can clearly see, contrary to what the witnesses

5 offered by Bolivia said, that the difference is based on an

6 increase of—in the rate for the second issuance. There is an

7 increase, and there is no relationship—a positive

8 relationship, that would be Factor 1 for the LIBOR rates and the Bolivian market rates.

9 So, the increase is independent from any other increase, and it's based on a higher increase in Bolivia.

10 ARBITRATOR CONTHE: So, in spite of the fact that the issuances were dollar-denominated?

11 THE WITNESS: Yes, sir.

12 ARBITRATOR CONTHE: So, you're saying that there was on the dollar cost of the issuance that were placed in the Bolivian market?

13 THE WITNESS: Yes, sir.

14 ARBITRATOR CONTHE: This is a related question, and
have seen that for the issuance the guarantee was a trust, what we would call a pledge. So, my question is whether that was a substantive pledge rather than a guarantee, mortgage, or any other type of pledge on specific electricity generation machines.
THE WITNESS: Yes. The issuance for $40 million was supported by—had no security.

ARBITRATOR CONTHE: But that is very similar to securitization. So, part of the—part of the income was attached to the debt.

And if you allow me, 47 percent of the income was impaired; correct?

THE WITNESS: Well, I don't remember the number, but—

ARBITRATOR CONTHE: But you can see here the actual restraint beyond the number of machines was the volume of the income because that was the part that was affected to impair with the payment of the debt or allocated to the payment of the debt.

I have another legal issue, but this is part of the prospectus, so I don't know if you can answer this question. In both prospectuses on the issuance—for the issuance, they referred to indigenous groups, and reference is also made to the protection of the investment under the BIT between the U.K. and Bolivia, and that offers certain guarantees to the investor, but neither of the issuances referred to the BIT between the United States and Bolivia.
22 Do you know why?
23 THE WITNESS: To be honest with you, no.
24 ARBITRATOR CONTHE: And I have seen that in the second
25 prospectus of 2009, reference is made to the three legal
proceedings: One, a challenge on a tax Decision; and the other two references at 8-1 are the challenges to the resolution by the Superintendency on Spot and Capacity Prices. But in connection with capacity of 2007, even though this measure was passed in 2007 February, and the bond issuance doesn't refer to that measure that Rurelec later on thought that it was very significant.

THE WITNESS: I imagine that the program was developed before, and it took a while to do so. And when the prospectus was published, it may have not taken into account that variable. But this is--this was done earlier, and the program took eight months.

ARBITRATOR CONTHE: Now I move on to the credit rating agencies, and I understand that EGSA requested ratings just for bond issuance; correct?

THE WITNESS: Yes, sir.

ARBITRATOR CONTHE: I don't know whether EGSA changed because later on I'm going to refer to the change of auditors,
but the change of auditors for a company is a red flag, they're wondering what's going on, but I don't know whether you or EGSA changed the credit rating agency or, rather, those were two different issuances. On the one--you used Fitch for one and a different one for the second one.

THE WITNESS: Let me explain to you.

The first issuance was done with Fitch, and because
the time we needed, we already delayed that one. To be timely,
Fitch did not guarantee a rating in due time, so we looked for another credit rating agency, and someone that could offer such a specific rating in the time that we needed. Fitch had maintained the rating up to December, but--for the first one, but the second one was not related to the first one. In the first quarter, our rating went down, and we maintain our relationship with them for another six months because they're saying that even if you're no longer related to an agency anymore, to a credit agency, you have to maintain the relationship six months.
And so far all of the ratings with--that were of Guaracachi were done with PCR.

ARBITRATOR CONTHE: So, in 2009, you--when you addressed or when you tried--you reached out to Fitch and they did not offer the rating in a timely fashion, and PCR was better?

THE WITNESS: Well, it wasn't better. Fitch's rating
in December was the same as Pacific's, so the rating after
Fitch and prior--after the issuance was lower because, even
though Fitch did not have to rate anymore because we just
kept the relationship because of the legislation, there was a
downgrade by Fitch because of the bigger debt.

ARBITRATOR CONTHE: So, you're telling me that that
is--that that happened after the second rating by the other
THE WITNESS: Yes.

And Fitch told you then what rating was, but obviously you just told us that you had a short deadline, and I was the Director of the Treasury in Spain, and you were the Financial Director, and I imagine that you were also in contact with credit rating agencies, and you could imagine what the second credit rating was going to be with the second issuance.

Couldn't it be that Fitch told you that they were going to downgrade the rating and that's the reason why you went to PCR?

THE WITNESS: Well, even if the rating was lower, we could have issued the bonds. Bondholders in Bolivia are pension funds. 90 percent of the funds such as Guaracachi's are acquired by pension funds, 20 percent by some other institutions, and individuals who wish to buy some bonds. But regardless of the credit rating that we could have received, bonds were basically sold already because they were
the bondholders, and it's like a monopoly. They even--we even need to define the rate with them. This is not supply and demand. It's--so, the issuance was already sold out, and we just did it because of the time we had. We needed to issue to continue with this project, which was so significant, so important, and we all wanted it to work.
ARBITRATOR CONTHE: So, the bondholders at the same time were members of the Board of Directors; right? So, this could even distort the costs.

THE WITNESS: But there was a Chinese wall in between because--let me explain to you that trust was so significant with Guaracachi--Bejarano and Eduardo were part of that, and they had Directors that were well-informed of the Financial Statements. They actually approved the statements; and, prior to approving them, we were asked 50,000 questions. They were really informed of the financial situation within Guaracachi. So, these companies invested and bought bonds, well-aware of the situation within Guaracachi. So, it was not feasible for the company--for them to invest so heavily in the company, if the company was in such a dire situation.

ARBITRATOR CONTHE: And why did you authorize only $20 million for the first issuance but only placed 16? THE WITNESS: One of the bondholders, a Spanish company, decided that there was another alternative, and they had a lot of funds back then, and part of the funds they had
was devoted to a different alternative, and that's the reason why, when we designed this program, we did it as a program rather than individual issuances because, for an individual issuance, as you know, it is issued; and, if you're not able to place it fully, you cannot do the second one.
But we did it because we knew that some companies may not buy all of them, so we decided to have a program, so that if we didn't sell all in the first place, then we were going to have other placements, and second and third and fourth one--we had up to four deadlines, so that's the reason why we decided to do that.

ARBITRATOR CONTHE: I have a very brief question. The internal auditor—or there were two: PriceWaterhouse and Ernst & Young.

THE WITNESS: You're talking about external ones; correct?

ARBITRATOR CONTHE: Yes.

THE WITNESS: Guaracachi first started with Coopers, Coopers & Lybrand were the auditors. Then we had two Directors from the Minority Shareholders, and based on the auditor's regulations—or rules and regulations, they are the ones that have to elect someone, and they recommended to change auditors because they were--they were losing--they were no longer as
objective as they were at very beginning, but that was not an opinion that I shared. The idea was to rotate and change auditors, have them for two years and then change them. So, we had Ernst & Young and then PriceWaterhouse.

ARBITRATOR CONTHE: Would you remind us when
PriceWaterhouse was in charge and then when they came back?
And if there is any relationship between that timeline and what we talked about the development units.

THE WITNESS: We had PriceWaterhouse, and they continued to be--

ARBITRATOR CONTHE: They continued to work?

THE WITNESS: PriceWaterhouse continued to be there until the moment it was nationalized. But the one that was there the longest was Price, and the one that actually drafted the report that the lawyer mentioned is PriceWaterhouse as auditor. We did not change them after that measure.

ARBITRATOR CONTHE: So, 2007, '8, and '9, you had PriceWaterhouse; right?

THE WITNESS: I don't have a very clear idea, but I think that Ernst & Young was the auditor for one year, and then we had PriceWaterhouse again.

At the time of the report developed by PriceWaterhouse, PriceWaterhouse was the auditor.

ARBITRATOR CONTHE: You already said this, but could you repeat it again. Why did you change? You're talking about independence of auditors.
THE WITNESS: Well, this goes beyond independence of auditors.

The Directors of the Minority Shareholders, Ernst & Young--they were changing 2007, but the Directors of the
Minority Shareholders said that they stopped being objective after being there for a long time, so that means I'm going to change my lawyer because my lawyer is no longer neutral or objective. But if I trust my lawyer, I don't need to change that person, but that was an idea that came along with the Directors of the minority that were there after 2008. And then PriceWaterhouse came back.

And I'm not trying to make any negative comment, but Price and Ernst are the largest companies and now Fitch is also the auditor for the Government.

ARBITRATOR CONTHE: Now, in connection with accounting issues and also referring to Guaracachi's statements, I'm going to ask you about the updating of statements based on the UFV. The Bolivian GAAPs, did they award discretionary powers?

THE WITNESS: No, they considered it mandatory. And this is very important, and I might not have been able to express my ideas as clearly, but these principles are not only good to determine distribution of funds, but this is also
one that determines that the profits are the ones used to pay taxes. Profits are not deducted from the UFV. Profits are profits from that exercise, and there are some adjustments that have nothing to do with the UFV, and that's what we used to pay taxes in Bolivia.

So, it's not possible to try to show profits by
12:20  1 substracting UFV, but then not to do it for the payment of
taxes. So, if we are going to substract it or deduct it, we
are going to do it in both instances, and we have followed
the
principles by using the profits and also taking into account
some future planning.

ARBITRATOR CONTHE: Why was--so, you're talking
about
this standard. We're talking about a standard that was used
for inflationary adjustment, and--but inflation was not so
significant back then.

THE WITNESS: Well, this was published by the
auditors
association, and the technical committee of the association
included Mrs. Bejarano who is now against that rule. The
inflation was not very significant, but the Government and
association of auditors decided to use it to clear the
financial situation in the country.

But in Bolivia, there was a depreciation of the
Bolivian peso vis-à-vis the dollar--appreciation,
appreciation
of the Bolivian peso vis-à-vis the dollar, so inflation was
no
longer significant to show the financial and economic
situation
of the company.
ARBITRATOR CONTHE: And what was the logic behind that rule? Because Guaracachi's debt was dollar-denominated; rather, most of the information you have, these were changing to Bolivian pesos and then changed to the UFV rate and then they were converted back to dollars.
THE WITNESS: We did our accounting in Bolivian pesos.

Now, there could be some parallel reports for Shareholders or some internal controls within the company that might require it to be in U.S. dollars, but we do it in Bolivian pesos.

ARBITRATOR CONTHE: So, you confirm that the managers and the company had no discretion to update or not based on the UFV. They had to do so, but they had some leeway to show it as loss and profit or go straight into a reserve account as net worth.

THE WITNESS: Yes. That is the recommendation by PriceWaterhouse, but that is an accounting principle. It's not like you can apply it and then stop applying it if you don't like it.

ARBITRATOR CONTHE: I would like to know the definition of the Covenant and the borrowing debt—or the indebtedness clause that you had with some of the banks. I understand that the denominator was net worth based on Bolivian accounting standards.

THE WITNESS: Well, we have two ratios. One of
belongs to the CAF, and the other one to the bondholders. It is the net worth, and it does not specify as to what includes and what it excludes. The only difference is that CAF's has a different leeway, and the financial liability is not total liability. The CAF is total liability. In the case of the
bondholders, it's the total liabilities.

ARBITRATOR CONTHE: So, given CAF, if they replaced financial debt—or rather if they did not take financial borrowing with the financing of the suppliers, that solved problems, and I assume that that is what the company did so as not to breach the Covenant they had with CAF. And those who live in the European Union these days, we know what the system could be, but we do understand that there was an economic incentive to replace the financial debt with commercial debt because that commercial debt was not against the CAF ratio.

THE WITNESS: But CAF's ratio against any other standard in the world is very low, at least in the electric sector. It must be 1:1. They had the ability to lend 75-- cents per dollar of the net worth before, and that's the way CAF worked. We had a loan with CAF—or a different Administration had a loan with CAF, and the ratio was completely different. But based on my experience and my work with them, CAF takes the flow based and adjusts it based on the flow of the company. And based on that--based on the streams of the company. And based on that, they assigned the ratios.
So, they adjust the stream based on their judgment.

And I don't want to be unfair with CAF, and usually the institutions, the banks loan money to those who do not need it.

But let me move on to an accounting question that goes
beyond CAF but that has to do with the consolidated accounting for Rurelec. As long as you were the Financial Director of the largest subsidiary of Rurelec, I imagine that you were in contact with the Financial Director of Rurelec and also the auditors working with Rurelec; correct?

THE WITNESS: Yes.

ARBITRATOR CONTHE: So, what was the Fair Market to assess participation within Guaracachi?

THE WITNESS: I do not know the ratio, but I can tell you the difference in concepts as to how they recorded it and how we recorded it in Bolivia.

Standards in Bolivia are specific, and we have that are specific, but in some other cases you have--UFVs not taken into account, but in Bolivia I did have to take account the UFV.

ARBITRATOR CONTHE: I understand. But this is based on accounting standards and, as a Financial Director, you needed to provide information for them to do the Fair Market
THE WITNESS: Well, we sent the information that they requested. I think I only saw those people twice, and I basically sent the information; systematically, we sent adjusted information by UFV. But the standards in Bolivia are particular to Bolivia, and those of the United Kingdom are
observed in the United Kingdom and not in Bolivia.

And the last question is more of a general question, and I don't know if you can answer it, but could be useful to me, and I guess to my colleagues too who says—who is from the euro region, Latin America has not been in the peak of the financial crisis that we had in 2007-2008, but I understand that this crisis must have had some effect on a country like Bolivia, and Guaracachi in particular, taking into account the Shareholder was an English company that have suffered the very serious crisis that the euro countries also suffered.

So, throughout these critical years that we're analyzing, 2007 prior to the crisis, and 2008 and 2009, when least in the United States and in Europe there was a financial crisis, what was the impact of that radical change in economic situation on Guaracachi's situation as a large Bolivian company?

I can refer to the country context. As Bolivians, we need to feel very proud because we
are the only country that has grown over the last--over the
recent years because of the Measures that were implemented
by
the Government. We have not been affected by external
shocks.
We continued to grow and to respond.
To answer your question, because of the
macroeconomic
Measures taken by the Government, the administration of Mr.
Evo
Morales, we haven't had any impact in our economy, and we haven't been affected by international crises.

ARBITRATOR CONTHE: There was something else that actually took me aback. The interest rates in Bolivia between '08 and '07 went up, and in the industrialized countries, it was going down.

Why did it go up?

THE WITNESS: One of the Measures that the National Administration took was to Bolivianize the economy. All dollar rates went up and all rates in Bolivian pesos went down. There was an incentive to lend in dollars—I'm sorry, lend in Bolivian pesos, and provide transactions in Bolivian pesos. We're trying to Bolivianize the economy.

In the past few years, because of a series of Measures taken by the Finance Minister, Mr. Arce, the Bolivian peso was stronger than the dollar. The Bolivian peso was 8 pesos per dollar, now it's 6.7 Bolivian pesos per dollar. So the Bolivian peso is a relatively stronger--strong currency, just like in other countries, like Brazil.

ARBITRATOR CONTHE: So, there was a carry trade,
So, people take debts in dollars and get Bolivian pesos?

The witness: No. There was incentive to loan in Bolivian pesos, so dollar rates went up for a number of...
reasons. You can go through the reports of the Central Bank and of the Superintendency, and you're going to see that the rates went up in dollars and went down in Bolivian pesos.

ARBITRATOR CONTHE: When calculating the WACC of Guaracachi, a question that is posed is whether the interest rates paid for its borrowings were market rate or they were distorted because of two factors. One you have already explained has to do with the pension funds that were going to both sides, and that's clear to me; but the other matter is that the fact that CAF was one of the financiers, was--kept lending at rates that were higher or lower than the market vis-à-vis other market financiers?

THE WITNESS: The issue of the bonds, if you look at bond issuances at the time, almost all of them have the same cost. So, there was no subvention in connection with that. CAF has two arms, a public and a private arm. The public arm lends to Government, so the rates are quite low. Then the private arm is just a commercial bank that lends at LIBOR plus a certain margin, and it just so happened that the LIBOR was quite low, it's not a rate that is being protected, and so the CAF is more demanding than the commercial banks themselves.
And the rate was relatively low, but this has to do with the fact that LIBOR was very, very low because of the crisis.
But in the loan that we took before, there was a put option because the rate was going up to 7.5, so the rate was going to show up. And I'm talking about 10 years ago. So, the rate was going to shoot up. So, the CAF is a bank just like any other bank, so they need to make money. They don't make money with the governments, but they make money with the private sector.

ARBITRATOR CONTHE: Guaracachi took financing from private banks to repay financings that came from the CAF.

THE WITNESS: Yes. Let me explain that. Before Rurelec came into play, when it was still GPU, there was a CAF loan for the turbines, Numbers 9 and 10, for $25 million. So, the rates of the CAF were prohibitive. All of the assets had to be attached because of a 25 million loan. So, they placed the conditions as they wanted; the security as they wanted--well, things--so, flexibilize things.

But one of the tasks that I undertook to do was to find alternative financing at better condition because the LIBOR was going up at the time, and individually distributed dividends--well, the data on the Contract was wrong. There
were waivers every year, et cetera, but there were two options in Bolivia to do this. There were $16.5 million that were owed to the CAF, and we had to pay that. So, we had to look at options. We had the Banco Viscayo, it was there, and also the
Banco Credito was there. So, why should we go to foreign banks? Because no bank in Bolivia had the capacity to--to pay--to lend 20 percent. So, the Banco Credito gave us the $16.5 million, which say take advantage of the CAF. We paid the loan of the CAF. And the conditions that we got now were quite--the rates were quite competitive. The conditions were much more competitive--for the other loans I'm talking about--and this is the first loan that the Banco Credito gave of such size in Bolivia. It was very interesting to work with them. And when the opportunity came to go back to the CAF--because we did need the CAF--we did go back to the CAF, and they received it with open arms as they have always done.

ARBITRATOR CONTHE: Thank you very much. I have no further questions.

PRESIDENT JÚDICE: I have a small question.

Mr. Blanco, I think at the beginning of your testimony you said that the results of the combined cycle were in accordance with expectations.

Did I understand this correctly?

THE WITNESS: The results that we expected from the
The profit of Guaracachi is important and the cash flow is quite substantial, and this is due, amongst other things--

PRESIDENT JÚDICE: Yes, but this is your impression.

You don't have any rigorous knowledge of this?
THE WITNESS: I understand that the cash flow has increased.

PRESIDENT JÚDICE: Yes, but you don't know whether the information of the budgets--

THE WITNESS: Well, Mr. President, I have not had time to verify this.

PRESIDENT JÚDICE: Thank you very much. I understand.

It was just to clarify things for me.

Thank you very much for your participation, sir.

You can either stay or you can leave, but you can step down as a witness. We're not going to bother you anymore.

THE WITNESS: Thank you very much, Mr. President.

Thank you very much to the members of the Tribunal. Thank you to the counsel for Bolivia, and thank you to the Rurelec counsel. I hope my clarification has been enough to clarify some of the doubts that have been forth.

PRESIDENT JÚDICE: Yes, you have seen that the pace of these proceedings are what they are, but things have gone very well. Thank you very much.

(Witness steps down.)
MR. BLACKABY: I think the only question is that it's 20 to 1:00, as an Anglo-Saxon--in America they would already have had lunch by now. In Britain we would be just about to have lunch. In Portugal, you're probably thinking about your mid-morning break. And Spain is not even having breakfast.
So, I was just wondering whether it made sense, since the timing of the break will be the same whenever we have it, whether it makes sense to break for one hour now and to continue thereafter rather than having a witness which may continue until—I don't know, even an hour, it's going to take us towards 2:00. So, I just throw that open. I think from our side we would prefer to have a lunch break now and start promptly in one hour, but I throw that out as a proposal.

PRESIDENT JÚDICE: That's your suggestion. What's your point of view? What do you think?

MR. GARCÍA REPRESA: Well, Mr. President, the other option that we would have is to conduct the direct examination because we have a 15-minute time limit for the direct examination, but we are in your hands, and we understand there are needs, people need to rest.

PRESIDENT JÚDICE: The Tribunal is not concerned with this. It's the same for the Tribunal, so perhaps we could do a 15-minute direct.

MR. BLACKABY: Of course, that means that the
is then sequestered over lunch and has to sit at the desk. And it's not a particularly--it's fine at a coffee break; it's not so easy over lunch. And we are doing it now and starting at 2:00, it doesn't make any difference in terms of timing.

PRESIDENT JÚDICE: That's a typical Reply argument. What do you think?
MR. GARCÍA REPRESA: I don't see what the other Party is—what the other Party's consent is because the witness cannot look at the transcript or talk to the other witnesses, so—but if we do this, we are going to make this day longer. We have 15 minutes, and we should actually hear the witness.

PRESIDENT JÚDICE: Very well. I'm going to ask the witness to excuse us because he's going to be alone for an hour. I'm sure the witness will be grateful for this.

José Antonio Lanza, Claimants' Witness, Called

PRESIDENT JÚDICE: Is it possible to start? Thank you very much.

Good morning, Mr. Lanza. We're going to begin your examination. I'm going to ask you to forgive us because you're going to have to have lunch by yourself because we're going to begin, and then you're going to break, and you cannot have any contacts with the—any contact with the people related to these proceedings.

We're a little behind, so your name is—

THE WITNESS: José Antonio Lanza.

PRESIDENT JÚDICE: There is a sheet of paper there,
and I'm going to ask you to read it, please, and please read it out loud so we can hear it.

THE WITNESS: I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth.
12:43 1 PRESIDENT JÚDICE: Thank you very much.

2 I don't know if you had experience in proceedings such

3 as these. The lawyers to your left are going to ask you questions of you for about 15 minutes, then we're going to have

4 lunch break, and then you are going to hear questions from the

5 lawyers to your right.

6 Other questions may be posed later, and the Tribunal

7 may also pose questions. Thank you very much.

