

THE  
 GOVERNMENT

IN THE MATTER OF AN ARBITRATION UNDER THE TREATY BETWEEN  
 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  
 THE  
 GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF  
 THE  
 REPUBLIC OF BOLIVIA FOR THE PROMOTION AND PROTECTION OF  
 INVESTMENTS  
 -and-  
 THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON  
 INTERNATIONAL TRADE LAW (UNCITRAL)

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 :  
 In the Matter of Arbitration :  
 Between: :  
 :  
 GUARACACHI AMERICA, INC. (U.S.A.) and :  
 RURELEC PLC (UNITED KINGDOM), :  
 :  
 Claimants, : PCA Case No. 2011-  
 :  
 and :  
 :  
 PLURINATIONAL STATE OF BOLIVIA, :  
 :  
 Respondent. :  
 :  
 ----- x Volume 3

17

HEARING ON THE MERITS

Thursday, April 4, 2013

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

The hearing in the above-entitled matter came on,

pursuant to notice, at 9:37 a.m. before:

DR. JOSÉ MIGUEL JÚDICE, President of the Tribunal

MR. MANUEL CONTHE, Arbitrator

PROF. RAÚL EMILIO VINUESA, Arbitrator

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On behalf of the Respondent:

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DRA. ELIZABETH ARISMENDI CHUMACERO  
DRA. IDRA PENNYCOOK  
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## INDEX

| PAGE | ITEMS                                       |
|------|---|
|      | WITNESSES:                                  |
|      | CARLOS PEDRO MARCELO BLANCO QUINTANILLA     |
| 525  | Direct examination by Ms. Richard           |
| 529  | Cross-examination by Mr. Silva Romero       |
| 570  | by Mr. García Represa                       |
| 575  | Redirect examination by Mr. Blackaby        |
| 582  | Recross-examination by Mr. García Represa   |
| 584  | Questions from the Tribunal                 |
|      | JOSE ANTONIO LANZA                          |
| 606  | Direct examination by Mr. Commission        |
| 612  | Cross-examination by Mr. García Represa     |
| 681  | Redirect examination by Mr. Blackaby        |
| 690  | Recross-examination by Mr. García Represa   |
| 694  | Questions from the Tribunal                 |
| 711  | Further recross-exam. by Mr. García Represa |
|      | CARLOS QUISPE LIMA                          |
| 715  | Direct examination by Mr. Merizalde         |
| 720  | Cross-examination by Mr. Blackaby           |
| 761  | Questions from the Tribunal                 |



1 PROCEEDINGS

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

3 Good morning, Members of the Tribunal.

4 There was an issue that was pending after the  
5 submissions made during the first day of the hearings, had  
to

6 do with the reaction of Bolivia vis-à-vis the statements  
made

7 by Claimants in connection with the withdrawal of the claim

8 related to the Worthington engines. In our last  
presentations

9 we were saying that this claim was moot, in our opinion,  
10 because in February 2013, EGSA had sent a letter to Energais  
11 for them to come and pick up the engines, and conversations  
12 between EGSA and Energais had taken place, and there had  
been a  
13 meeting, and Mr. Blackaby made reference to this meeting.

14 Mr. Blackaby--this is Day 1 of the transcript Pages  
70

15 and 71--indicated that, after the meeting that the Parties  
16 held, there was an initial inspection of the engines on the  
17 basis of which they appeared to be complete. He stated that  
18 Claimants withdrew the claim related to the Worthington  
engines

19 and accepted the return of the engines for the reasons

were 20 indicated by Mr. Blackaby, in the understanding that there

21 three conditions that were to be met, and Mr. Blackaby  
22 mentioned them. And if I am misconstruing the words of  
23 Mr. Blackaby, he will correct me:

24 First, that the engines had to be complete;

25 Second, that no spare parts be withdrawn from the

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

21                   PRESIDENT JÚDICE: Mr. Blackaby.

22                   MR. BLACKABY: On behalf of the Claimant, on the  
basis

23 of the representations made by counsel for the Plurinational

24 State of Bolivia, and on those conditions, we confirm the

25 withdrawal of the claim, and also on the additional  
condition

09:41 1 or the additional concept that the motors be withdrawn  
before a  
2 notary public to make a full note of what has actually been  
3 taken away and the state of the motors, et cetera. But I  
think  
4 on that basis we can close the Worthington chapter. Thank  
you.

5 PRESIDENT JÚDICE: Thank you very much, gentlemen.

6 I think that from our side we will wait for the new  
7 developments, and afterwards, you inform us if you want us  
your  
8 own agreement or if you don't need from our side anything  
9 related thereto.

10 But we are not going to look in detail on this  
11 specific relief; and, therefore, we appreciate this effort  
of  
12 both parties. We thank you very much the effort made by  
those  
13 Parties to try and reduce the Disputes. Thank you very much.

