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)

In the Matter of Arbitration Between: GUARACACHI AMERICA, INC. (U.S.A.) and RURELEC PLC (UNITED KINGDOM), Claimants, and PLURINATIONAL STATE OF BOLIVIA, Respondent.	PCA Case No. 2011-17 Volume 6

HEARING ON THE MERITS

Tuesday, April 9, 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 2:08 P.m. before:

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MR. MANUEL CONTHE, Arbitrator

PROF. RAÚL EMILIO VINUESA, Arbitrator

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P R O C E E D I N G S

PRESIDENT JÚDICE: Good afternoon.

Then, Mr. Blackaby, you have the floor for your final pleading. Thank you.

CLOSING ARGUMENT BY COUNSEL FOR CLAIMANTS

MR. BLACKABY: Thank you, Mr. President, Members of the Tribunal, esteemed colleagues of the Plurinational State of Bolivia.

In the course of the last week, Bolivia's defenses have evaporated one by one as they have been exposed to the focus of serious examination. The bare facts are what remained. Bolivia seized control of the country's largest electricity generator. This was a mature power generation company with over 500 megawatts of installed capacity representing a market share of over 30 percent with a long history of profitable operation; yet it was seized for $0 to the equityholders.

Bolivia's fig leaf defense is that the Fair Market Value of the controlling shareholding was zero, and this was based on an alleged "independent" study by a consultant to which Claimants have had no access until just four weeks ago. Let's recall how the exercise undertaken in that independent study was described by my good friend Dr. Silva Romero in the opening, as you can see on Slide 3. And you will see, he says that the value will be established as a result of a valuation

14:12 process to be realized by an independent company contracted by ENDE, and then at the end of the quote he says, "Remember that the valuation must be undertaken by an independent company."

Now, the Tribunal will recall that the Claimants were not allowed to participate in the selection of the Expert nor to review or comment on any draft report or conclusions. It's now clear why the report was hidden from view until so late. Its function was very different from an objective analysis of value as described by Bolivia. On its own terms, it was simply a confidential, and I quote, "strategic element," for Bolivia to use in settlement negotiations with the Claimants, a description that could not be further from an objective, impartial study.

As you can see from the document itself, and I read in Spanish: "Consider that this is a confidential document of the Bolivian Government. The portions or the full document should never be revealed except for via a judicial requirement. This document is a strategic element in negotiations with Guaracachi America, the former owner of Guaracachi. The values herein contained are not subject to the approval of Guaracachi America because they can be a disadvantage for ENDE."

So, this is a secret report commissioned by Bolivia to helping them in their negotiations with Claimants. But Bolivia has so little faith in the exercise undertaken by Profin that it does not even seek to defend the conclusions that it made in

14:14 this case. But the Profin report is the only contemporaneous support for a zero value. It is a subjective report intended as a strategic element for Bolivia and has now been abandoned by Bolivia, knowing that it will be subject to a detailed scrutiny in the Oral Hearing.

So, the exercise of valuation must begin anew in the context of this arbitration. Subject to a series of disparate and desperate jurisdictional objections I will shortly discuss, there is an agreement between the Parties on the need to compensate for Fair Market Value on a willing-buyer basis, and you can see there an extract from the opening speech of Bolivia by Mr. García Represa where he confirms that one of the points in agreement between the Parties is the method of calculation, the standard of the willing buyer. And that, Members of the Tribunal, is the principal scope of the exercise entrusted to you in this arbitration.

Now, you heard a lot of discussion about many different facts, but when all is said and done, much of it is irrelevant to your task. The investments and disposals are in the accounts and form part of the valuation exercise. There is no great debate upon what the investment figures are. The liquidity issues are jointly conceded to be irrelevant for valuation purposes. The combined cycle is up and running.

But make no mistake: The Guaracachi that was seized from the Claimants is not a zero-value company to equity. One

14:16 need only look at the 2011 results to realize that. Exhibit C-224 as you can see from the slide. On the back of Claimants' investments, remember, there have been no new projections since nationalization. Up to the end of 2011, profits were $12.6 million in 2011.

Now, the purpose of a final hearing is for the Tribunal to have the benefit of interacting with the witnesses who lived the facts relevant to the Dispute and to test the credibility of the experts presented by the Parties. So, let's recall the witnesses that you have met over the last week.

Claimants supplied five witnesses fact which are listed on the screen. Each of these witnesses lived the facts relevant to the Dispute in a personal and direct manner.

You heard from Mr. Earl, the CEO of Rurelec; Mr. Aliaga, the General Manager of Guaracachi from 2004 to 2010, someone who knew the business intimately both before capitalization--sorry, knew the business intimately and had been with the company for many years; Mr. Blanco, the Financial Director; Mr. Andrade, the Business Manager; and Mr. Lanza, the Project Manager responsible for the combined cycle. Each of these witnesses told you in detail about the facts as they lived them covering all relevant times and all relevant details.

Bolivia provided just three witnesses. In fact, there were just two witnesses of fact. These were employees of

14:17 Guaracachi who were lucky enough to survive the nationalization: Ms. Bejarano, the internal auditor of Guaracachi; and Mr. Paz, the former analyst of Guaracachi, who is now its General Manager. Both are presumably grateful to Bolivia for saving their positions.

Ms. Bejarano was the only witness presented by Bolivia who appeared to have direct personal knowledge of the issues she was discussing. It had appeared she had agreed to give evidence without even being informed that she would be asked questions by opposing counsel. Spanish transcript, Day 4, Page 1026.

Now, this was either an oversight by Bolivia's counsel team, which hardly seems credible, given the level of our opponents, or a ploy to get her to provide a statement without explaining the consequences. Whatever the situation, it was clear she had been placed under enormous pressure by Bolivia to testify against her former colleagues.

Coming to Mr. Paz. The nature of Mr. Paz's role as an analyst for Guaracachi from 1995 to 2010 was to run studies about electricity demand or any other role requested by his superiors, as you can see from Slide 10.

Mr. Paz was neither a director nor in the management role for the entire 15-year period before nationalization. He, therefore, had no direct and personal knowledge of any relevant pre-nationalization fact. His knowledge had simply come from a

14:19 review of the record of historic documents in this arbitration undertaken since his meteoric, but apparently unwanted, series of promotions to become the fourth--yes, the fourth--General Manager of Guaracachi since nationalization.

Mr. Paz was the coverall, the factotum witness, who claimed to have personal and direct knowledge of every issue in the arbitration. However, on cross-examination, he concluded that, firstly, he had no personal and direct knowledge of any investment decision or any disposal decision made by Guaracachi prior to nationalization. This was the responsibility of others. You see that on Slide 11.

He said, in Spanish: "My question was whether you participated in the decisions or--in decisions of investing or divesting."

He replied, "No, because it didn't correspond to my rank."

So, he wasn't involved in investment decisions. Okay. This turned on to the question of the question of the combined cycle. He had no personal and direct knowledge of the progress of the combined cycle until after nationalization, since this was the responsibility of Mr. Lanza. That's clear from Slide 12.

I asked him: "Were you aware of the progress of the combined-cycle project?"

PRESIDENT JÚDICE: You said Mr. Lanza?

14:20 MR. BLACKABY: Sorry, Mr. Paz. I apologize. This is Mr. Paz's evidence, yes.

I then asked him--I asked him whether or not he was aware of the different graphs showing the advance of the project. He said, "Before or after nationalization?"

He responded, I asked before nationalization, and he responded no. And when I asked him whether he was familiar with a particular program before nationalization, he said, "No, I was in charge of the carbon credits." Slide 12.

So, no knowledge of investment, no direct knowledge of the combined cycle advancement, and thirdly, no personal and direct knowledge of the financial status of the company shortly before nationalization. And why? Because he explained that that was the responsibility of Ms. Bejarano. That's on Slide 13.

I asked him: "I understand from your evidence that you're not speaking of the financial situation of Guaracachi; is that your evidence?"

He replied, "Yes."

"And is that because it wasn't up to you?"

And he answered, "Yes, because in accordance with the lawyers, they told me that those themes would be dealt with by Ms. Bejarano."

So, with little or no direct personal of the relevant facts, Mr. Paz then changes hats and is then used by Bolivia as

14:22 an expert to respond to the report of Dr. Abdala. The problem, as he readily accepts, is that he's not independent of the Party that seeks to rely on his expert evidence. On the contrary, he was appointed to his present post by the Bolivian Government through the vote of ENDE, whose Directors are nominated by various Ministers. And you can find that in the Spanish transcript, not on the slides because the extract was rather long, but the Spanish transcript Page 1190, Line 8, to Page 1191, Line 19.

Now, in this context, the Tribunal needs to be very careful. In light of his dependency on the Respondent, Mr. Paz's expert evidence has no more value than if it was simply alleged or pleaded by Bolivia's counsel. Bolivia seeks to dress it up in a statement to give it the appearance of independent expert evidence, but don't be fooled. It's simply Party advocacy that Bolivia seeks to elevate to something more by including it in a written statement.

Bolivia enjoys playing this game of submitting Expert Statements from individuals it controls. The Second Statement of this nature was the extraordinary series of comments from Mr. Quispe, a government lawyer in eight out of the 10 years of experience he has had since graduation.

What is more, the Government lawyer whose role and duty it was to defend the position of the Government in cases involving the electricity and hydrocarbons authorities before

14:23 the Supreme Court, his evidence is no more independent than if the Attorney General himself submitted a statement to this Tribunal and expected it to be given more weight than mere Party advocacy.

Mr. Quispe openly and correctly concluded that he was not independent of the Government, which you can see on Slide 14.

He also conceded he had no personal and direct knowledge of the facts in the case, as he said in Spanish, "I had no knowledge of the facts that I am including in my statements."

The Tribunal will recall Mr. Quispe's role as a party advocate was blatantly revealed in the course of his cross-examination. He openly admitted that he had been instructed to investigate the issue of alternative remedies and had provided three authorities on the question to Bolivia's counsel, one of which he considered favorable and the other two which were clearly adverse to his thesis. He only included the favorable decision in his Third Report and made no reference to the other cases.

Mr. Quispe saw no problem in this, saying that he had only been instructed to discover if a request to suspend was possible rather than realistic, and so it only annexed the positive decision.

Enough said. There is neither fact witness nor

14:25 independent Expert, his statement is not evidence at all, but simply Party submission.

Turning to the experts, it was clear from what happened yesterday that Dr. Flores is not an electricity Expert. He accepted that. He turned to Mr. Paz for his assumptions to project future revenues. Now, Mr. Paz, as we just described, is not independent.

Now, Mr. Flores said he discussed the assumptions for his model with Mr. Paz, although he never suggested that this was the case in his reports. But since he didn't understand the electricity market when he started, what was that conversation like? The extent to which he was lost is proven by the fact that he didn't even understand that he had been given 2008 Spot Price projections to measure the actual impact of the Spot Price measures on Guaracachi. 2008 projections. He didn't check because he had no idea how to check.

Now, Mr. Paz was quite happy keeping him in the dark on that one since Mr. Paz had, in fact, asked him for projections and then mischaracterized them.

Mr. Flores compounds the problem by seeking to build a discount rate out of all proportion with reality. The 27 percent cost of equity not notwithstanding an agreed 7.88 percent cost of debt. He did that by adding every adder and every multiplier that the academic community has ever theorized about, even though nobody uses them in the real world. And he

14:26 1 didn't check. He didn't perform a single benchmark analysis
2 either on the discount rate or on the resulting value, because
3 he knew what the result would be. Any comparison would prove
4 him wrong.
5 So much for the witnesses. So, let's turn to the
6 issues in the case and see where they stand for weeks since the
7 hearing started.
8 Chronologically, let's quickly start with
9 pre-capitalization. This is not relevant for your decision,
10 and so little time was expended at the hearing on the topic,
11 but one thing is clear: Capitalization took place because the
12 Government and ENDE did not have access to the Funds to expand
13 the system on their own.
14 Bolivia focuses on the condition of existing plants
15 and equipment. That's not relevant. The question was not what
16 ENDE had, but rather what it would be capable of doing when
17 faced with the new demand. Capitalization was looking for new
18 investment, and that is what it achieved.
19 This was achieved through aggressive marketing of the
20 new legal framework internationally, and in particular the
21 Electricity Law. And we saw examples in the opening of the
22 Florida roadshow that was identified to achieve that purpose
23 and the 32 international electricity companies that attended.
24 The system was designed to ensure that it would be
25 self-financing, unlike the previous system. One of its central

14:27 tenets was drawn from the successful privatization programs in Chile and Argentina. A wholesale electricity market based on each supplier receiving an equal payment depending upon the marginal cost of electricity, the cost of the last unit dispatched.

Another important element of the Electricity Law was the question of Capacity Payments which were based on the cost of adding new power to the system. Participants understood this to mean the entire cost of both the turbine and the related costs to link it to the system, and that was how the matter worked out, for the fixed 20 percent payment for complimentary costing paid since 1996 as explained by Mr. Andrade last week. That you can see on Slide 16, the extract from the transcript.

Based on this framework, GPU, as the winner of the bid for Guaracachi, established a special entity to hold the investment known as Guaracachi America. This was an express requirement of the Bidding Rules. Indeed, Mr. Earl, who was involved in that process at the time, described the establishment of a holding company as "a requirement of the capitalization process." That's at transcript Day 2, Page 300.

The Government understood that such entities would be controlled by the parent corporations that had been successful in the bid and which would have the necessary expertise and access to capital. The important issue here is the Government

14:29 1 was aware of the creation of Guaracachi America from the very
2 moment it was constituted because it had required that it be
3 constituted.
4 Based on this new Regulatory Framework, which was
5 designed to encourage new investment and result in the
6 decommissioning of old investment that would no longer be
7 called upon to dispatch, Guaracachi began its significant
8 investment program unequaled by the other capitalized
9 electricity companies.
10 Now, it's unquestioned that with the inclusion of the
11 combined cycle, Guaracachi added over 320 megawatts of high
12 efficiency installed capacity to the national grid. It is
13 unquestioned that during that same period it decommissioned
14 approximately 50 megawatts of inefficient installed capacity.
15 The net gain is around 270 megawatts of high efficiency
16 installed capacity, and you will recall our Slide 17 which
17 shows the impact of that was as investments were made and
18 investments were decommissioned.
19 Bolivia seeks or sought to dis-insinuate that the
20 decommissioning of inefficient units or what it calls
21 disinvestment was somehow improper. This could not be further
22 from the truth. A generation company has a license to operate
23 certain units, and it cannot add new capacity or decommission
24 old capacity without seeking and obtaining approval of the
25 regulator.

14:30 The first point is thus a simple one: Guaracachi did not decommission any units without the approval of the regulator. The regulator receives the opinion of all affected participants in the system and makes a decision.

On certain occasions, the regulator denied Guaracachi's request and units remained. For instance, in 2006, Guaracachi requested that it be permitted to withdraw the two inefficient Worthington engines, ARJ-5 and ARJ-6, and replace them with three more efficient Jenbacher engines. The regulator approved the request in 2007, and the Jenbachers were installed. Then the regulator asked Guaracachi to keep the Worthingtons in service for line stability purposes until 30 April 2010, the day before the nationalization.

And in the examination of Mr. Earl on Slide 18, you will see an example of that when he talked about that they were trying to take out the two Worthingtons from 2008 onwards when they installed the new Jenbachers, but they weren't allowed to take them off the License because they were being used for line stabilization.

Mr. Earl's recollection is fully supported by a resolution of the Superintendency of Electricity, as you can see on Slide 19. You can see here that the CNDC was explaining the necessity of keeping ARJ-5 and ARJ-6 with the object of covering probable rationing or problems of voltage regulation in the southern area.

14:32 And how does Mr. Earl describe this? Well, what was the business? He was permanently looking to have efficient machines, but in the context of transmission line constraints and CNDC dispatching machines meant that some of the old machines remained available to deal with those issues, but the strategy, the company strategy, which was amply shown by the desire to try and get rid of the request to try and get rid of some of the older machines was to replace those old machines and to have the highest efficiency thermal units in the country.

And finally, on Slide 21, you can see exactly where capacity was added, exactly where it was withdrawn, what the impact was in terms of megawatts, and in the right-hand side the regulatory approvals for either the addition or the withdrawal of capacity. And the net gain of installed capacity is 266.8 megawatts.

Okay. The combined cycle. Bolivia seeks to raise questions in the mind of the Tribunal about the state of Guaracachi's biggest investment, the combined cycle project at the date of seizure. Yet the evidence is overwhelming. The project was virtually complete and ready to be fired up for the benefit of the Bolivian people. Let's recall the facts. I won't repeat the benefits that combined cycle brings to Bolivia. That's been well rehearsed. The combined cycle is now in full operation and at the top of the dispatch order for

14:34 thermal units, and you can see on Slide 22 in the projections of the CNDC with regard to the effective cost that the combined cycle units, GCH-9 and GCH-10, have the lowest costs which are in the column highlighted on the right-hand side and the consequences on the top of the dispatch order for thermal units.

Mr. Paz made it clear that Mr. Lanza was Guaracachi's Expert in installing electrical energy generation projects such as the combined cycle and the man at Guaracachi with the detailed knowledge of the combined cycle. That's at Spanish transcript Day 4, Page 1160, Line 23, not on your screen.

The facts speak for themselves. Mr. Lanza was not dismissed on nationalization because he was needed for the project. Indeed, he was promoted to General Manager of Guaracachi, if you recall. His evidence on the question of the completion of the project is highly credible because it spans pre-nationalization and post-nationalization, and the evidence pre- and post- relied upon by Guaracachi is entirely consistent with the evidence pre-nationalization.

And you can see this on Slide 23. As you can see here, the different reports made by Mr. Lanza to the Board as to the state of progress; and, of course, the nationalization took place in May 2010. But in terms of the progress, it marched forward, and the figures are entirely consistent. All of the relevant exhibits are in the right-hand column.

14:35 Mr. Lanza, as you can see from these reports, reported to the Board on this issue very regularly. It was of great importance to the Board. No concerns were raised by the Board. No concerns were raised by the internal auditor, Martha Bejarano, on the process of the combined cycle.

Ms. Bejarano noted she had to review every contract entered into with suppliers. You can look at that, Page 1053, and found nothing untoward. Mr. Paz confirmed that he had no reason to suggest that Mr. Lanza would supply incorrect information. That's at Day 4, Page 903.

Mr. Lanza's progress reports were verified and repeated in the rating provided by Pacific Ratings, and the Financial Reports verified by the auditors. You can see on Slide 24 the Pacific Ratings report where it says clearly, "At the date of elaboration of the present report, the advance of the works is currently at 96 percent in accordance with the program."

And then, if you turn over, you have the Annual Report of Empresa Eléctrica Guaracachi at page 65, the audited account, confirming that in December 2009, the executed portion of the project was 90 percent.

Then, on Slide 26, you will see how Ms. Bejarano acknowledged that as of the 31st of December 1999, 90 percent of the total budget of $68 million had been spent, and all of the equipment had been purchased. I invite you to read the

14:37 highlighted portions. If you turn to Slide 27, as Mr. Lanza noted at the hearing, the progress was around 95 percent, had been concluded with an advance in the budget of approximately 68 million, and vis-à-vis against that was about 97 to 98 percent that had been used, and that was in May of 2010; i.e., the date of nationalization.

Yet, Mr. Paz is used by Bolivia, no doubt because as we heard earlier on, he had no knowledge of the progress because it wasn't part of his responsibility, to be used to present the document from the Electricity Authority, which was suggested that the project was only 50 percent complete. Now, the circumstances of that document, as we heard, had nothing to do with the question of the true advancement of the project. Bolivia is no different from most countries in that a performance bond is required for public works. In this case it was 5 percent of a project originally budgeted for $40 million. The math is simple. You need a project bond of $2 million. The bond had been duly purchased by Guaracachi.

When the budget for the project was increased to $68 million and approved by the Board, Guaracachi informed the regulator. That's at Paz Annex 24. However, the authority failed to adjust the formal budget and simply retain the 2 million-dollar bond that would have normally remained in place until the project was complete.

In light of the near completion of the project and the

14:39 cash constraints of the company at the time, Guaracachi opened a discussion with the regulator to seek to have part of the bond discharged. A gentlemen's agreement was reached, as described by Mr. Lanza, whereby the regulator agreed to release one half of the bond, $1 million to Guaracachi, but it had to issue a document to justify the release, and so it did so using the convenient figure of just over 50 percent with regard to completion, of course, based on a budget that the regulator knew was no longer applicable. The budget was $68 million, 95 percent of which--over 95 percent of which had been spent, and that was confirmed by Ms. Bejarano. So, this had nothing to do with reality and everything to do with releasing a million dollars to help with the cash issue, and also permitting the regulator to retain $1 million as a security vis-à-vis the completion of the project.

PRESIDENT JÚDICE: Sorry, may I put a question?

You stated that it's not different from other countries. I'm not sure if this is on the record, anything about other countries related to this kind of practice.

MR. BLACKABY: The issue with regard to other countries was the issue of placing a performance bond.

PRESIDENT JÚDICE: I just said, not the way the bond has been treated?

MR. BLACKABY: I'm not seeking to make any comment on that, just the existence of a project bond.

14:40 PRESIDENT JÚDICE: Thank you.

MR. BLACKABY: As you can see from Slide 28, Mr. Lanza's evidence on this point.

Now, there is another issue that needs to be clarified about the combined cycle, and that is the date that it was due to enter into service. As of the date of nationalization, the plant was due to be complete by 1 November 2010, and but the final phase of the project was critical, and it consisted of pre-commissioning, commissioning, training, and start-up. Don't forget a combined cycle had never been commissioned in Bolivia before. It was for that very reason that IPOL had been contracted to work closely with engineers on the ground at this delicate phase, engineers who had put in service combined cycle projects before.

Mr. Paz, for Bolivia, explained that the real Experts in this new technology were IPOL, and in particular Mr. Gerry Blake, and you can see that on Slide 29, the top side.