9 DIRECT EXAMINATION

10 BY MR. COMMISSION:

11 Q. Mr. Lanza, good afternoon. You submitted two Witness

12 Statements in this arbitration, which you should have in front

13 of you; is that correct?

14 A. Yes.

15 Q. Would you mind taking a moment to make sure those statements are complete and they are your signature.

17 A. That's correct.

18 Q. Thank you, Mr. Lanza.

19 Do you have any corrections to make to your statements

20 here today?
A. Yes, in my Second Statement, there is a mistake on Page 67—on Paragraph 67. There is a typo. It says that seven engines were acquired from Rurelec. Six were acquired from EPS, and the seventh was acquired from Energais.

Q. Okay. Thank you, Mr. Lanza.
Now, moving on, what was your position at Guaracachi prior to the May 2010 nationalization?

A. At the time of nationalization of Guaracachi, I was the Manager of Projects and Development of Guaracachi.

Q. And in that role, what were your responsibilities for Guaracachi?

A. Since I started working in the project and development management office in Guaracachi, I was in charge of all development projects that the company undertook. I was in charge of all the projects from the Jenbacher projects, the GCH-11 turbine, and the combined cycle, and also the Santa Cruz and San Matías plants.

Q. Mr. Lanza, we've heard a lot about the combined-cycle projects during the course of this week. Could you briefly explain how it is and how it works.

A. The CCGT project is one of the most efficient technologies that one can have in a combined operation. It includes thermal units that operate together with steam units, so the combined cycle uses the heat coming from the
chimneys--from the gas turbines, in this case--or of any thermal unit, and this steam is introduced into a heat recuperator, and this steam is put at high pressure and at about 500-600 degrees of temperature to operate a steam turbine. And this is one of the most efficient thermal machines. And through the movement of the mechanical power
created in the steam turbine connected to a generator, you get additional electricity power.

So, with the same initial amount of gas that is being used up by the thermal units, you obtain an additional 60 to 70 percent additional power free without consuming a single cubic meter of gas by the generation of steam. So, the combined cycle is--is a very thermally efficient system.

And in the case of the Guaracachi combined cycle, well, this machine is the most efficient thermal machine of the whole electrical system in Bolivia.

This logically represents a reduction in tariffs, and this is what interests the Bolivian user the most.

Q. I have two more questions for you today. The first is the combined-cycle project was originally budgeted to be a project for 80 megawatts; is that correct?

A. Yes.

Q. And is it also correct that for Guaracachi to find another turbine that was--that had a higher capacity than 96 megawatts--in fact, it was 96 megawatts; isn't that correct?

A. Yes, that is correct.
Originally, the project was conceived to deliver additional power of 80 megawatts through the steam turbine. But, unfortunately, at the time the project started, all of the world electrical market was being built, all of the companies were developing projects and building generation plants, and
there were difficulties in connection with the delivery times for units. There was a waiting list, and you had to wait two or three years to buy a unit.

So, Guaracachi wanted to do this project as soon as possible. So, Guaracachi went to the secondary market to get this unit, and we were able to find a turbine in the secondary market that had higher capacity, was 96 megawatts in this case.

And this meant that the whole project had to be reengineered because the size of the project was bigger. It went from 80 megawatts to 96 megawatts.

MR. GARCÍA REPRESA: I haven't interrupted, but this is a direct examination, not a cross-examination. So, asking questions of the witness saying "is this correct," of course, the answer will be yes.

So, please don't ask any leading questions.

PRESIDENT JÚDICE: I would ask you not to enter into a gray zone on this area.

BY MR. COMMISSION:

Q. One final question, Mr. Lanza. What was the progress
of the combined-cycle project as of May 2010?

A. It was about 95 percent concluded, and the 68 million
budgeted, about 97 or 96 percent of that had been used.

MR. COMMISSION: I have no further questions. I believe counsel for Bolivia will have some questions for you at this point.
PRESIDENT JÚDICE: Thank you very much. We are now going to break for an hour, if you agree, just to take advantage of the time, we are going to meet in an hour, so we are going to meet back here at 2:00.

MR. GARCÍA REPRESA: Excuse me, Mr. President. Excuse me for interrupting, I'm being told that the witness did not read the Initial Statement.

PRESIDENT JÚDICE: Yes, I think he did read it, yes, he did. He read the Witness Declaration; right? And he read it slowly.

But in any case, you are here to tell the truth, the whole truth, and nothing but the truth; right?

THE WITNESS: If you want me to do it again, I will can do it. I can read it again.

MR. GARCÍA REPRESA: No, that's not necessary, Mr. President. We're going to review the transcript, but thank you very much for clarifying on this.

PRESIDENT JÚDICE: Sometimes this happens to the Tribunal as well; right? If there are any doubts, you let us know.
MR. GARCÍA REPRESA: Well, now you need to instruct the witness.

PRESIDENT JÚDICE: Yes. I have said this already, but I will repeat it. During this period of one hour and a few minutes until we resume, you cannot have any contacts with any
person that has anything to do with these proceedings. Please.

THE WITNESS: Yes, understood.

PRESIDENT JÚDICE: Thank you very much.

(Whereupon, at 12:53 p.m., the hearing was adjourned until 2:00 p.m., the same day.)
PRESIDENT JÚDICE: Good afternoon. I hope you had a good lunch, and you are ready to work this afternoon, so I am going to give the floor to the lawyer to your right.

MR. SILVA ROMERO: Thank you very much, Mr. President.

Mr. García Represa will be in charge of the cross-examination.

CROSS-EXAMINATION

BY MR. GARCÍA REPRESA:

Q. Thank you. Good afternoon, Mr. Lanza.

A. Good afternoon.

Q. As you have heard already, my name is José Manuel García Repesa, and I am representing your country in this arbitration with the colleagues from the Office of the Attorney General. I will be asking you some questions about the statement that you submitted in this arbitration on behalf of the Claimants, and I will be referring to some documents that are included in a binder similar to this one which we will be giving to you in the next couple of minutes.
And for the sake of clarity, if you do not understand something, please ask me, and I will restate my question. I imagine that my colleagues must have explained to you how the rules work, but let me remind you of some of the basic rules, and the first one is that to facilitate the work of our court reporters, please speak to the mike.
Also, you need to wait for me to ask you the question, and then you can start answering, and I will try to do the same as long as your answers are brief and concise. And, in this regard, I should tell you that we have a limited amount of time; therefore, I am going to be thankful for your efforts to answer my questions straight to the point, and also I would like to clarify to you that that there might be additional questions after my own examination.

First of all, I would like to ask you about the correction that you introduced to your statement before lunch, and I'm sure you remember that you corrected Paragraph 67 in your Second Statement. Do you remember that?

A. Yes.

Q. And you told us in connection with that Paragraph 67, that in the fourth line where it says "Rurelec," because this is a typo, it should read "EPS." Do you remember that?

A. Yes.

Q. Please speak up.

A. Yes, I do remember that.
20 Q. And I thought that a typo is just a mistake in the letter or a syllable, but between Rurelec and EPS, the closest you came is writing an E. Is that a typo?

21 A. At some point in the drafting, I imagine that was the case, and I just didn't notice this when I reviewed it.

22 Q. But you're telling me that you drafted this statement
14:08 1 and you reviewed it?

2 A. Yes, correct. That's the reason why I signed it.

3 Q. Tell me, at the beginning of your First Statement, you

4 explained that you worked for Rurelec; correct?

5 A. Starting in 2012.

6 Q. So, I understand that the answer is yes?

7 A. Yes, I do work for Rurelec, and I started in 2012.

8 Q. Thank you. And nowadays you're a consultant with

9 Rurelec; correct?

10 A. Yes.

11 Q. When was the last time that you talked to Mr. Earl?

12 A. Well, I have been talking to Mr. Earl quite frequently

13 because I am in charge of developing projects in Latin America.

14 We are adding projects in Chile and Peru, and I am in charge of

15 those projects. I spent time in Santiago.

16 And, as part of the development of the projects, which

17 are quite significant, I maintain an ongoing relationship with

18 Mr. Earl.

19 Q. Once again, let's see if you can answer now. When

20 the last time that you talked to Mr. Earl?
21  A.  Yesterday.

22  Q.  Yesterday evening?

23  A.  No, yesterday afternoon.

24  Q.  What time?

25  A.  It was in the morning, actually, at breakfast.
14:10  Q. So, you're telling me yesterday at breakfast. Did you talk about the arbitration?

A. No, we did not. We talked about some superficial things. We are expecting the turbine by April 14th in Arica, at the Arica port. We were talking about the unloading of the turbine.

Q. Now tell me, in addition to the activities for Rurelec, do you perform any other task for which you received compensation?

A. Yes, I'm a university Professor. I'm a graduate Professor at the graduate--Professor at the graduate--undergraduate and graduate levels.

Q. Would you say that your main source of compensation is Rurelec or the university?

A. It's Rurelec. From the monetary point of view, it's Rurelec.

Q. Do you receive a monthly payment?

A. Yes, I do.

Q. And in addition to that payment or salary, are you going to receive any bonus or punishment based on the arbitration?
22    A. No, I will not.
23    Q. And you mentioned that you started with the
24    consultancy in January 2012. And I understand that in May
25    were dismissed from EGSA?
A. Yes, May 7 to be more accurate.
Q. I think that you have not forgotten that date?
A. Of course I haven't.
Q. And the reason is because of the conditions of the dismissal or the situation surrounding the dismissal was not very pleasant; right?
A. Well, being dismissed is not very pleasant, especially when you think that you have done a good job, when you had been working on the development of projects and knowing that the country had been experiencing outages for years.
Q. Now, between May 7, 2011, and the beginning of your consultancy with Rurelec, did you have any source of income?
A. I usually have consultancies in the country, consultancy--do consultancy work in the country. I have my regular source of income, the one that I get from my teaching activities, and also because of the subjects that I teach, the courses that I teach and various Master's degrees, I have income, and that has been my source of compensation in 2012. But I took six months off.
Q. You're referring to 2011, not 2012?
A. Yes, correct, 2011.
In 2010, I had a very demanding year that was the end of the combined-cycle project; and, together with my team, I worked between 15 and 18 hours a day, over the weekends and holidays, so it was a great effort, and I decided upon being
14:13 1 dismissed by Guaracachi, I decided to take some time off.
  2    Q. And after that well deserved time off, you started
  3    your consultancy with Rurelec; and, as part of that
  4    consultancy, you prepared the two statements that you have
  here
  5    before you. Correct?
  6    A. Yes.
  7    Q. Could you look at your Second Statement.
  8    Just to confirm some dates, the first one is
 10    So, they are one year apart, roughly; correct?
 11    A. Yes.
 12    Q. And for the Second Statement, if we look at
 13    Paragraph 3, you wrote the document or you described the
 14    documents that you were given by the attorneys of Rurelec;
 15    correct?
 16    A. So, you're saying Item 3 of my First Statement?
 17    Q. No, I'm sorry if I caused any confusion. It's
 18    Paragraph 3 of your Second Statement.
 19    A. Yes.
 20    Q. And one of the documents that you were given is the
 21    statement by Mr. Eduardo Paz, who is the current General
 22    Manager of EGSA?
 23    A. Yes.
Q. But you were not given the Second Statement by Mr. Paz from November 2012; correct?
A. I don't think I got it.

Q. Do you know why you were not given the Second Statement?

A. I imagine it had nothing to do with my subject matter.

Q. So, you told me that you imagined, but are you aware or not?

A. Well, if I wasn't given that, I don't know why. I assume why.

Q. And at Paragraph Number 3 of your Second Statement, you are saying that you were also given the Second Statement—in the Second Statement of Ms. Bejarano; correct?

A. Yes.

Q. But you were not given the First Statement by Ms. Bejarano; correct?

A. I think that I was given that because I remember having read that.

Q. Do you want to correct Paragraph Number 3?

A. No, I don't think so.

Q. So, the lawyers gave you the second one but not the first one; correct?

A. Yes.
Q.  Weren't you surprised to react to the Second
Statement without referring to the first one?

A.  Not really.  I understand that by reading the
Second
14:17 1 Statement by Mrs. Bejarano, I was addressing specific items
2 that I addressed in my statement, so it was enough for me to
3 know that they meant--that I was reading was in connection
with
4 what I had already--what she said before.
5      Q. But I should be more specific. The First Statement
6 dates September 2012, so that is prior to your First
7 Statement.
8      A. Yes, I did know that.
9      Q. And you knew that the First Statement by Mrs. Lanza
10 (sic) was after your First Statement. Did you know that?
11      A. Yes.
12      Q. And you did not review the Third Statement; correct?
13      A. Yes, I did read the Third Statement by Mrs. Bejarano,
14 but the fact that I have not described it here doesn't mean
15 that I haven't read it.
16      Q. Yes, I have no doubt that you have read it prior to
17 the
18 last statement by Mrs. Bejarano?
19      A. The last statement by Ms. Bejarano?
20      Q. And I am going to slow down a little bit so as not to
21 not to get the dates wrong.
So, I'm trying to find out why you were given certain documents to review but not others. Is it clear?

A. Yes.

Q. So, it is clear that when you wrote your Second Statement in January 2013, you had not reviewed the statement of November 2012 by Mrs. Bejarano; correct?

A. The third one? Probably, yes.

Q. Probably, yes, I am correct, or probably, yes, I did review it?

A. Probably I did not review it. That's what I meant.

Q. And in the third paragraph of your Second Statement I don't want whether you want me to call you Mr. Lanza. I don't want to call you Tuco.

A. Everyone calls me Tuco, so if you want to call me Tuco, that's fine.

Q. Fine. And I'm saying because in some documents we see Tuco, and I thank you for allowing me to call you Tuco.

And as I was telling you, third paragraph, Second Statement, you're also mentioning that you reviewed the annexes, the relevant annexes to the two statements that you
21 reviewed. When you were saying the relevant annexes, are you
22 referring to reviewing all of the exhibits or annexes?
23 A. I would say that I've read them all.
24 Q. And who selected the annexes that you had to read?
25 A. The annexes were part of the documentation that I
received. So, as I read the statement, it was referring to a statement, to an annex, and I would go and check that annex just to make sure I understood what the accompanying document was.

Q. Let me know, Mr. Lanza. Now I have some terminology questions before we go into the more substantive discussion. What is a wholly owned subsidiary, in your opinion?

A. A wholly owned subsidiary? To be honest with you, that's the first time I hear that term.

MR. BLACKABY: Are they asking him if the Expert is an linguistic Expert, or if there is a document or something asking a witness how is the sun made up, how many rocks are there on the moon, without any kind of consultation seems to be highly inappropriate.

PRESIDENT JÚDICE: I now understand your objection. Now I want to understand the point.

MR. GARCÍA REPRESA: With pleasure, Mr. President. I'm just reading Paragraph 18 in his statement. I understand that the witness never heard that word before, so I'm saying how is it possible if he included it in the statement.
This is Paragraph 18 of the First Statement.

Q. And I am referring to the very first sentence in that paragraph. And it reads, and please correct me if I'm not reading the content correctly. There you are saying that a Capitalization Contract was then entered into by Bolivia,
wholly owned entity duly constituted.

So, my question is what is a wholly owned entity?

A. Well, we need--now I understand the context of your question. The wholly owned entity is Guaracachi America.

Q. And I understand, and also for you to understand better my reaction, you drafted this text; right?

A. Yes, with the help of the lawyers.

Q. What was the language in which the lawyers wrote this?

A. Well, in their language. They speak English.

Q. Well, now, let's move on to the binder, the one that has the--to the binder, the white binder, and we're going to go to Tab 14, and there you're going to find the English version;

and if we look at Paragraph 18, and if you look at the first line of that paragraph, I am going to do the same that I did in the English version. It says: "A Capitalization Contract was then entered into by Bolivia, the wholly owned entity."

That I understand that when in your statement you're referring to a wholly owned entity, that is a translation of wholly owned entity in the other text, "entidad de propiedad
21 "absoluta," would be a translation of wholly owned entity?
22
23 A. Yes.
24 Q. Okay. So, we're going to move on to something else, if that's okay with you. We are going to be discussing
25 projects, and I would like for you to tell me, what is a
promising project?

14:26 1 promising project?

2     PRESIDENT JÚDICE: Excuse me?

3     BY MR. GARCÍA REPRESA:

4     Q. What is a promising project?

5     A. I think that we need to think of it as a project

6     that you expect to have good results from.

7     Q. And in English that would be a promising project?

8     A. Well, I am not an expert in English.

9     Q. But that is the translation we have at Paragraph 45

10    of your First Statement.

11    I would like now to look at Paragraph 34 of your

12    First

13    Statement.

14    In Paragraph 34, you are referring to the well-

15    known

16    combined cycle, and you mentioned on Line 4 from the bottom

17    that the technical development of the project up to its

18    conclusion was in charge of independent--Integrated Energy

19    Limited--Independent Power Operations Limited, and this is

20    IPOL, the one company that we have mentioned many times so

21    far.

20    I don't know I heard your answer. Once again, I'm

21    sorry, but I'm going to ask you again.

21    Is that IPOL, the one that we were referring to
22 throughout the case?

23    A. So, are you referring to the meetings here? This

24    is

25    my first day here at the--my day here at the hearing, so

25    this

25    is the very first time that I hear the word IPOL.
Q. Well, I'm also referring to the pleadings.

PRESIDENT JÚDICE: I do not want to interrupt your cross-examination, but I think that you're asking questions that are connected to the statement, but he cannot see the words.

MR. GARCÍA REPRESA: I disagree. I'm sorry to disagree, but I ask the witness to look at the fourth line from the bottom, Paragraph 34. I read it, and that's where we see IPOL. I'm just asking for a confirmation.

PRESIDENT JÚDICE: But your question was whether this is a company that has come up several times in this case. I think that this is a question related to your work on this case, I would say.

BY MR. GARCÍA REPRESA:

Q. Is IPOL a company that belongs to Mr. Earl?

A. Yes.

MR. BLACKABY: The objection is I heard the question before, and I didn't object quickly.

The question is, is it a company that belongs to Mr. Earl, does it mean that Mr. Earl is a shareholder, an owner? Is he affiliated with it? Is he the Director, is he
the Shareholder? But he's trying to have an engineer say
something else, and he will be using that later on, so I
don't think that that is right.

PRESIDENT JÚDICE: Well, we know that he is an
14:30 1 engineer, he's not a legal expert, and the Tribunal will be
you analyzing his statements, taking that into account. Thank
you very much.
4  But before answering, please think what you're going
to say because oftentimes words have a legal meaning that
you may not be aware of, so try to be as clear as possible to help
the Tribunal later on. Thank you.
8           MR. GARCÍA REPRESA: Thank you.
9           BY MR. GARCÍA REPRESA:
10      Q. Now, to be clear, sir--and I'm not trying to put
words in your mouth--in your understanding, just your understanding,
12 is IPOL a company that belongs to Mr. Earl? Yes or no.
13           PRESIDENT JÚDICE: That's better.
14           THE WITNESS: I just wanted to say that I'm a
15 technical person, and the work that I performed in Guaracachi
16 has been exclusively technical in nature, and I have been
17 charged with operating the company initially, and then to
develop the projects. I have not been involved in the
19 administrative details as such, so I don't know if IPOL is
or
is not a company that is owned by Peter Earl.

BY MR. GARCÍA REPRESA:

Q. You know people from IPOL, you know the company IPOL?

A. Yes, I know it because I have worked very closely with one of his technical people for many years.

Q. Jerry Blake; right?
A. Yes, Jerry Blake.

Q. Well, you don't know, then, whether IPOL is related in any way with Mr. Earl?

A. No.

Q. Do you know a company called IPC? Do you know a company called IPC?

A. Yes, I've heard of it.

Q. In your understanding, is it a company of Mr. Earl's?

A. I don't have knowledge to provide you with an answer to that question.

Q. Was IPOL the technical operator of EGSA?

A. IPOL provided technical advice initially in the operations arena and in the maintenance arena, and for the CCGT project a special contract was signed for each corporation in the kind of project.

Q. So, there were two different contracts, a management contract that dated back in time, and at the time of the CCGT there was another specific contract for the CCGT project itself; correct?

A. Correct.
Q. And under that specific contract for the technical development of the CCGT project IPOL received large fees; correct?

A. I don't know if they were large or not, but the Contract with IPOL was a contract that came from the very
beginning, and then it went until 2006, up until the end of the CCGT. It was a contract for the total amount of $50 million, and $400,000 were paid, and I think IPOL is owned $100,000. But also IPOL had a payment for having found a turbine.

Q. Let's go to the Contract that you know and that you mentioned a moment ago. It's Annex 20 to Mr. Paz's statement.

THE INTERPRETER: Interpreter would like to correct that it's $500,000 before.

BY MR. GARCÍA REPRESA:

Q. You had mentioned that the financial terms or the payment terms of this Contract are here, and if you go to 3.0 commercial, I don't know if you see it--

A. Yes, I do.

Q. And you see that there are four points in connection with the commercial part?

A. Yes, yes.

Q. And here you see a total payment based on estimated hours of $500,000. Is this the payment that you were making reference to?

A. Yes.

Q. And if you go to Item 2, it says that for the
activities conducted—that is to say, the prior search of the STG, which is the steam generator; right?

A. Right.

Q. For that search of the STG, the generator,
14:36  1  100,000 pounds are paid to it.  Is this correct?
  2      A.  Yes.  This is what the contract states.
  3      Q.  Now, you do remember the payment that was mentioned
a
  4  minute ago?
  5      A.  Yes.  Yes, now that I read it, I do.
  6      Q.  But if you look at Paragraph 3, it says that for
  7  additional work that may come up, Guaracachi would make
  8  additional payments.
  9      Do you see that?
 10      A.  Yes, that's what it says.
 11      Q.  Now, apart from the payments--from these payments
for
 12  the other Contract, the Management Contract, IPOL would
receive
 13  monthly payments; correct?
 14      A.  Yes, that is my understanding.
 15      Q.  Do you know how much those monthly payments were
for,
 16  approximately?
 17      A.  I don't remember, as I sit here.
 18      Q.  Yes, but you were the General Manager of EGSA;
right?
 19      A.  Yes.  But when I was the General Manager, that
20  contract was already annulled.
Q. But the combined cycle Contract would still--was still current; right?

