PCA CASE NO. 2009-23

IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF ECUADOR CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS, SIGNED 27 AUGUST 1993 (THE "TREATY") AND THE UNCITRAL ARBITRATION RULES 1976

BETWEEN: -

1. CHEVRON CORPORATION (U.S.A.)
2. TEXACO PETROLEUM COMPANY (U.S.A.)

The Claimants

- and -

THE REPUBLIC OF ECUADOR

The Respondent

Procedural Order No. 10

dated 9 April 2012

The Arbitration Tribunal:

Dr. Horacio A. Grigera Naón;
Professor Vaughan Lowe;
V.V. Veeder QC (President)

1. The Tribunal has considered the Parties' several submissions regarding the possible bifurcation of one or more preliminary issues leading to an earlier first hearing in this arbitration, made during the procedural meeting on 13 March 2012 (held by telephone conference-call) and in writing, namely the Parties' letters both dated 29 March 2012 responding to the Tribunal's request by letter dated 22 March 2012 (following receipt of the Claimants' Supplemental Memorial on the Merits of 21 March 2012), the Respondent's letter dated 9 March 2012, the Claimants' letter dated 14 March 2012 and the Respondent's letter dated 19 March 2012.

2. *Twin-Track Procedure:* The Tribunal has decided to adopt a "twin-track" procedure, leading simultaneously to: (i) a first short hearing addressing preliminary legal issues arising from the Settlement Agreements; and (ii) a second longer hearing addressing all extant issues which may be required finally to decide the Parties' dispute. The Tribunal acknowledges that these preliminary issues cannot be legally determinative of the Parties' dispute (howsoever decided by the Tribunal), given the full scope of that dispute in this arbitration. Moreover, whilst the Tribunal currently intends to decide these preliminary issues by a partial award after the first hearing and before the second hearing, the Tribunal also recognises that it might not be possible or appropriate to do so (for one reason or another, as yet unknown), thereby requiring the Tribunal to defer its decision until a final award after the second hearing. Even in that event, however, time and expense should not be duplicated or wasted for the Parties or the Tribunal.

3. *(i) The First Track:* As regards this first track, the Tribunal considers that these preliminary issues should be limited to the legal interpretation and legal effect of the Settlement Agreements as alleged by the Claimants and as disputed by the Respondent, including (in particular) the issue whether or not Chevron is a "Releasee" under the 1995 Settlement Agreement.

4. The Tribunal intends that these issues be addressed at a short oral hearing after this summer, confined to oral argument, oral expert evidence (as to Ecuadorian and US laws) and, possibly, a limited amount of relevant factual evidence. It does not consider, from the Parties' previous submissions, that this hearing should last more than three days. The Tribunal is concerned to fix the dates and venue for this hearing as soon as possible; and it invites the Parties' confirmation that such a hearing is workable for their respective counsel and witnesses. The Tribunal currently has in mind 26, 27 and 28 November 2012 in London. It may be possible to hold this hearing at an earlier date; but it should not be held later, if at all possible.

5. The Tribunal requests the Parties as soon as possible to "meet-and-confer" as to all intermediate procedural steps between now and this first hearing, necessary for this first track. That procedure will require the Respondent to submit a Counter-Memorial on the preliminary issues (answering the relevant parts of the Claimants' Memorial and Supplemental Memorial on the Merits), the Claimants to submit a Reply Memorial to that Counter-Memorial, and the Respondent in turn to submit a Rejoinder Memorial to that Reply Memorial. As regards all written expert evidence, the Tribunal requests that the Parties agree a procedure before the hearing (possibly between the Counter-Memorial and the Reply Memorial) whereby the expert witnesses consult privately and produce a joint written report listing for the Tribunal areas of expert agreement, expert disagreement and, in the latter case, the reasons for such disagreement. There may doubtless be other procedural steps required to prepare for this first hearing, including a pre-hearing organisational meeting (to be held by telephone conference-call); and the Parties are requested to identify them for the Tribunal.

6. *(ii) Second Track:* As regards this second track, the Tribunal acknowledges that the Respondent requires significant time to plead its full Counter-Memorial in answer to the Claimants' Memorial and Supplemental Memorial on the Merits. Given this simultaneous twin-track procedure, it is minded to grant the Respondent ten months, expiring in February 2013. As to the next procedural steps, including the date and likely length of the second hearing, the Tribunal again requests the Parties to "meet-and-confer" and, if possible, submit a joint proposal for a procedural timetable leading up to and including this second hearing. Although it may be difficult at this stage to estimate precisely the length of this second hearing, the Tribunal wishes to fix its dates and venue as soon as possible. As already explained above, the preliminary issues, howsoever decided, will not render this second hearing unnecessary.

7. The Tribunal requests the Parties to respond to this procedural order as soon as possible, but no later than **30 April 2012**.

PLACE OF ARBITRATION: THE HAGUE, THE NETHERLANDS

DATE: 9 APRIL 2012

THE TRIBUNAL:

Dr. Horacio A. Grigera Naón

Professor Vaughan Lowe QC

V.V. Veeder QC (President)