Yet following nationalization, IPOL received a clear message that foreign participation was no longer welcome in the project. And as you can see that with regard to questions from the Tribunal of Mr. Lanza linked particularly to the general managership of Mr. Mercado, who was outwardly hostile to the idea of continuing to work with the English.

In conclusion, it was practically impossible for the people from IPOL to go to Guaracachi to provide the necessary

14:42 assistance. As I said once again, the then General Manager Mr. Mercado believed Guaracachi could commission the combined cycle alone. And again, you can see the answers of Mr. Lanza to the President's questions on Slide 30.

That belief was misplaced. In 2010, several technical problems arose, including a problem in inclination of the generators' rotor, an issue with the seals of generator, and some bearing failures. The consequence was that the only entity capable of resolving the issues was IPOL. And so Mr. Lanza entered into contact with IPOL and eventually convinced them to come back to the rescue, and Mr. Gerry Blake finally traveled to Bolivia on behalf of IPOL in January 2011 and prepared his report which you can see at Paz Annex 59.

Following IPOL's visit, however, a number of engineering issues combined with intense weather conditions caused a short-circuit on the 30th of January. This put the project back more than a year as the generator rotor had to be repaired. As Mr. Lanza noted at the start of the project, it was one of the saddest days of his life. Slide 31.

Now, Mr. Lanza explained that had some of the engineering issues been identified earlier, the extreme weather conditions would likely not have caused the short circuit. In his view, has IPOL been involved continuously as they were expected to be, the technical problems in 2010 and the short circuit in January 2011 could have been avoided or at least

14:43 mitigated, and you can see that in Mr. Lanza's cross-examination responses at Slide 32.

The next issue raised by Bolivia is liquidity. Even before the hearing started, Bolivia had conceded that the question of liquidity has no bearing on the valuation exercise. You will recognize this Slide 33 from the opening. The only thing that mattered was debt, and the two experts agreed on the quantum of debt.

In any event, liquidity principally affected Guaracachi's largest supplier, the State-owned gas company YPFB. So, it was the State, in a sense, that was affected by this.

Ms. Bejarano, on examination, could not recall that YPFB had threatened to turn off the gas or even whether they charged Guaracachi interest on pending invoices, and you can see that Exchange at Slide 34.

She also agreed, and you can see as well that Guaracachi was in close contact with YPFB to manage the payment situation throughout this particular period. She acknowledged--again, you can see Slide 34--that monthly payments were being made against the outstanding balance. Monthly payments were always made against the outstanding balance.

It was also clear that payments to the suppliers of the combined cycle project had not been significantly delayed.

14:45 You can see at Slide 35 the latest pre-May 1 status of the budget showing that nearly all of the budget had been expended; and, if you look at the individual elements with regard to the different contractors, you will see the percentage completion of each of those elements, and that is nearly all in the 90 percent range.

Mr. Lanza was clear on this issue. In his evidence, as can you can see on Slide 36, he says, "The questions of a lack of cash that Guaracachi experienced did not have an impact on the combined cycle. We did not fail to put in place a single purchase order, and our suppliers did not delay deliveries, thanks to the fact that we managed to remain on good management relationship with them."

Once the combined cycle was online, it was unquestioned that Guaracachi's cash flow would increase substantially, and you can look at the cash flows today to see that that's the case. Indeed, both Mr. Earl and Mr. Blanco confirmed that the combined cycle were set to double the company's EBITDA, and you can see the exchange with Mr. Blanco at Slide 37 and the exchange or the words of Mr. Earl at Slide 38.

Another factual issue was the question of payment. Bolivia now appears to acknowledge that Rurelec acquired a controlling stake in Guaracachi in January 2006, and it would be very difficult for them to say otherwise, that they were

14:46 happen to have pictures taken with the British Ambassador opening new generation capacity. But it still questions whether a purchase price of $35 million was paid.

Now, let's recall the evidence on the record. There are two pieces of incontrovertible evidence on the record that the payment of $35 million was made; namely, the 2006 and 2007 Audited Financial Statements of Rurelec Plc, a publicly traded U.K. corporation subject to the rules of the London Stock Exchange, which was audited by Grant Thornton, one of the most reputable auditing firms in the U.K. Bolivia has not, nor could it, dispute the authenticity of the statutory audited accounts of the U.K. company.

In order to eliminate any possible doubt over this question, let's go over this evidence yet again. Slide 39, you have the extract from the Share Purchase Agreement, R-61. It provides for the acquisition of Bolivian Integrated Energy, which, in turn, held a 50.001 interest in Guaracachi through Guaracachi America. The acquisition would be made by Rurelec's wholly owned subsidiary Birdsong Overseas for the consideration of $35 million. Clause 3 of the Share Purchase Agreement on the screen provides that the payment will be made in different installments: 20 million upon completion, $10,000,000 within a week of completion, and two additional payments totaling $5 million in accordance with Clause 10.

So, let's look at the Rurelec 2006 Audited Financial

14:48 Statements. It says quite clearly at Note 26: "The purchase consideration for the Shares was $35 million of which 30 million was paid in cash on completion and $3 million was paid in cash in April 2006. The final payment installments of $2 million was due to be paid by 31 December 2007. This was the bit that was retained with regard to hidden liabilities.

Costs associated with the purchase of the Shares amounted to 128,000 pounds. So, this had been gone over by the auditors. They've checked all of these payments. They've confirmed in the report to public Shareholders that all this has happened. In the right-hand side, the opinion that auditors give at end of the report confirming that they've checked everything in accordance with the obligations, and in accordance both with U.K. accounting standards and international standards IFRSs as adopted by the European Union, and that the Financial Statements had been properly prepared in accordance with the company's act, 19.85, and in accordance with the IFRSs as adopted by the European Union.

Okay. So, so far we know that $33 million public paid, and we know that there's going to be a $2 million payment made next year, so let's turn to next year. Again, the 2007 Annual Report, Exhibit C-127, confirmed that the final $ 2 million installment was paid. You see there the third configuration, the figure that you see there, 1,265,000 pounds, corresponds to $2 million. And once again, the confirmation of

14:50 the statutory auditors that they've reviewed the account and audited the account in accordance with their obligations for a public company in the U.K. and in accordance with European Union and international financial standards.

Now, as the Tribunal well knows, the amount of invested has no link to the value of the company at a later date. A company can go up in value or can go down in value. The only question is, was there an investment, and here the answer is resoundingly, yes, there was an investment.

Now, the next exercise is to establish its value as at the valuation date, and of course that's the exercise that my colleague, Mr. Rubins, will take you to.

So much for the history of Guaracachi until nationalization. Let's now turn to some of the legal issues which the Tribunal must resolve. As a preliminary point, I'd like to respond to the question raised by Professor Vinuesa, who was asked to clarify how the two Claimants interact in the context of the claim, since one, Rurelec, is the ultimate Shareholder of the other, Guaracachi America. That's from Day 2, Page 358.

Our primary point is that it does not matter where the Tribunal starts its analysis of the claim. It may do so from the perspective of Guaracachi or of Rurelec. The reason is simple: The damage is one and the same. If you start with Guaracachi America and uphold jurisdiction, then its direct

14:51 loss is the Market Value of the participation in Guaracachi at the date of valuation and the related losses arising out of the Spot Price and effective-means claims. Once you calculate that amount, then that will be your damages award, and you don't need to consider any question concerning Rurelec since Rurelec's loss would be entirely satisfied by payment of the full damages award to Guaracachi America.

In the unlikely event you were to reject jurisdiction over Guaracachi America, then you would look to Rurelec. The valuation of its participation in Guaracachi is one and the same as that of Guaracachi America, and so the damages exercise is also one and the same. With regard to the regulatory measures, the losses are also the same, noting, of course, that the effective-means test is not textually in the U.K. Treaty and, you, therefore, would be imported through the MFN provision. That's if you started from looking at Guaracachi America.

If you start with Rurelec and uphold jurisdiction, then its loss is the Market Value of its participation in Guaracachi, the date of valuation, and the related losses arising out of the other claims. Once again, if you start with Rurelec, you have to look at the effective means through the optic of the Most Favored Nation Clause.

Once you calculate that amount, then that will be your damages award, and you don't need to consider any question

14:53 concerning Guaracachi America, since its loss would be entirely satisfied by payment of a full damages award to Rurelec. In the unlikely event you were to reject jurisdiction over Rurelec, then you would turn to Guaracachi America. The valuation of its participation is one and the same as that of Rurelec, and so the damages exercise is one and the same. With regard to the Spot Price and effective-means claims, the losses are also the same, unless you have rejected the access to effective means through the MFN test under the U.K. Treaty. In that context you would need to review the test separately under the U.S. Treaty for Guaracachi America.

The bottom line in all this is that there is no double recovery that is sought in relation to this claim. It simply depends on where you want to start the exercise, and you will readily see that as a consequence it may not be necessary to address all of the jurisdictional issues that Bolivia has raised depending on which entity you start with. So, let's look at the jurisdictional issues.

First, let's examine the extraordinary proposition that two investors at different levels of the corporate structure cannot bring a single arbitration, even where the claims are based on identical measures and the treaty provisions in question are wholly compatible. It's such an extraordinary proposition that Bolivia has not found a single authority either in case law or scholarly writing that supports

14:54 it.

Bolivia tries to cast question as an issue of consent. In a desperate attempt to build a case, Bolivia relies on ICS v. Argentina and Daimler versus Argentina, cases in which the Claimants has failed to comply with an express 18-month obligation to litigate before the Argentine courts under the U.K.-Argentina BIT.

First, contrary to the situation in ICS and Daimler, the Claimants here are not ignoring any express procedural or jurisdictional step that's written in the Treaty. There is simply no condition that they can point to that we haven't complied with.

Second, Bolivia's position does not concern any lack of consent to arbitrate disputes arising from its breach of the treaties. Consent by Bolivia to arbitrate disputes arising from its breach of the treaties is set out in the different clauses, and you can see the U.K. Treaty at Slide 44 or the U.S. Treaty at Slide 45. One of the options is arbitration under the rules of UNCITRAL. The consent by Bolivia has been given in these two articles.

Guaracachi America and Rurelec gave their consent in turn to arbitrate their dispute with Bolivia through a single notice of arbitration, accepting the consent to UNCITRAL Arbitration in the two articles set out in the two treaties.

So, the question before this Tribunal has nothing to

14:55 do with consent. Bolivia cannot point to a single condition of consent that has not been fulfilled. Rather, what Bolivia is complaining about is the commencement of a single proceeding on the basis of two treaties, but there is nothing that limits or conditions that right of the Claimants in the treaties.

Indeed, the Tribunal may recall in opening that counsel for Bolivia recognized that an investor can bring a contractual claim and a treaty claim through the same arbitration proceeding, and as happened in the Perenco versus Ecuador case, and counsel for Respondent considered that was perfectly acceptable, that it didn't hear any criticism of that. Counsel failed to explain what conceptual difference there is. In the Perenco case you had two different sources of rights: Contract and a treaty, but with compatible dispute resolution provisions. The Contract had an ICSID clause, the Treaty had an ICSID clause.

Consent was given by Perenco in two different instruments at two different times: In the Contract for the contractual claim and in the Request for Arbitration for the ICSID Claim. It wasn't a single instrument of consent from the Claimant.

If anything, the situation in this case is much simpler. You have two Treaties with compatible dispute resolution provisions, and expressions of consent by both Claimants in a single Notice of Arbitration. Claimants are

14:57 bringing a claim which is based on the same investment, the same measures, and on rights which are wholly compatible with each other.

The only time that additional consent is required is where there is an incompatibility between dispute resolution provisions, and that was the case in the Suez, Vivendi, Aguas de Barcelona, and Anglian Water against Argentina Case. In that case there were four investors who brought a claim under three different BITs in a single arbitration proceeding. The substantive provisions were the same, but the Dispute resolution clauses were incompatible because the U.K. investor could only access through UNCITRAL, and the French and the Spanish investors through ICSID. That was the purpose of the consent that was sought. Consent to change the dispute resolution or to permit them to be heard together.

That's the right approach. As long as the conditions of the offer of arbitration under the treaties are compatible with each other, the claims can be heard in a single procedure. In the instant case, the conditions for consent are consistent with each other, and so there is no need for separate consent by Bolivia.

Notice.

Second, Bolivia asserts that insufficient notice was given of the Spot Pricing capacity claims. There's no dispute that on the 1st of May we sent notices concerning

14:58 nationalization, and you recall that the vast majority of case law that has considered the question has held that formal notices are a procedural obligation and not a jurisdictional requirement. The purpose of a notice is to give the Parties an opportunity to settle before a claim is brought against the sovereign State. In any event, whatever you think about the notice or whether it was incorporated, well over six months has now passed without any suggestion of a settlement of those claims.

But with regard to the only cases that considered these to be potentially jurisdictional conditions, Murphy and Burlington, they are extremely different. In the Murphy Case the Claimant sent no notice of dispute at all and relied on the notice of a third party. In Burlington, the Claimant had sent a notice relating to a modification to the hydrocarbons framework through the imposition of an extraordinary payment amounting to 99 percent of certain oil price differentials, but then sought to add a wholly unrelated claim regarding indigenous peoples that the Tribunal found unconnected to the underlying Dispute.

Here the Spot Price mechanism and the capacity payment measures took place in the very period during which Bolivia was implementing an undeclared nationalization policy of the electricity sector. Bolivia states that they see no connection among them. Yet, as you can see from Slide 47, the Attorney

14:59 General of Bolivia stated to you emphatically that the Government program proposed by the Government of Evo Morales from 2006 included as one of the main concepts that were claiming by the State of the power generators. So Bolivia had a six-year plan that culminated in the expropriation of the Claimants' investment. Prior to the nationalization, Bolivia took these measures in a manner that diminished the Claimants' investment as part of a program that they admit was underway to recover power generation company to the State. The consequence of these measures was a depression of the income of Guaracachi and, thus, the value prior to final seizure. They cannot be divorced from the underlying nationalization program. If you can avoid the click, that would be helpful.

Guaracachi America. Now, let's turn to Bolivia's allegation that this Tribunal has no jurisdiction over Guaracachi America since it claims to have effectively denied benefits under the U.S. Treaty and thus evade liability for substantive breaches that had already occurred when the benefits were still in place.

Firstly, Guaracachi America has substantial business activities in the United States, and so no right to deny exists. Indeed, Guaracachi America is the Special Purpose Vehicle that Bolivia itself, through the Bidding Rules, required investors to create in order to manage Guaracachi's shares. It has held shares in Guaracachi since 1995. It has a

15:01 designated agent in the state of Delaware. It's held annual shareholding meetings in the United States. It's held Board of Directors meetings and submitted annual tax returns, among other activities.

Indeed, Profin--you will remember the extract from Profin that we looked at at the beginning--considered that Guaracachi America was the proper interlocutor for the Government for the purpose of settlement negotiations.

Substantial business activities clearly must take into account the nature of the company required to be established by Bolivia to hold the Guaracachi shares; i.e., a holding company. Guaracachi America conducted all of the substantive activities required of a holding company.

Now, in the unlikely event the Tribunal were to consider that all of Guaracachi America's substantive activities as a holding company were insufficient, we need to address the question of denial of benefits. On this second point, Bolivia's interpretation is fundamentally misconceived.

Let's first recall that in the Treaty Bolivia reserves the right to deny benefits. It does not deny benefits. It could have done. It could have followed the Dutch Treaty model and simply have required substantive business activity as a precondition for protection. It didn't do that. It's a denial of benefits clause, and you can see from the extract from the Yukos Tribunal there's a big difference and similarly from the

15:02 Plama Tribunal at Slide 48.

The question, therefore, becomes at what moment must the right to deny benefits be exercised to be effective?

We must first understand what are the benefits under the Treaty for Guaracachi America that might potentially be denied. They are twofold: First, it receives the benefit of the substantive protections: The right not to be expropriated without compensation, the right not to be treated unfairly and inequitably, the right to receive Full Protection and Security, and the right to effective means to enforce rights. They are the benefits it received under the Treaty before denial.

Second, it receives the benefit of an additional procedural protection, that it is to submit a breach of substantive protections to international arbitration.

Let's take these in turn.

Most importantly, Guaracachi America is relying on the no expropriation without compensation protection in the Treaty in relation to a nationalization that took place on the 1st of May 2010. Ask yourself: As at the 1st of May 2010, did Guaracachi America have the benefit of the Treaty protection for compensation for expropriation? The answer must be, of course, yes, it did because at that moment the benefit had not been denied.

At that time, when it had that benefit, the protection, a breach occurred, and a breach was alleged.

15:04 Guaracachi America's benefit, substantive benefit under the Treaty must inevitably have crystallized on the 1st of May 2010 because protection had not been denied at that moment.

Second, Guaracachi America is relying on the Fair and Equitable Treatment protection of the Treaty against the Spot Price measures in 2008. At the time of the measures did Guaracachi America have benefit of the Treaty protections? The answer is yes. No denial had occurred at that date. Guaracachi America's benefit under the Treaty, therefore, crystallized when most measures were passed; i.e., when the breach occurred.

Finally, it relies on the effective-means protection in the Treaty against the failure of the Bolivian courts to decide independent case at the time of nationalization. At that time again, 1st of May 2010, it had the protection of the Treaty. Guaracachi America's benefit under the Treaty must, therefore, crystallize. It had the benefit, there was an act, the act constituted an alleged breach of the Treaty. That was complete. Its claim was complete as at that date. Protections had not been denied.

To summarize, a State Party must effect--on the substantive rights, the State must effect denial before the rights have been acquired. Guaracachi America's benefits under the treaty had already crystallized before Bolivia sought to deny such benefits. Bolivia seeks to retroactively deny

15:05 Guaracachi America's acquired rights, but it's too late. The benefits have already accrued.

Now, a second benefit for Guaracachi America under the U.S. Treaty is to have its treaty breaches adjudicated by an international Arbitral Tribunal. Once again, that benefit had not been denied and was in full force and effect on the date when Guaracachi America relied upon the Offer and the consent in the Treaty by accepting Bolivia's offer to arbitrate in its Notice of Arbitration.

Now, it's quite simple. There is an offer to arbitrate Treaty disputes in the treaties. You accept the Offer through a Notice of Arbitration. That creates a binding Arbitration Agreement with regard to the disputes that you've submitted. You can't set aside that arbitration agreement by a simple later unilateral denial of benefits. The Arbitration Agreement was already complete.

Such retroactive destruction of acquired rights would also fly in the face of the very object and purpose of the treaties, which is to promote and protect investment, and it's for that reason that the denial of benefits clauses must always apply prospectively. You take away my benefit under the Treated today. Tomorrow I can no longer rely on the Treaty. Tomorrow, I can no longer rely on a new measure. But what you did to me two years ago when the Treaty was still in force vis-à-vis me and which I consider to be a breach and in respect

15:07 of which I've already started an arbitration, they're my acquired rights. I have the right to continue to seek enforcement through arbitration. And that's exactly the analysis of the Yukos Tribunal, which I highly recommend to you and you have on Slide 50.

Again, in that particular case the Russian Federation sought to deny benefits in its First Memorial, and they concluded: If that passage, the denial, is construed as an exercise of the reserved rights of denial, it can only be prospective in effect from the date of that Memorial. To treat denial as retrospective would, in the light of the energy charter treaty's purpose in the relevant treaty, be incompatible with the objectives and principles of the charter.

As in Yukos, the retrospective denial by Bolivia of benefits granted to Guaracachi America at a time when they were fully in force would defeat the object and purpose of promoting foreign investment, but there will also be a destruction of acquired rights.

And that makes perfect sense because think of the absurd situation that would happen otherwise. If you can simply deny benefits that have accrued, deny the breach of treaty that's already happened, say I'm not responsible for any of that. You wait until the entity begins the arbitration. You wait for them to plead their case. You then submit in your defense, and you say, by the way, I'm denying the rights, I'm

15:08 exercising my right. Now, there was some suggestion in Claimants' opening--in Respondent's opening speech that there would have to be an analysis. You're being sued as a State by someone. You believe that your denial of benefits has retroactive effect? You're going to exercise it every single time. Why do you want to be sued? Nobody wants to be sued. We simply exercise the denial of benefits and all of the past breaches that had occurred when the Treaty was in effect prior to that denial would be wiped off, wiped away. It makes no sense whatsoever. It would be exactly the same as if there had been excluded from the protection in the first place. The denial of benefits can only logically and in accordance with basic principles of Treaty interpretation and justice have prospective effect, and that is why the decision in Yukos is right. This is a very, very important point of law.

PRESIDENT JÚDICE: May I put a question.

MR. BLACKABY: Yes.

PRESIDENT JÚDICE: Then, from your point of view, the denial could happen until the nationalization date or until a later date?

MR. BLACKABY: You have two sets of rights. You have the rights that occurred substantively, so they would be the protections that occurred, the Spot Price measures, the nationalization--

PRESIDENT JÚDICE: That's not my question. The

15:10 question is the following. If you were Bolivia and you wanted to deny it, what would be in your point of view the last day to do that?

MR. BLACKABY: Before the Measures.

PRESIDENT JÚDICE: Before the Measures.

MR. BLACKABY: Before the measure of which you complain--

PRESIDENT JÚDICE: Not before nationalization, from your point of view, but before the Spot Price, before capacity?

MR. BLACKABY: It depends on each of the claims.

PRESIDENT JÚDICE: Depends on the claims or depends on the position with the other side?

MR. BLACKABY: It depends--you have each--if your rights are denied before anything occurs, that in that particular moment, of course, then anything that happens after that you're no longer protected, so in order to avoid liability for nationalization to Guaracachi America, the denial of benefits would have to take place before the nationalization took place.

PRESIDENT JÚDICE: Thank you.

MR. BLACKABY: Now, turning quickly to Rurelec, the Respondent persists in its allegation that there is no evidence on the record that shows that Rurelec has obtained its investments. We've already seen the evidence on that, and we also draw your attention to the Quiborax Case which Bolivia

15:11 relied on. What it does not tell you in that case is that Bolivia made similar challenges against the Claimant in the Quiborax Case concerning Quiborax's investment. They were dismissed by the Arbitral Tribunal. And why? Because unless the Respondent can show fraud or overcome plentiful evidence in support of the Claimant's case, then the Tribunal should accept jurisdiction. Here you have the audited financial accounts Bolivia's objection must, therefore, be dismissed.