A. The combined cycle Contract was annulled de facto--actually, it was never--the rescission of the Contract was never signed. At the beginning of the capitalization, this
14:37 1 Contract was annulled de facto because the administration at
2 that time understood that that was the case, and it did not
3 want to have any Contract with anything that could be linked to
4 a British presence in Guaracachi.

5           PRESIDENT JÚDICE: Did you say capitalization or
6               nationalization?
7           MR. GARCÍA REPRESA: Well, yes. It was
8               nationalization.
9               You saved the question I was going to ask,
10         Mr. President.
11           BY MR. GARCÍA REPRESA:
12         Q. Isn't it true that Jerry Blake cooperated with EGSA?
13         A. I would like to give you a little bit of context.
14         Q. Could you please answer my question and then
15         provide context.
16         A. Jerry Blake went to Guaracachi in January 2011 at
17         my request and because of my asking him to do so, and this
18         requires an additional explanation because once
19         nationalization took place and once Mr. Jerges Mercado was the Manager, all
20         communication was cut with any English Party, so there was no
way for us to get any kind of assistance, for example, the ones in this case that had to do with the combined cycle Contract, in order to develop the duties that we had to do and that were still outstanding.

I talked to Mr. Mercado many times to explain this to
him, but there was a misunderstanding at that time because they thought when they broke the Administration Contract, they also broke the combined-cycle contract as well. It took a long time for them to understand that these were two different contracts; and, unfortunately, up until the time Mr. Mercado left the company when he was retired, it was practically impossible--well, and that is why I was saying that the Contract was annulled in fact.

PRESIDENT JÚDICE: You said it was practically impossible--it was practically impossible what?

THE WITNESS: It was practically impossible for the people from IPOL, in this case Mr. Jerry Blake, to go to Guaracachi to provide the necessary assistance to us in connection with the Contract.

When there was a management change, and Mr. Joaquin Rodriguez took office--

MR. GARCÍA REPRESA: Excuse me, Mr. President, I think we are driving away from the point.

PRESIDENT JÚDICE: I think it's important to finish this.

THE WITNESS: When Mr. Joaquin Rodriguez came to be...
the General Manager, he understood these things were important,

and he understood that these were two different contracts. I
drafted the invitation letter, and Mr. Paz's statement has
annexed this letter. This is a letter sent by IPOL to Mike,
and Jerry Blake came to Bolivia around 25-26 January 2011, about a year after the nationalization took place.

PRESIDENT JÚDICE: Thank you very much. That's enough for now.

BY MR. GARCÍA REPRESA:

Q. Sir, you said that it was very complicated, almost impossible for the British to come after nationalization, and it's not very clear to me what that means, and I wanted to explore this with you.

Was there prohibition for all British passport holders to work with EGSA?

A. I don't know of anything like that, and that's not what I said, I don't think. We're only talking about Guaracachi exclusively.

Q. Sir, when you said that no British national could come, I think you meant that no one related to Rurelec or to Mr. Earl could come.

A. Yes, with Rurelec or with the contracts that we had, whether it be IPOL.

And there was a third contract that we had in the San Matías project. There was a British company there called First
Energy, and it was very difficult for them to understand that this Contract had to be performed so that the San Matías Plant could become operational. So, after a few months of speaking and trying to convince them these are different contracts
they're different companies, First Energy, for example, had nothing to do with Rurelec--well, then, they agreed to conduct the work that had to be conducted in the machines that were being installed in San Matías.

Q. But you just said to me that First Energy had nothing to do with Rurelec. Do you know who the Shareholders of First Energy are?

A. I was with the owner of First Energy and met with the owner of First Energy in London because I had to arrange the arrival of these technical people. They didn't want to come to Bolivia because they were scared, they were afraid that something could happen to them, and I met Mr. Dwight Evans. He's one of the majority Shareholders of the company.

Q. Did you know that Mr. Earl is or was a director of First Energy?

A. No.

Q. But that is on file, so I'm not going to ask any more questions.

PRESIDENT JÚDICE: Wasn't this Mr. Evans one of the Shareholders or was he the Majority Shareholders?
THE WITNESS: One of the Majority Shareholders is my understanding.

MR. BLACKABY: Could I make one point, an objection, which is since I'm often called to order by the other side, I'd like to call one point of order, which is that counsel does not
comment on the evidence or make statements whilst questioning a witness such as the one we have just had, which was did you know that—it is on the file, so I'm not going to ask any more questions. It is on the file is a statement. It's a submission. That's what closing submissions are for. You can prove it in due course, but it's not the commenting in the middle of the witness examination.

PRESIDENT JÚDICE: As we said before, quite often, counsel, even both as experienced as is the case, do something that is not exactly I would say by the book, and, therefore, we understand that any reference out of the final pleadings will be repeated at the final pleadings, and it's no reference whatsoever before it, okay?

MR. BLACKABY: The only objection is being said in front of the witness.

MR. GARCÍA REPRESA: Thank you, and just so that there is no doubt, R-63 will have the reference that you're looking for?

MR. BLACKABY: That is just another submission
has been made and which I again object to, and I really do request the other side respect the rules of the game as I have been asked to respect. Otherwise, I will start interrupting without asking, and I don't think that's very helpful.

MR. GARCÍA REPRESA: I will proceed not so that we don't waste more time.
I'm going to do it in Spanish, of course.

BY MR. GARCÍA REPRESA:

Q. Sir, in connection with the combined-cycle project, a moment ago we talked about the generator that was acquired via IPOL in 2007; is this correct?

A. Yes.

Q. Let's go to Paragraph 32 of your First Statement. And there, you talked about the fact that this was cutting-edge technology.

A. Yes.

Q. Can you remember the year of manufacturing of the generator found by IPOL?

A. Seventy-one.

Q. So, a generator of 1971 was a cutting-edge technology generator in 2007? Is that your testimony?

A. It's important to clarify and to state the following:

As all of us know, generally speaking, the first thermal machine during the industrial revolution was the steam machine,

so the steam machine has also evolved technologically,
From the 1950s to today, a machine is not different now from what it was in the 1950s, so the latest technology is applied to the control system of the different units. What we have done with this machine is the following.

Well, the machine dates back to 1971, but it only had
10,000 hours of operation. It's an hour-and-a-half of operations that it has, just to give you context for those of you who don't know much about operations.

So, 43 start-ups and does nothing, really.

So, what we've done is to make sure that all controls be designed and built with the latest technology, state-of-the-art technology, and a German company designed the control system. The PLC system has been developed with microprocessors, current microprocessors, the ones that existed in the market at the time of installation, and all the excitation system, the AVR system, we got rid of the old system, and we bought new system in the factory in France, in the southern part of France, this in 2009. So, that's why it says here that it is cutting edge technology because this cutting-edge combined-cycle system because it has been added, this cutting edge technology has been added to this machine.

Just to finish, there are two elements when it comes to combined system; right? The generator and the steam turbine. We bought this of the secondary market. The rest
the equipment, and it's very large, heat recovery system, boilers, pumps, cooling towers—all that equipment that represents 95 percent of the combined cycle budget is new. It was bought of the largest manufacturers in the world, Siemens, KfW, top of the art—state-of-the-art companies that built these kind of companies.
So, this combined-cycle system that we have designed and installed in the country is a combined-cycle project that is cutting edge.

Q. And you confirmed that the generator that was searched by IPOL was a 1971 generator?
A. Yes.

Q. In your Second Statement, sir, you go a little further when it comes to the role of IPOL. Please go to Paragraph 33.

This is a long paragraph, and you can read it in its entirety, but I am interested in Page 15. On Page 15, you say that IPOL's participation—and this is for the combined cycle—was fundamental.

Do you see that?
A. Yes.

Q. And if we go to Paragraph 34, in the last line of Paragraph 34, you say that the operation, the functioning or commissioning of the main equipment of the CCGT was entrusted to IPOL.

Have I correctly described your statement? Yes or no.
20 Then you can give me your explanation?
21     A. Can you repeat your question, please?
22     Q. Yes, of course.
23 In Paragraphs 34--and I'm only trying to avoid
24 comments in the sense that I'm trying to put words in your
25 mouth--you say that the operation, functioning or
commissioning
of the main equipment of the CCGT was entrusted to IPOL; is
this correct?

A. Yes, that is what it says, this in response to the
statement to the contrary that Mr. Paz had given.

Q. You confirm that what you just said a moment ago is
reflected in the Terms and Conditions of the contracts
signed with Santos, a construction company, and IPOL.

Do you see that?

A. Yes.

Q. And I assume that before signing this statement you
looked at the Terms and Conditions of those contracts?

A. I'm not sure whether I reviewed them, but I used my
memory to try and remember the conceptual differences
between the role of one company and the role of the other company.

Q. I thought that you had reviewed these agreements
because there is a footnote at the end of the paragraph
where you mentioned the agreements.

Do you see that?

A. Yes.

Q. I assumed that before making reference to this in
your statement you read this and you reviewed this.
22      A.  I have read these agreements many times throughout the whole project.
24      Q.  So, I understand that you know them well.
25      A.  Yes, one could say that.
Q. Very well.

The Contract I'm interested in is the one that has to do with IPOL, and it's behind Tab 3 of your ringed binder. And could you please tell me where IPOL is entrusted with the operation, function, or commissioning of the main equipment of the CCGT?

A. It's right here on Page 2, 5, it says, "construction, erection, and commissioning." This is one of the roles that IPOL played under this agreement. So, where it says decommissioned, one has to understand that commissioning is a stage where all the equipment is tested. People are trained so they can have the necessary expertise to operate equipment. The equipment is started up, and it is made operational. So, that was what Guaracachi had to do, to start up the equipment, to test the equipment, to operate the equipment, and to deliver the equipment to the people in charge of this operation. According to the view we had of the matter, as I say in my statement, this should have been prepared by IPOL's
people, and using one of the companies that Rurelec has in
the Argentina Patagonia, Rurelec had to do this because they had
the knowledge and expertise.

Q. Sir, you were asked about the mission that IPOL had
under this Contract, and you have referred me to Clause 2
that described the project and also the schedule for this project.
14:57 1 Specifically, I had--in particular, you had referred me to
the
final portion of this schedule, and this was the last 15
months.
The fifth stage talks about construction and
commissioning, just to simplify things.
A. Yes.
Q. The construction was not entrusted to IPOL; right?
A. No.
Q. It was to be done by Santos CMI; right?
A. Yes.
Q. So, this is not defining the role of IPOL,
necessarily, but I would like for you to look at the next
page,
2(1), Paragraph 2(1). There is a section--well, actually a
phrase that I'm going to translate into Spanish. If you
don't agree with the translation, you tell me. It says EGSA hires
IPOL to do the following things. Is my translation more or
less correct?
A. Yes.
Q. And I understand that all of the functions of IPOL
are
listed there?
A. Yes.
Q. The general ones; yes?
A. Yes.
Q. Amongst those roles, I don't see the operation or functioning of the combined cycle, sir. Do you see--do you
14:58 1 agree with me?

2 A. It says operator trainer and operation, training

and

3 manuals, and then it says, "continuous coordination in all

the
design and construction process." All of these items are

explained in detail in the appendices.

Q. Thank you, sir.

7 I can read as well, and I was told that

8 cross-examination is not a reading exercise. I will repeat

my

9 question.

10 In this list of functions of IPOL, I don't see that

11 IPOL is entrusted with the operation of the combined cycle.

Do

12 you agree with me or not?

13 A. The operation has never been included in IPOL's

14 Contract. What I'm trying to explain to you is that the

15 commissioning of the CCGT, until such time as this is

16 transferred to the operations people from Guaracachi, this

was

17 supervised by IPOL.

18 Q. So, we have to correct Paragraph 34 of your Second

19 Statement that we were looking at a moment ago, and we have

to

20 delete the word "operation"; correct?
A. In the way in which you are understanding operation, well, apparently you're trying to say that operation is referring to the period after the commercial operation of the machine once the project has ended. In my understanding, as I had written this here, operations here means the process
between the commissioning, the start-up of the machine and the commercial operation of the machine. When the machine starts up, the commissioning has taken place, and the operation takes place, this will be supervised by Guaracachi or, rather, by IPOL, and this, the whole version is coming to a transfer to the owners of the companies.

Q. So, here is where you define the timeline for IPOL's mission?

A. Yes.

Q. We're going to continue talking about the CCGT, but I will be more interested on the economic aspect of it, cost, et cetera.

In your First Statement, and that's where we were just a minute ago--let's go back to where we were, Paragraph 34, that's where we read IPOL first, 35, where we read that IPOL was hired to get the turbine, and at 36 you explain that the cost of the project increased.

Do you see it?

A. Yes.

Q. And if we look at the sequence of these
paragraphs—and because of time constraints, please read it to yourself, but I have checked the figures, and we've seen that the figures went from $40 million at Paragraph 34 in 2006 to $68 million in 2008; correct?

A. Yes.
Q. And that is--and the reason for that, as you state in Paragraph 36, is that there was a significant increase of raw material necessary for the equipment and electricity generation; correct?

A. That was one of the reasons. It is not the only one. It is one of the most important reasons.

Q. And, in terms of hierarchy or percentage, what would be the percentage in terms of the importance of the increase in the raw material?

A. If my memory is serving me right because I drafted the report for the Board of Directors, I would say that it represents 60 percent in significance, and 40 percent--so, 60 percent due to the raw material and 40 percent because of the increase in the size of the project.

Q. And so that there are no doubts, at Paragraph 37, in the last sentence, you say--and here I quote--"the necessary raw materials"--rather, this meant that the prices for raw materials needed for electricity plants increased considerably,

in the English version. But don't you think it should be
"considerable" instead of "considerably" in the Spanish version?

A. Yes.

Q. And I am not going do this, but we are going to see where the "considerably" comes from.

Would you say that this increase in the cost of raw
materials was unexceptional or special increase that was not expected when the original project was created or planned?

A. Well, it was expected because as Mr. Flores, the Expert hired by Bolivia stated in his first report, when he showed a table with the increases in prices, in connection with this type of product, he refers to this paragraph, to the paragraph that I wrote; and, in that table, you can see that in 2005-2006, there was the regular inflation-related increase, but starting in 2008, the increase is dramatic. And if we go back to those times, and if we review what happened in the world, we're going to agree that China was having exceptional growth. China was buying all of the raw material that was available. They bought most of the steel available, and they led to shortages somewhere else, and the value of raw material, given the shortages, also increased, so this phenomenon was not expected, and it was not expected for economists in general that they would not know—they wouldn't have known what was going to happen.

Q. And what happened with the IPP Turbine Index?
A. I can tell you that up until 2008, 2009, 2010, that is the period that I studied, at the beginning I was just working on the technical issues. And I wouldn't be able to tell you whether the trend continued or not. This is not so recent in my memory.

Q. But I thought that you had reviewed the report by
Mr. Flores?

A. Yes, I did.

Q. And did you review the graph or the table that showed the increase? Did you review it in whole or in part?

A. Well, based on my memory, I think I reviewed up to 2008, 2009.

Q. So, you didn't review 2010?

A. Well, I did review it, but I would be lying to you if I told you that I remember whether it maintained—the trend maintained or not or it increased, and we're going to go now back to the Second Statement, Paragraph 62, and I'm sorry for going back and forth, but since you go over the same issues, we have to do so.

Q. You refer again to IPOL. In the first sentence you're referring to the loss of Rurelec and IPOL support. Is there any reason why you put them together in that sentence?

A. Could you please repeat your question.

Q. In the first sentence you are referring to Rurelec and IPOL together. Is there any reason why you mentioned them together?
A. Because it was obvious. The nationalization of May 1st, 2010, implied that simultaneously we lost the support of both companies, one, because of nationalization, and the other one because of the indirect effect of nationalization.

Q. So, here goes my question again: Is there any reason
15:09 1 why you put together the two companies in these sentences—in

2 this sentence? Yes or no.

3         PRESIDENT JÚDICE: I think that he has answered
4 already.

5         MR. GARCÍA REPRESA: He mentioned why he put them
6 there but not why he put them together.

7         PRESIDENT JÚDICE: Well, then to clarify.

8         BY MR. GARCÍA REPRESA:

9         Q. You're telling me that here you could have put all
10 of
11 the companies and all of the persons that stopped working
12 after
13 the nationalization.

14         A. I don't remember many others that we stopped
15 working
16 with. We continued to have a working relationship with the
17 others.

18         Q. And here, you're starting to refer to the
19 nationalization, and you say that the loss of Rurelec and
20 IPOL,
21 and here I am going to refer to Paragraph 64, it says "The
22 dismissal of IPOL and Rurelec," and you also refer to
23 Mr. Mercado, I understand, "caused significant problems in
24 the
25 final stage of the CCGT project."
Do you see it?

A. Yes.

Q. And next in the same paragraph you list what you call--what, in your opinion, are the problems resulting from the dismissal of IPOL and Rurelec; correct?
A. No, I don't think you are interpreting what I wrote there. Here I am describing some technical events that we had after the nationalization in recent months with the CCGT that, in my opinion, could have been mitigated if IPOL had been--had participated with Jerry Blake, who could have provided support to solve these issues. That's what I tried to say here.

Q. So, when you mention in Lines 1 to 3, these two acts or actions--these two actions--the dismissal of IPOL and Rurelec and, on the other hand, the installation of an inexperienced General Manager, caused significant problems, I should understand that when you say "caused," you're not--you don't really mean caused.

A. I think that you need to read the whole paragraph because if you read it, it says, "caused significant problems in the final stages of the CCGT project, many of which could have been avoided or at least mitigated had Rurelec and IPOL still been involved."

So, I think that the paragraph is clear enough. We have suffered technical problems that could have been mitigated
20 with other solutions had IPOL participated.

21 Q. And if I ask you the questions is because you mentioned that one of the problems caused by the absence of IPOL and the arrival of the new General Manager, an unexpected short circuit in the CCGT generator.

25 A. Yes, but you're saying that these problems could have
15:13 1 been avoided with Rurelec and IPOL's participation.

2 Q. I didn't say that, but I can give you an opportunity

3 to answer that later on.

4 My question is, don't you think that at least it is exaggerated to say at Paragraph 64 that there are two actions

5 that caused problems that could have been avoided or mitigated,

6 and then you list as one of the problems a short circuit?

7 A. The situation that I faced, together with my team, avoided,

8 follows a chronology of the problems we faced. Had we avoided,

9 for example, the problem in October 2010 where it says that the
generator seals were not working properly, this is something very simple, but caused us many problems, we would have never
gotten to the short circuit.

10 Let me explain you why. When we had the short circuit on January 31, 2011, one of the saddest days of my life because of that sad event, I had the good idea of asking General Electric and Siemens, the largest companies in the world, to come over and write a report about what had happened. This implied a lot of money. We had hired two very important
insurance services, one for risk days and another one for the commissioning. Therefore, we needed international companies to be able to provide a report on what happened, so that the insurance companies paid, and this actually happened. They paid $11 million to Guaracachi because of this event.

The reports say that on Sunday, January 31, we had
combination of various factors, rains in Santa Cruz, very high humidity level, a very sunny day on Sunday, and this led to a highly humid situation that combined with the oil in the generator and produced an event that, according to the reports, has only one--has another episode or event that is similar, and that was in 1990. So, that event, 1994, in a country in Europe. So, because of that, because of the combination of all those events, we had that episode. Had we solved an earlier problem, the expertise of Mr. Jerry Blake could have solved the problem, we'd have never had the short circuit, and that's the reason why I put it there.

Q. Had you finished?
A. Yes.

Q. And, in your Second Statement, in Paragraph 41, you referred to all the delays from the Government that had an impact on the CCGT; correct?
A. Yes.

Q. And then you also referred to two government delays, and there is one title for each of them, but I am going to
simplify this. One of them is the authorization to replace
the
Units 7 and 8 at Guaracachi, and the other one is the
issuance
of permits to drill two water wells; correct?
A. Yes.
Q. And my proposal is to look at both events separately.
At Paragraph 45, you mention permit authorization to transport Guaracachi Units 7 and 8, and this implies moving them from the Guaracachi Plant to Santa Cruz, that is also in Santa Cruz, but that is in the industrial section of Santa Cruz.

A. Yes.

Q. And you state at Paragraph 45 that, in November 2007, EGSA requested the Electricity Authority permits to transport Guaracachi Units 7 and 8.

A. Yes.

Q. Would you like to correct that date?

A. No, I don't. I maintain the date, even though I know the answer by Mr. Paz.

Q. And that's the reason why I wanted to save some time, but let's look at Tab Number 6. This is Annex 61 to the statement of Mr. Paz, and if you look at the top of the page, this is addressed to the Superintendent of Electricity, but you mentioned the Electricity Authority. Back then, the name had not changed; right?

A. It may have.
20 Q. Had it changed names?
21         PRESIDENT JÚDICE: I did not understand your answer.
22 I did not understand the answer by the witness.
23         THE WITNESS: I said that it might be right.
24         BY MR. GARCÍA REPRESA:
25 Q. So, we need to correct that at Paragraph 45; right?
15:20 1   A. I think we should.

2   Q. So, I was telling you that this is a document addressed to the Superintendent of Electricity, and on the top right it says that a request is made to modify the License for generation at the Guaracachi plants for the relocation of units seven and eight at the industrial park of the same City of Santa Cruz. And if you look at the stamp on top, this is the stamp that showed the registration, and that date is April 29, 2008; correct?

9 2008; correct?

10   A. Yes.

11   Q. And you mentioned April 2007, but that is the request for expanding the Guaracachi License to include Guaracachi II. That is the combined cycle unit; correct?

14   A. So, you're saying Paragraph 45?

15   Q. Yes.

16   And if you have any questions or doubts, we can look at the documents.

18   A. I am referring to the permits to move Units 7 and 8 to the industrial park.
Q. And you're saying that that permit was requested in November 2007?

