

PCA CASE NO. 2011-17

IN THE MATTER OF AN ARBITRATION UNDER

A. THE TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF BOLIVIA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT

-and-

B. THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF BOLIVIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

-and-

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

-between-

1. GUARACACHI AMERICA, INC.
2. RURELEC PLC

(the "Claimants")

-and-

THE PLURINATIONAL STATE OF BOLIVIA

(the "Respondent," and together with the Claimants, the "Parties")

PROCEDURAL ORDER NO. 13
21 February 2013

A. DOCUMENT PRODUCTION REQUEST

1. In accordance with Procedural Order No. 12, the Tribunal requested that the Parties submit their comments regarding the Respondent's request for document production by 15 February 2013 using the Redfern Schedule.
2. By letter dated 15 February 2013, the Claimants responded to the Respondent's request for document production. In the abovementioned letter, the Claimants stated that "*the documents requested by Bolivia in its requests numbered 1 through 4 have either already been provided to Bolivia (including in response to previous request for documents), or are irrelevant and immaterial to the outcome of this dispute*". The Claimants nonetheless produced certain documents that respond to these requests as well as to request number 5.

B. EXTENSION AGREED BETWEEN THE PARTIES

3. By e-mail of 19 February 2013, the Claimants informed the Tribunal that the Parties had reached agreement on a brief extension of the deadlines for the submission of the Response to the Request for *cautio judicatum solvi* (security for costs), until Wednesday, 20 February 2013 and the submission of the Reply on the Merits, until Friday, 1 March 2013. The Claimants also noted that these extensions would not affect the dates for the hearing.
4. By subsequent e-mail of the same date, the Respondent confirmed the abovementioned agreement.

C. DECISION

5. In light of the comments submitted by the Parties, the Tribunal notes that a dispute exists between them regarding request No. 1, in which the Respondent demands the production of the "*agreement*" and "*further documentation*" mentioned in Rurelec's Press Release of 2 July 2012 (R-101).
6. The Respondent requests production of these documents for two reasons: first, in order to confirm that the abovementioned "*agreement*" does not contain any provision by which "*The Funder*" would bear the costs of a possible award of costs against the Claimants (given that, unless "*The Funder*" will bear costs, the Respondent considers that it would be put in a precarious situation that would require an order for *cautio judicatum solvi* (security for costs)); and, second, to confirm that no conflict of interest exists for the present arbitration on account of "*The Funder*", whose identity is still unknown.
7. The Claimants consider that these documents are not relevant to the present proceedings, and that the sole purpose of Bolivia's request is to obtain support for its request for *cautio judicatum*

solvi (security for costs). Apart from considering this request unjustified, the Claimants contend that the Respondent has failed to explain why a cost award against the Claimants is a “reasonable possibility” according to Article 26(3)(b) of the UNCITRAL Rules, and why the Claimants would not comply with a costs order. Finally, the Claimants consider that Bolivia has not demonstrated what the conflict of interest created by the abovementioned “agreement” would be.

8. The Tribunal decides not to order the production of the “agreement” or “further documentation” by the Claimants. Regarding the possible existence of a conflict of interest, the Respondent has failed to specify what the conflict of interest created by the “agreement” would be. Moreover, the Respondent states in its request for *cautio judicatum solvi* (security for costs) that it has discovered by means of other documents the identity of “The Funder”, Salvia Investment Limited. In any case, the applicable provisions governing conflicts of interest in the present proceedings (i.e. Articles 11 to 13 of the UNCITRAL Arbitration Rules) do not foresee the production of document by the Parties, but rather disclosure by the arbitrators upon becoming aware of circumstances that could create a conflict of interest.
9. Therefore, in order to remove any doubt, the members of the Tribunal hereby declare that they have no relationship with Salvia Investment Limited, and are not aware of any circumstance that could give rise to justifiable doubts as to their impartiality and independence on account of the financing of the Claimants’ claims by Salvia Investment Limited.
10. With respect to confirming that the “agreement” would not cover the payment of a possible award on costs against the Claimants, the Tribunal notes that the Claimants have neither denied this, nor produced the “agreement” or any other document contradicting this assertion. Thus, applying the IBA Guidelines on the Taking of Evidence in International Arbitration (in particular Article 9 thereof), as permitted by paragraph 14.3 of Procedural Order No. 1, the Tribunal will take the foregoing into account, and will draw such inferences as it deems appropriate when deciding on the Respondent’s Request for *cautio judicatum solvi* (security for costs).
11. Finally, the Tribunal confirms the Parties’ agreement as follows:
 - a) The Claimants shall submit their Comments on the Respondent’s Request for *cautio judicatum solvi* (security for costs) by **20 February 2013**; and
 - b) The Respondent shall submit its Rejoinder on the Merits by **1 March 2013**.

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

21 February 2013



José Miguel Júdece
(President of the Tribunal)