Similarly, the contribution arguments are not substantive. There is no separate test under the BITs requiring contribution. In any event, a clear contribution has occurred. The only case on which they rely concerned the sale of wheat, the Romak Case, where there was clearly no substantive investment, and here there has been a great deal of substantive investment.

Finally, we refer you to our written pleadings on the question of the alleged indirect investment. You will see on Slide 51 the cases that deal with the definition of "investment," which is very broad in the U.K. and Bolivia BIT, and certainly includes any interest in the company, and that would include Rurelec's interest in Guaracachi America.

Now I will move swiftly on.

Just quickly a very small comment on expropriation. We dealt with this at length. There is no denial Bolivia recognizes it was nationalized, it recognizes what the damages

15:12 exercise has to be.

Just very quickly on the alleged issue of the Corani settlement, we wished to clarify some the conditions of the Corani settlement as set out in Slide 53. What were the conditions of that settlement? GDF Suez bought a U.S. company called Econergy in October 2008 for $62 million. Econergy had a portfolio of businesses in various energy assets in six different countries. One of them was Bolivia. The Bolivian investment was in Corani. Econergy had purchased Corani in 2007 from Duke Energy for $20 million. Corani has a single 150-megawatt plant. Compare that to the 500 megawatts for Guaracachi.

GDF Suez made no investment whatsoever in Corani between October 2008, when it invested, and May 2010, when it was nationalized. There were no pending projects.

Next slide, Slide 54, following nationalization, no steps were taken to compensate GDF Suez, so an UNCITRAL arbitration was commenced in January 2011. Settlement of the arbitration was eventually reached for the payment of $18.4 million. It won't take you much to realize that the payment of 18.4 million eventually paid was entirely consistent with the value that was assigned to Corani within the broader transaction and recall that Econergy only paid $20 million for Corani in 2007.

PRESIDENT JÚDICE: Mr. Blackaby, in this comment of

15:13 yours, you are giving meaning to the price that has been paid by the entity. Remember you were in different opinion, it seems to me, 10 minutes ago.

MR. BLACKABY: The difference is, in this particular case, between the Year 2007 and 2010 there was no investment made--no new investments made in Corani. There were no investments made between the purchase of Corani by Econergy in 2007. It then disposed--Econergy was sold as a whole to GDF Suez in 2008. There were no new investments there either.

It's very different from a situation where a company is purchased like, for example, in the Rurelec situation, which, following purchase there were huge investments made in over 185 megawatts of energy. Here, there were no investments made. This was--an investment passed from hand to hand between--

PRESIDENT JÚDICE: Shall I assume that from your point of view investment made prior to the last acquisition that by a foreign entity eventually protected by BIT should also be taken into consideration for this kind of problem?

MR. BLACKABY: No, I'm not seeking to make any broader points on damages on this point. I'm simply presenting the facts here with regard to the question of the 18.4 million settlement with regard to an asset that had been bought by another entity. I have no knowledge of the background or the financial history of Corani.

15:15 So I'm not making any damages--just to be clear for the record, I'm not making any damages points. I just want all of the facts to be clear on the record since it was raised by Bolivia as to what that is.

PRESIDENT JÚDICE: Sorry for that.

MR. BLACKABY: No, that's all. I wouldn't want to make any broader points, and I don't.

Okay. I'm going to--on the Spot Price claim, I will simply leave you with an extract from Mr. Aliaga concerning the importance of the electricity framework for investment at Slide 56. And I would like to address just very quickly here on the question that was raised by the Tribunal as to whether or not there was any question of playing the system by investing heavily in efficient baseload capacity but retaining some inefficient units and also the question of forced supply and the changes that occurred in that regard.

On the question of forced supply, it may be promptly dispensed with. The change concerning forced supply addressed the need respond to particular faults in the network; for example, bringing on peaking power unit to ensure voltage maintenance.

In this case, this supply is not a general supply to the system but, rather, a temporary supply in connection with a technical fault. In such circumstances, it's fully understandable that the peak unit does not set a price since

15:16 it's not the demand of the market that's requiring its service. The price-fixing rules affect supply and demand and are market driven, and so it's natural that forced supply not set prices nor does it allow other units to earn any profit margin. So, its presence in some of Guaracachi's plants is related to technical complaints such as voltage maintenance.

Secondly, the suggestion of playing the system is unfounded. Claimants' business model has always been to replace old and inefficient units with new efficient units. Given the tightening of the capacity reserve, this made a lot of sense from 2005.

Now, you will recall the earlier evidence we saw about our attempts to dispose of inefficient units in our requests to the regulator to do that, which, again, prove that there was no attempt by us to play the system. We wanted to get rid of the old units. But if the Government wanted us to keep the units and didn't allow Guaracachi to dispose of them, then it had to accept the consequence of its own decision and respect the price-fixing rules. It could not have its cake and eat it too.

If it wanted the economic benefit of the peaking units as insurance against black-outs, then it had to accept the consequences of its own decisions on the price-fixing mechanism established clearly by the Electricity Law.

In any event, this was not going to be indefinite benefit. When the combined cycle came online, obviously the

15:18 reliance on peaking units dropped dramatically, which is why the claim is largely a historic claim if you look at the figures.

But the claim and what is being undertaken here is a clear breach of that regime that was used to attract investment--and I refer you at Slide 57 back to the quote from the Total v. Argentina Tribunal, which confirmed that that was, indeed, a breach.

Finally, I would like it turn very quickly to the Capacity Price claim. Now, just to be clear, the only claim in respect of Capacity Prices is the breach of the effective-means protection as a consequence of the complete failure of the Bolivian judicial system to provide an effective means for Guaracachi to assert its rights. That protection is found in the U.S. Treaty at Article 24, which you can see on Page 58. And it's extended to U.K. investors such as Ruralec pursuant to of Article 3.2 of the U.K. treaty, the Most Favored Nation provision. And you will recall the leading case on this standard, White Industries V India. That's how the standard had been imported.

Now, there is no--as a consequence, no autonomous fair-and-equitable-treatment claim for the capacity measure, so Claimants have no burden of proving a fundamental change of the Electricity Law in breach of their expectations with regard to that Measure. They simply have to prove that the issue they

15:19 submitted to the Bolivian courts for Resolution has not been provided with an effective means for it to be enforced.

Now, we establish in our pleadings that the test here is entirely objective. The only question is whether the delay of the judicial system was such as to constitute a breach of the standard. It's simply irrelevant whether six years is a normal delay for the Bolivian Supreme Court to issue a single-page opinion. Why not 10? Why not 20?

As a consequence, a great deal of Mr. Quispe's statements are irrelevant. It's irrelevant whether the courts are seeking to address endemic delay or whether other Parties have suffered delays.

Here you can quite see that the administrative recourse was dealt with relatively promptly, but when the matter passed to the Courts, the pleadings were simply archived until the case takes its turn some six years later. This is not a question of an active procedure where the Court has some ongoing role in managing a process. It's the archiving of a pleaded case until its turn arrives, and the turn for this case had not affected in five years.

Okay. Now, the basic point made by Bolivia was that Guaracachi could have obtained a suspension of the Resolutions in question. The evolution of this argument was interesting. In his First Statement, Mr. Quispe described the administrative justice system in Bolivia, and it was quite clear Guaracachi

had followed the route he described in his Statement.

In the Second Statement, Mr. Quispe suggested for the first time that a suspension might be obtained by relying on certain articles of the procedural--Administrative Procedural Law of the Civil Procedure Code. No authority was annexed at all.

Finally, in his Third Statement, he annexed a single case which relied on none of the provisions he identified. On questioning, he confirmed that he did--identified three cases and that two had rejected his thesis. He was shown a number of other cases by us and acknowledged that none supported the granting of a suspension of an Administrative Act on the basis that such Act is presumed valid until struck down by a competent court. He was unable to identify a single case in over 160 in which a suspension had been granted. And that you will see on Slide 60.

And in the course of his examination, when he was first asked how many times a suspension had been granted, he said, "muchos casos"; that became, a little later, "algunos casos"; and finally became "un caso." And you can see the evolution of his evidence on Slide 61 and 62.

The true position of the Bolivian courts, based on a long line of "uniforme jurisprudencia," is summed up in the Supreme Court decision at Exhibit CL-191, which cites earlier cases with the same holding. And the holding is set out at

15:22 Slide 63 of your slides, making it quite clear that it is not possible to own obtain the suspension of an administrative Act.

I thank you for your patience. I appreciate there was a lot to get through. I would now like to hand over to my colleague, Dr. Rubins.

PRESIDENT JÚDICE: Thank you, Mr. Blackaby.

Mr. Rubins.

MR. RUBINS: Thank you, Mr. Blackaby. Thank you, Members of the Tribunal and representatives of the Plurinational State of Bolivia.

I'm going to spend the next 45 minutes or so trying to set out where we've come to in the competing models on the quantification of damages in this case. I will not be covering everything--every point on damages because I think the issues are rather fresh in your minds, perhaps compared to some of the other issues in the case that Mr. Blackaby has covered.

PRESIDENT JÚDICE: They are all fresh anyway.

THE WITNESS: They are not fresh anymore? Well, I will do my best in the time allotted. Time is short.

PRESIDENT JÚDICE: Please proceed.

MR. RUBINS: Before I go into detail, there is an important general point to make, which is relevant to damages; and that is that Guaracachi was an established electricity enterprise, and it occupied a huge portion of the Bolivian market, more than 30 percent. And while demand grew over the

15:23 2005-2010 period, Guaracachi grew with it, and it doubled its capacity, and on nationalization it still had a very, very substantial--in fact, a slightly greater--market share for larger market.

And by that time it had five years of dividend history and five years of profitability under the management that you have met and who guided the company in modernizing and expanding.

The health of the business shows in the profits immediately after the nationalization, $12.66 million, and that's, of course, without any new investment after the nationalization. That is all on the back of the investments that Guaracachi made under Rurelec's control, and that's before the combined cycle project actually came on line to increase profitability.

So, I put up this slide--which I will come back to again to talk about in more detail--it's Slide 66, so we could focus a bit today on the difference between an established utility company like Guaracachi and a greenfield project of any kind even in the same sector with respect to risks. And you will see on the left-hand side of the slide the typical risk factors and the comparable situation on the right side for a greenfield project.

A utility company has multiple assets when it's established, just like Guaracachi did; whereas, a greenfield

15:25 project you're talking normally about a single asset. Has--a utility company like Guaracachi has an established revenue stream; whereas, a greenfield project has revenues that are of uncertain timing because, by definition, there is not a spade in the ground. There is no--there is significant additional project-completion risk.

With an established company, there is a certain flexibility of lending arrangements. And just keep in mind, remember with Guaracachi that when times got tight in terms of cash due to the combined cycle in 2008, 2009, and early 2010, what happened? You had a deferral by agreement of the Shareholders of dividends. That's an equity-bridged financing. That's a bridge loan. And that's the kind of thing that one can do when Shareholders trust that in the medium term they're going to get those dividends paid.

Whereas, in a greenfield project, the assets and revenue streams that one projects are contingent on very specific kinds of financing that are available for that kind of project.

A utility company that's established like Guaracachi has a steady cash flow that allows an increased level of debt financing, so--as we saw in Guaracachi, but as you will see throughout, for example, in Latin America, in utility companies, the level of debt is higher than one would expect for a greenfield project where additional debt is difficult.

15:27 And, finally, existing operations for an established utility company support any future construction activities; whereas, for a greenfield project, you just don't know whether the construction risk will crystallize.

So, standing in May 2010, one thing you know is this: Guaracachi was not a greenfield project. It was not an idea about some opportunity. It was a regulated utility with a proven track record that was obviously heading upwards. So, when you think about threshold rates of return--which we will come back to in a minute--remember when you're talking about general expectations for projects in South Africa, you're talking about equity returns for a greenfield project, where a range of uncertainties prevail that just don't apply to an unexciting business like Rurelec.

And Mr. Conthe, I think, aptly pointed out--and this is from the--actually, I think this is from the Spanish transcript, Day 5, Page 1650, starting line 21, Mr. Conthe pointed out, and I quote: "This is precisely why electric utilities, at least in some countries, were typical investments for widows and orphans, precisely because they have very little risk."

That's precisely the point.

Dr. Flores's position on the discount rate, which is the embodiment of the applicable risk for valuation purposes is an exercise in mismatch, an exercise in picking from here and

15:28 there. He applies particularly, as you've seen, two key adjustments to the CAPM model for determining the cost of equity: The Size Premium and the Country Risk Premium with a multiplier to account for additional volatility of stocks vis-à-vis bonds. And he bases these adders on academic theories and not on real-life valuations.

Let's start with the Size Premium. The Size Premium is an anomaly. That's what the author of one of the original studies on the topic called it, Mr. Bans--probably Professor Bans, EO-30 Pages 3 to 4. And what that means is clear: The effect is just not logical. There have always, therefore, been a range of opinions about Size Premiums. Even when it was in its heyday at the end of the 1980s and beginning of the 1990s, there were plenty of people who said it didn't exist. That, in fact, smaller companies as smaller companies don't attract a high return and don't attract, per se, an additional risk, and, therefore, when you're valuing a company which is small by whatever criterion you measure it, one shouldn't add to the risks that are already measured in other elements of the discount rate, and also measured in the cash flows.

Dr. Flores ignored the most recent empirical research conducted by Fama and French, who were among the pioneers of the size-premium theory, who found the new evidence so compelling that the size effect doesn't exist that they changed their view. After studying 23 different markets in four

15:30 different regions, they said, clearly, there is no Size Premium. C-272.

It's interesting that Dr. Flores never cited Fama and French. He said that it was too recent a study to give it any credence at all. He's not sure how reliable it is and so forth, but he confirmed that he's not aware of any critique of it so far, and certainly he might have mentioned it. You can find the discussion in Day 5, starting at Page 1560 in the Spanish.

The main source on which Dr. Flores does rely is the Morningstar/Ibbotson Report, EO-13, which we looked at at length, and that report provides very interesting discussion of what this phenomenon, if it exists, might be. Because they observe in that report, and I quote, "virtually all of the small-stock effect occurs in January as the excess outcomes for small company stocks are mostly negative in other months of the year."

So, if you were to take away January and you were to use the same evidence, the same stocks that are used to find that there is a small-stock premium, you would actually find, for February to December, that there is a small-stock bonus or discount--excuse me, a discount; that is to say, the risk is lower than large stocks. That's EO-13, Page 98.

That's really quite remarkable because it seems very strange, and when you look at the explanations that

15:32 Ibbotson/Morningstar were able to find, they are absolutely unrelated to a valuation of the sort that we are trying to engage in here.

The report pointed to two reasons, two explanations for the January blip: One, fund managers are cleaning out their portfolios before the end of the year in order so that when they have to report on their success as of December 31, the bad stocks won't show up.

And, second, tax optimization. People sell off stocks, especially loser stocks, at the end of the year and then buy them back at the beginning of the year in order to maximize their fiscal advantage based on a January-to-December tax year, I suppose.

So, these are problems for fund managers and for short-term stock market speculators. These are not issues that would concern any participant in the market for long-term real businesses on the ground. So, that's why, even if you accept that there is a Size Premium, a valuer of this asset wouldn't care.

Now, Dr. Flores in his reports spends very little space discussing the Size Premium and its rationale. Neither report has any justification for considering Guaracachi as a company that would be likely to be subject to that sort of bonus or premium, except for its Book Value. Its Book Value which Dr. Flores, of course, wholly disputes as a valid

15:34 comparable methodology, but he uses it to place it in Morningstar/Ibbotson's set of Deciles to show it's in the smallest decile when compared to U.S. New York Stock Exchange-traded companies.

Now, when pressed on this, why the stock premium--why the Size Premium for Guaracachi, at the hearing, Dr. Flores started to talk about various things that he never mentioned in his reports as a justification. His justification in the reports were those academic studies, nothing else. You can find at Day 5, Spanish Page 1624.

And he started, for example, to talk about liquidity in connection with the Size Premium. Well, Guaracachi, he said, it might be illiquid, and "I mentioned that", he said, "in my reports. I mentioned illiquidity in my reports". But you remember the context of lack of cash flow, and you remember how it was used in Dr. Flores's reply. Absolutely no connection. And, in fact, Bolivia, in its Rejoinder, Paragraph 177, told us very clearly it has no impact on damages.

Other things that Dr. Flores cast about for during cross-examination to justify why Guaracachi actually is a small company included even the number of people working for Guaracachi. We'd never heard that one before, and certainly we don't know the relevance of that to extra risk. It certainly makes no sense to me. Day 5, Spanish, Page 1622.

In fact, Dr. Flores just didn't think about or didn't

15:36 consider what a willing buyer and willing seller would have done in forming their agreed price for Guaracachi. He was absolute and sweeping in his adoption of the Size Premium.

Now, according to the approach he took in his reply, for example, Cisco Systems. Have you heard of Cisco Systems? It's one of the largest IT companies in the United States. It would get a Size Premium. It would be in the second decile, but even the second decile, in Ibbotson/Morningstar takes a Size Premium.

And if we turn to Bolivia, every company in Bolivia would subject to Size Premium. The National Bank of Bolivia would be subject to Size Premium. YPFB would be subject to a substantial Size Premium.

Now, not one available Latin American investment bank valuation that we have seen in the record uses a Size Premium, and that's because they do what Damodaran says they should do: Look at the fundamentals of the company, build the cash flows in the right way, and build the discount rate in the right way.

The extra volatility of equity over debt is already contained in the Market Risk Premium. That's what it's for, and we shouldn't feel too sorry for Dr. Flores for not having a subscription to the investment bank reports.

Now, these investment bank reports are from 2010. They're two years old. And so, in fact, you can probably get them for free, floating around in the market. But in any

15:37 event, you don't need a subscription. The entire package of investment bank reports contained in C-300 cost less than $1,000. But Dr. Flores didn't ask because he knew what he would find from Santander or from any other investment bank.

Now, even if you do accept that the size effect exists and should be reflected in a Size Premium, Mr. Tarbell, for example, C-247, says, an analysis of the fundamentals of the company is still required as a starting point. You have to look at whether a particular company is a small company for the reasons that one might expect would attract additional risk.

So, let's turn to Tarbell's criteria. This is Slide 65.

Now, in essence, these criteria, the conditions for higher returns in small firms that Tarbell identifies, are--basically come in two parts. We can group these in two groups: One is the hidden-defects problem; and one is the volatility-of-revenues problem. And the rest is a bit of detail.

Now, on the first--the hidden-defects problem of some small companies, particularly in the United States, Guaracachi was not the proverbial cat in a bag. All of the information was available that was necessary to assess the value of this company over time. It was covered by Fitch and then by PCR, and that kind of coverage by analysts is not normally available for typical tiny company in the United States, for example.

15:39 And it ensured that the company's operations would be transparent to the market. Rurelec, the Shareholder, the ultimate Shareholder, was publicly traded. As my colleague, Mr. Blackaby, observed, you can see a lot of the audited and public documents related to listing on the Stock Exchange, which contained a huge amount of information about Guaracachi.

It had also a sophisticated local management team, support from international industry experts and so forth.

Now, as to volatility of revenues, Guaracachi operated in an industry subject to price regulation, where demand volatility was minimal. Now, even on Mr. Paz's estimate, demand in the electricity sector was set to increase steadily and significantly. And we think he's understated that. But in any event, the growth was there, and this is not like a market where growth is uncertain.

And we can see the result of that over time. Guaracachi declared dividends every year between 2005 and 2008. And remember, the 2008 and 2009 dividends which were declared and deferred is only confirmation of the security of the cash flows going forward in the future. Why? Because, as I said, the Shareholders didn't have to agree to that. They could have taken their money and run. Instead, they felt confident enough--yes, Mr. Chairman?

PRESIDENT JÚDICE: You confirm that from your point of view they could take the money away without any limitation

15:41 whatsoever? From a legal and contractual point of view? The dividends.

MR. RUBINS: The dividends that they deferred, they deferred based upon their agreement and the approval of the Board of Directors.

PRESIDENT JÚDICE: No, but if they were entitled to take that money away at that moment?

MR. RUBINS: Yes, the ones that were deferred, of course. They were--

Mr. Chairman--

PRESIDENT JÚDICE: It's okay. It's enough.

MR. RUBINS: No, no, no, let me just explain.

The dividends that were declared, they remained a legal obligation to pay of the company to the Shareholders, and it continued that way into time. I mean, the new management of Guaracachi, as I understand, hasn't paid that money to the Shareholders; but that's a wrong, not a right. I mean, it's--the declaration of those dividends is very real. And they forwent that by agreement because they believed in the medium term that they would have that money back.

Is that more or less clear?

PRESIDENT JÚDICE: Yes. Yes, it is.

MR. RUBINS: In essence, what Dr. Flores is doing with the Size Premium is exactly what Damodaran says you should not do: Imposing a one-size-fits-all premium without considering

15:43 the underlying fundamentals. And Damodaran calls that sloppy error in his Opinion at C-370, Page 2.

And remember what we also learned that Dr. Flores admitted on cross-examination, that there is reason believe that even if there were a Size Premium, the wrong one would have been applied, 6.28 percent is simply too high, because Ibbotson/Morningstar subdivides the tenth decile into four subcategories. And according to the measure that Dr. Flores used, the actual place in the decile is the second to top in the tenth decile. That's 4.91 and not 6.28.

He didn't mention any of that in his reports.

On to the Country Risk Premium. As Dr. Flores recognized yesterday, he applies the same Country Risk Premium that Dr. Abdala calculated as a base, and then he adds a multiplier of 1.5. And he cites as the sole authority for doing that our friend Professor Damodaran, EO-25.