A. Well, it was the beginning of the paperwork.

Q. And where was it actually requested?

A. Well, let me give you some context here.

As I mentioned, we started to work on this
immediately. And I'm saying "immediately," because in the original chronology of the CCGT, we were going to move the units in early 2008. And our General Manager, Mr. Aliaga, and myself, in various occasions, sent the relevant notes, the pertinent notes, to the Secretary, and we also had meetings with the Superintendent and the authorities from the National Dispatch Center. So, we had notes going back and forth, and, unfortunately, I cannot attach them because they belong to Guaracachi, and I do not have those notes, but there were notes going and responses coming back in the sense that we need to start with the paperwork.

But the great problem we had—and I think that this is something important to mention—this was a relatively serious problem for the authorities, the regulatory entity, and also the regulator of electricity in Bolivia. The decommissioning of these units meant that there could be outages. And so we had back and forth between the Superintendency and the National Commission of Dispatches, because neither wanted to make the decision to say, okay, give us your documents and you will be
authorized. That's why I ratified that we started our paperwork, we discussed back and forth until it was the time to say, okay, let's streamline this process. The dates have already been moved, the dates already showed that one of them is going to be in late 2008 and the other one in early 2009. We changed the original chronology of the Contractor.
And based on the agreements that we had, we said we could probably get the authorization for moving the equipment, so this final document is dated on that date just because after so many back and forth between Guaracachi and the authorities from this sector.

PRESIDENT JÚDICE: Are you going to change subjects?

MR. GARCÍA REPRESA: Not yet.

PRESIDENT JÚDICE: Because our court reporters need a break.

MR. GARCÍA REPRESA: Yes, and I was trying to speed up. I was not going to show the documents, but I have to show them. So we can have a break now.

PRESIDENT JÚDICE: Fifteen minutes sharp we will be here once more. We're a little bit behind. Thank you.

(Brief recess.)

PRESIDENT JÚDICE: Very well, then. We're going to resume.

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

BY MR. GARCÍA REPRESA:

Q. Mr. Lanza, I suggest we take up where we left off,
I'm going to try to go a little faster. If you get lost at some point in time, let me know, and we're going to go a little slower.

On Paragraph 45 of your Second Statement, you talk about a request made to the Superintendency in November 2007.
Do you see that?

A. Yes.

That request—please confirm this—has to do with the modification of the License to include Guaracachi 12; is this correct?

A. No.

Could you please go to Tab 7. This is C-164, and this is the resolution of the SSDE 365-2008, and if you look at the first paragraph, it talks about a request for the extension of the License submitted by Guaracachi via a document dated 16 November '07.

Do you see that?

A. Yes.

That request for the extension of the License was for the inclusion of Guaracachi 12; correct?

A. No.

Let's see.

Well, excuse me. I'm going to go a little faster, but you need to explain this to me.

When one requests a license extension, it is to
include another generator unit that is not included in the License; correct?

A. Yes.

Q. And then, when in November '07 EGSA asked for an extension of the License, it was to include a generator unit
15:43 1 that was not included in the License up until that date;  
2 correct?  
3 A. Yes.  
4 Q. The only unit that was not included in the License at  
5 that date and that was then included in the License was  
6 Guaracachi 12; correct?  
7 A. Yes.  
8 Q. I'm not going to change the subject. Don't worry.  
9 We're going to stay on this issue.  
10 So, let us look at Tab 6 now, which is Annex 61.  
This  
11 is a request for the modification of the License; correct?  
12 A. Yes.  
13 Q. So, when one modifies a license, one does it because  
14 one of the units that are included already in the License have  
15 undergone some change, either because it disappeared or they  
16 are relocated; correct?  
17 A. Yes.  
18 Q. In this case, Guaracachi 7 and Guaracachi 8 are being  
19 relocated; correct?  
20 A. Correct.  
21 Q. And this request is dated 29 April '08; correct?
A. Yes, that's what I read.

Q. Let us now look at Tab 8. This is a resolution of the SSDE that provides a response to the request for the modification of the License to relocate Guaracachi 7 and
15:45 1 Guaracachi 8; correct?

   A. Yes, that's correct.

   Q. If you look at Page 2, you see the whereas clauses, and the second whereas mention is made that through a legal opinion of May 2008, the request was analyzed--the request was presented in April--and EGSA was asked to complete the information; correct?

   A. Yes, correct.

   Q. And EGSA completed the information after this document, that is to say, after 7 May 2008; correct?

   A. Yes, that is how you have to understand it.

   Q. If you look at the next page, you can see that EGSA supplied the supplementary information on 28 June '08; correct?

   A. Yes, correct. But it was 20 June '08.

   MR. GARCÍA REPRESA: Thank you, sir.

   PRESIDENT JÚDICE: Where was it?


   BY MR. GARCÍA REPRESA:

   Q. After providing supplementary information in June 2008, you can look at the other whereas clauses, but I'm interested in is the date where the Superintendency
approved the request, which is 30 January '09; right?

A. Yes, that's correct.

Q. I'm now going to move on to a different topic. This was the first issue that you mentioned, but now we're going to
move on to the second issue.

A. Excuse me, I want to make a comment.

Q. I think note has been taken, and my colleagues are going to perhaps ask whatever they need to ask.

A. You have not asked any questions. The only thing you've done is you've read the points that are included in the--in this Resolution.

Q. I'm sure my colleagues are going to ask you for clarifications, if they see fit.

The second Government problem that you were mentioning in connection with the CCGT project was the authorization to drill two waterholes.

Do you remember this?

A. Yes.

Q. If you go to your Second Statement, Paragraph 50, we see the title that has to do with that problem, and there you describe here that this process started in September 2004.

What process are you referring to?

A. The process of hiring a consultant.

Q. You can explain this to me. You said, we contacted a consulting firm very early on in the process, September '04.
I understand that the process--you can correct me if I'm wrong--is the process to determine how to drill these wells; correct?

A. Yes, correct.
Q. And then, if you go to 51, you say that, in December '04, 3 months after the process started, a recommendation was made by a consulting firm; correct?
A. Yes, correct.
Q. And that recommendation is that EGSA use two 300-meter wells. I understand that these are 300-meter-deep wells for the CCGT.
A. Yes.
Q. And on the basis of this technical recommendation, EGSA had to request for authorization of the authorities of Santa Cruz in order to be able to drill these wells; correct?
A. Yes, in due time.
Q. Should I understand that your answer is yes, in due time?
A. No.
I'm going to perhaps jump ahead in your question because a moment ago you didn't let me answer.
Q. Sir, I'm going to object to this.

PRESIDENT JÚDICE: Well, this is a legal expression. The idea of Mr. Represa is that since you have limited time, the lawyers from Claimants are going to ask about that.
THE WITNESS: I'm not going to make reference to

question posed to me before.

MR. GARCÍA REPRESA: But the fact that he said he's
going to jump ahead and answer my next question, of course, that doesn't really convince me.

PRESIDENT JÚDICE: I understand that you know much more about this than many of us. Surely, much more than me. So, you can anticipate that question is going to be posed later.

But the logic of the questions is going to be determined by the Bolivian lawyers. So, when a question is posed, you are going to be able to answer it.

Do you agree?

THE WITNESS: Yes, we agree.

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

BY MR. GARCÍA REPRESA:

Q. And I was asking that, on the basis of this technical recommendation, you had to request an authorization to drill two wells for the CCGT. Yes or no?

A. Not necessarily. Because initially a number of things have to be done beforehand. One has to determine whether the project is viable or not viable.

Q. On the basis of the technical recommendation, you had to ask for authorization in order to be able to drill two
wells? Yes or no?

A. Yes, but in due time.

Q. Thank you very much. I finally got the answer to my question.
And the due time, according to you, is November '07; correct?

A. Yes, correct.

Q. So, you could do a calculation, but three hours after the technical recommendation of Cokey & Associates?

A. Three years later, yes, and there is a logical explanation for this.

As the serious and responsible company that we were, before making a decision to perform a project, we had to verify that the project was technically viable and financially profitable.

Q. Excuse me. I thought you had finished.

A. To determine profitability, financial profitability, and taking into account the low gas prices in Bolivia, a CCGT project is not financially profitable.

The only way--

Q. Excuse me. Excuse me. Let me interrupt you--

MR. GARCÍA REPRESA: And I would like to ask for the assistance of the Tribunal in this.

I have not dealt with the economic aspect of the CCGT.
PRESIDENT JÚDICE:  I think the question has been clear for the Tribunal. Before asking further authorization of the authorities, many things had to be analyzed. I think Mr. García Repesa is asking questions because he wanted to
clarify things.

The Tribunal has understood already. We have understood your argument. Do you understand?

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

BY MR. GARCÍA REPRESA:

Q. Just to be clear, and I'm looking at Paragraph 52 of your statement, sir, where you say that in November 2007 I informed that you had started paperwork the to obtain an environmental License. So, before November '07, no formal request had been made to the Government of Santa Cruz to drill these wells; correct?

A. None, because we were assessing the project, and the project, that--as has been described elsewhere, the project was approved in a Board of Directors in November 2006, so we got the go-ahead then.

So, starting at that date, we had to look at all technical issues related to the project. Before that, it would have been impossible because we had to look at the financial viability of the project, and the financial viability of this
project was linked to the obtention of the carbon credits, and we dealt with that.

Q. You mentioned November 2006. I don't know if it was a mistake or not.

Is it November '06 or November '07?

A. Well, I was saying that in November '06 is what--
was the time when the Board of Directors approved the execution of the CCGT. And starting as of that date, everything becomes official.

Q. Yes, I understand.

And the authorization to the municipality, the municipality—Santa Cruz's authorization was asked in December '07; right?

A. Yes, that's what Number 53 says.

Q. And the authorization, in response to that December 2000— the request in response of that November 2007 authorization was provided in 2008; correct?

A. Yes.

Q. So, between November 2007 and September 2008, seven months have elapsed and not 14 months.

A. Yes.

Could you be more clear when you mention 14 months?

Q. Yes. We don't need to deal with that issue.

Let us talk about the combined cycle.

Could you please confirm or deny the following: 

Nowhere in your two statements have you mentioned the impact of the illiquidity of EGSA in the delays related to the CCGT; correct?
A. Yes, correct.

Q. Do you think that this was a relevant issue that should be informed to the Arbitral Tribunal, Mr. Lanza?
15:56   1   A.   No, because if we look at the real facts related to
2   the project, the circumstantial problems related to the lack
3   of cash that Guaracachi has had at the end of 2009, well, in
spite
4   of the fact that we had made statements in the Board of
this
5   Directors or some mails, et cetera, where it was said that
this
6   may happen, the lack of cash that Guaracachi has suffered at
7   some point in time has not had an impact on the CCGT.
8           And we have continued placing purchase orders. Our
9   suppliers have not delayed their deliveries. Thanks to the
they
10   fact we had been able to work very well with them from the
the
11   management standpoint, and there was a bit of a delay, and
the
12   have understood that this was a temporary problem, and both
the
13   purchase orders and the deliveries have all been made in
this
14   and thank God the lack of cash, which was just a temporary
not
15   situation in Guaracachi, has had no impact on the CCGT.
not
16   Q.   Has anyone mentioned to you or recommended to you
17   to mention in your Statements the illiquidity situation of
not
18   EGSA?
19   A.   No, no one recommended this to me.
20   I did not include this in my Statement because it
21 wasn't an event that was permanent. I decided not to--not to
use it.

Q. Please go to Number 19 of your binder. This is the
last document, is Annex 29, to Paz's statements. And this
is a document that you had mentioned in your Second Statement.
And we don't have to refer to it. It is mentioned in Footnote Number 68.

Do you recognize this document, sir?

A. Yes, I prepared it.

Q. You prepared it on 23 May 2010; correct?

A. Yes, correct.

Q. Twenty-two days after nationalization; correct?

A. Yes. This was a requirement that was imposed by the General Manager.

Q. This is about a report on Guaracachi 12, and it has to do with the CCGT steam generator?

A. Yes, it has to do with the CCGT project.

Q. Now, if we go to the first item, and I'm going to try and go a little faster, the first has to do with the current state of progress, and then the second point has to do with the tasks that were conducted and to be conducted.

And if you move on ahead in the document, you see a number of tasks that need to be carried out, and there are three purchase orders and contracts. This is Page 11 of 15.

Do you see that?

A. Yes.
Q. The first phrase says, Next we are going to introduce a list of the purchase orders and outstanding contracts. And then it continues, Many of these purchase orders and/or contracts have excessive delays for various reasons.
Do you continue to see it?

A. Yes, yes, for various reasons.

Q. And as one of those reasons, you mentioned the following: First, lack of cash, company cash, which led us not to place new orders or pay suppliers within the deadlines. Do you want to correct your Statement before this Tribunal?

A. No, because what I am stating is something that took place later, and I certify that regardless of the content of this report--and if we look at the details of the purchase orders that you can see mentioned below, you can see that almost all of the purchase orders are included here, and only a few say funds are required for Spot purchases. So, six of them said that funds were required for purchases, and the rest have been awarded, and some others are awaiting delivery. So, as I mentioned before, even though the company experienced this, this fact has not led to delays in the CCGT. The delays were due to other events that had been described.

Q. Thank you.
If we look at the next one, schedule--and I think that is related to the delays, it says, first, next, the detailed schedule is presented; second paragraph, to be able obtain these deadlines, the following requirements have to be met.
Do you see it?

A. Yes.

Q. First, cash-flow problems have to be solved and, to that end, the necessary financing has to be obtained for the conclusion of the project.

So, I understand that this--the requirements are not like that because you are saying if there are no problems, there is nothing to solve.

A. But you need to understand that Mr. Jerges Mercado was appointed 22 days prior to this report. Jerges Mercado was not aware of the workings of this project. He is requesting the managers, new and old managers, to draft a very thorough report in this case on the most important project of Guaracachi to see the situation and also the possible contingencies.

So, at Item Number 4, I indicate to Mr. Mercado it is important for him to consider that that schedule will be met if the company overcomes the cash-flow problems and the purchase orders are placed in due time and in due course, and this is what happened. The cash-flow problems were solved,
the purchase orders after this document were placed in due course and in due time.

Q. Thank you, Engineer.

And you just saved me a question, but just to confirm,

at the date of this document, there were cash-flow problems; correct? Yes or no?
A. I am not an expert to tell you whether there were
cash-flow problems. There is a Financial Management Office
that is in charge of that, and that's the one that is in
charge

of the funds.

My specific role was to develop the project and to
place the purchase orders. Whenever I draft a document, all
I
had to do is to say, This is the schedule, and for this
schedule to be complied with, I'm going to ask you to not
have
this and that event. And finally, I'm telling you we should
not have any significant technical contingencies.

So, as the Technical Manager, I can say this is
viable
as long as this is met. I'm not saying whether there are
problems or not.

Q. So, in the first item where you say that cash-flow
problems have to be solved, you did not know whether there
were
cash-flow problems.

That's what you are stating; right?

Just tell me whether you knew it or not. That
would
be the beginning; and, based on your knowledge, we can
develop
our questions.
A. Everyone who was managing the executive portion of the project indeed understood that the financial requirements were not abundant in Guaracachi because this was a significant project that was using up a lot of resources, and because we were also going into another project, the San Matías project,
that weakened our financial position, and also the
Government
denied to sign a letter for us to obtain the carbon credits
and
be able to inject $5 million into the company.

So, clearly, we were aware that we did not have too
much money, and we needed to make the necessary efforts to
manage the scarce resources or the non-abundant resources,
to
continue with this project.

Q. So, when you wrote this project, EGSA had cash-flow
problems. Is that correct or not?

A. Yes, as I mentioned before, it had problems, yes,
with
cash.

Q. And you're telling me that one of those problems
was
due to the denial of the Government to sign a letter for
obtaining carbon credits; correct?

A. Yes.

Q. What was the goal behind that letter?

A. CAF and KfW should have been placed as focal points
and should have been included in the project.

Q. Included once--you mean after approval by the
United
Nations?
A. If you allow me, I cannot give you exact details whether one should happen before the other because I have information about the general—the global project, but not about specific items.

Q. So, you're telling me that you did not know whether
16:08 1 the responsibility—or you knew about the responsibility of the
2 State?
3 A. Well, I participated in some of the meetings before
4 and after the nationalization. I worked with the Government
to
5 obtain the signatures.
6 Q. So, you were looking for a letter to be signed by
7 the State to serve a notice to the United Nations that CAF and
8 KfW were authorized to be part of the project; correct?
9 A. Yes.
10 Q. Do you know if that letter was necessary before or
11 after the registration with the United Nations?
12 A. No, I do not have specific information.
13 Q. If it was necessary after registration with the
14 United Nations, do you agree with me that the State was not
15 responsible for any delays in the payment of the carbon
16 credits?
17 MR. BLACKABY: Objection. Those are six different
18 questions with separate legal and very--
19 PRESIDENT JÚDICE: Mr. García Represa?
20 MR. GARCÍA REPRESA: I'm willing to go step by step.
21 PRESIDENT JÚDICE: But clearly you're asking the
witness to answer a question that he already told you he is not aware of.

MR. GARCÍA REPRESA: Well, that's why I have started my question with "if."
PRESIDENT JÚDICE: But witnesses are not here to draw assumptions, but you may get—you might get this from somewhere else.

MR. GARCÍA REPRESA: Well, I don't think it is necessary to get there because we have been there already.

BY MR. GARCÍA REPRESA:

Q. So, in your Second Statement, Paragraph 23--

PRESIDENT JÚDICE: Twenty-three?

MR. GARCÍA REPRESA: Twenty-three.

BY MR. GARCÍA REPRESA:

Q. --you're referring to decommissioning of Guaracachi 3 and 5; correct?

A. Yes.

Q. Please read this paragraph to yourself, and after the reading tell me if you would like to correct anything.

Please tell me first if there is any correction that you would like to introduce. Otherwise, we will move ahead.

A. Apparently, I mean—I don't seem to see any mistakes.

Q. You're saying there that Guaracachi 3 and 5 were
most efficient units--

A. Inefficient. I said inefficient.

THE INTERPRETER: The witness corrects the lawyer.

BY MR. GARCÍA REPRESA:

Q. Yes. Most inefficient units in the system and were
not being considered as firm capacity units; correct?

A. Yes.

So, we have two components here that I am going to discuss with you, efficiency and the calculation of fixed capacity.

To support that assertion, you say on the sixth line,

the CNDC's medium-term plan.

I'm sorry, but I'm not aware of any document that is called CNDC's medium-term plan. Are you aware of the existence of any plan like that?

A. Well, it could be a semantic issue. It could be a medium-term study. We need to look at the document and the full name of the document. I don't know if the name is important to the document.

Q. Well, in our profession, it is important.

I understand that you're referring to the medium-term schedule that is published by CNDC every six months; correct?

A. Yes.

Q. And we and move on to Number 14 and look at your Statement, paragraph--so, we're going to go to Tab 14, where and
then the same for the second version, we're going to look at paragraph 23.
And on top of Page 10--so, this is in the First Statement. You have a blue page. Just--behind the blue page,
just go up to Page 10 and Paragraph 23. I am right now looking at the top of Page 10.

First line, 2001 medium-term plan.

Do you see it?

A. Yes.

Q. Do you think that that's the reason why in Spanish says medium-term plan?

A. I don't think so.

Q. Let's go back to the Spanish version.

In the sixth line you're referring to the medium-term plan for 2001, but I understand that the medium-term plan is published every six months; correct?

A. Yes.

Q. So, in the same year you have two medium-term plans. So, which one are you referring to?


Q. And if we look at Annex 8 to Mr. Paz's Statement--I'm afraid that that is not the medium-term plan; rather, the nodal price--nodal prices for 2008-2010. I don't think that that
But please correct me if I'm wrong, but when we are going to project or calculate firm capacity, we need to study medium-term schedules and plans that includes all of the databases except for just the nodal prices; correct?
16:15  1   A.   Yes.

2   Q.   And if we look at the document that you have in your binder, at the first tab, you're going to find the report for the medium-term plan, May-April 2005.

3   Do you see it?

4   A.   Yes.

5   Q.   I should, therefore, understand that Footnote 32 to your Second Statement has a typo, and instead of Annex 8, it should say, this Annex that I'm currently showing you, that is C-236--276, rather.

6   A.   Let me look at the outcome of this study.

7   Yes, this is the study I'm referring to.

8   Q.   And in Paragraph 23, when you tell us that the Guaracachi 3 and 5 units were the most inefficient units in the system, and given your prior correction, I understand that they were the ones with the highest production cost.

9   A.   Of course not. Inefficiency cost is—in concept is very is different from the operational cost.

10   MR. GARCÍA REPRESA: If you allow me to answer Mr. Blackaby—well, you're answering the Witness's question. Please do not interrupt.
22  BY MR. GARCÍA REPRESA:

23  Q. When you're saying that Guaracachi 3 and 5 were the
24  most inefficient units, you referred to the efficiency concept
25  in connection with the units. I understand, and please correct
me if that is not right, efficiency has to do with the total
cost of dollar per megawatt hour.
A. That is a mistaken concept in Mr. Paz's statement.
He's not an electrical or mechanical engineer, so Mr. Paz
confuses or misconstrues efficiency and operational cost.
To clarify efficiency, this is a unit that has
nothing
to do with dimension. It has to do with the amount of
energy
necessary for a process vis-à-vis the outcome energy, the
resulting energy. The difference between the input and the
output would give you or would yield a unit level or value
that
will measure the efficiency.
And efficiency can be measured in percentages. But
cost
that has nothing to do with the operating or operational
is
because that is linked to the cost of fuel. So, if my unit
is
gas-fired, the price of the unit is going to be different
from
diesel. That is a more expensive fuel.
Q. Now, tell me, the efficiency of a unit in Bolivia,
is
taking
into account height, temperature, and BTU, BTU units and
taking into the account costs for maintenance and operation and then determining the heat power or the heat-producing power, all this in a model to represent the cost that represents the input and the output?