Now, here in this field, the 1.5 multiplier, Damodaran is rather alone. Nobody else in this market uses this multiplier, and certainly Dr. Flores didn't cite any other authority for it. The traditional approach for long-term company valuations is to build up a Country Risk Premium using bond spreads.

And even Professor Damodaran only applies the multiplier to long-term valuations, which is what Dr. Flores eventually more or less agreed. You can find that Day 5,

15:44 Spanish, Page 1585.

And we can clearly see from Exhibit 308, which I have given you on Page 67, Damodaran's spreadsheet on the Country Risk Premium, that the multiplier, the 1.5 multiplier, is an option in the spreadsheet to be clicked on or clicked off. It's the second yellow box from the top, where he's clicked yes to show you the effect on the Country Risk Premium.

And if you were to click no, then the line Country Risk Premium, all of those numbers--the one at the top, Albania is 6.75 percent--all of them would change to be a percentage expression of adjusted default spread.

So, for example, for Bolivia, which is at 550 basis points--it's highlighted in yellow--if you were to click "no" in that box, then Country Risk Premium would flip to 5.50 percent.

Why? Well, Professor Damodaran explains it in his instructions of how to use this at the top. And he says, "To estimate the long-term Country Risk Premium, I start with the country rating from Moody's, I get the default spreads"--that's the 550--and then he says, "I then add the base rate, the risk-free rate, to estimate the total risk premium."

It stops there. That's before the 1.5 multiplier. He says that's the total risk premium.

Now--and I'm sorry, I actually misstated. I need to go back because what would change if you clicked "yes" to "no"

would be Total Risk Premium, not Country Risk Premium, or maybe both of them would change, actually. Yeah, both of them--excuse me, both of them would change to take out the 1.5.

In any event, he stops his explanation there to estimate the Total Risk Premium, not including 1.5.

And then he goes on. In the short term especially, there may be more risk associated with stocks than sovereign bonds, and so you can estimate that in the short term especially by clicking "yes" in the box, and I have shown you how to do that.

Now, what is "short term"? That is a the discussion that we had. Dr. Flores tried to say it's 100 years--Day 5, Spanish, Page 1585--in his second Expert Report, Paragraph 207, he said he considered four years clearly not short term, and on the day, yesterday, he said, okay, that's medium term. Fine. Four years is medium term, and 28 years is clearly long term by any measure. Damodaran would not have clicked yes in this box for a valuation of Guaracachi.

Now, if we stay on this exhibit on Slide 67, I want to emphasize the inconsistency in Dr. Flores's application of the multiplier. Now, remember, he agreed with me when we talked about what Damodaran would have done as compared to what he did, because Dr. Flores took as his base default spread not 550 basis points, but 702 basis points. He applied the 1.5 multiplier to a completely different default spread achieved by

15:48 a completely different method in order to boost the 1.5 multiplied risk premium to--from 8.25 percent to 10.-something percent--10.5, roughly.

And again, you have benchmarks on the Country Risk Premium. The Santander reports, again C-300, none of them use a 1.5 multiplier. Again, all of the other investment bank reports that are available do the same thing. Dr. Flores could have checked, but he did not.

And, secondly, you can look for comparison only to Bolivia's October 2012 bond issuance, the only direct measure that we have of Bolivian country risk. Now, in a huge space of time as well. It's not the same year; we're not saying it is. But it gives you a Country Risk Premium of 3.09 percent, more than 7 percent lower than Dr. Flores's estimate in 2010. And there is nothing to explain a 7 percent drop--in other words, a drop by two-thirds--over the space of just two years.

That's just not credible. There is no explanation.

Let me turn very briefly to the Market Risk Premium in which Dr. Flores again is inconsistent with respect to his use of Professor Damodaran.

Dr. Flores criticized Dr. Abdala for adopting that 5 percent Market Risk Premium saying that Damodaran never suggested saying that was the proper level. But Dr. Flores was referring to a 2009 assessment--and that's Exhibit C-177 at Page 67--and the updated paper that we looked at yesterday,

15:50 EO-29, Page 68, shows clearly that Professor Damodaran was revising downwards his Market Risk Premium for Year 2010. And he said 4.5 to 5 percent. That's what I'm going to use for my 2010 valuations.

And you know that also by looking at same Slide 67. Look again at the first box on the page, the first yellow box. What's the premium for a mature equity market? That's the Market Risk Premium. 4-and-a-half percent. Exactly as he said in the 2010--in the 2010 market-risk-premium analysis.

But Dr. Flores uses 6.7 percent, which has absolutely no relationship.

Now, when we get the--when we put the cost equity, over which we've had so much dispute together with the cost of debt which there has been no dispute, we get the WACC, and the median--and the WACC that Dr. Abdala came to is corroborated by benchmarks.

The first benchmark is the median WACC for the Latin American electricity generators that are referred to in the Santander reports, at C-300. And we can flip that up. On Slide 68, you see that here. The median of all of the reports 9.19 percent; Compass Lexecon 10.63 percent; and Econ One at almost 20. None of the companies examined, even the ones in Argentina which are surely subject to higher country risk, came close to that level.

And we can also point here to the ratio between the

15:52 cost of debt, which is agreed, and the cost of equity, which isn't agreed. And that's on the next slide. Dr. Abdala took you through this slide. And again, looking at the sample, the median company from the sample has a relationship between cost of debt and cost of equity of 1.53 percent.

In Compass Lexecon's model, that ratio is 1.83, not that far off. But Econ One posits in its model a ratio of 3.51; that is to say, the cost of equity is three-and-a-half times the cost of debt. That is very, very strange. That suggests that lenders simply are not perceiving--they're not perceiving a huge portion of the risk that Equityholders are perceiving. And that's just not realistic.

Now, we also have as a benchmark 10.1 percent. What's 10.1 percent? That's the discount rate set for electricity distributors for the calculation of tariffs by the Bolivian Government, which was set at that level in November 2007 up to October 2011, covering the May 2010 period.

And that's SSDE Resolution Number 229/07, and AE Resolution Number 143/11.

Now, this was, at the time, Bolivia's judgment as to the cost of capital for these companies in Bolivia. The universal regulatory standard for setting the proper tariff levels is the reasonable Rate of Return, the reasonable--the cost of capital for those companies so that they can recover it through tariffs.

15:54 Now, if you look at all those benchmarks together--if you could turn to Slide 74.

For the transcript, there is an error. I referred before to--we also have a benchmark 10.1 percent; what's 10.1. percent.

So, can you see here all of the benchmarks. On the left side at 9.91 percent, the comparables; at 10.1 percent, the rate for distributors used to calculate tariffs for the relevant period. Compass Lexecon's is in the middle.

The next one, 11.69 percent, is the law for generators as of 2000.

Now, this one we've discussed a little bit. In the Law, it says 12 percent. This is 12 percent that Mr. Conthe was referring to. It's from Resolution Ministerial 1/2000. And it's used to estimate Capacity Prices at 12 percent in real terms. And in nominal terms, that's 14.5 percent.

But Dr. Flores correctly stated in his direct examination yesterday that that rate can't be directly compared to a 2010 valuation because it fails to take into account important elements of the discount rate that would have changed between 2001, and the nationalization. That's Day 5, Spanish, Page 1541.

What would you have to change? Well, first, you would have to change the risk-free rate, which is at the bottom of both cost of debt and cost of equity.

15:56 Now, in 2000, it was 6.66 percent; and by April 2010, it had dropped down by almost 3 percent to 3.85.

PRESIDENT JÚDICE: Do we have any information on the record about that?

MR. RUBINS: It's the bottom of the slide, actually. Federal Reserve Web site and all that.

Right. So, it had dropped almost 3 percent, 2.81 percent, from the 2000 rate. And that goes both into cost of debt and cost of equity.

And you also have to adjust the Market Risk Premium, which only goes into the cost of equity, so that was a bit harder for me to calculate overnight, particularly with the state of my consciousness in the middle of the night. However, it would bring--the Market Risk Premium fell 1.4 percent between 2000 and 2010. The problem is, it only goes into cost of equity. So, doing the weighted average, I can't figure that out.

So, what I put on the slide is just the impact of the change in the risk-free rate, which would bring the 14.5 percent down to 11.69.

What you should keep in mind is it's actually lower than that because the impact of the change in Market Risk Premium would be somewhere below 1.4 percent. It's a weighted average of 1.4 percent.

Then we have the purple column, which says

15:58 12.5 percent--it's a document we're going to come to in a moment, which is actually--it's labeled Guaracachi 2008. It is actually Guaracachi's discount rate for the combined-cycle project before it was undertaken. And we will come to that in a minute.

Now, Dr. Flores doesn't have any benchmarks for his discount rate, and so he has confused the issue with respect to IRR. And I would like to spend just a couple of minutes trying to untangle that.

The IRR, we know what the definition is; it's the rate at which future cash flows, when discounted to the present value, will equal zero.

If you turn to Slide 70, you can see Dr. Abdala's explanation--graphical explanation of this. And I think it's pretty clear from this chart that the IRR is completely independent from the discount rate. In fact, on this chart, there are X and Y axes. All right? The discount rate goes left to right, and the IRR runs down the middle--in the middle the Net Present Value is the vertical.

Now, obviously what you know from this slide is that the ex ante IRR has to be higher than the WACC for a project that has gone forward because a project that has gone forward, by definition, is somewhere in that green triangle. We don't know where it is in that green triangle. We know that if it was to the right of the IRR line at its cost of capital, then

16:00 it would never have gone forward. We are dealing with projects that have gone forward. So, they're going to be somewhere in the green triangle.

Now, Dr. Flores recognized this basic principle in his direct examination, and I would like you to look on the next slide, 71, at how he demonstrated it. This is his slide. And the absolute numbers don't matter. Just look at their relationship. Look at Project B. Project B is a project--if you flip back again to Dr. Abdala's graphic, Project B is one that's in the green triangle.

Now, where in the green triangle? It's not at zero. It's not towards the tippy-tippy pointy end of the triangle; it's somewhere in the Green Zone.

How do we know that? Well, he's chosen 30 percent as the expected IRR. He set the discount rate at 20, which is lower. He says, Has the minimum profitability been reached? Answer yes, and the net present value isn't zero; it's 8.3. So, that means it's somewhere into this zone. It's not the same--20 percent is not the same as 30 percent in this model or anywhere.

Now, if you turn now to Slide 73, you can see Guaracachi's ex ante look at the combined-cycle project. This is only for the combined-cycle project, so it's not directly comparable, although what you can see is various scenarios, IRR in the middle, TIR, normal, optimistic, pessimistic. On the

16:02 right side, the Net Present Values, VAN, Net Present Values which, as you would expect, is smaller in pessimistic and highest in the optimistic. All discounted at the same rate, 12.5 percent.

And so, for Guaracachi, it was perfectly normal to consider that in the normal scenario we will have a cost of capital of 12.5--that's the discount rate--and an IRR of 29 percent for this particular project.

Now, Dr. Flores mischaracterized yesterday the documents related to the South African project and the carbon credits. The IPSA equity-raising memorandum gives an estimate of threshold equity IRR for a new greenfield project with no existing plant or cash flows.

Peter Earl's comment simply refers to a target equity IRR for a greenfield project of 20 percent.

And the Hitchens/Harrison letter to UN/SEC refers to a greenfield project equity IRR based on the combined-cycle conversion project with all the associated project risks.

Remember the slide that I showed you at the very beginning. Again, these are projects on the right side. Guaracachi was a project on the left side.

Now, in order to project free cash flows in a DCF, you need to simulate a market transaction. To simulate a market transaction in this way, you need to make assumptions about future revenues. You need to act like a market participant.

16:03 You need specific experience to make the necessary judgment calls.

Now, the way in which Compass Lexecon calculated capacity and dispatch was clear. Dr. Abdala made the judgment calls. Rebuttal Report, Paragraphs 106 to 107. And you all understand his sector experience. And the MEC and, later, EdI, carried out his instructions.

As we learned Friday and during our discussions with Dr. Flores, the modus operandi for Bolivia's case on revenue projections remains opaque. We found out for the first time yesterday that Mr. Paz and Dr. Flores had telephone conversations and meetings, Day 5, English, Page 1207.

From reading his Reports, you get the impression that Dr. Flores simply took Mr. Paz's data and inserted it directly into his model. In fact, Dr. Flores explained yesterday that, unlike Dr. Abdala, who literally wrote the book on the electricity sector in Argentina, Dr. Flores had no idea about the market when he started this case. Day 5, English, Page 1281. And you can see on the slide what he said. And he confirms to the Chairman's question: "Mr. Paz provided to you information that a person who knows the way the electricity market works?"

"Yes, that's exact."

Now, at the same time, Dr. Flores described Mr. Paz's function as mechanical, so it's not entirely clear whether

16:05 Mr. Paz was mechanical or Expert.

Now, Mr. Paz, who--assuming that Mr. Paz was making factual assumptions underlying his dispatch--Dr. Flores's dispatch and capacity estimations, let's take a look at his information-selection criteria.

Now, Mr. Paz, in fact, created his own criteria, which you can find in his Third Statement at Paragraph 48 on Slide 76, and what he told you he was choosing information based upon is the Rule that "Ningún comprado hipotético diligente en Bolivia, al realizar una proyección de energía eléctrica, tomaria como base una información diferente": (In English) "No hypothetical willing buyer in Bolivia could realize that projection of electricity would take this as a basis a different information."

On cross-examination, he changed his testimony, accepting that technical studies would be relevant to a willing buyer, and volunteering due diligence. That would also be important. And he had to do that because Mr. Paz didn't limit himself to purely CNDC information. He excluded the Karachipampa Plant, although he appeared to think that was a mistake, Day 4, English, Page 952. And the CNDC confirmed the day before the nationalization that the plant was staying on line.

Now, in fact, the situation is much simpler than Mr. Paz made it out to be. There is only one very clear rule

16:07 about information for valuation assumptions. The transacting Parties collect all of the information they can before setting their price, and. Dr. Flores agreed with that, Day 5, English, Page 1277.

It's not about a choice between the 2009 POES and the 2011 POES. As Dr. Abdala explained in redirect, Day 5, English, Page 1077, it's a question of what information was available to the market as at the valuation date. And that's obviously going to include some CNDC information, but it won't end there. It will include Mr. Paz's due diligence, technical studies, and just going down and looking at the plant.

And the Rositas example is a good one. I won't go into detail, but can you see from the documentation, if you turn to Slide 78, you can look through the documents, and you can see the slippage year on year. And you can see that the money that had to be budgeted at the beginning of the year in order to get this project started just was never budgeted. It never happened. And it continued never to happen.

On the issue of benchmarking, it's a very simple point. Dr. Abdala benchmarks his valuation against results procured by other methodologies. Dr. Flores does not.

We heard for the first time yesterday that Dr. Flores does, in fact, have a benchmark, and he referred in his redirect examination to this value of the sale of Guaracachi in 2003, for example. But I think Dr. Flores has not hit the

16:09 point on alternative valuation methodologies. He did not provide any alternative number based on an alternative means of calculating the value of Guaracachi equity.

Dr. Flores admitted that a comparables analysis is a good way to do that, and he's used it before. Day 5, Page 1272. He just thought it could not be used in this case, and he appeared to be arguing that Bolivia was completely unique in some way. And using some kind of apartment analogy, as if people don't every day compare real estate in different markets by using adjustments based on the cost of living in various cities. It happens all the time.

The same kinds of adjustments, if Dr. Flores thought that was necessary, could have been made in this case as well, but he did not. And that must be because no other method could possibly justify his negative equity figure.

And Dr. Flores had the means at his disposal to do a comparables analysis even without the thousand dollars for investment bank reports. Dr. Flores used Professor Damodaran's database of 322 companies, very few of which--excuse me--322 companies--yes, and he used it to calculate working capital for Guaracachi. You can find that in his First Report at Paragraph 85.

And he tried to justify not using that same database for a comparables analysis by saying that it contains too little information. Day 5, English, Page 1276.

16:10 But that's not true. If you look at the document, if you look, in fact, at the publicly available information from Professor Damodaran, you will find Professor Damodaran, on the Internet, has already done most of the work. He's created the ratios that can be used directly to calculate a comparables analysis.

A few words about the prior sales, which have been mentioned now and again. Several questions have been asked by the Tribunal about the return on investment that would be implied by an award of 77-and-a-half million dollars for an investment that cost Rurelec $35 million in light of previous transactions where the prior owners sold at a loss.

Now, remember, the assets that Rurelec acquired for $35 million were recognized almost immediately thereafter to have been worth substantially more; and, according to an independent valuator, Rurelec's stake in Guaracachi's assets was, in fact, worth about $61 million already in 2006. And you can find that in Rurelec's--in C-113. That's the audited financials for 2006, Pages 59 and 69.

Now, if you take that as the base, Rurelec's investment grew in value from its value in 2005 to its value in 2010 by only $15.62 million, about 25 percent over four years, which is rather modest, given the additional investments that Guaracachi made over that period. And this is all set out in our Reply on the Merits at Paragraph 194.

16:12 Now, second, as we heard from Peter Earl, the capitalization was very successful and the investments committed and made by the capitalized companies in the early 2000s brought on line lots of new capacity that was not immediately needed. And this resulted in the rapid growth of the capacity reserve from less than 5 percent on capitalization to over 30 percent by 2002, and you can see this on Slide 80.

So, as you can see from the slide, this initial injection of capacity meant that prices fell dramatically and very few peaking power units were being called on, and that resulted in lower profits for the generators. So, the prior owners of Guaracachi, like GPU, got caught in the middle, a very nasty situation for them. Things got--and things were really no better for Integrated Energy. And you can find Peter Earl's explanation of the difference in the businesses under their control and under Rurelec's control responding to the Tribunal's questions, Day 2, Page 377.

By 2006, the reserve margin began to fall drastically as increasing demand outpaced new investment. Neither Corani nor Valle Hermoso made any material new adjustments, apparently hoping that their less-efficient units would start determining electricity prices if margins got too tight. Guaracachi's business plan was radically different, and you've heard all about that. Investment in high-efficiency baseload units.

The consequence of intense investment from 2006 to

16:14 2010 was a highly successful company which, today, has the rewards of the Claimants' investment, with profits in 2011, as I said, of $12.6 million. So, it's a radically different company in May 2010 than the one on January 6, 2006, when it was acquired by Rurelec.

I'm conscious of the fact that I am out of time. I had literally two minutes on the Spot Price claim, but I don't want to test anyone's patience, and I'm in the Tribunal's hands.

PRESIDENT JÚDICE: No, you are in your own hands, but anyway, what I'm worried about is to have some kind of balance between the two Parties.

Mr. Silva Romero spoke yesterday of two hours. We are little in excess of two hours already. Needless to say that you will have the equivalent. But it will bring us later. It's the last day. We can survive, but if there is no opposition for these two minutes, I will always appreciate to have more than less information from the Parties. And therefore, I think the Tribunal will give these two minute, and obviously, you have enough to prepare.

MR. SILVA ROMERO: Mr. President, while Bolivia is awarded the same time, we have no objections.

PRESIDENT JÚDICE: Yes, of course.

Thank you.

Go ahead. You have your two or three minutes.

16:16 Flexibility.

MR. RUBINS: If you could turn to Slide 79, with respect to the Spot Price claim, the CNDC clarified yesterday morning that the pre-nationalization Spot Price revenues that they were asked to calculate were not based on historical data. And can you see this on the slide, the exchange that I had about the document to the left, which is the report that CNDC provided to Mr. Paz, where they provided their estimation of Node Prices for a historical period, trying to figure out the real impact of the change in Spot Price formation on Guaracachi.

And Mr. Jaldín Florero confirmed to me they're not historical prices. And he further clarified, it is impossible for something that is expected to correspond to the actual historical price.

Apparently, Dr. Flores didn't realize this, and the exchange that we had about that is Day 5, English, Page 1283. And apparently he was unable to check. I suppose because he didn't know how to check.

Now, Mr. Paz outright denied it. Now, Mr. Paz testified before the CNDC, and he denied that these were ahistorical--that is to say, not historical; that they were a projection. And I presume that counsel for Bolivia didn't know about this either, which means that the calculations are--of Dr. Flores with respect to this claim simply are irrelevant.

16:18 They don't measure the right thing.

Now, because of that, the post-nationalization period is also miscalculated in Dr. Flores's Reports. Remember what Dr. Flores did is simply took the gap between the CNDC numbers and the MEC numbers and carried that forward in time into the future.

And Dr. Flores confirmed to me that if, he was--if the numbers were not historical for the pre-2010 period, then his calculation for the post-2010 period would also be wrong.

One last word about interest. We explained in the opening that Claimants were deprived of the opportunity to invest the compensation to which they were entitled in the ordinary course of their business as a result of the unlawful expropriation. The only way they can be fully compensated for this lost opportunity is by applying something related to the cost of capital, whether it be cost of equity or the WACC.

And this is the principle that was set down in a very widely publicized recent arbitration award, ConocoPhillips versus PdVSA, which is Exhibit CL-154. It's an ICC arbitration, where interest was awarded at a rate of 10.55 percent, which is equivalent to the cost of equity.

Now, I think, to be fair, the cost of equity in that case was appropriate because there wasn't any debt, and so the cost of equity for ConocoPhillips was 10.55 percent.

In our case, there was debt, so it would probably be

16:20 the WACC, and that's what we asked for in this case, the weighted average. We don't ask for the 14-and-a-half percent cost of equity.

And the Tribunal explained the reason. Explained: The interest rate should be "a reasonable proxy for the return the Claimants otherwise could have earned on the amounts invested and lost." For Conoco that was the cost of equity; for us it's the WACC. But the principle is the same: Full compensation means interest related to costs of capital.

And with that, I will conclude.

PRESIDENT JÚDICE: Thank you very much.

Now, we have given to Bolivia--we will give Bolivia 30 minutes with a little bit of flexibility, and we can start at 5:00 p.m. Is 5:00 p.m. too late for you?

MR. SILVA ROMERO: I think it's okay for me. But I don't know what Jose Manuel thinks. He is also going to speak, and he has a question before we take our break.

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

In connection with the time, I have no comment. I think 5:00 is fine.

I just wanted to confirm, when you asked in connection with Number 74 in connection with the information and whether this information was in the file, you were answered that it was on the footnote.

The information on the footnote is a reference to a

16:21 Web page, so I understand from my colleagues that the whole Web is included in our file. If that is the case, I invite the Tribunal to consider other aspects that Bolivia has put forth.

PRESIDENT JÚDICE: Thank you very much. The Tribunal will look at this issue in due time.

It is a Web page; that's true?

MR. RUBINS: That's correct, yes.

PRESIDENT JÚDICE: Thank you.

MR. RUBINS: You know, I saw how Dr. Flores used the pages yesterday. And so I--I didn't object--

PRESIDENT JÚDICE: This is not the moment to call for comment.

(Brief recess.)

PRESIDENT JÚDICE: Whenever you're ready, Mr. Silva Romero.

CLOSING ARGUMENT BY COUNSEL FOR RESPONDENT

MR. SILVA ROMERO: Thank you very much, Mr. President. I understand that we are going to be submitting our presentation, our slides.

Mr. President, Mr. Conthe, Mr. Vinuesa, Bolivia has the honor of starting the Closing Arguments before you with the following caveats.

First of all, and as it is obvious, everything that we have said in our eight written memorials plus our Opening Arguments in this hearing will be included with what we are

17:05 going to say next.

Second, the main goal of our Closing Argument is to refer to the facts during the hearing and how those facts have confirmed what Bolivia has expressed in the writings and in the pleadings.

And, third, the third goal, clearly the Members of the Tribunal have asked us some questions, and we will attempt to answer those questions during our Closing Arguments. As we did in our Opening Argument, we will be having several members of our team who will be addressing the Tribunal. Next to me, I will have Mr. José Manuel García Represa. Then I will take the floor again for three minutes, and the Attorney General will be concluding with our pleadings. And it is important for us to make quick progress to have the slides presented by the Claimants handy. And to begin as an introduction--

(Pause.)

PRESIDENT JÚDICE: If this was the TV or the movies, we wouldn't be able to start again, but this is a different story. Just a second, please.

(Pause.)

MR. SILVA ROMERO: I'm glad I said it at the very beginning.

So, to begin with and as an introduction to our Closing Arguments, I should make some comments on the way the hearing proceeded.

17:08 The first observation is something that we have said before. It has to do with the strategy the Claimants have used over the last stages of this procedure, this defamation strategy that should be rejected by the Tribunal, and let me show you some examples of that strategy because this is just not rhetoric.

First, the MEC situation that we have in the correspondence exchanged by the Parties, and you see one example of that correspondence at Slide Number 3.

What happened in connection with MEC? The Claimants accused Bolivia without grounds of intimidating MEC so that they wouldn't appear before you. Bolivia answered in writing, after holding consultations in Washington and also introducing all of the evidence. The Claimants have not responded to Bolivia's answer, and the Tribunal and the Claimants made questions to MEC in connection with this. I made an attempt to ask Mr. Llarens about this issue, but clearly at the very beginning, and he said, I have no information about business issues, I am just a technician, so let us not waste time, and I will just stop there.

I don't know what happened with the conflict of interest and also the other issues that they were supposed to be working on in Bolivia.

But, Members of the Tribunal, it is important to note that the Claimants have accused on the record Bolivia of

17:10 intimidating MEC. There was a reply. We have shown that there are no grounds for this acquisition, and nothing goes on.

Second, as you can see at Slide Number 4, we were getting ready for the hearing, and we had the telephone conference. Prior to that telephone conference, we received some letters by the Claimant, and they adjusted--they attached a press document quoting some words by the Vice President of Bolivia. You might recall my response, but they had said that the Vice President of Bolivia had threatened every witness that would come here to provide a statement before you, and please look at that article and see that what my colleague, Mr. Blackaby, suggested is nowhere to be found.

Mr. Blackaby said it three times, and this is not a reference to the Bible because I don't think that this should be done here, but for the first time in his letter, second in the telephone conference; and, third, once again during the telephone conference. Bolivia is criticized in this way, the Vice President is also criticized, but, Members of the Tribunal, nothing goes on here.

Third, this is litigation with photographs, photographs with two members of the military in front of EGSA, and that means that the expropriation or the nationalization was violent. Clearly, this is senseless. For the example, during the Closing Arguments we heard how they used the distressed moment by Ms. Bejarano to say that the lawyers have

17:12 not told Mrs. Bejarano that questions were going to be made or just to insinuate that Mrs. Bejarano was not willing to answer questions. I think that at this point we are getting to levels of rhetoric that are uncalled for.

And also, what we heard from witnesses the Claimant, just to give you an example, and I think that it is just a waste of time to continue to give you examples of this, but when I mentioned Mr. Blanco why there are some words in his statement that clearly seem to come from the English version, and he told me that it is a problem with the translation. Translation of what? So, this is an English statement that was translated into Spanish, but then there was no more translation. So, we are going to start by criticizing the lawyers or not because in my 20 years of my professional career I never saw that we could begin by addressing the translation of the Claimants.

I have no way out but just to tell you that all this is very grave, and the goal might not be other than what I mentioned in my opening statements: To destroy the image of the Plurinational State of Bolivia, to convey to you the image that Bolivia is a paper State that should pay these people millions and millions of dollars. I do not share this type of strategy. I should condemn this strategy, and I also have reservations on behalf of the State of Bolivia, and you should take that into account whenever you make a decision in this

17:14 case.

PRESIDENT JÚDICE: If you allow me, the contribution of the Parties especially in closing arguments, is going to be very careful, it's going to be very useful. Of course, we're going to face the situation, but I just to want say that from the point of view of the Tribunal, and I think that this is the same for the Claimants, there is total respect for the Plurinational State of Bolivia because this is the State of the international community, and it deserves that respect. I would say this is just rhetoric, so I don't even think that a--I need to say, but at any rate I have said it.

MR. SILVA ROMERO: Well, as you know, I'm doing my job.

The Claimants' witnesses, on the contrary, have been the ones that have been the nicest with Bolivia, and you can look at Slide Number 5 where you see excerpts from the hearing by Mr. Earl and Mr. Blanco. Mr. Earl actually celebrates the policy, the nationalization policy implemented by Bolivia in the electricity sector, and he says, had he been in the Government, he also would have nationalized.

And in connection with Mr. Blanco, he says we, the Bolivians, should be very proud that over the last couple of years we are the only country that has grown due to the Measures implemented by the Plurinational Government in terms of macroeconomic variables. We are a country that has not been

17:16 affected by external impacts, and this was an answer to Mr. Conthe's question. This is a country that is growing, and in response to your question, the economy of Bolivia, due to macroeconomic measures implemented by President Evo Morales, has had stable growth economy. We have had no shocks, and we have not been affected by international crises.

But it has been made very clear, Members of the Tribunal, and this is the third set of observations I have as the way of introduction, who the Claimants are, and let me make two comments.

The first comment, and you begin to see that at Slide Number 6, is that the Claimants have said here in front of you that they have done things whose legality is dubious. First, Mr. Aliaga said that some engines were sold, and that was done one month and five days before requesting the modification of the License.

This is Slide Number 7 now. Mr. Lanza referred to the bonds, and also we also heard Mr. Blackaby just a minute ago, who also referred to this gentlemen agreement, a gentlemen agreement where it's not--where it says 40 percent, but it's actually 50 percent, all in connection with this performance bond.

I wouldn't like to qualify what happened in that document, but I think that you should have that into account.

Second, Rurelec's strategy was very well summed up by

17:18 Mr. Flores when he answered a question by co-Arbitrator Conthe; and, as you can see at Slide Number 8, he said or he suggested that what happened here is that Rurelec arrived in Bolivia knowing that there could be a nationalization. They did not even invest a single penny in the company. They borrowed money. They nationalized the company, and now they're asking you to dismiss Rurelec, as I mentioned in the Opening Statement, with a check for over $100 million. This has to be linked to the question by our co-Arbitrator Conthe. If $35 million were paid at the beginning, if you leave with a $100 million check, that would be the business of the century, especially knowing that nationalization was a possibility starting in 2005.

Fourth, and also as an introduction, and once again I would like to underscore the incredible strategy adopted by the Claimant in this arbitration.

First, it is very easy through rhetoric to say that Bolivia would like to delay through jurisdictional objections. Arbitration is the exception, but we also need to show that there is consent, and the requirements for you to have jurisdiction have been met. And I will say that there are several jurisdictional clauses in this case.

Second, the amount of the compensation. If something is clear in this hearing it's that that amount is extremely inflated. I wouldn't like to say that it is astronomical, but

17:20 that's what it is.

And, third, the new claims, as clearly seen in the hearing, have no grounds, and they have been opportunistic claims, and that is the reason why we are going to divide, Members of the Tribunal, our closing arguments into four sections to comment on what happened during the hearing. First, we're going to make some comments on the jurisdictional objections. Then we're going to refer to nationalization, next Spot Prices and, finally, basic Capacity Prices.

And let's start with jurisdiction.

What are the conclusions resulting from the events here at the hearing due to our jurisdictional objections? First of all, let us exclude what we have not discussed; and, to that end, we have referred to the written Memorials and also the Opening Statements that nothing has been said about the early nature of the claims due to Spot Prices and PMP, and not much has been said, at least during the closing, by our colleagues of the argument in connection with PMP and the fork in the road. But we refer you to our pleadings, written pleadings, and also our opening arguments.

Let me refer to the other five jurisdictional objections presented by Bolivia in connection with what we saw during the hearing.

The first objection, as you know, is the lack of consent to this accumulation of treaties, nationalities, in

17:22 just under just one proceeding. Mr. Vinuesa last Tuesday asked about this question. Is there one claim? Are there several claims? How do you structure them? Are there two claims for Rurelec and Guaracachi/Guaracachi America? How should we solve this?

I had made a note for these closing arguments that the Claimants have not specified whether this is just one claim or they have several claims, and the first time that they referred to the claim by Guaracachi America was just an hour ago. That's when they said something about it.

And you have been given papers, arguments, and you need to choose what you're going to do.

The final claim by the Claimants or the Claimant is not clear. You need to determine whether you're going to give the check to Rurelec or Guaracachi America. But that is not possible.

Let us look at the structure derived from Slide 123 in the Opening Statement by the Claimant. Rurelec and Guaracachi are claiming the same thing; and, to that end, in spite of having different nationalities and being protected by different treaties, they have initiated one single claim for arbitration. I wouldn't like to say much more than what I said during the opening in connection with this topic, but my question again for your own benefit, Members of the Tribunal, is where do you see Bolivia's consent to this accumulation? Answer: It does

not exist.

Second question, what is it or how was this consent--how did this consent come about? Remember the case law, those Final Acts, final events that would lead to this accumulation. The answer is the Claimants, who have the burden of proof in this case, have not met the burden of proof before you, Members of the Tribunal.

Professor Vinuesa also mentioned, and here I go to Slide Number 12, the Abaclat Case. And the Abaclat Case is different from this case for several reasons. Clearly, there are several Claimants--that is the first difference--and, based on Mr. Blackaby's explanation today, we only have one claim. In the case of Abaclat we have several claims, but in the case of Abaclat we have only one Treaty as the basis for this consent. But here they're trying to accumulate treaties.

I was telling you that in my humble opinion, the decision in the Abaclat Case is not the best solution, and I wanted to refer to the--in my opinion, it's really a monstrosity, and you have to look at Professor Abi-Saab's different opinion. What does Mr. Abi-Saab say in his opinion? He's saying, in his Dissenting Opinion, at Paragraph 65, that we have "no precedents or writings about the subject is simply because the issue didn't arise until now before an ICSID tribunal as concerns collective mass claims actions." This is what was said at Paragraph 175. Members of the Tribunal, this

17:26 is the first time that this has to be decided. As I mentioned before, the other cases that have been mentioned by the Claimants, the respondents agreed to the accumulation of treaties by not objecting to that accumulation in their pleadings in terms of jurisdictions or their Counter-Memorial.

And Abi-Saab continues to say in his Dissenting Opinion the follow: "The few cases of multi-party arbitrations that took place within the ICSID framework (and also NAFTA), were always either with the clear agreement of the Parties or with no objection from the Respondent, which amounts to an implied consent. Thus, the Rule of 'secondary consent' was consistently upheld in multi-party arbitration." And he continues with his explanation.

So, Members of the Tribunal, you need to have a clear statement of the existence of this consent; otherwise, your decision could be subject to annulment.

Now, I move on to the second objection to jurisdiction and to what happened during the hearing, and Rurelec did not invest in Bolivia. You might recall that in the Opening Statement I was reminding you that it is important to maintain an objective view of the investment, and that this is in connection with the action of the investing, that there could be a contribution, the list of investments under the Treaty is a list of investments, but there should also be the willingness to invest as recognized in the decision in the Romak Case as

17:28 well as in the Quiborax case.

So what happened with this objection during the hearing? And this is in connection with the six comments that I would like to say next.

Members of the Tribunal, after almost three years of arbitration, Mr. Earl actually recognized that there is nothing in the record that could prove the transfer. We requested the documents and disclosures. We were not given the documents under disclosure.

And it is incredible to read at Slide Number 14 what he says after three years of arbitration. Mr. Earl is saying: "But I'm sure in the next 24 hours that I can get you copies of the transfers so that you can see."

But, Members of the Tribunal, this is the equivalent in some jurisdictions to the confession that the word "contribution," the alleged transfer by Rurelec or the alleged contribution did not take place.

A second comment in connection with this objection is that we also see, as I had already anticipated during my Opening Statement, a series of assertions by the Claimants' witnesses to indicate that Rurelec has done this, Rurelec has done that, and that's creating confusion between EGSA and Rurelec. But please be aware. You need to take that into account.

And just to give you an example, you might remember a

17:30 dialogue that I had with Mr. Andrade during his cross-examination; and, as you can see at Slide Number 15, it is very clear that whenever he said, "Rurelec bought GCH-11," that was just a lie because the purchaser was not Rurelec; rather, EGSA.

And the purchase was not done with Rurelec funds established by Mr. Andrade, but it was done with debt and equity.

Perhaps the only contribution that one would have in this case from Rurelec is the one that strikingly--strikingly--mentions Mr. Blanco in his Second Statement, Paragraph 20, when he said that Rurelec contributed the impetus to incorporate new technology. If contributing impetus is an investment-related contribution, then I think the world is full of investors.

Third comment, allegedly the witness statements also indicate, talking about the Claimants' witnesses, that there was an alleged transfer of know-how. The question is who transferred this know-how? Is it coming from Rurelec? Is that the contribution that Rurelec made to Bolivia? Well, there has to be some contribution to the Bolivian economy. These individuals should have done something for them to be known as investors. In Investment Law, we had not reached such an abstract level that the only thing that the investor has to do was to just hold shares. There has to be an action, the action

17:32 of investing.

What the case file shows is that if any contribution was contributed in this--if any know-how was contributed in this case, it was IPOL's contribution, and I thought before this hearing that IPOL was related to Rurelec, and perhaps there was some investment in that regard.

Mr. Earl in his statement, and this was confirmed in Claimants in their closing statement, in Slide Number 18, confirmed and reconfirmed that there is no relationship between Rurelec's and IPOL. So, what Rurelec does is Rurelec's, and what is IPOL's is IPOL's.

What has been the investment? What has been in our case the investment made by Rurelec?

I showed this slide in the Opening Statement. The Claimants' lawyers have said nothing about this, and they were saying that a guarantee may be an investment. A guarantee is a purely commercial act that cannot be classed as investment.

Now, my fifth comment in connection with this Objection to Jurisdiction--

PRESIDENT JÚDICE: Mr. Silva Romero, please, just one question: In 2005, Rurelec made the purchase; right? Do you understand that the time elapsed from '95 with the investment made by this entity or other entities before it, should not be taken into account for purposes of determining whether the investment exists or not?

17:34 MR. SILVA ROMERO: That is correct. Proof of a contribution needs to exist. We have no evidence of Rurelec's contribution in our file.

PRESIDENT JÚDICE: Yes, of course, but if you reach that conclusion, what's happened before, is it relevant from your viewpoint for investment purposes or not?

MR. SILVA ROMERO: If a business is acquired and a contribution is made to acquire the business, then we're in the presence of an investment.

PRESIDENT JÚDICE: Very well. Thank you.

MR. SILVA ROMERO: If we look at my fifth comment related to this objection, what has been very clear in our opinion at this hearing, Members of the Tribunal, is that Rurelec did not put in a cent in EGSA. Much has been said about the illiquidity of the company, the level of indebtedness. This is relevant when we need to find whether Rurelec invested or not. If there was no contribution when acquiring the Shares, if there was no technology transfer, if the company did not capitalize itself to face the debts that it had, where is Rurelec's contribution? What I have shown--what has been shown is that Rurelec borrowed money and indebted the company. Claimants' witnesses have contradicted themselves. Sometimes they said that illiquidity was critical, and sometimes there was no illiquidity. At 20 you can see that Aliaga said black and white in connection with this.

17:36 And Mr. Aliaga said that Rurelec didn't even put in the 3 million that, according to him, was necessary to solve everything. It was said three millions were missing, and Rurelec did not put them in, and a suggestion was made for the capitalization of EGSA for new shares to be issued, but what is clear is that they did not want to put in a single cent.

The answer to this is very clear. That is what they had in mind as a business. They wanted to purchase a litigious credit.

Mr. García Represa is going to talk about this, and much has been said about the CCGT. He will explain how relevant or not that is. The reading in connection with the insistence of the CCGT is the following: Claimants know that they have not put in a cent in the business. This is clear in the record. But they have to show that they contributed something, that something happened. They did something. Claimants implicitly recognized that all investments require a contribution. The CCGT is a nice project. It is an environmental project. It is a project that can bring EGSA forward. So, they show it as if they had contributed something.

Our point is that there is no evidence in the file in connection with any contribution related to the CCGT.

Now, my last comment in connection with this objection that Rurelec had made no investment. I hope I understood the

17:38 question posed by the Member of the Tribunal when it said what would happen if EGSA had become capitalized and Rurelec via Guaracachi America would have had 80 percent--

PRESIDENT JÚDICE: Yes, it would have put in 3 million.

MR. SILVA ROMERO: Well, according to Bolivian law, there had to be a balance amongst the different Shareholders, so any capitalization would have meant that all Shareholders would have been obligated to put in more money for the interest in EGSA.

I just heard Mr. Blackaby talk about the Quiborax Case, this in connection with the Objection to Jurisdiction, and it was said that in Quiborax the Tribunal rejected an argument by Bolivia whether Quiborax had or not made an investment.

What happened in Quiborax had nothing to do with the reasons given by Mr. Blackaby. There were two objections to jurisdiction in Quiborax: First, the fact that there was no investment. Why? Because it was said that Quiborax had made no contributions to the Bolivian economy. This was rejected by the Tribunal. Quiborax has nothing to do with what we are alleging in this case.

And second, Quiborax alleged, or, rather, Bolivia alleged that Quiborax had committed illegalities, which meant that the investment was not protected by the Treaty. This was

17:39 rejected by the Tribunal. What was accepted by the Tribunal is that Allen Fosk, the owner of Quiborax, continues to be a party to this case. Allen Fosk was the holder of a certain number of shares, but nowhere in the file was it demonstrated that Allen Fosk had paid for those shares, that a transfer was made for those shares to be acquired.

This is a very close case to what you have to decide. Bolivia was the Respondent; and, if there has to be a consistency in this world of investment arbitration, and this nascent world of investment, you have to look at this decision very, very much in detail.

The third Objection to Jurisdiction has to do with the denial of benefits. My colleagues, Claimants for or rather counsel for Claimants have a placed a number of arguments in connection with the opportunity that there is to deny benefits in connection with the U.S.-Bolivia Treaty. I will refer you to the comments that I made during the opening statements, but I'm going to say two things.

First, Mr. Blackaby told you--well, he indicated that that clause under the Treaty would give Bolivia great discretion to tell an American investor whenever Bolivia sees fit, "Okay, the Treaty no longer protects you." Remember that we're not talking about every single U.S. investor. There is a very clear definition in the Treaty as to who can be denied benefits. Benefits are to be denied to mailbox companies, and

17:41 we all agree that Guaracachi America, Inc., was not.

As to when benefits could be denied, I would like to refer you to the only two decisions that have solved this issue in my opinion, which is Ulysseas v. Ecuador and Pac Rim v. El Salvador, where it is that the latest opportunities for this is during the Counter-Memorial. You are going to have to study those decisions and reach a conclusion in connection therewith.

Two additional observations in connection with this jurisdictional objection. Mr. Earl accepted that the only purpose of Guaracachi America, Inc., was to hold EGSA's shares. There is an identical case, Pac Rim v. El Salvador, well, they said that holding U.S. shares--rather, to hold shares in Bolivia or in El Salvador in the Pac Rim Case cannot be a substantial commercial activity in the United States. Bolivia has no issue with protecting U.S. investors that conduct substantial business activities in the United States, but not mailbox companies. I don't think the U.S. would protect Bolivian mailbox companies.

Second comment, and the arguments floating around is that, well, if Guaracachi America is a mailbox company is because we were obligated to create this mailbox company to be part of the capitalization. That is not correct. I refer you to the Bidding Terms, and the bidders have the possibility of adopting different legal concepts. It could be, for example, an Allegra company, a consortiums companies, as you can see

17:44 at 24, a specific purpose entity--this what Guaracachi America chose--or other kind of consortia. And there is an open possibility here.

It's not that Bolivia obligated them to do this. They chose this Special Purpose Vehicle to hold EGSA's shares. So, I think that this is a fact point that needs to be corrected vis-à-vis what we've heard about an hour ago.

Now, the fourth jurisdictional objection now in connection with which I wanted to make a number of comments, and this has to do with the fact that the new claims are not to be included within your jurisdiction because they were not communicated to Bolivia. I heard a comment in the sense that Rurelec is different from Murphy because in the Murphy case the controversies were never notified. And this is the point here. The new claims were never notified. What was notified was the claim related to nationalization; and at 25 you see a time line here where the opportunistic nature of these claims is absolutely clear.