Is that your concept?

A. No, that is your concept. That is called operational
cost. That is the megawatt cost of operating that unit.

Q. But at Paragraph 23 of your Second Statement, when you're referring to the efficiency of the system, could you please tell me how you measure the efficiency of Guaracachi and 5 compared to the remaining units in the system?

A. I don't know if I have it here, but there should be a table.

Q. Just for the record, what document are you referring to?

A. Annex 3(2), the document that you just gave me.

PRESIDENT JÚDICE: Tab 1?

THE WITNESS: Yes, Tab 1.

MR. GARCÍA REPRESA: And for the Tribunal, 01--I mean, Tab 1 is document 276. We have printed two of the tables.

PRESIDENT JÚDICE: So, you asked us to look at 3(1)?


In the third column--

PRESIDENT JÚDICE: I'm sorry, but--so you're talking about the final graphs?

THE WITNESS: Yes.

PRESIDENT JÚDICE: Go ahead.
THE WITNESS: The third column shows the yield or the efficiency, and it refers to the thermal yield, and it refers to 50 percent, 75 percent, and then 100 percent. If we look at 100 percent and if we go down and we
look at Guaracachi 3, we're going to see that Guaracachi 3 shows 12,884, and Guaracachi 5 shows 13,315. And these are the highest numbers out of the whole list. Then these are the most inefficient units in the generating--in the generation park back then because the rest of the units, if you look downward, has a thermal yield or a thermal capacity that is lower as measured in calorific--British calorific units based on kilowatt hour.

So that's why I'm saying that the most inefficient ones are Guaracachi 3 and 5.

BY MR. GARCÍA REPRESA:

Q. So, your efficiency concept is BTU, British thermal unit, over KwH; correct?
A. Yes.

Q. So, this has nothing to do with the cost of the units, the operating cost or the cost for using the machines?
A. These units will work with some sort of fuel. That fuel has a price. And depending on the value of that fuel, you're going to have the operational costs for that unit in Bolivia.

For example, in Bolivia, the cost of gas is very
inexpensive. If you use liquid fuel such as diesel that we need to import, the cost—the operational cost going to be much higher than if using natural gas.

So, that is the difference between both concepts.
Q. And for all of us to agree, in this table, in addition to the thermal efficiency, in the fourth column, if we continue and move to the right, we have another one that says "cost over megawatt hour."

A. Correct. That is the cost for operating the machine.

Q. But in Bolivia, dispatch based on efficiency, the efficiency of the generation units. So, when we're talking about thermal units, that efficiency is based on the thermal yield measured by CNDC or the megawatt-hour yield?

A. Well, we need to forget about the efficiency.

Q. Could you just please answer my question.

A. I am answering.

You need to leave aside efficiency. And whenever you determine firm capacity, you need to look into operational costs in megawatt hour. And it has nothing to do with the cost of the unit.

Q. Well, but this goes beyond the firm capacity estimate.

A. Well, for the estimates of the firm capacity and also to determine the dispatch of power, you will look into the
inexpensive up to the most expensive one.

Q. So, you're telling me to forget about efficiency. And I understand that that is a covered--or is a covered correction or a way to do a subtle correction.

So, you're telling me that in order to define something as inefficient, we need to qualify it as thermally
16:26 1 inefficient.

2 A. I do not understand what you told me that I had

made a

3 veiled or a hidden correction.

4 Q. But at Paragraph 23, when you say that Guaracachi

Units 3 and 5 are the least efficient, are they least

6 thermally or from the dispatch point of view?

7 A. Well, for the engineers, the word "efficiency" only

8 has one meaning, and it is the one that you see there in the

9 report.

10 PRESIDENT JÚDICE: So, what you see there is clear.

11 MR. GARCÍA REPRESA: Yes. But Paragraph 23,

12 Mr. President, is not clear, and I need his confirmation.

13 PRESIDENT JÚDICE: But that is your confirmation,

14 now we move on to another issue.

15 BY MR. GARCÍA REPRESA:

16 Q. In the same paragraph you're saying that the same

17 units were not considered by CNDC as firm capacity units.

18 A. Yes, correct.

19 Q. They should be base units as opposed to firm

20 units.

21 Tell me, units are not firm. They are base units.
That is to say, units that have compensated as firm capacity or not.

A. The answer is no. The Bolivian legislation doesn't work that way. One can have an explanation as to how the first
16:28 1 estimate work, and first of all, you estimate all the units that are going to be compensated on the basis of firm capacity, the ones that are recognized, and those recognized units are put into a list. That's the list you have towards the end of the document, and those lists go into the model, the SDL, short-term or the medium-term plan or program, and there were have simulation with the units that are recognized as firm capacity. Those are not considered as firm capacity or not even considered for the dispatch in the simulation of the short or medium-term simulation.

Q. So, you're telling me that we need to look at the medium-term plan data to determine firm capacity?

A. Well, if that has firm capacity, there will be compensation. If there is no allocation of the capacity, it's like those machines do not exist in the generation park.

Q. So, at Paragraph 23, when you're justifying decommissioning of the units, the reason is that they were not included in the medium-term plan; is that correct?

A. Yes.

Q. You also tell us in this paragraph, the third line
towards the end, that those units would not be called upon to dispatch; is that correct?

A. Yes. For the next four years, just to be exact.

Q. Now, to get our words right, when you're talking about units called upon to dispatch, we go from the less costly to
16:30  1 the most costly, and that is called the generation cost;
        correct?
        A. Yes, correct.
        Q. What you're telling me is Guaracachi 3 and 5, since,
        according to the medium-term schedule, were now going to be
        paid on the basis of fixed capacity and that were not going
to
        be called upon to dispatch, it was possible to ask that they
        be withdrawn from the Licensee--from the License.
        A. Yes, of course, if you're going to have a machine
that
        is there that is not going to work, it's going to just go to
        waste, yes, it's unproductive.
        Q. Yes, and I understand that Units Guaracachi 3 and
        Guaracachi 5 were not the only ones that were going to be in
a
        situation like that.
        A. Yes, also the administrative units of Valle
        Hermoso--
        (Pause.)
        A. Well, I was saying that there were other three
        units
        from Valle Hermoso that were in the same situation, and--and
        Valle Hermoso had also requested that they be withdrawn from
        the License and to do the same paperwork that Guaracachi did.
Q. Apart from Guaracachi 3 and 5 and Valle Hermoso, was there another unit in the interconnected system that was not going to be called upon for fixed capacity until 2005?

A. I don't remember. I don't think so.

Q. Let us look at the PNP and--PMP, and this is
behind--let's look at behind Tab 1.

And if we look at the thermoelectrical units for the period of May 2001 to October 2005, we see that Guaracachi 3 and Guaracachi 5 are zero up until 2005; correct?

A. Yes, correct.

Q. The only other units that have zero for the five years are Aranjuez 1 and Aranjuez 6; correct?

A. Yes, correct.

Q. So, those units could have been withdrawn from the system as well, if we follow the same logic; right?

A. Yes, of course.

MR. GARCÍA REPRESA: I have no further questions.

THE WITNESS: Excuse me, I would like to say something else.

PRESIDENT JÚDICE: Well, you can respond now, if you want.

THE WITNESS: But I just wanted to tell you, in connection with your last statement that in Guaracachi, we tried to rid ourselves of these Aranjuez engines. We hired an American company that's called Beleya, to lobby here in the
States and look for purchasers of these units, and we have this other Guaracachi records, and this American company, Beleya, say that these companies were impossible to sell.

PRESIDENT JÚDICE: Yes, the Tribunal is clear as to
MR. GARCÍA REPRESA: Just one more minute because I think we're still within my time limit.

(Pause.)

MR. GARCÍA REPRESA: And that is the end of my time.

Thank you.

PRESIDENT JÚDICE: Yes, please go ahead.

MR. BLACKABY: We're going to distribute some documents that are in the record. Thank you.

REDIRECT EXAMINATION

BY MR. BLACKABY:

Q. Mr. Lanza, I had a couple of questions that I wanted to ask.

MR. BLACKABY: Mr. Lanza also needs the document.

BY MR. BLACKABY:

Q. Mr. Lanza, a number of questions were asked of you, and they had to do with the fact whether you reviewed or not certain testimonies of other witnesses in this case.

Do you remember those questions?

A. Yes.

Q. Yes, I wanted to talk about some extracts of the pleadings in this file, and you were observing the fact that—or it was observed that you did not review the First
Statement of Ms. Bejarano. This is a document that was put forth by Claimant.
And if you can please read the second paragraph of the first page, this is the Memorial to the objections to jurisdiction.

A. These objections include the statements of Martha Lourdes Bejarano and Mr. Carlos Quispe Lima, and the Annexes, R-1 to R-36; and their legal Annexes, RL-29 and RL-60, which are the legal authorities.

Q. Okay. That's enough. Up to there.

Are you aware whether there is anything relevant in your testimony in connection with the objections to jurisdiction or the merits in this case?

Are you aware that your testimony has to do with the objections to jurisdiction of the case or has to do with the merits of the case?

Were you involved in any way with the jurisdictional matters in this case?

A. No, I don't think so.

Q. Can you go please go a couple of pages ahead, and we are now dealing with the Reply to the Counter-Memorial of the Claimants on jurisdiction of the Tribunal. Please read the
A. This Reply includes the Third Witness Statement of Martha Lourdes Bejarano Entrádo, Bejarano 3, and the Second Witness Statement of Mr. Eduardo Paz Castro, Paz 2.

Q. That's enough. Thank you.
16:38  Then, taking into account your understanding in this arbitration and the role you play in this arbitration—well, taking into account the role you play in this arbitration, what do you think about the fact that you were not shown the relevant documents that have to do with the objections to jurisdiction?

MR. GARCÍA REPRESA: I don't think you can answer yes or no to that.

MR. BLACKABY: That's my question.

Okay. I withdraw the question. We are going to move on to a different issue. We're going to distribute another document. This is C-161, which is a presentation to the General Assembly—the general meeting of the Guaracachi Shareholders in connection with the conversion project of the CCGT dated September '08.

BY MR. BLACKABY:

Q. A number of questions were asked of you in connection with the increase in the budget of the CCGT project.

Do you remember this?

A. Yes.
Q. Could you please identify this document—what is this document?

A. This is a document that was submitted to the general meeting of Shareholders that was held in September 2008 to ask request the approval of the increase in the budget from
16:40 $40 million to $68 million. This was the CCGT project.

Q. Could you please go to Page 2, which is the main page of this document. Could you please read the last paragraph.

A. Page 2?

Q. Yes, Page 2.

A. Below we present an analysis of the reasons that have brought about the increase in the budget, and a detailed description of each one of the line items of the budget.

Annex 1 shows the detail of the approved budget and of the revised budget.

Q. Thank you very much.


So, what issues are being dealt with between Pages 6 and 8? What is being discussed here, and what is being presented to the Shareholders' meeting here?

A. Here we are showing curves in connection with price variations that the main components have suffered—for example, main components being steel, copper, nickel, and aluminum—and also the enormous variation of prices that has existed between
21 2006 and 2008, and the variation is about two or three times
22 their price during those years.

23 Q. Turn to Pages 9 and 10, what's being explained there?

24 A. Pages 9 and 10, we are showing data from the World
25 Bank where we're showing the price increase of the CCGT project
from '04 to '09. And, undoubtedly, there has been a substantial price increase. And, in 2009 we find a price of 1.2 million per installed megawatt. So, this project, in spite of the 68 million increase, our CCGT project has a cost of $800,000 per installed megawatt, which is much lower than prices at that time, which was 1.5--1.2 to $1.5 million. The prices go from $1.2 million and $1.5 million per installed megawatt, and our CCGT project was very competitive. The price was quite low, which was lower than $800,000. And this had our project to be an excellent project, and--so this is something that we could see in the daily operations and the excellent income that Guaracachi has had. Q. What was your recommendation to the general meeting of Shareholders? A. Our recommendation was that the increase be approved by the meeting because of the excellent returns that this project has, even though there was an increase to 68 million in the budget, the return was going to be very good. It was about
15 percent return, and this was going to yield benefits to the company. We were going to double EBITDA. This project was a money-making machine.

Q. If we go to the very last page of this document, can we see there? We see figures there on this page.

A. This is the original budget that was submitted
originally in 2006 for $40 million. Then we see the amended budget, $66.5 million, and the Shareholders' meeting recommended that the increase be a $68 million increase.

Q. What did the Shareholders' meeting do?

A. The Shareholders' meeting approved this document and recommended that 66.5 be approved, and it approved a new budget that was a little higher, 1.5 million higher, or $68 million.

Q. Thank you very much. I'm going to move on to a different issue. This has to do with a letter. This is C-320, and this--I don't know if the witness has a copy of it. This is a letter that Jerges Mercado, the first General Manager of Guaracachi after the nationalization, was sent to Peter Vonk from the CAF.

So, you remember that a number of questions were posed to you, and this had to do with the reasons for the delay of the combined cycle?

A. Yes, the reasons related to Guaracachi 7 and 8 and the wells, for example.

Q. This is a report--or, rather, a letter that was prepared for the CAF explaining a number of things and this
admission with the reasons for the delay.

Remember questions were posed to you in connection with the delay?

There is a report that has been annexed to this
Could you please read the first paragraph. Please read slowly.

A. Delay?

Q. No, I'm sorry, the very first paragraph.

A. The reasons for the delay of the commissioning of the combined-cycle project until November 2010 are due to different reasons, and mainly they are directly related to delays related to authorizations from the competent entities, technical complexities, engineering complexities, and the mounting of the equipment. And the difficulty that our country poses in connection with the acquisition of different equipment and accessories for them to be transported during reasonable timelines.

Q. When you're talking about the authorizations, for example, the transfer or the wells, were you referring to this?

A. Yes. Here, it says delay in authorizations: One, it says, relocation of Guaracachi 7, Guaracachi 8, to the industrial park.
Can I read this, or shall I just explain this?

Q. Well, only if you remember. But there were other issues in connection with the delay; right?

A. Yes, there were issues with the water wells.

Q. Okay. Thank you very much. I think we can now move...
on to a different matter.

A number of questions were asked of you in connection with a document that was behind Tab 19 of this binder. If you can go to it, please.

You were asked questions in connection with the payment to suppliers. Do you remember the questions that you were asked in connection with the impact that the payments to suppliers had allegedly, this was caused--was the cause of illiquidity?

MR. BLACKABY: Unfortunately, the copy that we have here has a very nice table, but it's illegible. Had this been a work of art, it would have been beautiful.

THE WITNESS: Yes, it is difficult to understand in connection with the progress in the CCGT.

BY MR. BLACKABY:

Q. We have a better copy, thank God. But before that, before showing it to you, could you read the last phrase of the document behind Tab 19.

I think this is Annex 29--Annex 29.
A. Yes, this is dated 23 May 2010, and it says that there is a total progress of 95.1 percent and 216 workers from the Contractor are currently working.

Q. What was the purpose of indicating this to Mr. Mercado? What was the reason for this memorandum?

A. The reason for this memo was to inform Mr. Mercado the
real progress made in the CCGT project. And we showed a progress, and then when we looked at the different areas system by system, we basically showed that the project is actually almost concluded.

Q. Go to Page 15 of this document. Let's look at the text of the text here, Page 15. It says--

A. Page 15?

Q. It says "To this date." It says the schedule--the second paragraph. It says "To this date."

A. "To this date, purchase orders have been placed for $66 million, which is equivalent to 97.5 1 percent of the approved amounts, and $63.5 million have been disbursed to date. These amounts do not consider financial expenses and they do not consider taxes either."

Q. So, the amounts to be paid, what were they at that time?

A. About $3 million.

Q. Thank you.

As I was promising, and as I was saying, I have a better copy of the chart on the first page. I think you can find this in your Second Statement.

A. Second Statement?
Q. Yes, Paragraph 57.
A. Yes, I found it.
Q. And here we can see a beautiful green colored table.
16:54  1 Splendid. It's also white and some intermediate colors.

2 Well, could you please read where it says current

3 accumulation.

4 If I understand this correctly, this has to do with

5 the progress of the project, and this is summarized in this

6 table that you can read here.

7 Could you please look at purchases and supplies.

What

8 was the level of current accumulation?

9 A. On this chart?

10 Q. Well, let's take engineering, for example.

11 A. Well, engineering has in progress of 96.8 percent.

12 Q. And what about purchases and supplies?

13 A. 98.2 percent.

14 Q. And services?

15 A. It's 89.4 percent.

16 So, if we weigh these figures, these figures, you

see

17 that there is a 95.1 percent progress as of 23 May 2010.

18 Q. Thank you, Mr. Lanza.

19 MR. BLACKABY: We have no further questions.

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

Just

21 one moment.

22 (Pause.)
BY MR. GARCÍA REPRESA:

Q. Sir, let's look at the document we were looking at
before, which is behind Tab 19 of your book. And let's look at
Page 15, which is the page that we were looking at before, and
where we left off.

On the top of this page, we have a schedule; right?
A. Yes, correct.

What we see right here are months; correct? On the top line?
A. Yes, exactly.

And they're divided in weeks; right?
A. Yes.

Could you please tell me when the commercial operation, according to this schedule, was provided for?
A. 1st November 2010.

You said to me a moment ago--well, do you remember if this is the date that Mr. Flores--the date that Mr. Flores uses in it his report?
A. Mr. Flores in his report?

Yes, you read the Expert Report of Claimant (sic) in this case; right?
A. I'm not sure, but I don't know that--if this is--I don't think he uses this date.
Q. So, you don't know whether Mr. Daniel Flores uses November 1st?

A. No, I don't know.

Q. But November 1st was the date that was scheduled for
16:57 1 the conclusion of the CCGT, but here we're talking about
2 23 May 2010.
3
4 Would you say that at the date of nationalization
5 it
6 was scheduled for this to be completed as of November?
7 A. In the last report that I presented to the Board of
8 Directors, I think it was 23 March 2010. I think it's one
9 of
10 the documents that's annexed here.
11 We had problems with a Brazilian company called
12 Hebisa, and we had problems with isolation in the generator.
13 Well, this was going to cause a delay and said that we
14 were--we're not going to Commission this by May 1st, 2010.
15 So,
16 I told the Board of Directors that we were going to start
17 operations on 1st August 2010.
18 Two months later, after this event, when I prepared
19 the report, and--and as we can read in the report, we see
20 the
21 still
22 working on that--and I told Mr. Jerges Mercado that the most
23 probable date was 1st November 2010.
24 Q. So then, between March and the--23 May, when this
25 schedule was pushed forward, it was pushed forward to
26 November 2010; correct?
A. Yes, correct.

Q. And looking at this Page Number 15, mention was made of the budget under Paragraph 5. And you said that there were about $3 million that needed to be paid to complete the
combined-cycle project.

PRESIDENT JÚDICE: Well, I think they were talking about the difference between the different purchase orders, the ones that are paid and the ones that are not paid. Maybe I didn't read this correctly.

THE WITNESS: Yes, your interpretation is correct. The difference was whatever had been awarded up to until that time and the reimbursement made.

BY MR. GARCÍA REPRESA:

Q. If you could please turn the page--I was trying to get this kind of interpretation.

If you turn the page, could you please--the second paragraph, if you would be so kind.

A. The requirements for cash flows up to the termination of the project, unless there were any contingencies, would reach 8,587,928 and 26 cents based on the following information.

Q. And my colleagues also mentioned to you in the document that they provided the Statements by Mrs. Bejarano and Mr. Paz.
21 In your Statement, you referred to EGSA's investments.

22 Do you remember that?

23 A. If you tell me where.

24 Q. For example, Title III of your Second Statement, it says, "the important investments"--
A. I'm sorry. I think I'm looking somewhere else. That is the Second Statement?

Q. Yes.

A. What item?

Q. For example, Page 4, Roman III, and there it says "significant investments."

Do you see it?

A. Yes.

Q. So, if Ms. Bejarano had referred to the investments in her First Statement, that is something that you--would have been interesting to you; right?

A. It depends on the context. If it is related to some technical issues, the answer is probably yes.

Q. And if Mr. Paz, for example, in his Second Statement that you analyzed, had mentioned the alleged thrust to Rurelec's investment, that would have been something interesting to you; correct?

A. I did not understand what you call the alleged thrust or the alleged support.

Q. I think it is quite clear to us. Don't worry.

MR. GARCÍA REPRESA: I have no further questions.
ARBITRATOR CONTHE: I have two very brief questions.

The first one has to do with something that was discussed before in connection with the three units, 1, 2, 3,
at the Aranjuez Plant, and they were the ones that were thermally inefficient, and that cost 38 to $40 per kilowatt. And you are saying that you ordered the company to sell them, but it was impossible to sell them, so the conclusion--what was the conclusion? Why were they impossible to sell? THE WITNESS: What actually happened--and this is something that should be mentioned--the node where these units are installed, the Aranjuez node in the electricity system in Bolivia, had some problems; to regulate voltage, to be more specific. And that meant that these units that had high operational costs were key to the operation to be able to maintain the voltage levels and be able to provide or supply power to Sucre, given that the inefficient unit, Aranjuez 8, was decommissioned. Because the grid coming from the interconnected system had very small transformers at the Aranjuez Plant, so, they were unable to convey that--to dispatch or to transport the necessary energy to the Aranjuez population. These units were kept as compelled or required units.
They were compensated based on the operational cost. They did not produce any marginal costs back then. They were compensated based on firm capacity at the operational cost so that if they might work, they might solve the problem in
We were unable to sell them, but they provided support and security in the southern area for Potosi and Aranjuez, even at a higher operational cost.

ARBITRATOR CONTHE: So, the idea of voltage and security in Sucre had some technical consideration that, in your opinion, made it reasonable to have such a high price, $38 per kilowatt, so that it wasn't considered a marginal price throughout the system; correct?