As you can see, the Measures related to the Capacity Payments were taken in February '07. Spot Price Measures were taken in June; and, in August--August '08. Nationalization took place on May 1st, 2010. The only dispute notices on file that have to do with nationalization took place on 13 May 2010. The arbitration notice was established on 24 November 2010, with no new claims, and these new claims appear on 1st

17:46 March 2012. Where? In the Memorial. You've seen the desperation of Claimants to join nationalization with new claims, so sometimes they talk about direct expropriation, sometimes they talk about indirect expropriation, a series of steps that would lead to expropriation. I think that the strategy is to give you something to reject so that Claimants can get something because of nationalization. The position of Bolivia is that there is no compensation, zero compensation, due Claimants because of nationalization.

The last jurisdictional objection has to do in connection with new claims. We talked about violations to Bolivian law, and this is not part of your jurisdiction, Members of the Tribunal, because they are not submitted as treaty violations. I've heard an argument in connection with which that objection will no longer be jurisdictional but, rather, merits-related, and if we look at 26 you see that both the Treaty with the United Kingdom and the Treaty with the U.S. require that an obligation of a treaty be violated.

When we see the claim related to the Spot Prices at 27, we see that in the Opening Statement this was presented as a violation of the Electricity Law, and the principles of that law.

At 28, that is what Mr. Abdala understood, and Mr. Abdala also understood this at 29 in connection with the claim related to basic Capacity Price.

17:48 The conclusion for this claim has to be in line with the conclusion reached by the Tribunal in the Iberdrola v. Guatemala case.

Because of these and other objections, Bolivia understands that you have no jurisdiction to hear the claims posed by Claimants. We are sorry that this proceeding--these proceedings did not become bifurcated because Bolivia's position is that everything was done without dealing with the merits, and the allegations related to nationalization, Spot Prices, basic Capacity Price, et cetera, are done under reservation and ex abundante cautela.

Now, in connection with nationalization, I'm going to make five introductory comments. First, I'm going to state that in Claimants' statement, there is a contradiction--in Claimants' statements there is contradiction in connection with direct expropriation and indirect expropriation. I would like for you to remember what the Tribunal said in the Burlington v. Ecuador Case.

Second, Mr. Earl recognized that he knew of the nationalization risk back in 2005. This is very important, Members of the Tribunal. Remember that in 2005, the SPA was entered into, and immediately thereafter Rurelec informed the London Stock Exchange that there was a risk for nationalization. And what is the protection they mentioned? The U.K. Treaty. This was in the mind of Rurelec from the very

17:50 beginning, and this must have consequences as I've mentioned and as Mr. García Represa will mention later on.

Third comment. Mr. Blackaby acknowledged expressly the relevance of the issue of whether expropriation was illegal or legal. We agree that everything has been said in connection with the lack of payment, equating unlawful expropriation or whether there was new prices or not. This would be irrelevant for you in order to hear claims on nationalization.

However--and I'm at 35--in the opening statements, Claimants for the first time criticized the lawful nature of nationalization. It's the first one that they say that the nationalization was violent, that something happened that should not have happened, and I'm not going to make any comments in this regard, and I've heard your comments very carefully, Mr. President. I think this is part of the strategy to show Bolivia as a little, tiny State that does whatever, and I don't think that that is correct.

Fifth place, my fifth comment, we have in 37 a question posed by Mr. Conthe to Bolivia in connection with Profin. I can criticize the argument, but I'm not going to criticize the question.

In connection with the question, I'm going to say something, and the Attorney General will make a comment at the end. We feel that Dr. Conthe has posed questions inappropriately, and we say this with respect and as a

17:52 representative for Bolivia, I have to say this, Bolivia is subject to a number of oversights, and I'm going to reserve all rights that Bolivia has in this regard. Mr. Attorney General will say something in this regard later on.

In connection with the question posed by Mr. Conthe, the answer to this question will bear no effects because the lawfulness or lack of lawfulness is irrelevant, so the issue of due process disappears.

Another comment in this regard is, as I was saying in my Opening Statement, that Claimants are trying to redraft the Treaty in connection with the assessment process. They say that there would be a due process that should be respected vis-à-vis the valuation process, and I don't read that in any of the treaties invoked in this case.

Now, in connection with the Profin Report, Mr. Conthe made reference to the clause related to the use and publication of the valuation. The point made by Mr. Conthe indicated that this document is confidential, that it should not be disclosed, that it is strategic in nature, and you can read at 39 the terminology that was used by Profin.

Looking at this clause and concluding that Profin is not independent, well, that is not the same thing. What this clause is saying is that that document is prepared by an independent expert according to the Bidding Condition, and then how this document is dealt with confidentially, strategically,

17:54 that's a different thing. To conclude out of this clause that Profin was not independent is a non sequitur. Here, we're only deeming with how this document is going to be used, but I don't know how one can conclude that Profin was not independent. That should have been evidenced differently on the basis of reports or on the basis of the fact that Profin failed to take into account certain elements, the evidence would be different, and that evidence, Members of the Tribunal, has not been offered by Claimants, Claimants that put forth the relative--the relevant allegations in this regard.

As recognized by Claimants, this is a quantum case. The Tribunal should not decide this fearfully. Other tribunals in investment cases have decided that the Fair Market Value of the expropriated company was zero.

Remember what Mr. García Represa said in connection with the private equity houses? They could be willing buyers in certain circumstances, and sometimes they buy a company that is not working very well, that has problems. They buy it, they fix it, and they resell it. That happens in the market, and you should not be surprised by this, Members of the Tribunal.

With your permission, Mr. President, I will give the floor to Mr. García Represa.

PRESIDENT JÚDICE: Thank you, Mr. Silva Romero.

MR. GARCÍA REPRESA: Thank you very much, Mr. President, Members of the Tribunal, dear colleagues. In

17:56 the next few minutes, I'm going to try and summarize what we've learned this week and last week, in connection with the reasons why this Tribunal should not order any kind of compensation for Claimants for the nationalization.

Remember that the barrier that both experts use, which is the financial data of EGSA at the time of nationalization, is $92.7 million. If EGSA is worth less than that at nationalization--and this is the position of Bolivia--we say that it's 91.3 million's worth--there is no compensation whatsoever.

Bolivia is not saying that the company's worth nothing, but the stock that corresponds to the value of the company minus the financial debt at the time of nationalization has no value. That's something very different.

Bolivia has always recognized its international obligation to pay compensations for nationalization of the electricity companies that were nationalized under the Nationalization Decree that you have in this case.

Mention was made by Claimants of the Corani and Valle Hermoso case. They were trying to distinguish Corani from EGSA. I agree. The position of Bolivia is that these are different cases. Why are they different cases? I'm going to ask you to go to 106 of my Opening Statement, where you're going to see that Corani, in 2010, had profits for $7.8 million, and we're going to see what happened in EGSA in

17:58 2010. Valle Hermoso had earnings for $4.3 million, and none of them was up to its ears in debt like EGSA.

In the next few minutes I'm going to try and summarize for you what we've learned in connection with the terrible economic situation of EGSA at the time of nationalization. I'm going to mention why the Fair Market Value calculated by Mr. Flores with a realistic basis is correct and reasonable in this specific case. I'm going to talk about the other methods of valuation, and I'm going to say why these are not relevant and why Mr. Flores' benchmark is relevant, and I'm going to invite you to refer to some of the slides submitted by Claimant in the closing submission, and then I'm going to talk a bit about interest very briefly as to what Mr. Rubins mentioned.

In connection with the economic difficulties of EGSA, you've heard the testimony of Mr. Aliaga who indicated that EGSA was in a critical period, and Mr. Lanza was resentful because he had been dismissed from EGSA. He denied any kind of problem in EGSA, and go to Slide 36 of my colleagues, and you are going to see what Lanza says, and this contradicts everything else that Claimants' witnesses have said, and what it is a proven fact is that starting in 2008, EGSA was not able to pay dividends. It's not that it didn't want to. It's that it was not able to.

Mr. Earl said this in one of the Board of Directors meetings, and you have it here, and this was confirmed by

18:00 Mr. Abdala, among others, during his examination.

You're going to remember that Mr. Abdala tried to create a little bit of confusion in his presentation of the data. He said, okay, they were paid in '09, but the dividends for '08 and '09 were not able to be paid. They were declared. They should not have been declared, as Minority Shareholders indicated, but they were never paid because the company wasn't able to pay them. This is relevant for the size premium, and we're going to talk about that in a moment.

In March '09, Fitch ratings downgraded EGSA's credit rating because of the weakening of the credit profile of EGSA as a consequence of the financing of the investment plan and the larger debt that it had. This was the main problem for EGSA. As Mr. Silva Romero said, you can show us every single investment by EGSA. If that investment is done under debt and it jeopardizes the company, indebting the company for many, many years, then they eat up the equity of Shareholders. And that is what has happened. That's it.

Mr. Paz explained in his Witness Statement why they changed from Fitch to PCR, but he was not asked about the reason, and now they're telling us that Mr. Paz was just an analyst.

Mr. Paz had to verify what was going on with the credit-rating agencies, and he explained that in his statement. He was in charge of that. Please look at Mr. Paz's statement,

18:02 and there is one credit-rating agency as opposed to two, and that also has an impact on the Size Premium as we will see shortly.

In this connection, you can see at 45, the various versions that we received from the witnesses of the Claimants, Mr. Earl on the one hand says that the change from Fitch to PCR is because Fitch was very exposed because of what had happened in the United States, their reputation was not the same, and they needed to ask for a replacement, but I don't know if you know but Pacific Credit Ratings's reputation is far from the reputation that Fitch has, but then Mr. Blanco said that the reason they changed is that they needed a quick answer, and these are completely different stories in an attempt to change--to actually cover the real reason, and that is they were not really happy with the credit rating.

On this regard, now I am going to show you the next page on the transcript, that is 696, and where Mr. Blanco actually confirms what we actually said in connection with the credit ratings, and please take that into account when you review the file.

In December 2009, at Slide 46, Mr. Blanco recognized liquidity problems with EGSA, and he said that EGSA was not in a position to obtain more financing, and this is important for the Size Premium, and I insist on this because this is just not a concept.

18:04 In January 2010, Mr. Blanco--and these are internal pieces of correspondence that have not been made public by the Claimants. He referred to the impossibility of obtaining more financing, and Abdala, to respond to my questions whether he had seen the communications by EGSA's Financial Director, he said no. He said that he knows they exist, but he did not review them.

March of 2010, the General Manager, the then-General Manager Mr. Aliaga, recognizes that EGSA cannot continue to respect the dignity tariff, and that represented a cost between 750 and 900,000--$890,000 a year, and the reason is that the borrowing capability was to the limit, and it was no longer--they were no longer able to borrow more.

So, what happened? We heard a new argument, a last-minute argument here in the hearing, that if that cap was going to give a new credit.

Now, when I say that there is no record of that argument, there is a request. There is the application for the credit, but there is no document issued by CAF saying that they do consider or do not consider the granting of that loan. There is nothing from CAF.

So, if we're going to refer to hypotheticals and intentions, I don't think that any willing buyer would have accepted that a bank, a Development Bank, that already had very strict conditions would have made those conditions easier or

18:06 just give out the money without any sort of requirements.

And Mr. Conthe was asking about the ratios requested by CAF, and how is it that they are requesting 0.65? I think it is quite strict, and that is the relevant portion of it. How could it be that a development bank is imposing such strict conditions to a company just because they did not believe in the company because if that company had such great perspectives as they're stating today, the rules shouldn't have been that strict, and that is an indication of the poor situation in which company was.

Mr. Abdala, himself, during his examination at 49 recognized that EGSA was not able to have any more borrowing as of May 2010, and he was--this is a confirmation by Abdala of what I just told you.

My colleagues mentioned during the hearing that the best indication of EGSA's financial health was that the minority pension funds had bought the bonds issued by EGSA in early 2009. And if you look at the timeline, we are referring to early 2009, and everything that I mentioned so far is late 2009, January-March 2010. Clearly the situation took a turn for the worse, but you were never told that because of the Bolivian regulation, pension funds had to invest in Bolivia. They cannot finance or fund companies or look for debt outside Bolivia, and the Bolivian debt is not so broad as they might lead you to think.

18:07 And, second, if the situation was so good, why is it that the same pension funds that in 2007 took part of that bond issuance by EGSA, they needed to go down, why is it that they requested 8 or 9 percent as interest rate and later on they're requesting 9.70? That is to say, a 13 percent increase. They did not explain that, and that is due to the deterioration of the company.

So, in connection with the financing, what were we able to see here? So, contrary to what you will see in the pleadings and in the memorials, and I invite you to do so because this clear shows the strategy of the company. EGSA's problems were worse than just a mismatch in the accounting records. If that was the case, you have the banks, and even Mr. Abdala confirmed that they had no further capability to borrow.

And you will remember that the Claimants, in their writings, not in their Closing Argument, tried to blame the State for the illiquidity and financial problems that EGSA was facing. How did they do so? First, they said that the State was responsible for EGSA not to collect the pre-payment of the bonds. If the State acted in good faith, they would have received something like 3.3 million euros prior to nationalization.

And they also tell us that the State delayed the implementation of the combined-cycle project because they did

not approve the drilling of two wells necessary to pump up the water for the steam turbine, and also that the State delayed the relocation of two units that needed to be moved away for the construction of the combined-cycle project.

Now, in connection with the pre-payment of the carbon credits, you're going to see at Slide 50 onward my Exchange with Mr. Earl, and that is at 50, 51, and 52, the Exchange, similar Exchange, I had with Mr. Blanco.

What do Mr. Earl or Mr. Blanco tell us? First, that the State issued the approval letter for the project in July 2008, that the--in June 2008, rather, that the project record was not notified or informed to the United Nations until May 4th, 2010, that this registration before the United Nations was necessary for the pre-payment of the carbon credits, and that only--after that only should that letter be used to communicate to the United Nations that KfW and CAF could be informed of the project, too.

And Mr. Earl is telling us that, yes, indeed, it was a condition for the payment that was not fulfilled until after the nationalization, but that he was negotiating giving his good relations--relationship with CAF to reject, to give up that good precedent condition, but Mr. Earl never confirmed that after the negotiation they obtained a change of the requirements.

In May 2010, a willing buyer has a precedent condition

18:11 that has not--a condition precedent that has not been reported, and the State has nothing to do with the delay in the payment of the carbon credits.

Now, in connection with the delays for the drilling of the wells and also the authorization to move Guaracachi 8 and 7, you will see at Slide Number 53 the Exchange I had with Mr. Lanza.

What did he tell us? He told us that EGSA received recommendation on these wells, and it took them three years to request permission to the municipality to drill. What was the delay of the municipality? Nine months. What did they say in their writings? Fourteen months. When one puts these facts in perspective, there is no delay that could be attributed to the State.

Now, regarding the displacement of these Units 7 and 8, Mr. Lanza said that in connection with my question that between the initial request and the approval there was another Exchange of documents because EGSA had presented an incomplete record. They needed to complete that. And what was the delay between the complete application and the authorization? Seven months as opposed to the 13 months that we were told in the pleadings written by clearly an English person, but not Mr. Lanza.

Now, what was the true cause or the real cause of the delay in the combined cycle? And I here invite you to look at

18:12 Slide Number 54. This was a conversation, a discussion within EGSA's Board, and there it is said that given the liquidity situation of the company, payments to suppliers have been suspended and no new purchase orders are being placed. This situation will have a negative impact on the conclusion date for the project, and that was what actually happened.

And given the situation as of the date of nationalization we have on the one hand that EGSA owes $35 million to suppliers, and if we just look at the last account, December 2009, $21 million.

Now, as part of this amount, we have the $14 million that were owed to the gas provider, and the--to the gas supplier, and this is a key input for this project.

Now, let's look at Slide Number 54--34. This is something that our colleague showed us. I am sorry to have to do this because I thought that, given the quality of the professionals at the other side this was not necessary, but here it is said that the payment to suppliers was under control, and they're quoting here Ms. Bejarano's statement or answer, and here it says:

"QUESTION: Was Guaracachi making payments? It says--Guaracachi was making payments at least monthly to YPFB?

"ANSWER: Yes. And I have even included the figure in the first introduction."

18:14 But what would any reader understand? That Guaracachi was making payments. That is at the nationalization date. But if you look at the previous lines that were quoted here, what does Ms. Bejarano say to respond to this question?

"Guaracachi was making systematic payments to YPFB in 2010. Was it?"

And the answer is: "No."

Systematic payments were made up to June 2009. Later on, we paid installments based on the availability of funds we had, and there is a document in the record that shows that the last payment made was for October 2009. Third--

PRESIDENT JÚDICE: Are you going to change?

MR. GARCÍA REPRESA: I am referring to the nationalization date.

PRESIDENT JÚDICE: Are you going to finish with nationalization or liquidity?

MR. GARCÍA REPRESA: Well, I haven't concluded that.

PRESIDENT JÚDICE: Okay, then I'm going to wait.

MR. GARCÍA REPRESA: Now in connection or in addition to the commercial debt with 35 million, out of which 14--we know EGSA had not enough funds. They also had a $92.7 million debt. And because of a change in the accounting policy, we never discussed the application of the accounting policies and the UFV. EGSA would have report losses in 2009. But immediately after nationalization there is something that my

18:16 colleague ignored completely, and that is the bailout plan by the State. The State had to pay at least $20 million, including 5 million from Corani and Valle Hermoso.

So, see up to what extent EGSA's competitors had to go to rescue EGSA after nationalization.

And in connection with this item, I would like for you to look at Slide Number 6 that was introduced this morning, and once again I understand that this is a mistake, but it is my obligation to correct it.

PRESIDENT JÚDICE: It wasn't this morning. It was just a little bit ago.

MR. GARCÍA REPRESA: For me it's the morning, I would say.

Slide Number 6 would show you the text where it says that Guaracachi is a highly profitable company, and it shows us the accounts for 2011. There is--their profits for 80 million Bolivian pesos, and then it says that the profits are 87 million Bolivians. So, this is for 2011, so I understand there is a mistake in the date.

But also I am really concerned because in this slide this is showing the wrong message. Why are we looking at 2011 instead of 2010, and I am going to show you now so that you do not have any doubts if the losses and profit--loss and profit statement for--profit-and-losses statement for EGSA 2011, there are only two pages, and you're going to see that at the end of

18:17 the accounting year, EGSA had 20 million Bolivians as losses almost 17 million Bolivian pesos, almost $2.3 million, and compare this to Corani and Valle Hermoso. And as I mentioned before and has already been recognized by Mr. Lanza, EGSA received a payment for almost $12 million for a problem they had with a combined-cycle project in 2011, but this improved their financial situation, but this says nothing clearly about the whole situation.

PRESIDENT JÚDICE: And how is this relevant? I am not anticipating your question, but my question is if under the Treaty if there is any right or if there is any right in connection with Spot Prices and capacity, but is this possible based on your own point of view for the Claimants EGSA? To think of their plans up to 2008 and for Spot Price and capacity to be to be maintained, even if the stream of funds was affected prior to--giving the forecast.

MR. GARCÍA REPRESA: I'm not sure I understood your question. I think that you are asking me questions about Spot Prices and capacity, but in connection with Spot Prices, if I understand you correctly, historical damages on the stream were inexistent because that's where you have the stabilization funds and this is shown already by the witnesses.

PRESIDENT JÚDICE: So, there is no record in the Treasury?

MR. GARCÍA REPRESA: Yes, correct. There must be at

18:20 1 least three months in the record, and I showed you already
2 Mr. Abdala's table that shows no impact.
3 Now, the basic Capacity Price has a higher impact, but
4 there is no estimation of what they would have obtained had
5 there been no change in the basic capacity price. So, what you
6 need to take into account there, even though this is not part
7 of the claim, is what the grounds was for that change. That
8 was based on a Bates & White report.
9 PRESIDENT JÚDICE: I know that.
10 MR. GARCÍA REPRESA: Well, but this is relevant
11 because this price allowed the companies to recover the cost,
12 the cost of purchasing equipment. Bates & White proved that
13 the cost of that 20 percent was not such. There was no cost to
14 compensate. Therefore, that 20 percent was a windfall profit.
15 That is what Bates & White said.
16 PRESIDENT JÚDICE: Well, that's the reason I asked you
17 the question. I clearly remember that.
18 MR. GARCÍA REPRESA: So, I wouldn't like to estimate
19 this right now. I'm not sure that that would have allowed for
20 an improvement of the liquidity. They could have made some
21 earlier payments to the suppliers, but if you compare the
22 historical claim given the basic Capacity Price and the
23 $20 million debt, it's clearly not sufficient.
24 So, Members of the Tribunal, now I would like to refer
25 to the valuation as to the date of nationalization; and, as I

18:22 mentioned before, I am going to refer to the first two points of disagreement, and they are the revenue projections, revenue forecasts in the discount rate, and it is quite striking that our colleagues see revenue projections very quickly. And what is the reason? Well, this is something that we saw at Slide 65. When one tries to look at the--55, sorry. When one looks at the impact of revenue given the discount rate, I analyzed--I used the DCF method, and we see that the impact of the streams on the total is 42 percent. It is not what you were shown in the opening statement, in the Opening Arguments by the Claimant.

So, why are they--the Claimants interested in showing this difference? Is this just mere dressing? It's just for you to think it is not worth for them to analyze in detail revenue forecasts? They're telling you that it is enough to analyze a discount rate, and several tribunals have said that they have discretion about this, and--what is the first task?

With due respect, in this case, is to analyze the credibility of the revenue forecast to establish the stream, and only starting there to consider the discount rate that has to be the right one to apply in this case.