THE WITNESS: Well, if the units were not compensated based on firm capacity, and because of the area they needed to operate, those costs were not marginal costs for the system, and they were paid based on the operational costs of the units. As we saw later on when the reserve dropped in the system, no one invested in the country, just Guaracachi was the only one to invest and saved the country from outages between 2006 and 2011. As the reserve was dropping and these units became firm
capacity, when these units were necessary to operate and were being compensated based on firm capacity, they marked the marginal costs for the system.

ARBISTRATOR CONTHE: So, in 2008, the Superintendency more or less applied—even when these technically obsolete units became firm capacity, they applied the same system that was applied when firm capacity was not available based on that a technical problem in the area?
THE WITNESS: Well, if we think of 2008, the reserves are very low in the system. So, all of the units in the generation park, those are expensive, and the ones that are inexpensive are compensated on the basis of firm capacity. So, whenever they generate, they have a price. They have a marginal cost. When the Worthington units started to work, they also marked a lower price. So, a lower cost. When they said, okay, this is not going to set the price anymore, let's have them operate if the system needs them, because we do not want to have outages and they were going to operate as long as they needed to, but they were not creating a marginal cost or creating prices for the system.

ARBITRATOR CONTHE: I'm sorry to insist, just to make sure I understand this--and I still do not have the technical background you do--but prior to the regulatory reform in 2008, there were some situations in which the three units did produce electricity, even though they were not considered part of the
firm capacity, and they were paid the variable cost, but
variable cost of $38 per kilowatt hour was not applied to
the rest of the system.
That means that the other generators in Guaracachi
were not benefiting from such a high cost in the three
engines at Aranjuez because the three engines back then did not--
were not considered firm capacity, and they were not creating
marginal cost--or setting marginal cost.
17:08 1 THE WITNESS: Yes, but the difference is that these
2 machines were not dispatching. So, whenever they were
called
3 to operate, it was because of a contingency; when they
operated
4 a couple of hours to solve the problem up to the solution of
5 the problem.

6 For example, let's say Aranjuez 8 is not working
7 properly, so the other unit was commissioned, and half an
hour
8 later the engines were shut off and we went back to the old
9 machine, to the old unit—or the other units. They worked
for
10 very few hours, but in 2008 when these units were required,
11 they operated for a long time, and the damage to the
regulatory
12 system was significant and dramatic.

13 As Engineer Paz showed in some the annexes studied
by
14 Mr. Enrique Gómez, who is a very important person in the
Electricity Sector in Bolivia, Mr. Gómez, in the report
presented by Mr. Paz, shows the drop in reserves starting in
2006-2008 in the system; and, clearly with this—with the
consequences of the intervention with the regulation, prices
continued to grow, and this goes contrary to the rules of
the
20 market. Prices should go up, but they went down, actually.
And that signal sent to the rest of the generator was the wrong market signal; therefore, none of the other six generators that we had in the electricity market invested. Therefore, given the wrong signals of the market, Guaracachi was the only one that invested and also led to the
shortages that resulted in 2010.

And I'm sorry for the very

simple
terms of my next question, but I'm trying to figure out if I

understand it.

Guaracachi had very ambitious projects. We had

already seen the combined cycle with 80 and then 96

terms of my next question, but I'm trying to figure out if I

megawatts,

and

and in Sucre Aranjuez 2 and 3 had no more than 8 megawatts,

and

each had 2.7.

So, why did Guaracachi, out of their own--why
didn't

Guaracachi, even if they couldn't sell it, decide, Okay, I'm

going to assign 8 efficient megawatts whose operational cost

is

not going to be 38 hours per hour, 38 hours per hour but 18,

so

whenever they need to produce marginal cost, it will be at

rather than 38?

In 2010, that was the plan Guaracachi

had. We had introduced to the Board in late 2009 that in

Aranjuez, given the problems that the node had in terms of

regulation and supply, we decided to decommission
Karachipampa

and connect one or two units at Aranjuez. We decided to buy a
Trent unit, highly efficient Trent unit, or to take one of the units from Guaracachi. Guaracachi 2 or 4 could be taken to Aranjuez, either 20 or 40 megawatts, and that is part of the records of the Board of Directors at Guaracachi, and this is also part of a submitted presented to the Superintendency.

So, with this change, to go from 20 to 40, we had
17:13 1 decided that Aranjuez 1 and Aranjuez 3 were decommissioned.

2 ARBITRATOR CONTHE: But why didn't you do it if it was so logical and so efficient? Why didn't you transfer 20 or 40 megawatts?

3 THE WITNESS: Also you're talking about 2010?

4 ARBITRATOR CONTHE: Yes.

5 But couldn't you have done that before, earlier than 2008 before these three units were marginalized?

6 THE WITNESS: We attempted it in 2005, and there are some documents here that prove that. EGSA was created for isolated systems. And this company managed isolated systems, and this was the property of Guaracachi. And the idea was to manage inefficient and high-cost and operationally expensive equipment, such as what we had in Karachipampa and Aranjuez.

7 The idea was to decommission them and install them in isolated systems because this was a company for isolated systems. So, our goal was to take the equipment to populations that did not have power. And this plan failed, and the Superintendency didn't approve it, and we had to go back.

8 We made several attempts to improve the supply
conditions in the southern system, but unfortunately we weren't able to.

PRESIDENT JÚDICE: But if I do not—if I am not mistaken, it means that you had to sell them or use them or place them as part of isolated systems, and you didn't—why
17:14 1 didn't you consider to dismantle them, destroy them, so that
      have
2   this would be positive from the economic point of view and
3   something that would produce at $18 a kilowatt hour?
4       THE WITNESS: Well, there is a key economic
5   principle
6   that says that the most expense energy is the energy that
7   you
8   do not have.
9   And in the country, we have had low investments--or
10  a
11  due
12  not
13  low level of investments, and a high likelihood of outages
14  to lack of supply implied that part of the population did
15  have power supply.
16       So, I think that from the point of view of the
17  responsible, efficient supplier, it is better to supply
18  energy
to the Bolivian citizen at 30, $35, than to provide nothing.
19  Because the cost is very high; that cost of not providing
20  the
21  energy is very high for the country.
22       ARBITRATOR CONTHE: Of course, of course it's
23  better
24  to pay 38 than not to have it. But why didn't you, in
25  2007-2008, try to change those 40 megawatts to a technology
26  that had a lower cost at $18 a kilowatt hour?
Guaracachi was going to increase power in Sucre with the new CCGT, but seeing that you could not transfer the engines to EGSA for isolated systems before the engines became firm capacity and started to be marginalized and also distorted the marginal cost of energy, why didn't Guaracachi make a new investment which would have been really small, in 20 or
40 kilowatts, to make sure that the supply was at 18 rather than $38?

THE WITNESS: Well, there were several ideas that we analyzed. But as you have seen our record of investments, we have continued to invest in 2007, 2008, '9, '10. We have quite an impressive record of investments. But even though Guaracachi was the largest company in the country, it is, indeed, a small company. Guaracachi had not even 70 employees, and the 70 individuals were in charge of developing all of these projects.

So, this was beyond the human resources we had to try to focus on other projects to assign resources, but we did try it, and we tried it several times.

ARBITRATOR CONTHE: I'm sorry to insist, but this is related to a claim. I have not been an energy regulator, but I have been a financial regulator, and regulators usually have a dirty mind and we always have to think that companies might be doing something wrong.
But let's say that I'm an energy regulator and I can say, Why? Well, Guaracachi is dragging its feet and they do not want to replace these three old engines, they're saying that they'd like to decommission them, they have tried to sell them, but they do not want to put 20 inexpensive megawatts in Sucre because they say that whenever demand grows, these old systems are going to create a marginal cost, and they're going
17:19  1 to have a windfall profit--windfall profit with the rest of the

2 grid, not with these three pieces of equipment.

3 Then Guaracachi had a conflict of interest, a conflict

4 of interest to have some additional benefit to have these three

5 pieces of equipment as marginal, and this could have been an incentive to replace them, even though it was a mid-term policy

6 with the investment in the CCGT.

7 But in Aranjuez, a regulator could not have the shrewdness to--could have had the shrewdness to deduct or to conclude that the company was dragging their feet to replace the equipment and to exclude the marginal price, even though the three units, because of the supply have--of the demand have become firm capacity.

14 THE WITNESS: I think that the regulator had the opposite conduct.

16 Guaracachi made several attempts to withdraw, to decommission these units. I told you that we tried to sell them in 2000. It was impossible to sell them. 2005--or 2004,

19 we created EGSA. We wanted to decommission all of the engines.

20 We presented the request to the Superintendency, and the
21 regulator, instead of saying "Wonderful, we're going to get rid
22 of these," and, "To supply the needs of Sucre, we need another
23 investment," we were denied of that option.
24 In 2006 or '7--the dates are not very clear in my
25 mind. Equipments 5 and 6--Units 5 and 6 were decommissioned.
704

17:21  1  We were not given the License, but all of sudden it was
2  extended, we could not decommission them, and when EGSA
3  tried
tried
4  to decommission them, the Superintendency said no. They
5  said
acting
6  no from the point of view of the regulator that was also
acting
remove 1
7  as the regulator who said, "Why am I going to let them
remove 1
8  megawatt from the system if the system is short of
megawatts?"
9  So, that was the logic behind the rationale of the regulator.
Megawatt
10  Generators were not interested in investing.
and
11  numbers were going down. This would have led to outages,
and
12  the Superintendency did not allow to remove a single
megawatt
11  to avoid outages, but Guaracachi did try this throughout the
years.
12
13  ARBITRATOR CONTHE: And this is the last question. I
13  think that you must have been the General Manager that had
the
14  shortest tenure because in March 2011, you were appointed
15  General Manager, and in May, two or three months later, you
16  were dismissed.
17  So, could you please tell us why you survived
18
nationalization when the rest of the managers were replaced immediately?

And why—I understand that the brief period of your tenure is also connected to the Restatement of the Financial Statements in 2010, but the Bolivian authorities, I guess, never thought that you would have that reaction. But could you give us—or could you elaborate on why you continued after
nationalization and you were extended, and later on--you were extended the Contract, and later on you were dismissed?

THE WITNESS: Well, based on my understanding and based on the situation, I remained with Guaracachi starting May 1st because of my knowledge of the CCGT. I was one of the few persons in Bolivia that had knowledge about this type of technology, and I was one of the few persons who could take this to completion.

Clearly, they could have hired someone else, but I think that I was left there because of my strategic knowledge.

And the combined cycle was seen in the country as the hope we had to avoid outage. But now--clearly, nowadays, with CCGT, outages are being avoided. I remained because of my knowledge,

my technical knowledge.

How did I get to be General Manager? ENDE's Manager,

Mr. Caballero, was a friend of mine, and in the Electricity Sector in Bolivia, now we know everyone. It's a very small sector. So, I had been working with him at ENDE since we were very young. We had very parallel careers. We--our agencies are even similar. He's just a little bit younger than I am,
And because of a problem with Joaquin Rodriguez, he called me one morning at 5:30 and he told me, "Joaquin has to leave because that is the Minister's decision, and I need your help. And I would like you to be the General Manager."
I told him, "Please do not put me in this situation because I know I'm not going to last long." I have--I was not a person that was highly regarded in the energy sector among the people who were actually managing the sector because of some differences in concepts. And I am going to lose my job, they're going to vote you, I'm going to get--I'm not going to get the votes, you're going to get the votes, and I am going to lose the job that I currently have. And he asked me for help, and the Minister has your name, so you don't have any other option. I didn't have much time. My wife heard yes, and she complained because she said, This is just your--this is just the decision that is going to put an end to your current job, and in a short time you're going to be out of a job. And the staff he had was not the best, so I lent him the most important resources that we had with--at Guaracachi to help him. The lawyer started to work for ENDE 100 percent. I also lent him our financier and Eduardo Paz so that they can work with him and help him execute the project.
Everything went well until the day when he said we need to change the profit and loss, and I objected because I did not agree. We had our differences, because--this was understandable. He had to follow a path, and I was not willing to follow that path.

ARBITRATOR CONTHE: It's very clear. Thank you.
PRESIDENT JÚDICE: I have just a question. I understand, based on my life experience, that oftentimes there are various interpretations of the facts, and the same applies to technical matters.

But here I hear you say that in April-May 2010, the combined cycle was completed by 95 percent, and in January Paz was saying that it was completed by 50 percent. The difference is so significant that at least you have a very significant problem in perceiving or understanding this problem, or a very different concept. These things are completely different.

THE WITNESS: I think that Mr. Paz is talking about something different and writing that in a very leading way. He's saying that the budgetary process is 50 percent. He doesn't say the project progress. That is technically 50 percent. He's talking about the progress made from the budgetary point of view.

Now, the Superintendency never wanted to change our $68 million budget. They always had the $40 million budget. But when they drafted the report, the Superintendency is saying there is a budgetary progress of 50 percent, and they're saying...
that Guaracachi has spent $20 million. But they had already
spent 68 million.

PRESIDENT JÚDICE: Yes, I knew that. But I don't
really don't understand it.

You were saying it was $20 million. I know that--
the numbers were, but the numbers say that it was 60 million.

THE WITNESS: Let me explain. It was a gentlemen's agreement between Guaracachi and the authorities--the Superintendency--I don't know what the name is.

The purpose for this Resolution was for the level of our guarantee to go down from $2 million to $1 million.

This means that for Guaracachi--well, we would have $1 million to solve our cash problems that we had at the time.

The Superintendency never wanted to go up to 68, for whatever reason. So, they said, I'm going to put in 50 percent. I'm going to return 50 percent to you only.

And I'm going to reduce the amount from 2 million to 1 million. This is simply speaking what happened. It had nothing to do with an analysis of the amounts that were reviewed.

The purchase of the boiler was $17 million. That was almost 50 percent of the $40 million. So, this was a gentlemen's agreement so that the amount of the guarantee could be reduced.

PRESIDENT JÚDICE: Mr. Paz has seen your First Statement. There is a photograph dated October 2009--and
is a matter for a lawyer. It seems quite backward here, but I don't know if you remember this photograph.

Do you remember the intention of it?

THE WITNESS: Yes, yes, I remember the photograph.

It's a photograph that I took. And I think I make comment of
So, this was a photograph of October 2009. So, it was a few months after we were able to withdraw Guaracachi 7 and Guaracachi 8. After we were able to withdraw those two units, we were able to start building the structure where the turbines and the generators were to be housed.

So, after the withdrawal, for three or four months after the withdrawal, we made enormous progress.

PRESIDENT JÚDICE: Are you sure when you wrote 95 percent, isn't this a mistake? Is this something not intentional? This is your conviction, 95 percent of progress?

THE WITNESS: Two important things in connection with the percentages that I have submitted to the report to the Board of Directors and to the reports that I submitted here.

The progress percentages are based on weekly and monthly reports respects that were reported to it by Santos CMI, the construction company. This is not something that we did, my team or myself, no; this is based on the contractor in connection with the weekly and monthly reports.

PRESIDENT JÚDICE: But you have accepted this?

THE WITNESS: Well, we had a team of engineers that
supervised all duties, civil work duties and also certifications of weekly progress. So, we had a daily report of the project, a weekly report of the project. If you would like for me to send you this information, I would be happy to
send it to you.

PRESIDENT JÚDICE: No, we don't really want any more information.

ARBITRATOR CONTHE: Yes.

There was something in your answer that I wanted to talk about. There was a gentlemen's agreement to reduce the security so that Guaracachi could save $1 million. This was a gentlemen's agreement.

Could you explain this to me. I didn't really understand this.

THE WITNESS: When you request a license for generation--and Mr. Aliaga, who is an engineer, knows more about this than I do because he was in charge of all this, so if I make a mistake, please forgive me.

So, when you ask for a license, you have to deposit a guarantee for 5 percent of the total cost of the project. The total cost of the project was $40 million, so we had to post a guarantee for $2 million. So, these $2 million, of course, this was a guarantee and, well, have you to post the guarantee and this makes the flow of cash inviolable.
21 ARBITRATOR CONTHE: This deposit was in cash? It wasn't a bank security?
22 THE WITNESS: It is a bank security, but in order to do that, you had to deposit those amounts in the bank, to make them immovable in the bank. So, this is a very interesting
amount of money that Guaracachi contributed at that time.

MR. GARCÍA REPRESA: Mr. President, I know that we are all impatient and we want to examine the next witness, and I'm sure the current witness is very, very impatient to step down as well, but on behalf of Bolivia, I would like to ask a few questions.

PRESIDENT JÚDICE: Yes, of course. We're going to give the other Party also this opportunity, but please be very brief and only deal with very, very important issues from your viewpoint.

MR. GARCÍA REPRESA: Yes, of course.

RECROSS-EXAMINATION

BY MR. GARCÍA REPRESA:

Q. You said, sir, that the Aranjuez engines you tried to sell them to a company called EGSA. Do you remember that?

A. Yes.

Q. You were the founding Shareholder of EGSA; correct?

A. As the Commercial Code of Bolivia says, to form a corporation, at least three Parties have to be involved in this
This was a 100 percent company of Guaracachi, so, 99.99 percent was Guaracachi's. And I had one share. It was .001. Another engineer who was the plant manager, his name was Alvarez, had the other .00 something. So, this was the way in which the corporation could be formed in Bolivia.
There was an investigation by the State in connection with the conditions of that projected--that scheduled engine sale.

PRESIDENT JÚDICE: I don't know, was this was mentioned?

No, I'm sorry, that's not an issue that you can ask about.

MR. GARCÍA REPRESA: All right.

BY MR. GARCÍA REPRESA:

Q. I will talk about another issue.

The Co-Arbitrator, Mr. Conthe, asked questions with why would Guaracachi 3 and 5 have to be withdrawn and why wasn't an investment made later on.

I wanted to confirm with you a number of issues. Each one of these units, Guaracachi 3 and 5, accounted for about 90 megawatts; correct?

A. Yes, correct.

Q. And, in Paragraph 24 of your Second Statement, at the end of that paragraph, it said that it made more sense to sell them and to reinvest the funds in more efficient technology.

And I would like for you to go to Document Number 2
your binder. Please go to it. And this is Annex 53 of Mr. Paz's statement. You told me you had reviewed the annexes by Mr. Paz, so please go to Page Number 3. Please let me know when you find Number 3.
17:38 And this is Note 4. Note 4 on Page 3.

17:38 Do you see it?

17:38 A. Yes.

17:38 Q. And this Note 4 makes reference to the sale of

17:38 Guaracachi 3 and 5.

17:39 A. Yes. That's what the heading says.

17:40 MR. BLACKABY: Objection.

17:40 PRESIDENT JÚDICE: Mr. García Represa, you're going

17:40 back to doing something that I asked you not to do. I asked

17:40 that--you to ask questions arising directly from the

17:40 questions

17:40 posed by the Tribunal and not to bring to the table new

17:40 matters

17:40 that you should have brought during your cross.

17:41 MR. GARCÍA REPRESA: With respect, Mr. President, I

17:41 completely understand.

17:42 The question that was asked by Mr. Conthe had to do

17:42 with why Guaracachi 3 and 5 were sold instead of other units

17:43 and why wasn't the amount invested in additional capacity.

17:44 PRESIDENT JÚDICE: I insist that you are going way

17:44 beyond the scope of the line of questioning.

17:45 MR. GARCÍA REPRESA: Yes, I take note, Mr. President.

17:46 We are going to make reserve of our rights.

17:47 PRESIDENT JÚDICE: Any other question?
MR. GARCÍA REPRESA: No, apart from my reservation.

PRESIDENT JÚDICE: Thank you very much for having cooperated with the Tribunal. You can step down, if you want.
THE WITNESS: Thank you very much.

(Witness steps down.)

PRESIDENT JÚDICE: We're going to now move on to the next witness. Perhaps, if we can have a short recess. Fifteen minutes. And then we are going to come back to the witness that is going to be examined by you. Thank you.

(Brief recess.)

CARLOS QUISPE LIMA, RESPONDENT'S WITNESS, CALLED

PRESIDENT JÚDICE: Good afternoon, Mr. Quispe. Thank you very much for attending the hearing. Would you please first say your name and then read the piece of paper that you have in front of you.

THE WITNESS: My name is Carlos Quispe Lima. I was called to appear as a witness by the counsel of Bolivia. Shall I read?

PRESIDENT JÚDICE: Yes, please, if you agree.

THE WITNESS: Witness Statement, I solemnly declare upon my honor and conscience that I shall say the truth, the whole truth, and nothing but the truth.

PRESIDENT JÚDICE: Thank you.

I trust that you know how the tribunals work.
going to have some questions by the lawyers to your right
first, and then to your left, and then finally the Tribunal.
Just take the time you need.

THE WITNESS: Thank you.
MR. SILVA ROMERO: Mr. Merizalde will question the witness.

DIRECT EXAMINATION

BY MR. MERIZALDE:

Q. Thank you very much, Dr. Silva.

A. Yes, I have my three statements.

Q. And they are signed by you; right?

A. Yes, I signed them.

Q. Would you like to make any formal changes to those statements?

A. Yes. I'd like to introduce three corrections that have to do with the--they're not substitutive. They're style changes, three style changes, in my statements.


I would like to correct that date. It is February 8, 2007.

And this is consistent with my Third Statement where I
had already referred to the right date. Paragraph 30 of my First Statement.

There, I say that Guaracachi presented an appeal onto Resolution 40/2007, but I should say February 15, 2007.
And, finally, in my Third Statement, Paragraph 7, in this paragraph, there is a description of the time it took for the administrative remedies, and in Line Number 5 I'm saying that it took more than nine months to decide on Resolution 40/2007; and as a result of the second clarification, it should be corrected to 11 months. That is to say, 11 months that was the time it took to decide on Resolution 40/2007.

That's all I had to say.

Q. So, do you confirm the contents of the three statements?

A. Yes. Beyond those three, I confirm the statements.

Q. Could you briefly explain to the Tribunal your current responsibilities.

A. Towards August 2009, I started to work with the Ministry of Hydrocarbons and Energy; and, starting in October the same year I became the General Director of Control within the same Ministry. And as part of that position, I am in charge of solving challenges presented by users, suppliers from the electricity and hydrocarbons area, and the National
Hydrocarbons Agency and the National Electricity Authority.
That is to say, the former Hydrocarbons Main Offices,
Superintendences, and all of my responsibilities are on behalf of the former Superintendency.
Q. So, could you please explain the difference between
the administrative and the judicial remedies and also the suspension of the administrative remedy.

A. In Bolivia, we have two instances for the control of administrative acts.

PRESIDENT JÚDICE: But this is not only in South America.

THE WITNESS: Well, let's say in several countries of the world. The first instance or the administrative step includes the appeal and the appeal to a higher administrative authority. A citizen who may feel affected by a decision by the Government may resort first to the same authority that issued a decision that that individual considered detrimental, and may ask for the reconsideration. If that is not favorable, the same citizen may resort to a higher administrative authority and present an appeal. If this is not favorable, this person can resort to the next step within the judicial system and present an administrative challenge, and this is presented before or submitted before the Supreme Court of Justice in Bolivia, and he or she may claim the nullification of the decision, the abrogation of the decision or the part
that is being questioned.

The citizen has the power granted by the administrative law at Article 59, Paragraph 2, rather than Paragraph 1, where it is stated that any appeal does not interrupt the performance of the Act, that in Paragraph 2 it
says the citizen may request the authority the suspension of the Act.

First, there could be serious damage to the Party or because of public reasons. Based on these two causes, this person may resort to the authority and say I request for the suspension of the performance of the act, but this request for suspension is not binding. The administration may assess the case and determine whether they are going to continue or not with the performance of the act.

In the next stage, the civil proceeding or procedure that is the one that governs this process is not very clear in stating whether the suspension remedy may be used or not. There is no clear rejection or validation, but based my own practice of the profession within the industry, I have been able to see that the Supreme Court has granted the suspension of this--has granted the stay. And the Civil Code has actually considered the stay, and in some other cases it has been rejected, but basically those would be the ways to decide on the stay of an act.

Q. I understand that you had the possibility to review
CL-190, and this is a document that was recently presented by the Claimants.

A. Yes, I understand that this is about a document, an Article that I wrote in 2008.

Q. Yes.
And could you please explain the context.

A. Yes. I was a little bit surprised to see that I wrote when I was a student of administrative law in La Paz, Bolivia, between 2007 and 2009. I was a student, and I was asked to write an article about one of the institutions of administrative law, and I chose this topic. And if I recall correctly, I wrote something not very thorough about—that six or seven pages long to analyze from the academic point of view the laws and also the Supreme Court decisions, and I was working with the municipal Government of La Paz, and I had very scarce experience in this administrative—in administrative cases.

Q. Was this a Master's program or a Ph.D.?

A. This was just a Master's degree. And as part of writing I am saying that the goal of that analysis is to analyze the legislation and the case law, the regulations and the case law.

Q. The Claimants say that the duration of the—
duration of the proceedings to solve the issues regarding power
have been too long.
And I explained that I do not share that opinion. I said that in my First Statement in the sense that the delay in Bolivia. I don't know if this is the case in other countries, too. The judicial delay is something that happens, is something that happens just because of the high case
law—caseload, and I don't think that this is a delay because of the specific proceeding.

This is just standard for all of the proceedings, and it is not unjustified because the Government of Bolivia has had executive and legislative actions to overcome that situation and, for example, we can mention the appointment of authorities on an interim basis to cover the vacancies within the Supreme Court, and we can also think of Law 212 that was passed in 2011, together with other Laws, and that decided to divide the caseload within the Supreme Court and assign them to the Main Justices and to the alternate justices.

So, here, we have two collegiate bodies in charge of the caseload, and I can again support my opinion that decisions were made to solve that situation.

MR. MERIZALDE: Mr. President, we have no further questions.

Thank you very much.

PRESIDENT JÚDICE: Mr. Blackaby, please, you have
CROSS-EXAMINATION

BY MR. BLACKABY:

Q. Good afternoon, Mr. Quispe.

A. Good afternoon.

Q. We are going to distribute a binder with documents that could be useful for your cross-examination; and, in the
meantime, I think that we can start with some rules so that you know how this is going to work. If you do not understand a question, please let me know so that I can repeat it, and please give clear answers and go beyond nodding or just moving your head because this is not going to be recorded.

A.  Okay.

Q. I have a preliminary question, Mr. Quispe: Do you consider yourself an expert or a fact witness?

A.  Could you please explain the difference?

Q. A fact witness is someone who has lived through the facts that are the object of the case, so I'd like to know whether you have lived the facts of the case in a personal and direct way.

A.  In my First Statement--

Q. I have not referred to your statements. I am just referring to your role here.

So, once again my question: Do you think that you're a fact witness based on this?

A.  I'm not because I did not learn of the facts that I am referring to in these statements, but I think that I should
state the following: When the lawyers of Bolivia asked me to introduce a statement, I reviewed the data, and that's the reason why I am referring to the First Statement. I said that I learned of these facts based on the review, my own review of the documents, and because of my role.
with the Ministry of Hydrocarbons. I am doing what the Superintendency of SIRESE used to do, and many of the questions here or the issues here at stake--many of the issues at stake here were part of the responsibilities of the Superintendency of SIRESE. So, I did not sign any of the appeals or the--appeal for reconsideration, and I have taken the role of the people who used to do that.

So, you were told about certain facts that are relevant to this case, otherwise you would not be here. And with that information you issued an opinion on some remedies within the Bolivian system?

Please just allow time so that there is no confusion and no overlap of voices.

BY MR. BLACKABY:

Was that your role?

Yes, it was. I reviewed all of the administrative proceedings.

And this would be more of an expert; right?

Someone who receives information about the facts and who expresses his or her opinion about the facts. That's what you did; right?
A. Personally, I had asked you for the difference between a witness and an expert. Personally, I do not know much about this, and this is what I was asked to do, and I was asked to come here to provide information in connection with that. That's what I wanted to tell you.
Q. So, are you aware that experts who offered technical information are independent of the Parties? Are you aware of that?
A. Yes.
Q. Do you consider yourself independent from the Government of Bolivia?
A. I work for a Ministry.
Q. Do you consider yourself independent?
A. No, I'm not independent.
Q. So, you're a lawyer.
A. Yes.
Q. When did you graduate?
Q. And based on my reading of your résumé, after 2004 you worked with D&A Consultores; correct?
A. Yes, correct.
Q. Would it be fair to say that you were a junior lawyer on commercial, criminal, labor issues?
A. Yes.
Q. And did you work on any claim that had any relationship with the Electricity Law?
22    A. No, I did not.

23    Q. Then based on your résumé, I understand that you
24    worked on three cases and a case related to criminal law and
25    that had nothing to do with electricity; correct?
And then up to August 2005, you worked with an NGO on issues that had to do with youth and the rights of indigenous populations; correct?

A. Yes.

And later on you started to work for the Government in September 2005?

A. Yes, correct.

And your first job was with the Ministry of justice up to February 2006; correct?

A. Yes.

And that included work with electricity for the Electricity Law?

A. No, it did not.

And then you changed your role within the Government and you started to work as a lawyer for the municipality of La Paz up to March 2008.

A. Yes.

And I understand that you worked on cases related to the municipality.
A. Well, that was mainly administrative law.

Q. Did that include anything that had to do with electricity or the Electricity Law?

A. No, it did not.

Q. And then you started to work with the Bolivian
Administrator of Highways in 2008; correct?

A. Yes.

And then you worked on the administration of contracts for highways; correct?

A. Yes.

And bidding?

A. Yes.

The bidding process for Public Works, and that does not include anything connected to the Electricity Law; correct?

A. Well, I was the Legal Adviser to the highway agency, and I was mainly in charge of contracts, and eventually there could have been review of a dispute between--with one of the electricity operators, Electro Plata distributor. So I got to see--that was my very first experience, but it was not key in my work.

You did not mention that?

A. I didn't mention that because it was only just one of out of many cases that I had seen with the authority.

And you were there for a year; correct?

A. Yes.
Q. And then you moved to the Ministry of Production and Rural Development, and there you worked as a director of legal issues up to May 2009.

A. Yes.

Q. So, you were General Director for only one month?
A. Yes, I was.

Q. And did you include any cases connected to the Electricity Law?

A. No, I did not.


A. No, it was August 2009, and in October I was the Director. I became the Director.

Q. Would it be fair to say that the first time that you had a significant professional experience in connection with the Electricity Sector was upon arriving to the Ministry of Hydrocarbons and Energy?

A. Yes, that would be correct to say.

Q. And as part of that role, you are responsible representing the Government in challenges, administrative challenges, initiated by agencies against the Ministry of Hydrocarbons and Energy, and this might be just a repetition, but just to clarify as a lawyer who represents the Government of Bolivia in this type of cases, you do not consider yourself an expert, an independent expert, because you conveyed the vision of the Government?
MR. MERIZALDE: Objection. He had already responded to that question.

PRESIDENT JÚDICE: Yes, he's wasting his time, but this is not something very serious at this point.
BY MR. BLACKABY:

Q. Have you ever taught administrative law or procedural law?

A. I have taught courses on private international law and some talks on administrative law.

Q. But they're not part of your résumé?

A. No, they're not.

Q. And with the modification of the Capacity Payments based on Resolution 40/2007, you were not working with the Ministry of Hydrocarbons; correct?

A. No, I wasn't.

Q. And you were not working with the challenges that had been presented against the Superintendency whenever they were rejected by SIRESE?

A. I started to work in 2009, so whatever was prior to that date is not something that I did.

Q. So, you're not aware of the administrative authorities claims; right?

A. No.

Q. So, let me go back to Paragraph 26 of your First Statement. Paragraph 26.
There you say that within the framework of your work, you're aware of the regulation of the estimation system to determine the compensation based on capacity. And as I explain later on, there are currently--there are two pending cases that
are of an administrative nature before the Supreme Court of Justice; is this correct?

A. Yes.

Q. And are you referring to the decisions that have to do with the challenge presented by Guaracachi?

A. I have analyzed the administrative remedies that have been presented in this case.

Q. And is it because in your new role you're representing the Government; therefore, you had to get to know the pending cases, the pending cases before the Supreme Court of Justice?

A. Yes, that is correct.

Q. So, you had to study in detail all of those pending cases?

A. Well, I studied the documentation that was part of the Administrative File.

Q. And you did the same for all of the cases?

A. Well, the cases that are here. If I have a claim, I need to review of all of the cases, all of the administrative performances--acts in connection with the case.

Q. So, when you got to the Ministry in October 2009,
those cases had been with the Supreme Court for over a year.
So, what was the decision or what explained your decision to
review these two measures, these two actions, or is it that
you study all of the challenges with the Supreme Court? Is that
part of your professional responsibilities, or you were asked
to study these two specific challenges?

A. Well, these are two different cases. I do not review all of the pending proceedings because all of the actions are steps that have taken place, and there is not much to do. So, as a representative of the Ministry, I need to just be informed of these processes, and the Resolution 40, 040, and the actions in connection with this Resolution were part of the request to study in depth, and this is the request I received from the Office of the Attorney General.

Q. So, can we say at the end of paragraph--can we look at the end of Paragraph 26. You're saying that the Supreme Court of Justice currently has two administrative claims, and I was forced to analyze in detail, and these cases are pending. Would it be fair to say that, since I was requested by the Government of Bolivia, you're not studying them because they are pending with the Supreme Court. You're studying them because you were asked to do so?

A. Well, in the first paragraph, in the first part I say that the lawyers have asked me to provide my statement.
Q. Well, I continue with Paragraph 26, and Paragraph 21 says, currently, there are two administrative cases pending before the Supreme Court of Justice in connection with electricity regulation, and this has led me to study this in detail.

So, what I'm saying is that you studied the subject
matters because they were pending before the Supreme Court of Justice, but that is not the case.

A. Well, that was not the only reason, yes, agreed, but that is what I say at Paragraph 7. I am saying that what I was asked to analyze is what I actually studied.

Q. We could probably restate your statement and say that claims against the modification to this regulation in 2007 which has led me to analyze the subject matter because of this arbitration.

A. Yes, I see no objection.

Q. Just to be clear, then, your employer, the Government of Bolivia, asked you to use your talent as a government lawyer to find arguments in support of the case in this arbitration; correct?

A. I don't agree with your statement, sir. The government for the State of Bolivia and the Attorney General's Office, I don't know if it was because of my talent because the functions I discharge with the Ministry, and because I am responsible for the actions before the Administrative Courts,
and because I know how administrative appeals for the electricity sector are brought. That's why they asked me to appear here. I don't know if that's the reason why the lawyers or the Attorney General's Office asked me to conduct the study, but you would have to ask them.

Q. Do you see any difference because it was you who
18:31  1 prepared the--you see the difference whether it was you who
2 prepared the statements or the Attorney General's Office or
3 someone else because they also know about these facts? They
4 were also specialists in administrative law. Why you?
5 A. I don't understand your question. I don't understand it.
6 Q. Well, I'm trying to understand why are you a witness
7 and why you're not a lawyer sitting just across from me.
8 What is the difference of having the testimony of a
9 government attorney submitted as a statement just like a
10 colleague of mine that can submit a statement saying I'm an
11 expert in such-and-such an area. I don't know if you see the
12 difference?
13 A. Sir, the question, I think, is addressed to the
14 lawyers of the State. Why have they chosen a statement over
15 another statement?
16 Q. It's not your fault. I was just trying to understand
17 what role you were playing.
18
19 MR. SILVA ROMERO: It's not a question, Mr. President,
20 it's just a comment. It's important for every single one of
21 us. Mr. Quispe says that he does not consider himself an
independent expert for the State because he works for the
State. So, if we pursue this line of questioning, we are
wasting time. We don't have a lot of time. And I just
wanted to say that because then I don't want them to say later on
PRESIDENT JÚDICE: No, no, I don't think anything is being said. I think each of the Parties can use their time in whatever way they see fit.

MR. BLACKABY: So, I would be grateful--

BY MR. BLACKABY:

Q. Anyway, I'm going to talk about another issue. In your statements you talked about the challenges to the system in Bolivia and how it works?

A. Yes, that's correct.

Q. For example, in Paragraph 17, you explain how the first challenges were conducted before specialized bodies of the administration; correct?

A. Yes.

Q. And that is known as the administrative claims before the authorities?

A. Yes.

Q. You need to say yes verbally for the transcriptionists.

If the injured party is not satisfied, there is an appeal before the courts, and here you say that these are
specialized administrative justices--judges; correct?

A. Yes.

Q. And this is the Supreme Court?

A. Yes, correct.
Q. And if I understand correctly, the Supreme Court is the first judicial instance or the first and only judicial instance in these matters?

A. Yes. It's the highest. It's the highest if you start counting from up above.

Q. Well, if we want from the administrative claims to the judicial claims, I have to go through these reports; right?

A. Well, the administrative proceedings and the civil procedural legislation says that one has to exhaust administrative remedies to be able to resort to the judicial remedies.

Q. Yes. We agree. Assuming that we had exhausted administrative remedies, the only judicial instance and the first initial instance is the Supreme Court.

A. Yes, that is correct.

Q. It is a single instance proceedings.

A. Yes, proceeding, yes.

Q. I wanted to clarify that. And Paragraphs 29 to 34 explain specifically how Guaracachi S.A. followed that procedure?

A. Yes, that's correct.
Q. If I look at Paragraphs 29 to 34 of your Statement, I
looked at your explanation, and I compared your explanation, which was theoretical with a more specific explanation. I think that Guaracachi—you described specifically how it works;
is that correct?

A. No, that's not correct.

In my statement, in Paragraphs 29 to 34, I explained general speaking what the appeal system was. Now, governments of the Bolivian State provided me with the statements of other witnesses when I was preparing my Witness Statement where reference was made to this procedure to challenge.

The procedure to challenge was much, much more complex than this. Here, mention is made of the most important decisions that led to the resolution of this case. Now, if, in my statement, if in my statement I had had to explain the whole proceedings, it would have been very confusing because it is really, really complex.

MR. MERIZALDE: I'm sorry to interrupt, Mr. Nigel. You asked the witness a moment ago whether he followed word by word the proceedings that he's stated. Can you let him finish.

PRESIDENT JÚDICE: Yes--I'm sorry, I would ask for the Parties not to interrupt either Party.
BY MR. BLACKABY:

Q. Yes, I am following your statement because this is the only thing that I have at my disposal to know what your opinion is.

I don't know why you didn't go deeper into detail, just two pages. Would it be worthwhile to enter into details
18:37 1 here?

2 A. Yes, I can explain this.

3 These remedies—well, let's see. The company brought

4 two claims in connection with this matter. I would have to

5 draw a chart—and I can't do this from memory—there are

6 Decrees and resolutions that were issued by the

7 Superintendency

8 that have made the processing of these proceedings very,

9 very

10 complicated. This was not the essence of the controversy,

11 so I

12 had to make observations to the statements, and my comments

13 are

14 summarized in these paragraphs, at least the most important

15 ones.

16 Q. In Paragraph 19 you say that the first instance has
to

17 do with the Appeal for Revocation.

18 A. Yes, that's correct.

19 Q. Guaracachi brought an Appeal for Revocation?

20 A. Yes, against Resolution 40/2007, yes.

21 Q. In Paragraph 20 you say that if a decision is
disfavorable for the appellant, he can bring an appeal
before a

22 higher administrative authority; and, as a consequence, this

23 appeal to a higher authority was actually brought; right?
A. Yes.

Q. And at the end of this paragraph it says, if the appeal by the appellant is rejected, then we can resort to the courts because the administrative proceedings are exhausted?

A. Yes, that's correct.
Q. And this was rejected for Guaracachi; yes?
A. Yes.

Q. So, the administrative claims were exhausted and then we can go to the courts; right?
A. Yes.

Q. So, according to your description of the facts here, Guaracachi followed what you indicated in Paragraph 19 and 20?
A. Yes. If you go to Paragraphs 32 and 34, I describe the different appeals that were brought by Guaracachi against Resolution 40/2007, 20/2007, but there is also another one that's numbered 18 and other numbers, but the most important one is Number 40.

Q. In your statement, you do not criticize Guaracachi because of the way it sought to challenge the decisions by the Superintendency.
A. What I do is I explain how the proceedings were done and how the administrative appeals were done by Guaracachi.

Q. You did not--you did not criticize, I said.
A. So, the answer is no, I did not criticize.

Q. In your First Statement, you mentioned other remedies
that were at the disposal of Guaracachi or a different way it could have taken in connection with the Measures related to Capacity Payments.

A. Are we talking about the basic Capacity Price?

Q. Yes, correct, in this statement.
A. No. The proceedings that are adequate to put in question an administrative act is the administrative proceeding, and this is what I stated in my statement.

Q. And Guaracachi followed administrative proceedings?

A. Yes, it did.

Q. In your Second Statement you mentioned for the first time the possibility of asking for a stay of the resolutions related to Capacity Payments under Article 59 of the administrative proceedings law; correct?

A. Yes.

Q. This is Paragraph 5 of your Second Statement?

A. Yes, that is correct.

Q. In your second testimony you also mentioned for the first time the possibility of asking for a stay of the resolutions related to Capacity Payments under Articles 167 and 169 of the Code of Civil Procedure. This is Paragraph 6.

A. Yes, that's correct. I'm following what you're saying.

Q. Was there any reason why you mentioned Article 59 of the law of administrative proceedings or Articles 167 and 169 of the Code of Civil Procedure in your Second Statement and...
22 didn't mention this in your First Statement?

23 A. Actually, Paragraph 3 of my second—or rather, Paragraph 4 of my Second Statement says, I find contradictory

25 the statement of the Claimants in connection with the critical
importance of this for their operations. I had read one of the documents submitted by the Claimants, and reference was made there to a critical situation in connection with the operations.

In my First Statement, I talk about--I talked about the appeals that Guaracachi had at its disposal to challenge an administrative decision.

In my Second Statement, I made reference to the options that the person under the jurisdiction of the State had in order to stay proceedings. This is different from bringing an appeal.

In my Second Statement, I make a reference to the possibility that the person under the jurisdiction of the State has to bring an appeal for reconsideration or an appeal to a higher administrative authority. Well, if the situation was so complicated, if the company was in such danger, I saw there the possibility for the appellant to have other options, to have other possibilities to request a stay of proceedings, and oftentimes this stay is granted; in many cases, yes, it's granted.
Q. We're going to go back to that issue. So, in your First Statement you didn't really realize that those positions that were being examined by international tribunals were important for the appellant, and they were critically important?
A. I did not say they were not important or that I failed to see that they were important. What I said in my First Statement is that I was describing the administrative proceedings that has to be followed in order to challenge an administrative act.

Q. Didn't the lawyers for Bolivia perhaps extend the reference to administrative remedies in your second testimony?

A. Yes, probably yes.


Do you see that?

A. Yes.

Q. You had cited no case law in your Second Statement in support of your opinion in the sense that this appeal or the appeal that you mentioned in Paragraph 6— that is to say Articles 167 and 169 of the Code of Civil Procedure—are viable options for Guaracachi.

Why did you decide not to annex case law to support your opinion?

A. Well, perhaps I didn't consider it necessary or because perhaps the regulations don't require so.
Paragraph 5, when I make reference to Article 59(2), I have annexed no example of an action that stays execution or performance, so perhaps it was not necessary to add those documents.
Q. But you did this in your Second Statement. Why didn't you do it before? Why did you think it was important for the Third Statement, not for the Second Statement?

A. Because, if I remember correctly, it was in the Reply Memorial that the Claimant put this aspect into question. This was a disputed issue, so we could find protection in Article 59 of the Administrative Procedure Code, and so I had to support my position with a Supreme Decision that showed the contrary to say that this was possible.

Q. Now, as a Bolivian lawyer, when you were consulted about different issues, did you think it was important, especially in this context, where you are an international lawyer to support your assertions with case law or with opinion of legal scholars or with some objective element, especially because you are not an independent witness? It would have been good for the Tribunal and for us to have received some kind of case law.