That's the reason why now I am going to refer to the model that represents power dispatch and also firm capacity. That is to say the capacity that EGSA will have in the system and how much each megawatt will be compensated, and this is

18:24 something that Mr. Flores mentioned, and that is--there is not a single mistake. There is not a single piece of criticism in connection with the calculations by Mr. Paz. Today, we heard that Mr. Paz is not independent; therefore, he could not have done any estimates. But if you go back in time and you think of what the Claimants told us, based on their opinion, MEC's estimations equal the typing of a letter by a secretary. She's given some words, and she types the--she's given the assumptions, and she writes the letter. And MEC's experts are given the assumption, and they just write up the assumptions. But then when Mr. Paz has to do the same, independence is key.

So, with due respect, I think that you need to be a little more careful when you make that sort of accusations.

And then we are told that it is kind of suspicious for Mr. Flores and Mr. Paz to have discussed the issue. I imagine that MEC and Abdala also discussed at least a list of instructions. So, now if the criticism is for the experts who understands what is going on and to criticize the assumptions of his model, we're getting to answers to the extremes. What are we told? Well, that Mr. Daniel Flores is not an expert on electricity. So, whatever he could do with those projections is really full of doubts, but please look at 72, Paragraph 72, where Mr. Abdala of Compass Lexecon says that to forecast future revenue I have requested the assistance of an engineer company that can actually develop these simulation models. In

18:25 a footnote he says I am not an expert on this issue, and so this is a level playing field on the same criticism that you had for our Expert applies to you, too.

Another aspect that was quite difficult in this hearing was to see how the Claimants' lawyers tried to confuse the Tribunal and also Mr. Paz when they said that Compass Lexecon's model starts in July 2010, and they also suggested that there was a mistake in Mr. Paz's model.

And then, what did Mr. Abdala say? That is false. They never said that. It is true that the projections of Mr. Paz start at May 2010, and they continue historical data as of that date. I'm going to ask you to recall what Mr. Abdala said in connection with the information that is used for the projection. Today, I take something from 2009, then 2010, then I put it into the--into mixed blender, and I get a result, and this is the result in a market that has nothing to do with it.

Now, something else that we have seen in the closing arguments of my colleagues at Page 77 is that, for the first time they asked something about Mr. Paz demand projections. They were trying to see if these would filter in the system, but Mr. Paz was never asked about the demand, but now if they are--if they thought of another argument after they examined the witness and they tried to put it forward during the Closing Argument, in my opinion, it's too late.

Now, what I told you a moment ago, Mr. Abdala and MEC

18:27 have not had any doubts in resorting to hindsight, and what Abdala says in Slide 57 shows that, but you will see something very surprising. Mr. Abdala says that whenever I have projections, I give instructions, and I think it is important for the Tribunal to know what happens next. But whenever he has to apply an inflation factor to the PPI turbines and the fact that it reaches almost 12 percent in 2009, and it is lower in 2010, and then it is negative 2012, well, then the future is not relevant. And when he thinks that the carbon credits $14 per ton, and now they're over 50 per ton, well, that is not relevant for the Tribunal. And at 58, you are going to see MEC's comment that shows that they have used information post-nationalization.

Something that was very interesting in this hearing was to see why MEC stops projections in 2018, and as an introduction, let me tell you that if Mr. Paz has done so up to 2018, it's for to you to have a benchmark.

Now, what is the main difference, and why is that date relevant in the case of MEC? Because, by choosing that date and also an expansion plan that was post-nationalization, the Claimants would like for Rositas to vanish from their plan, but Mr. Paz does include Rositas.

Now, there was a discussion here between MEC and CNDC whether this could be done after 2018, and the truth is yes, CNDC--and you have it at Page 59--confirmed that projections

had been done for 12 years. So, why should they just choose eight or nine years? Because, by coincidence, we are also excluding Rositas. That is the largest project that was being prepared in Bolivia.

It's essential for you to understand that Rositas did have a fundamental economic impact, and it's not the kind of impact that the Claimants told you, and I'm going to explain this.

In Abdala's model, Rositas--it's not that it delayed one, two, three, four, five years. No. Rositas, up until 2038, it never even appeared, and this is at 60.

What does this mean? And one has to always conduct a reality check in practice. And if you look at 61, you see this. We exclude Rositas. We look at the expansion plan without Rositas, and starting in 2019, we have black-outs. And what they are telling us is a willing buyer that is doing forecasts to buy EGSA would not consider the entry of the hydraulic projects that are most--more efficient, and it would consider then--2019 there would be black-outs.

If there are black-outs, it means all the units are being used, even the most inefficient units, at their top capacity. Since EGSA has the most inefficient units, the ones that bring in the highest price, EGSA is going to have a perfect business.

PRESIDENT JÚDICE: With the new Spot regulations, is

18:31 that still true?

MR. GARCÍA REPRESA: Yes, because the Rositas is much more efficient than any of the other units of EGSA's.

PRESIDENT JÚDICE: Yes, of course. But the difference between one, two, and three in connection with the others is very large.

THE WITNESS: Yes.

MR. GARCÍA REPRESA: Yes, there is a very important difference here, and I have a slide in this regard.

There is also a consequence in connection with quantities and not only in connection with price. So, here we have to think about quantity and price, and these two concepts are interrelated.

What we know about Rositas--and I'm not going to deal with this any longer--the project is being implemented. Mr. Paz actually, according to his personal knowledge, considered this, and--at Page 53, and I asked that question to the engineer from Estudios de Infraestructura.

And when you conduct the sensitivity analysis and include Rositas in the MEC model, that model fails. Clearly that model has a problem. This is not possible--it is not possible that if Rositas come into operation, the Aranjuez units continue to produce just like they were producing up until that point. There are no connection problems there. This is a failure from the model.

18:33 What did Mr. Parodi say? This is what the problem--the program gives you. What program? The program that MEC gave him, a program that he didn't even understand nor did he operate.

Now, this in connection with the Aranjuez unit, you can go to 66 and you can see the example. Mr. Paz explained this in his Statement, in his direct examination.

And I will now talk to you about Karachipampa. And this has not been dealt with in this hearing, and what is relevant here is that when Mr. Blanco submitted EGSA's budget in January 2010, he said Karachipampa will be decommissioned in August. Claimants completely ignore this in what they're saying to us. But before that, I think it's important for you to remember what Claimants' witnesses have said in this case about Karachipampa. That is to say, that this was a unit that was losing money, that it is a unit that should have been removed in 2009, but they got delayed and they never asked for the removal. It was a unit that was dangerous to operate, and that in the information given to the CNDC, they were told that the unit was going to be removed.

Claimants again, they said, well, the CNDC approved for Karachipampa to stay in operations.

Two things: The CNDC has no jurisdiction to approve or not to approve. It is the AE that has to do that.

Now, we look at the choice of documents by Claimants.

18:34 They're saying that CNDC maintains Karachipampa because in the Node Price Report that is published in April, Karachipampa appears in the next six months. But in the PMP, Karachipampa is not included. This is published in March that contains forecasts for the same period and three semesters beyond.

And there is an inconsistency in the documents? And Mr. Paz explained this: No. There is none. The Node Price Report is approved by the AE. The AE is not going to remove a unit from the report if it fails to approve the withdrawal of that unit. And, in 2006, that was not approved. What was pending was the Request of four withdrawals by EGSA. We know EGSA's Board revoked that application, and that is why Karachipampa was kept in operation.

And this was explained by Mr. Paz. The turbine was sent to Scotland to be repaired, and Karachipampa should not be in that model at the nationalization date, but the only reason why it's there is to inflate the claim of the Claimants.

Now, the delay in the CCGT is a red herring, a complete red herring in connection with the nationalization. And both experts explain the same thing in connection with the commissioning date.

Now, I'm going to talk about the basic Capacity Price, and there is a difference here with the calculation by Claimants. This is at 70.

Claimants feel that all units operating in 2012 of

18:36 EGSA's will continue operations at the term until 2021--rather, 2038. I have no information. I asked MEC, and they said the model works like that.

Where is the impact of all the other units that are more efficient that are going to become operational?

Now, in connection with the price to be applied to that firm capacity, Claimants have said nothing today--and this was striking for me, but why are we going to waste of time if that is lost? And if we look at Mr. Abdala's statement yesterday, evidently this makes no sense. It makes no sense to adjust to inflation the basic Capacity Price at 3 percent when the general price index was at 2 percent or 2.5 percent.

Why is Abdala choosing 2000-2010 as the reference date to estimate the future forecast of prices? He said that this was a judgment call. You can look at the period before or the period after.

At 73, you see what happens if one extends the period considered for future forecasts.

Now, what Mr. Abdala failed to consider is that in the years before his forecast, there was an exceptional and unforeseen increase of the raw materials and input necessary for the construction of electric plants--or electric power plants, including turbines. Mr. Lanza recognized this. He said this in his written statement, so I think it's clear.

So, why isn't Mr. Abdala considering a longer period

18:38 of time that would avoid such a harsh impact on the exceptional and unexpected increase in the latest years of his forecast? Abdala said it was a judgment call, and then some other person said it was pretty obvious, but it wasn't pretty obvious.

Now, I would like to refer to the exchange that Mr. Conthe and Mr. Abdala had in connection with why to use the PPI turbines instead of a general price index. And what Mr. Abdala confessed in that case is that, at the long run, that is not sustainable. We are conducting a simulation here, it's a 28-year simulation, and to say that the PPI price--PPI turbine price is going to be over the inflation prices in general for 28 years, that is absurd. And we have looked at in 2010 or 2011, and the turbine price is minus 05, and the general price index is positive.

And if you look at 77, you're going to see that the inflation numbers here proposed by Abdala is clearly exaggerated.

Another issue that has not been dealt with by my colleagues in their statement is that Mr. Abdala does not consider any investment in his model. When the CCGT ends, EGSA sits down and receives flows without any kind of investment. And he says that maintenance costs are included there. Well, good thing.

That is inconsistent, again, with what we've seen in connection with capacity. If EGSA would like to keep the level

18:40 of capacity and power that it sells to the market, it's going to be competitive investment-wise. I'm not saying to invest more to earn more; I'm talking about investing in order to at least maintain production.

What is Mr. Abdala saying in answers to questions posed in the examination? Well, he says that, obviously, if EGSA sees that its future income is going to be reduced, it would have reacted, (in English) "even if new capacity comes into place that might displace you temporarily," (in Spanish) Let's assume that hydroelectric generating companies enter into place, (in English) "well, obviously Guaracachi would have reacted and would never lose such an important market share."

And how it would--how would it have reacted?

Well, that model does have zero investment.

We now come to the discount rate, and at 79 you have highlighted the differences that experts still have amongst them; and, as you know, it's the Country Risk Premium and the Size Premium. And I'm going to speak about the Size Premium first.

There are two things that you have been shown. First, from a theoretical viewpoint, the Size Premium exists. It is applied. Authors mention it. And then we have to ask whether in this case we have to apply or not the Size Premium.

From a theoretical viewpoint, I'm sure you heard this afternoon again that mention was made of the Banz paper. He

18:42 deals with the existence or not of a Size Premium, and they say that Professor Banz says that the Size Premium is an anomaly. I would like for you to ask my colleagues to re-read this.

What is an anomaly, according to Banz? That smaller companies have to offer more returns. That is a fact that is undeniable and that is the case when Mr. Banz wrote his paper and today. What is an anomaly is that the CAPM, the classical CAPM, doesn't explain the reason why small and mid-caps need to offer more return.

So, there is adjusted CAPM. So, the formula has to reflect the reality.

The initial position of Claimants is this issue of the Size Premium doesn't exist. And yesterday, during the examination of Mr. Flores, you're going to see that he was shown a number of articles that mentioned the Size Premium. So, it exists; right? So, when it is--we have to ask when it is applied and when it is not applied.

So, if you go to 80, you're going to see two articles that were submitted by Claimants that explain this phenomenon. And especially the one to the right. "Most analysts agree that some adjustments should be made to account for the fact that, over time, smaller entities in the public markets have demanded higher rates of returns."

And we're not talking about a month or a year. This is an empirical study that has been conducted for a long time.

18:44 Another thing--and I'm going to address something that was mentioned this afternoon, this Size Premium or this empirical thing would only happen in January, it would be the January impact. There is a Fama and French article of 2012; this means the Size Premium should no longer be applied.

First, we are in 2010. Where were Fama and French in 2010? They were saying that the Size Premium should be applied.

In connection with the January impact, I'm sure you remember my question. Let us see what the conclusion by Ibbotson and Morningstar is in connection with the January impact.

What is the conclusion? That argument disappears if one looks at the size not as a market cap, but on the basis of other company data, such as employees--and this is something that is taken into account here--and other factors that allow us to class the company as a small company under the Ibbotson/Morningstar category.

At 81, you can see that things that are not of interest to the Claimants are not shown to you.

Mr. Spiller was mentioned here, and this is not one of the 500 employees that Compass Lexecon has today. He is the author that has worked the most with Mr. Abdala, they had signed jointly a number of Expert Reports, and what Mr. Spiller said is that (in Spanish) "It is well documented in financial

18:45 literature that smaller companies typically enjoy higher returns than larger companies." There is no debate about that. (In English) "The CAPM methodology does not fully account by itself for the greater risk and, hence, greater return that small stocks show in the long run."

That is the anomaly that was being mentioned a moment ago.

They don't mention that the conclusion by Mr. Spiller is that in that case, which was a Guatemala case, RDC V. Guatemala, the discount rate was 18.75 percent. This is not the exaggerated rate that the Claimants would want you to believe.

The fact that Econ One has used as a Size Premium the tenth smallest Ibbotson and Morningstar category, they're saying there are four subcategories--actually, there are six when you look at them--and he could have chosen a different one. He could have chosen a different one using the accounting values submitted by Claimants with UFV. But without UFV, there would be another subcategory with a Size Premium that would be higher to the one that you see here, 628, applied by Mr. Flores.

So, if we are starting to play which one of those subcategories should be applied, we should be rigorous, and we should apply a Size Premium that is higher.

Now, in practical terms, is EGSA a small company and

should be applied--and should we apply to it a Size Premium? Yes or no.

I asked Mr. Abdala a number of questions as to what he considered were the characteristics that allowed--that would allow us to conclude that EGSA was not a small company, and we have shown this at 65 of Claimant's presentation.

So, let's do the exercise that I did with Mr. Abdala and to comment on each one of these criteria.

The first criteria, according to--and according to the Claimants, a Size Premium should not be established is that EGSA is subject to price regulation. Where is price guaranteed, the price that EGSA is going to obtain? The price varies, first, in connection with the units it is going to be dispatching. If there are 400 megawatts of energy coming from a unit like Rositas, the price is not going to be the same because some units are going to be discharged from the system. There is no price guarantee.

There is no quantity guarantee because if we have new, more efficient units coming into the system, EGSA's units are going to be removed from dispatch.

There is a risk. What is being studied here at 65 is whether EGSA is subject to any of these risks. And, yes, there is a price risk. There is no guarantee.

Second, history of payments. This does not include Paragraph 63 by Abdala's Report because he talks about giving

18:49 payments up until '08, and I said why don't you go until 2010 to see what happened? So, that category can be removed as well. It does not apply. They couldn't do it because the liquidity issues, paid dividends during the last two Fiscal Years.

Third category, covered by credit-rating agencies. I don't know if this is a mistake or not here, it says agencies since 2007; "agencies" in the plural. There is only one credit agency, and the only reason why it's covered, because of the bond issue one and bond issue two. There is no cover of EGSA, and EGSA is not a publicly traded company. So, let us not make that mistake.

Then it says here difficulty in raising financing. Here, they have few limitations on fundraising. So, I think we have to throw all the e-mails by Mr. Blanco to the trash. Mr. Abdala never saw this, and EGSA apparently had no financing problems.

Another mention, that in '09, Guaracachi placed $24 million in bonds. Yes, March '09. It did place them, but under what conditions? And what happened after March '09? So, Claimant forgets what happened in '09 and in 2010.

And then the last point, they say well, EGSA was able to obtain financing. Under what conditions, I asked? All of EGSA's units were pledged.

When you look at Annex 5, where you see the table that

18:51 Mr. Blanco submitted in full, the same EGSA unit is used for bridge loans. So, this is going to be pledged, I pay you, and then the same unit is going to be pledge to a different bank and so on and so forth, and that's the way I'm obtaining financing.

They give us a standard interest rate. Well, we are going to have to see what is the evolution of that interest in time. And they never told you that there were trusts that were created to ensure payment of some of the financing that they obtained. Those drastic conditions are not enjoyed by a company that has no risk.

I'm going to now talk about the Country Risk Premium. But before that, go to 83, and the conclusion by Mr. Abdala is that if none of these conditions exist, if there is no financing problem or the problems, you do not apply the Size Premium. But if any of these conditions are met--and we would have to look at the situation, and I agree with Mr. Abdala that you have to look at the case. If you meet one of the conditions, you shouldn't necessarily apply the Size Premium. But when the circumstances call for it, clearly, one has to apply a Size Premium.

And there are conditions given by Tarbell--and there are many, apart from the ones mentioned by Abdala--and they say that the premium should not be applied if the company has diversified business such as generation, distribution, and

18:53 transmission. The Size Premium should not be applied if the company is internationally exposed. But none of those things happened in this case. And if Claimants failed to mention this, there must be a reason for that.

Let us look at the Country Risk Premium now.

At 84, you find the benchmark, if you will, of the comparison between the Country Risk Premium calculated by Compass and Damodaran--and the one computed by Damodaran, a moment ago says, if you take Damodaran's Column 1 and you take away the Country Risk Premium, then you obtain a different value. When Damodaran calculates the Country Risk Premium, he uses a multiplier.

If we compare Country Risk Premiums, we should compare them in full. What Econ One says is that the rate is 10.53, and what Claimants never showed you was the 19.02 rate that was calculated by Ibbotson/Morningstar.

Now, in connection with the application of this 1.5 multiplier, well, that multiplier has been accepted today, I think, that it is a tool; that means that it is not the same to invest in the debt of a State than to invest in the equity of a company. The risk is not the same.

So, contrary to what they propose, this is not the same for short-term valuations. Five or 10 years is not necessarily short term, and you have the example by Damodaran.

And the reason why they say that a multiplier should

18:54 not be applied is that there should be a matching--a long-term matching between the risk of investing in debt, and in equity. In more than 100 years in the United States of history, that correlation never existed, according to Mr. Flores. And how can you explain that that could happen in Bolivia in 2010? That is a fantasy, and Mr. Flores's explanation appears at 86.

Now, as the benchmark for Country Risk Premium, mention was made about the issue of Bolivian bonds of 2012. They come into this and said they that didn't use it. And they provide no explanation.

What happened between 2010 and 2012 for the sovereign debt of Bolivia to be about 13 percent? I understand that Claimants, I'm sure, have read the press, and the crisis of the sovereign debt must mean something to them. Mr. Flores talked about this in his Second Report, and no question was asked of Mr. Flores in connection with this.

The risk has been transferred. And us Spaniards know this very well, but there is an overdemand of sovereign debt of certain countries. And shortly before that, they did not interest foreign investors, and that meant that interest rates went down. If you're interested in what Mr. Flores says, you can look at that.

The comparison by Claimants is appalling. Look, the risk premium of Mr. Flores goes from 10 to 3. Ten is what Mr. Flores says, and three is the sovereign debt in 2010. But that

18:56 comparison is erroneous because 10 includes the multiplier. That should be variation between seven and three. That would be a more appropriate variation.

What are Claimants saying when they show us this very beautiful benchmark? And they say there is an equity risk differential, and Econ One has calculated, but it's quite high, and it should be lower. And I'm making reference now to the 27 percent cost and 7.88, and there is really big difference.

Well, the difference only reflects risks. Why 7.88? That is undisputed. But Mr. Flores said in his First Report that that is too low. So, why that figure? Because the whole debt of EGSA's had some is kind of guarantee. If one wants to compare the conditions of the debt of EGSA's with the condition of the debt of other companies like ESA Gener, ENDESA, and ENERSIS, one has to compare two things that can be compared against each other. So, ENDESA, ENERSIS, and ESA Gener, I don't think that they pledged their fixed assets and trusts to pay the debtors. So, there is a larger differential with the cost of equity because of these guarantees.

Now the discount rate.

Why is Econ One's 19.85 percent reasonable and adequate as a discount rate? There were various examples that were given, but you remember that, at the United Nations, EGSA said the cost of equity is between 25 and 30 percent and Daniel Flores calculated about 27 percent?

18:59 Now, we have to make an extension, they say, with a greenfield project. Well, perhaps. But when EGSA goes to the United Nations to say, look, I need this in order to be able to finance a project in EGSA, they say the cost of equity is 25 to 30 percent.

To say now well, we didn't have this in mind or do what they did now, is to say well, in 2008, before the project, okay. But what do you do when, in April 2010, a few days before nationalization, Tüv-Süd confirmed to the United Nations that Hichens's letter is correct and carbon credits should be given for that project because, if not, if you don't give a 25 to 30 percent equity ratio, the project will not go forward?

Here, Claimants don't look at the facts, and they look back to see what could have happened in hypothetical scenarios.

At 89, you're going to see the explanation by Mr. Rubins, where, after elaborating this issue, they--he said that 20 percent or 30 percent, they're not the same; the expected IRR and minimum IRR are not the same thing. So, this in connection with the discount rate of the project.

Obviously, if a project does not provide enough return to get some kind of return, you're not going to do it. But one has to look at the threshold rate, the benchmark that is requested by EGSA and by other investments in Bolivia in order to move capital.

And you're going to see at Slide Number 90 that the

19:01 Claimants here have not said anything about the hydroelectric projects in Rio Takesi. Rio Takesi is a project of July 2009 that was submitted to the United Nations where they refer to the threshold after tax. They have never even mentioned this in this hearing, and we think that this can be compared to the combined-cycle project. And this is even less risky than the other project, hydroelectric project--power is always going to be dispatched prior to the hydroelectric one.

So, we know that in the case of the combined cycle, if you look at 51, it seems that Mr.--

THE INTERPRETER: The interpreter gets corrected.

Thermoelectric power is always going to be dispatched prior to the--before the hydroelectric power.