A. Well, possibly, yes, it may have been useful, but
has to do with whether this is a disputed fact or not. I don't think we have to prove the law, so you can prove facts but you can allege the law, so I didn't think it was necessary, this--since it was a disputed position, later on I thought it was necessary to support my position.

Q. You said that, in your experience, in certain cases the stay of the proceedings had been awarded, and in other
cases no. So, this is not something very clear in Bolivian law because it happened in some cases and doesn't happen in other cases. If you knew this, why do you consider that the regulations were so clear that it wasn't necessary to provide case law?

A. Because the regulations allow me to do so.

Q. Yes, the regulations allow it to happen but the courts rejected it. Don't you think that this is not very transparent, the fact that you didn't contribute to this arbitration the case law that shows the real interpretation of that provision by Bolivian courts?

A. What I said in my Second Statement is that the possibility exists to request the stay of the proceeding. So, I said this possibility existed, and I showed a specific case where this was accepted.

Q. Very well. We are going to talk about this. This is Annex 3 to your Third Witness Statement; correct?
20    A. Yes.

21    Q. And you know that this case law was also submitted by Bolivia in its Rejoinder as RL-143?

22    A. I don't know about that, no.

23    Q. You provided the relevant cases in connection with this issue to the lawyers of Bolivia?
A. I gave them the one that I had included in my statement.

Q. And any other cases on this issue?

A. Yes, I think the numbers—I gave them the numbers of cases that I had studied. Yes, I think I did.

Q. So, is it possible that the lawyers from Bolivia have received from you case law that you have not annexed to your statement?

A. Yes. Amongst other documents, probably, yes.

Q. And the cases that you communicated to Bolivia but you did not annex to your statement, are these cases in favor of staying the proceedings or against the stay of the proceedings?

A. Both.

Q. Both?

A. Yes. There were some that allowed for it and--

Q. Didn't you think it was important in your opinion to indicate that this case law existed but there was also case law in the negative?

A. Yes, I could have done this, but in my Second
Statement I talked about the possibility of requesting the stay of proceedings within an administrative court proceeding.

Q. From what I understand—and let's see if you agree with me—you conducted some research, and you found a number of cases. You provided those cases to the lawyers for Bolivia;
18:50  1 and, out of those cases, you only used one to support your
2 theory that it was possible to request the stay; is that
3 correct?
4      A. Yes, that's correct.
5      Q. If you go to your Third Statement, Paragraph 21, you
6 say--you said that this stay could be requested under the
7 Code
8 of Civil Procedure or under Article 59 of the Administrative
9 Proceedings Law. And then in Paragraph 22 you introduce the
10 only case that we have discussed, the only case law that you
11 have included here.
12           According to you, the Court awarded the stay by the
13 application of norms from the Code of Civil Procedure and
14 the
15 Code of Administrative Procedure.
16      A. Yes.
17      Q. But the decision that you have annexed makes no
18 reference to Article 59 of the Law of Administrative
19 Proceedings.
20      A. I would have to look at it.
21      Q. Yes, let's look at it.
22      A. It's behind Tab 3. I think I have it here.
23      Q. We're talking about the Supreme Decision 112/2008.
24      Q. Yes, that's right.
In your statement, you talked about Article 59 of the Law of Administrative Procedure, and I would like for you to tell me where a reference is made to that Article.
A. Well, not in this case. Reference is made here to Article 54 of that law.

Q. Do you mention Article 54 in your--in any of your three statements?

A. No, I don't.

Q. In your Second Statement, you made reference to the possibility of using Articles 167 and 169 of the Code of Civil Procedure; right?

A. Yes, that's correct.

Q. And you also used that case law. In those cases, is mention made to Articles 167 and 169 of the Code of Civil Procedure?

A. No.

Q. No, I don't either. So, this decision does not prove that Guaracachi could have brought an appeal under 59 of the Law on Administrative Procedure or under Articles 167 and 169 of the Code of Civil Procedure. So, this case does not help you in that purpose.

A. No. In connection with the application of those two regulations, no, but what it does prove is that the Supreme Court did award the stay.

Q. Would you agree with me, Mr. Quispe, that there is
constant case law from the Supreme Court of Bolivia that consistently maintains that administrative acts are presumed legitimate and that the effects of these acts are not stayed.
because of the submission of appeals for stay?

A. No, I don't agree with that.

If you allow me, the statement that you have made I have read in some Supreme Decisions in the preliminary process.

It's just a reflection of what the Law on Administrative Procedure states. But this is not something that is uniform, so I have not found many decisions. I haven't really done a lot of research. Sometimes the stay has been accepted.

Q. You said you have not found many cases. More than one?

A. More than one of what?

Q. In cases where the stay is awarded.

A. I have only found one.

Q. Well, you said before, in many cases--at the beginning of your testimony, in many cases, a stay had been granted, and then you said in some other cases the stay was granted. Are you changing your testimony?

A. I said "many cases" when I was talking about cases that were brought as administrative proceedings.

Q. Yes, but I'm talking about the courts now. The only example that you found where an administrative act was stayed
22 was the case that you annexed to your statement.

23 A. Yes, that I have found, yes, because I don't follow up every single Supreme Decision that the Supreme Court issues every single day.
18:56  1 Q. Yes, but you're here to try to explain to us how this
2 works. This is the purpose of your statement before this
3 Tribunal.
4 A. Yes, yes, of course.
5 Q. I'm going to ask you to please look at CL-187
that's
6 behind Tab 5. This was one of the cases that you submitted
7 to Respondent's counsel. Do you remember that before you said
8 that there was a research that you made, and you
communicated
9 this to Respondent's counsel. Was this one of those
decisions
10 that you submitted to Respondent's counsel?
11 A. Yes, it's possible. I don't remember exactly, but I
12 think so.
13 Q. Okay, yes, very well.
14 This document was annexed by the State of Bolivia
as
15 one of the three cases that they included as RL-142, and
16 was annexed to their Rejoinder.
17 MR. MERIZALDE: Yes, it was also submitted by you
as
18 the new exhibits.
19 MR. BLACKABY: Yes, that's correct.
BY MR. BLACKABY:

Q. You were annexed—you said that you were annexed first, but there were three different cases, and we didn't really realize.

But, didn't you consider that it was important to Annex this case to your Statement so we could have a general
18:58 1 view of--on the matter of stay?

2     A. Yes, I said this before.

3     In my Second Statement, I had talked about the

4 possibility of requesting the stay and for the--for the stay to

5 be granted. And then I showed a case where the stay was

6 awarded.

7     Q. So, you didn't include this because this was

8 negative for the purpose of your Statement?

9     A. Yes, this did not support my Second Statement.

10     Q. This is a decision by the Supreme Court in

connection with a request for stay of the effects of an administrative

act that was adopted by SIRESE; is that correct?

12     A. Yes, correct.

13     Q. Now, in the case of Guaracachi's challenges, this

15 also an appeal that involved SIRESE; right?

16     A. Yes.

17     Q. Could you please read the third whereas clauses, the

18 third whereas clause that says "that the administrative

act."

19     A. That the administrative act has a number of natures:
20 Legitimacy that makes it valid if it's not declared null by a
21 competent authority; second, its performance that has an
22 obligatory force since its notification; and, therefore,
23 administrative resolutions cannot be challenged by a
24 contentious action. This has been stated by Supreme Decree
Q. So, here they rejected the request for stay; correct?
A. Correct.
Q. Would it be correct to say that Claimant wanted to find protection under Article 167 of the Code of Civil Procedure; is this correct?
A. Yes.
Q. And under Article 59 of the Law on Administrative Procedure; correct?
A. Yes, correct.
Q. These were the two articles that you made reference to in your Second Statement.
A. Yes.
Q. What was the conclusion of the Court?
A. What the Court said that the bringing of the claims does not suspend, per se, the administrative act.
Let me clarify, sir, if you allow me. Each case is a specific case. I understand that the Supreme Court has to assess the circumstances of each case to either grant the stay.
21 or to reject the stay. So, I understand that the Supreme Court
22 has issued not only this decision but other decisions to which
23 we made reference. Sometimes the stay was granted,
sometimes
24 it was not granted.
25 When I talk about—when I talk about 167 and 59(2),
well, I don't say the Administrative Court always grants the stay.

Q. But this is a request for Precautionary Measure?

A. Yes, but this doesn't mean that because we bring a case to the Court that we are going to suspend administrative action.

But Line 3 says the effects of the administrative resolutions challenged cannot be stayed by the bringing of the Court action, and this is what the Supreme Decision said. This is not saying--and I don't know of any other Supreme Decision that says this--Article 167 and 169--well, that the Supreme Court can never stay an administrative act.

Q. Yes, but it also says that the Claimant, the company, cannot find protection under Articles 167 of the Code of Civil Procedure or Article 59 of the Law of Administrative Procedure; correct?

A. Yes, correct.

Q. Before we move on to the next item, you're saying that each case is different, so the Supreme Court has to analyze it again.
A. They have to assess the case.

Q. Would it be correct to say that, in this decision, the Supreme Court is supporting their decision on their case law?

If we look at the last sentence of the paragraph that we read together, that reads as understood by the Supreme Court in
Supreme Decision Number 038 issued on April 2nd?

A. Yes, but they're saying that the presentation of the claim does not stay the Act.

Q. Now, let's--next case, next case law, that would be Number 6. This is another decision by the Supreme Court; correct?

A. Yes.

Q. And here there is a request for a stay on the performance of an administrative act, so here it says that the full body of the Court and the request of a stay, so this is not a request, this--of an automatic stay. This is just the request, and this also involves SIRESE; correct?

A. Yes.

Q. And the reasoning that we see in this third whereas clause is identical to the reasoning in the case that we just saw.

So, here it says that the administrative act has several characteristics such as the legitimacy, and this is identical to the other case. And I was also reading the other case; it is important to compare, and the language identical.

A. Once again, the same paragraph that you're reading
also indicates that effect of the administrative resolutions that were challenged cannot be suspended even given the administrative claim.

So, once again, they add that comment to the decision.
Q. This is a request for a stay. This is a specific request for a stay. And after that reasoning, the Tribunal says that, Therefore, as a consequence of that reasoning--

was the Court sitting en banc? The Court sitting en banc the request of State given the challenges.

So, the Supreme Court also considers that the reasoning is applied to a request for stay, that is expressed in specific.

A. The reasoning used in this case is the fact that it is an action that can be performed. It is assumed to be legitimate, and the stay is rejected.

Q. And if we go back to the previous paragraph, the Supreme Court also considers that they're following the settled case law of the Court sitting en banc.

A. Yes.

Q. And they mention another three cases under the same guidelines--two cases.

A. Yes, you're right, two cases.

Q. Let's quickly move on to the next case, CL-189.
21 is another decision by the Supreme Court, request of stay. So

22 this is a request of stay of the effects of an administrative

23 resolution that was issued by the Superintendency of

24 Hydrocarbons.

25 A. Correct.
Q. So, in this case, the stay request was also rejected?

A. Yes.

Q. And the Supreme Court also resorted to the same settled case law in connection with the possibility of suspending or staying the administrative act.

A. Yes, I can read it, but it is very similar.

But this is what I'm telling you. The Supreme Court may assess several cases, study several cases, and in the cases they decide that stay does not--is not right, and they can also get fine protection under the other case law. But it doesn't mean that the stay is not granted in any case. I understand that they may have done it once, and the stay may be granted.

Q. But every time we collect various decisions, we also see a decision to the contrary that is unfounded. And this was also rejected based on Article 59 of the law--that is to say, support was rejected in Article 59 of the administrative law.

PRESIDENT JÚDICE: Dr. Blackaby, how much longer do you need?

MR. BLACKABY: May I finish in the next 10 minutes?

10 minutes, David?
Q. We're going to continue with this analysis. We're going to devote another 10 minutes on analyzing the case law, and now we have devoted a long time to technical issue, but it's easier to get enthusiastic about these legal issues for
Could you look at Tab 9. CL-191. I would like to know if you could review it quickly and confirm if that was one of the decisions that you provided to the representatives of Bolivia, but you did not annex to your own Statement.

A. I do not remember the numbers of the resolutions I gave them; I may have given them three. This might be one of them.

Q. Yes. You said that you provided three, and this was one of them because this was annexed by Bolivia as part of this.

And there the Supreme Court also rejects a request for a Precautionary Measure; correct?

A. Yes.

Q. Of the effects of the Administrative Act as adopted by the Ministry of Labor; correct?

A. Yes.

Q. And if you can look at this sentence where--right before the conclusion where it says por (lo) tanto,
the--wherefore, it says the Court sitting en banc of the nation

rejected the request of the--to stay the effects of the

Resolutions challenged with this Precautionary Measure.

A. So, my reading is different.

In the case of Article 120 or Article 59 of the

procedural law, here it says that it does not encompass the
19:10  1 jurisdictional body.

2 Q. And you thought that that was a decision that was
3 important enough to convey to the lawyers of the other Party
4 but not to attach that to the other—to your Statement

because

5 you considered that this was negative; right?
6 A. I already told you several times, but this is it

not

7 connected to this case. All of the cases, in my Statement I
8 said that it can be done. That's the reason why I have
9 attached the decision of one case that showed a stay, and it
10 has a very important consequence for the represented Party.
11 So, the possibility of not to present a request for stay may
12 have—does have an important impact on the case that I
13 represent.

14 Q. Now, let's move on to Annex 2 to your statement.

Your

15 statement.

16 A. Yes.

17 Q. That is at Tab Number 2.

18 A. Tab 2.

19 Q. I understand that all of the cases in connection

with

hydrocarbons and electricity that have not been decided are

as
representative of the Government; correct?
A. Yes.
Q. So, I imagine you have a lot of work?
A. Well, that is part of my work.
19:11  Q. Part of your work?

A. Yes.

Q. So, I was complaining about my 15 or 20 cases, but you have much more.

So, I counted 167 pending cases in the electricity sector. I was not quite certain about the meaning of some things, for example, when it talked about the prescription of the instance, but are you aware that here only one case had judicial stay by the Supreme Court of an administrative decision?

A. I don't know whether that is the case or not. I have not reviewed the judicial processes. And you need to understand that, in most cases, processes are about to be decided. That means that they are still undecided, and the processes are part of a file.

Q. Don't you think that in this case, since this is a case about electricity, it would have been interesting to look at the stay awarded by the Supreme Court?

A. Well, but as you said, there's over a hundred cases, and this would have taken me a long time.
Q. Well, I would like to move over now to--I would like

22 to look at Article 8. And you already explained the

23 consequences of this Article.

24 This was published, I understand, by the Association

25 of--by the bar, sorry.
A. By the bar in La Paz, but this is my own publication online. This is like publishing on Facebook.

Q. But I would like for you to confirm that here you consider that the relevant names for an administrative case are related to 178 to 180 of the Civil Code; right?

A. Yes.

Q. And those are--sorry, 778 to 780, and those are in connection with the claims presented by Guaracachi?

A. Yes.

Q. And do you think, in connection with this Article, that it would be important to refer to the stay and refer to 167 and 169 of the civil proceedings procedure law?

A. Well, I think that the object of my work is to analyze the effect of bringing the claim.

So, back then, my focus was to just the claim itself. Does it stay the performance of the act or not? As we have seen in some other jurisdictions that can be compared to this one--and if you allow me, on the regulation for the administrative profession here, Page 5 in this document, I indicate the following: In the case of the legal profession
and the challenges in connection with Measures that have to do
with the legal profession--and here we include challenges as
the only way to modify a decision under this claim, and this
law that has been regulated by Article 139, and this is the
one

that through Article 39 authorizes through the administrative
proceeding. And in all of the cases that we have cited, we should--

Q. I am lost.

A. This is Page 5 of the document--of the article.

Q. But I was reading your Statement, not your article.

I wouldn't like to interrupt you, but this was a very simple question: Whether you had referred to 167 or 169 of the Code of Civil Procedure.

A. Yes, but my answer is that the object of this Article was to analyze the effect of bringing the claim rather than its--the whole process. And I have not--here I have referred to the analysis of the regulations, and also the constitutional case law, on the one hand; and, on the other hand, you should also take into account, and I had already mentioned this when Dr. Merizalde asked me the question, in 2008 I was a Master's degree--this is an academic article. Therefore, the other articles are the result of experience.

Q. In your Third Statement, at the very end, you are referring to the challenges to a Supreme Decree. I would like
to know whether you are indicating that here there is any additional claim or remedy that Guaracachi could have used. This is Paragraph 23 in your Statement.

A. So, this is in connection with the challenges to a Supreme Decree. And once again, you should consider that I understand that here we are questioning--or they are
questioning application of Spot Prices.

No, that is not the Spot Price. Sorry. What do you call this?

Here it reads that the lawyers of the State have asked me to explain the Bolivian administrative law, and if there is the existence of any remedy to request the four months or execution of a Supreme Decree. Any--any remedy.

So, I am referring to the possibility to present a request or to apply for a remedy.

Q. But my question is: What is the connection to this case? So, what do you have to say about--what is the relationship to Guaracachi?

It says that Guaracachi should have used constitutional law for the Administrative Resolution not to be applied, and it also refers to the decision by the Supreme Court, and also to bring a case before the Constitutional Court.

I fail to understand the meaning. So, just so that it is clear, I wanted to ask you.

A. Well, this is in connection with Paragraph 22. The
21 reason I included this analysis, at the request of the lawyers,
22 they asked me whether in Bolivian law there is any remedy of
23 that sort.
24 Q. Well, instructions are one thing, but to set the
25 record clear, you're not saying that there was a special remedy
to stay the effects of a Supreme Decision.

A. No, I didn't say that.

Q. And there is no other performance action that could be applied in this context?

A. I did not say that Guaracachi could apply this to request the nonperformance or the non-application of a decree.

Q. We're coming to the end.

Let's assume, Mr. Quispe, that Guaracachi gets the Supreme Court to issue a decision on both processes that are still pending for over five years, and that those decisions favored Guaracachi, and the Supreme Court decided to nullify the decision. So, the effect of this decision would be the nullification of the Administrative Act. Well, this would be the annulment of this administrative act.

MR. GARCÍA REPRESA: This is an objection because I was told that we cannot present a hypothesis to the fact witness, so I'm requesting the same type of treatment.

MR. BLACKABY: But he already indicated that he's not a fact witness and that he was instructed to give his opinion about certain remedies that are available under the Bolivian law.
He's not independent. But as a person that is contributing his expertise to the arbitration, I think that it is my right to this ask this question to a Bolivian lawyer that has nothing to do with the facts, and I have a right to ask
about his opinion about his own statement that is Bolivian law.

PRESIDENT JÚDICE: The Tribunal would rather not go into this debate, whether this is a fact witness or an expert;

but the Tribunal understands that it could be useful to hear Mr. Quispe's opinion, who is a Bolivian lawyer, and the only one we are going to have here. And we always know that legal opinions can be discussed. This is--can be argued. This is just an opinion, a legal opinion, and we are not compelled to agree with you, I'm sorry.

But we thought it would be useful to listen to you, so, please you can ask, and you can answer.

BY MR. BLACKABY:

Q. To repeat the question, assuming that the Supreme Court decides on other pending proceedings and that those decisions favor Guaracachi and the Supreme Court decides to nullify decision 40/2007, would you confirm that the effect of such a decision would be the nullification--the annulment of the Act?

A. Well, it depends.

PRESIDENT JÚDICE: Well, that's the way it usually is.
THE WITNESS: It depends on the request. It depends on the sequence of administrative acts. Usually, the Supreme Court could decide the annulment of the Act, and also the Act that decides on the other challenge presented to the higher body. But it could also be
that because of due process, only the--only the appeal to a
higher administrative authority is annulled.

BY MR. BLACKABY:

Q. So, in the case of Guaracachi that you have studied in
detail, there is a request; correct?
A. Yes, there is a request for annulment.

Q. Finally, I would like to know if you consider five
years--and this is an objective question, as a legal person-
five years to get to a First Instance Decision, in the
judicial--via the courts is a reasonable timeline?
A. Well, first of all, this type of proceeding is
only--this proceeding by the Courts only has one instance.
Q. I am just asking you whether five years to get to a
First Instance Decision by a court is reasonable.

PRESIDENT JÚDICE: This is not a question as a lawyer
but as a witness. I think that all the of the lawyers have
different opinions.

MR. BLACKABY: So, I'm going to withdraw the question,
and we are going to conclude now your cross-examination. I
thank you for your time, your patience, and I don't know if
the other Party has any questions.
PRESIDENT JÚDICE: Are they long or short?

MR. MERIZALDE: It's a pleasure, Mr. President, to tell you that we don't have any questions.

QUESTIONS FROM THE TRIBUNAL
ARBITRATOR VINUESA: I have a very brief question.

And if you answer, I will ask you a second question—if you answer yes, I will ask you the second one.

Your statements are prior to the later developments in the Supreme Court of Justice for these cases that we are referring to, so my question is whether you had the opportunity to know what happened between your last Statement and the current date.

THE WITNESS: There hasn't been any change.

ARBITRATOR VINUESA: So, you saw them. So, you know what is going on.

Well, then you might be in a position to answer my second question: What is the status of those cases? Just to know the situation.

THE WITNESS: Well, the cases are from 2008, of April-June 2008, and that's when both claims were brought before the courts. And in November-December, the decision--the cases were ready to be decided, and they are just waiting for the right time because there is--they're waiting because of their backlog, so that the decision is finally issued. So,
they have been waiting since 2008.

ARBITRATOR VINUESA: So, there hasn't been any change in the situation?

THE WITNESS: And there couldn't be because the proceeding before the courts takes time, and there couldn't be.
PRESIDENT JÚDICE: Thank you very much for your presence here. It's always a pleasure to have a lawyer as a witness. And if you want to stay tomorrow here, you are invited to because you have concluded with your statement. Thank you very much for your cooperation.

(Witness steps down.)

(Whereupon, at 7:29 p.m., the hearing was adjourned until 9:30 a.m. the following day.)
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.

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DAVID A. KASDAN