MR. GARCÍA REPRESA: Now, we all know that in the case of the combined-cycle project, Slide Number 21, Mr. Earl seems to have corrected what he said up to date, and he had said that in the London Stock Exchange, it was referring to the equity IRR. Well, I don't understand why he hasn't said that so far.

And it was striking today to see that the Claimants also corrected, once they analyzed the impact, the famous 12 percent discount rate that they see in 2000 to estimate the basic Capacity Price and that Mr. Flores explained. He told us before that that rate would be 14.5 in 2010, but now they go back and they say it's below 12 percent. And you see this at 74.

19:02 Regardless of all this, even if it was 12 percent for EGSA, why once again they are presenting this to the United States and invalidates 25 to 30 percent of the cost of equity?

We have nothing to contradict the validity of that document. And if you are interested, you can look at that portion of the 12 percent rate as of 2000 that Mr. Flores already explained, and I would like for you to look at Slide 93 in particular.

And with this, I will briefly mention why other issues such as the Book Value cannot be applied in this case.

In connection with this topic, I can only start by answering something that was mentioned here for the first time. When Rurelec supposedly paid 35 million in 2005, an independent assessment immediately said that it was worth much more. So, why don't we think of the facts as a whole?

Mr. Earl has said in his written statements that he was the Director of the seller; that IPC, his company, advised the seller in this transaction; that Rurelec was a buyer. So, we need to--Rurelec, the buyer, was this company. So we need to think that here, the purchaser tells the seller that 35 million is a good price, and the same day the sale in the Financial Statements of Rurelec show up as goodwill, and this difference is used to distribute dividends. And out of magic, I'm going to have a great profit, and I am going to do this at a better rate.

19:05 And let's think of the framework. When they bought this, they said they paid $35 million, and they mentioned the risk of nationalization. They also mentioned the BIT with the United Kingdom.

They're buying a claim. And clearly, if we need to believe what they are saying, it is more interesting instead of buying a claim, to buy it at a low price and then to find a funder for them to fund the claim and, if possible, take a check home without having made any single investment in the country.

So, what is the benchmark that Mr. Flores mentioned since they are saying that there is no benchmark? The only two transactions for 50.01 percent of EGSA's capital have only been done at a loss. 2003, December, First Energy reports in their 10-K that they have 30 million less as equity, but what they paid for the capitalization was 57 million. And in the same communication to the ICC, they say that they have 2 million losses. In January 2006--December 2005/January 2006, according to the Claimants, $35 million. So, the price continues to go down, but now it's time for arbitration, and I ask you to look at Slide 100.

And here, this is the business. This is the deal. They buy the claim, they say that they paid 35 million, and now they're asking us over a hundred million. So, what happened in between? The financial debt exploded. Why? Because there is

19:06 no investment by the Claimants. This is EGSA's investment.

The other liabilities have been exploited. Why? Because there was no liquidity to pay for the invoices. So, they stopped paying suppliers and unpaid debts continued to accumulate.

So, all in all, Members of the Tribunal, this is not a case in which you can only decide on the payment of some figure in between. You need to be rigorous, and you also need to see who bears the burden of the proof.

PRESIDENT JÚDICE: Of course, of course.

MR. GARCÍA REPRESA: I know I'm talking to a highly experienced Tribunal, but I'm going to highlight the obvious facts because oftentimes we lose the context when we're referring to discount rates when you know that you can choose a middle-of-the-road rate and everyone is going to be happy.

And I understand that we only have 10 minutes left. And regarding the interest rate, I'm only going to say that once again the Claimants say that they can be compensated as if they had made the investment. Once again, they would like to receive the payment for a risk they have not undertaken. And if I hadn't received the money, what would I have done? Well, I could have won or I could have lost. But if the risk of that investment--in particular, if we know their investment track record, this could have been interesting for someone else.

Now, in connection with the Spot Price claim, I am

19:08 going to be very brief, and I am just going to give the floor to the Attorney General for his conclusions. And if you decide to hear that claim for imprecibo (ph.), I am going to ask you to look at 104.

104 is the impact, Mr. President, in response to your question min connection with the Spot Price claim. This is--is this a red herring? Of course it is. Because we have heard that future projections were not done and something has happened. And as I mentioned at the very beginning, if we look at MEC's projections, future damages, $0.3 million. If we look at Econ One, $0.3 million.

And I confirm, and I was given the information the historical damage claim by the Claimants for the basic power Capacity Price, 7.3 million; if you compare that to the $92 million debt they had at the nationalization date.

And I would like to make one more correction, and please look at Slide 117. This is something that was introduced by the Claimants. This was something presented by the Claimants in the opening statements, and they had another slide right after this one where they referred to the modification of the Spot Price and its impact. And look at the last three columns, and that's the impact of the Spot Price.

So, we have--it has taken us a little bit longer to reconstruct this graph with actual data, so--and you can see that on the next slide. So, if you put on the horizontal axis

19:10 the actual capacity and on the vertical axis the cost, the variable cost, the marginal cost for power for each of these units, clearly you see what we are talking about when we are saying that dual power units are excluded.

Next, we have heard here for the first time that the most inefficient units in Aranjuez were not being sold because there was a problem with the line in 2002, but you were never--with high voltage. But you were never told that that problem was solved in 2002 with the construction of a new line with 230 watts.

Now, that problem with the reserve did not exist between 2002 and 2009, and it is true that we recognize that it came up again in 2009. But why didn't they tell it sell it in between? Why didn't they use the profits from Guaracachi 3 and 5 to have more efficient units?

Well, we all know why.

Thank you very much for your patience. And now, Members of the Tribunal, I now give the floor to the Attorney General of the State of Bolivia.

PROCURADOR MONTERO LARA: Thank you very much, Mr. President. Thank you very much, Arbitrators and representatives of the Claimants.

Over the last six days, we have proven several things. As we heard in our initial arguments, we have proven that this Tribunal, with due respect, doesn't have jurisdiction and

19:12 competence to address the claims by the Claimant. And if there was any, the high level of debt by EGSA, the nationalization date would take the value of that company to zero.

We have also proven that Bolivia has not granted any consent for the undue accumulation of treaties, Claimants in claims, as expected by Rurelec and Guaracachi America, Inc. That is to say, this Tribunal does not have jurisdiction to hear the claims presented by Rurelec because it has been proven that--over the last six days, little by little and with all of the arguments, our witnesses--Rurelec, instead of injecting capital or making any investment in Bolivia as stated in the Treaty with the U.K., they only indebted EGSA, distributed dividends, and, on the other hand, we have also proven that Bolivia denied the benefits of the Treaty to Guaracachi America, Inc. as stated in international law; therefore, we also say that this Tribunal doesn't have jurisdiction to hear those claims.

In connection with the nationalization, we have also shown that the nationalization was a Sovereign Act, completely Sovereign Act, that was conducted in accordance with international treaties signed by Bolivia. As a matter of fact, we heard Mr. Earl say a couple of days that, had he been the Bolivian State, he would have nationalized the electricity generation companies in Corani and Valle Hermoso.

But here I need to make some comments.

19:14 First, this was a peaceful and orderly nationalization, and we already referred to the use of photographs by the Claimants, which is parts of an interested and exaggerated stigma against the Bolivian State.

Second, nationalization was a decision, a sovereign decision, that belongs to the State in an attempt to preserve a key sector, the electricity sector, under the principles and also the constitutional goals of the Plurinational State of Bolivia.

Third, the nationalization met all of the requirements of the due process under international law by having an independent valuation establishing the Fair Market Value of the three companies that were nationalized, Corani, Valle Hermoso, and Guaracachi.

The State has rules, Members of the Tribunal. We have rules and domestic legislation that have to be observed. We have rules and domestic legislation that guarantee transparency in Government's control as well as social control, the control of contracts, and also the control of our constituency towards the contracts that we signed with the potential investors.

Fourth, we have also shown with the economist, Mr. Daniel Flores, that the amount of the claim has been extraordinarily inflated, and it's based on unreal assumptions for a local company.

With examination of the witnesses that the Tribunal

19:16 called to appear here, such as MEC, EdI, we have also shown that power projections and the capacity projections used by Mr. Abdala have serious technical mistakes that have a great impact on the results clearly to favor the Claimants.

We have also proven that the new claims, since they haven't been clearly notified to the State, and since these are issues that have to do with the Bolivian law and since the investor chose the Bolivian--the potential investor chose the Bolivian courts, are outside this jurisdiction this Honorable Tribunal.

We have also heard some offenses towards my country because Bolivia is a safe country to invest, but it is safe for the investment by real companies, but it is certainly not for paper companies. They continue to invest. We have several companies in the hydrocarbons energy sector, in the mining sector, and it is well-known. And this is also known by the Claimants, too, that these companies have recognized that the benefits they received in the past were disproportionate, and they were out of place, and the roles have been reversed in the area of hydrocarbons. For example, the hydrocarbons percentage was very high, and here I'm referring to profits, to benefit the companies, and a minimum percentage for the State.

Now, the situation is the opposite, but in spite of that, these companies continue to invest in the country, and they have fair profits and fair revenues. For the owners of

19:19 the raw material, it is coherent--it is fair to have a higher percentage of profits.

Now, some of those companies that have been affected and that are duly questioned by the new economic policy of the Plurinational State of Bolivia, they are trying to exert pressure on the State through processes like this one, but I think that they should have realized that it is not going to be easy now. We have a responsible defense, and we assume it in a very patriotic way.

Our witnesses are public servants who are here just to do that, to defend the rights and the interests of their own State, and we have also seen their demeanor based on values and principles.

Finally, and to conclude, I wonder, Members of the Tribunal, what the message to the international community would be if, by means of an award, of a decision in a proceeding such as this one, compensation is imposed to favor people who did not invest and who, on the contrary, took a strategic company, a service company, a utilities company to owe more than its own equity. That would be would be against any type of logic.

As I mentioned before--Mr. Silva Romero mentioned this in connection with the questions posed on Profin and others. I have the duty to reserve certain rights in its broadest sense. As public attorneys, we have the obligation to resort to any instance necessary and to use to all of the resource to defend

19:22 the interests of our country.

With this, I conclude. I deeply appreciate the patience, your patience, and I hereby conclude the Closing Arguments by the Plurinational State of Bolivia.

PRESIDENT JÚDICE: Thank you very much.

There is no redirect.

MR. BLACKABY: With regards to the last issue raised both by Mr. Silva Romero and by the Attorney General--this is not a résumé of the hearing, it's a procedural objection, and I believe I have a procedural comment. And I believe as Claimants we have the right to proceed to a procedural comment. I would like the opportunity to do so. It wouldn't take more than two minutes, but I believe for the record it's important that also the Claimants also be heard with regard to that reservation.

PRESIDENT JÚDICE: Dr. Blackaby.

My interpretation was not a procedural object, but just a reaction that each one will analyze and consider as appropriate about what is being considered by one of the Parties as some references, some comments. But my interpretation is that this is obviously not related with the arbitral procedure, but with our eventual actions. If it is a procedural objection, an objection is made, and I understand that you're entitled to a quick comment.

But if my interpretation is correct, then I--it's not

19:24 a procedural objection. Is that right? For instance, if the Respondent can see that some comment is--has criminal implications--I'm not saying it is the case--it is not related with the procedural, with the procedure, and that is my interpretation, probably I'm not correct. But for the sake of--for everything to be clear, I would like for you to determine if, in the conclusions by Silva Romero and the Attorney General, if there are any procedural objections. We know what an procedural objection is in an arbitration, and if that is the case, I will give the floor to Mr. Blackaby two minutes to address them.

(Counsel for Respondent conferring.)

MR. SILVA ROMERO: Sometimes it's just easier not to keep adding on to the--to keep talking about the same issue, but all I can do, based on the instructions I have received, is to repeat what I said a couple of hours ago: Bolivia considers that certain questions and comments by Mr. Conthe were not appropriate, and we reserve the right to qualify this comment. Bolivia is making to reserve the right; if it's procedural or not, I don't think I should state that now.

PRESIDENT JÚDICE: Thank you, Mr. Silva Romero.

(Tribunal conferring.)

PRESIDENT JÚDICE: Okay. I understand what you have said, Mr. Silva Romero, and--it's not to up to the Parties to make the final decisions as to what is actually at stake, but

19:26 quite often Parties clarify things that way; they do not have an obligation to do that, but that simplifies the work of the Tribunal.

I am not criticizing anyone.

I always prefer to try to stay on the safe side, and, therefore, I'm not stating this is a procedural objection, but I would rather prefer not to reprieve one of the Parties of what it considers would be a right to answer to what it considers a procedural objection.

And, therefore, Mr. Blackaby, do it. But it's possible, as you promised, with some flexibility, your two minutes. Thank you.

MR. BLACKABY: Thank you, Mr. President. And I understand the limitations on that, and I just want to make it clear this is just an opportunity to respond on the same record that the position has been taken.

Claimants regret profoundly the statements made by Mr. Silva Romero and the Attorney General in this regard. It is a sad day for arbitration when an Arbitrator may not ask legitimate questions that arise from a thorough review of the record.

Questions from all Members of the Tribunal in this case have sometimes tested the position of the Claimants and have sometimes tested the position of the Respondent. The irony in this case is that after having referred to one

19:28 particular question allegedly--referenced to the Profin Report allegedly in favor of the Claimants, Mr. Silva Romero himself relies on a comment from Dr. Conthe in support of the Respondent's position.

You will recall there was a specific question raised today, 91:24 on the record, the English record, where the question was discussed and relied on Dr. Conthe's question that if $35 million was paid at the beginning, if you leave with a check of over a hundred million, that would be the business of the century.

That is precisely what Arbitrators do: They test propositions.

Our proposition was strongly tested by Dr. Conthe, and we responded as best we could. Similarly, Dr. Conthe and other members of the Tribunal as well have consistently tested the position of both Parties. That is what a well-prepared Arbitral Tribunal does. That is the job of the Arbitral Tribunal. We've had the pleasure, I have to say on my behalf, of having a very well-prepared Arbitral Tribunal with regard to all of the Arbitrators.

If the criterion of Bolivia applies to this case, welcome to the day the silent arbitration when Arbitrators are afraid to open their mouth for fear of subsequent challenge in other fora. All I can say is that I know that this Tribunal will not respond to such a threat, and that it will do its task

as it needs to do.

But I simply wanted to put that on the record. And with that, I thank the Tribunal for its patience in allowing me to make these comments.

Thank you.

PRESIDENT JÚDICE: Thank you very much, Mr. Blackaby.

Now, it's normal for us to ask if you want to make some other comments before closing the audience.

MR. BLACKABY: Just of a procedural response, and maybe we can make some suggestions and maybe ask that there be a response.

PRESIDENT JÚDICE: That's another time.

I would also like to ask you if you want to make any other comments or additional statements.

MR. SILVA ROMERO: On behalf of the State of Bolivia and all of the team of lawyers, we would like to thank the Tribunal for their attention and the work they have shown in the record.

PRESIDENT JÚDICE: Thank you very much, Mr. Romero.

Another question, then, about the pleadings--about the Arbitral Tribunal actions and activity.

Do you have something more to comment?

MR. BLACKABY: Other than, again, to thank the Tribunal for its patience and its preparation. It's been a pleasure for our side, and we have no comments or no objections

19:30 to the to the way in which this arbitration has been handled.

PRESIDENT JÚDICE: Same question to the Respondent, the Plurinational State of Bolivia, do you have anything else that you would like to say in connection with this hearing and in connection with the work performed by the Arbitral Tribunal?

MR. SILVA ROMERO: Nothing further, Mr. President.

PRESIDENT JÚDICE: The only thing has to do with the questions of Mr. Conthe, if I understood you correctly.

MR. SILVA ROMERO: Mr. President, I have not received instructions to provide an answer to your question. We have stated on the record the comments that we wanted to put in there. I don't have any instructions to answer to your question.

PRESIDENT JÚDICE: Is there any other question that you would like to put to the Tribunal?

MR. SILVA ROMERO: I have no instructions to answer your question, Mr. President.

PRESIDENT JÚDICE: Thank you very much.

Now, we are going to move on to the Post-Hearing Briefing. Analyze the possibility, our conclusion is the following: We expect that the Parties, if they so wish, in a deadline that will not be very large, to transform, so to speak, these two very, very useful PowerPoints into their conclusions prepared in a different presentation, but clearly not going out of what has been referred in this PowerPoint and

19:32 during these conclusions.

The Tribunal has come together and has decided that the Parties will have the right in a short period of time and--within a short period of time to transform this very useful PowerPoint into a set of conclusions that should just perhaps make this PowerPoint presentation more into a narrative in these oral final pleadings. It's just to state this. It is not the idea to expand, add, or prepare other Memorials.

And after that--so, 15 days after that document is submitted to us, I would like for your costs to be submitted to us.

After the analysis, final conclusion, we expect you--that you, within 15 days, will present, as usual, your costs here, with everything that is not included in this kind of presentation.

Then my second point--my question now is to ask what you do you consider, if possible, is a decent deadline? This should not be a very long deadline. We don't want another very long Memorial.

MR. SILVA ROMERO: Before that, Mr. President, perhaps we should establish a page number limit. We have written so much already.

PRESIDENT JÚDICE: Yes. The Tribunal thanks you for your proposal.

MR. BLACKABY: I guess just a couple of questions to

19:34 clarify the exercise. We have, obviously, the slide set. My understanding of your request, Mr. President, Members of the Tribunal, is that we will, in essence, provide an accompanying text to the slide set. We won't be presenting new slides or--is that a correct interpretation?

PRESIDENT JÚDICE: Yes.

MR. BLACKABY: Accompanying text. That's the first question.

ARBITRATOR VINUESA: This was a unanimous decision by the Tribunal to subject the Parties to their conclusions. We don't want new arguments. We have read a lot, I think we know a lot about this case, and this is an opportunity that we are giving to you to put in writing the things that we've heard today in a more elegant way or less elegant way--probably more elegant way to put these ideas forward.

The idea is for you to put to us your conclusions. I think your summary is very, very good, and it has helped us quite a bit, the three of us, and we would like you to have this last opportunity to summarize the main points that are most salient.

That's the Agreement, isn't it, Mr. President?

PRESIDENT JÚDICE: Yes, that's correct.

MR. BLACKABY: Thank you very much. That's very clear.

I guess the only question to respond to my friend

19:36 Dr. Silva Romero's question, is on a limitation of pages, I think--I mean, I'm just--

ARBITRATOR VINUESA: And deadline.

MR. BLACKABY: And the deadline, exactly.

The first one, I'm just picking a number out of the sky, but if we would say 70 pages or--

MR. SILVA ROMERO: I was thinking 50.

MR. BLACKABY: How about 60?

MR. SILVA ROMERO: Sixty.

MR. BLACKABY: Sixty pages, I think we can agree on 60 pages.

(Comments off microphone.)

MR. BLACKABY: And we would propose one month, since we have basically done all the work.

MR. SILVA ROMERO: The deadline is more problematic for us. We have a series of deadlines that we have to meet in other cases; specifically, the team of the Attorney General's Office has to meet those deadlines.

I would say June 10. Two months.

MR. BLACKABY: I think, again, the scope of the exercise that the Tribunal has delimited, which is not the traditional Post-Hearing Brief but simply to put in a little more elegance what we've managed to produce within 24 hours, I think one month is more than enough.

PRESIDENT JÚDICE: We think that two-months perhaps

too long.

MR. SILVA ROMERO: Let me explain, Mr. President, because I was referring to this a moment ago, and the Attorney General's comment was in that regard as well, we have a series of oversight matters on control--controls by the State. So, our Memorials have to be looked at by a number of authorities in the State. So, two months is quite a short period of time. So, we're trying to be as cooperative as possible, but that is the best we can do.

You do have a lot of information. That does not mean that you're not going to be able to make progress in your deliberations.

You have a lot of information. That does not mean that you are going to be unable to move forward in your discussions. And in two months, you are going to receive the final conclusions by the Parties, and perhaps you're going to leave gaps that you have in your conclusions.

PRESIDENT JÚDICE: We have a proposal, which is one month plus 15 days for costs. That was my proposal. So, one month and 15 days. That will be my proposal, including the time--including this time you would have to provide the costs apart from the conclusions.

MR. SILVA ROMERO: I understand that your proposal is as to the decision.

ARBITRATOR VINUESA: We have preset codes, and we

spoke about this beforehand.

MR. SILVA ROMERO: We take due note, Mr. President. That is all.

ARBITRATOR VINUESA: We do have certain codes that we go by, and certain signals we give each other. I'm sorry to say that.

PRESIDENT JÚDICE: Mr. Montero, I was going to prepare a short note to clarify all this, but that is the determination.

Mr. Doe--and this is his duty--he had asked me to ask you if there are any news in connection with the payment that had to be provided by Bolivia.

MR. SILVA ROMERO: I'm being informed, Mr. President, that Friday this week you should be receiving the payment. That is what we all hope.

PRESIDENT JÚDICE: Thank you. Thank you very much. That is what we all hope.

Before ending, I would like to thank you for the work that you have done and for your cooperation and also for the energy that you have put in when presenting your submissions.

We have two very experienced co-Arbitrators, and some of them are quite experienced in advocacy matters. It is very clear to me that the energy is very positive. The positions are very clear, sometimes they're a bit harsh, but this helped the answers by the witnesses. And the Experts have helped.

19:41 Sometimes they are faced with issues that perhaps can be interpreted as things that are different from what they were intended to be.

The witnesses and the Experts have answered questions of the lawyers and of the Tribunal, both in the direct and in the cross-examinations, and both Parties have used questions posed by the Tribunal to present their cases.

We have tried to do the best we could. Lawyers are not perfect, and Arbitral Tribunals are not perfect, either, but we had the best of intentions, absolutely.

I would like to thank those people who have made this possible--and, if not impossible, much more complicated--thank you very much to the stenographers and the interpreters. You have done excellent work, perfect work.

And when we speak about lawyers, we need to take decisions and we need to decide who will win or not, but with our friends, they are, I think it's possible to say they won already, and thank you very much for your professionalism, your help to our work.

(Whereupon, at 7:43 p.m., the hearing was adjourned concluded.)

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