14 Therefore, we can move on to the examination of the  
15 next witness, which is Mr. Blanco.

16 CARLOS PEDRO MARCELO BLANCO QUINTANILLA, CLAIMANTS' WITNESS,

17 CALLED

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

20 THE WITNESS: Yes, good morning, Mr. President. My

21 name is Carlos Pedro Marcelo Blanco, but I use the name  
Marcelo

22 only.

23                   PRESIDENT JÚDICE: You have been identified, so I'm  
24 going to ask you to read the piece of paper you have on your  
25 desk. Please read it out loud so it can be recorded.





22 Q. And is there anything in those statements that you  
23 would like to change or to correct?

24 A. Yes, I would like to amend the Second Statement. I  
25 think, if memory serves, it's Paragraph 16, second paragraph

09:47 1 16, when I say that Guaracachi in 2010 and 2011 continued to  
2 obtain loans from Banco Credito Mercantil--and Mercantil,  
3 that's a mistake. The rest stands, but I just wanted to  
change  
4 Banco Credito and Banco Mercantil Santa Cruz.

5 PRESIDENT JÚDICE: So, we have to delete those two  
6 bank names?

7 THE WITNESS: Yes, Mr. President. That's correct.

8 BY MS. RICHARD:

9 Q. Thank you.

10 Would you please briefly summarize for the Tribunal  
11 your academic and professional background, including your  
role  
12 at Empresa Eléctrica Guaracachi.

13 A. I graduated magna cum laude--

14 (Lost interpretation.)

15 A. I graduated from Vermont. I have an MBA. I have a  
16 magna cum laude degree that I got. After that, after my  
17 graduate studies, I worked for CIML in Santa Cruz de la  
Sierra.

18 This was a company that worked in wood particulate materials.  
19 Then after working for CIML, I worked in the Embassy of  
Bolivia  
20 in Argentina. I worked to Argentina because of medical  
21 reasons, one of my daughters.

22 In Argentina, I did a Master's degree specialized  
in  
23 business administration. Then I went back to Bolivia, and I  
24 worked for a Banco Mercantil Group. I was a General Manager.  
25 I was looking at the investments of the group. Banco  
Mercantil

09:49 1 Group is one of the most important banks in Bolivia. After  
2 that I worked for the UNDP, the United Nations, as  
consultant  
3 for administration and management. I was a consultant there.  
4 Then I was invited by the World Bank to work as a consultant  
in  
5 administrative matters in connection with education.  
6 After that, I was invited to participate in a  
7 competitive examination for a position in Santa Cruz. It  
was a  
8 French company, it was called GeoServices, it was one of the  
9 largest companies in Bolivia, and I did get that position,  
and  
10 a number of executives offered me the opportunity to work in  
11 Empresa Eléctrica Guaracachi. From '99 to 2002 I worked as  
the  
12 Administrative Financial Manager of Guaracachi. Then I  
started  
13 working for Sánchez de Lozada, the former President's  
14 administration, and I was the Minister of Energy until 2004,  
15 then Mr. Lozada stepped down. Then I went back to Santa  
Cruz.  
16 I worked again with Mr. Earl. I worked in the rural  
17 electrification project. Then I came back to Guaracachi as  
a  
18 Financial Manager, and after that I was appointed Financial  
19 Director of that company.

20 Q. Thank you.

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

23 And if you can just wait?

24 A. The financial situation of Guaracachi during the  
25 years, I held a position in the company was robust. It was

09:51 1 actually creditworthy. The word "robust" has been translated,

2 but the correct word should be "creditworthy," and/or  
3 "solvent." It was a solvent company.

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

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

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

18 Also, the contributions had to do with the dignity

19 tariff. This was a solidarity measure, an equity measure,  
in  
20 my understanding. There were other measures that were taken  
as  
21 the reduction in the Spot Price and the basic Capacity Price.  
22 Other things that had an impact on liquidity was  
that  
23 we were waiting for pre-payments of the CAF, and this was  
not  
24 done because of a series of paperwork issues that were  
caught  
25 up with the National Government, and these were some of the



09:53 1 factors that impacted the liquidity of Guaracachi.

2 Q. And just prior to the nationalization, what was  
your 3 future perspective for the company?

4 A. Well, this was an ambitious project, the combined  
5 cycle was, and we were going to double our EBITDA. We're  
6 looking at the Financial Statements now of the current  
7 administration of Guaracachi, and we can see that the  
increase 8 was going to be very important. The income was going to be  
9 higher. We actually discarded all the thermal units, and we  
10 were sure that this was going to be a success; otherwise, we  
11 wouldn't have undergone and done a project such as this with  
12 the magnitude of the combined-cycle project.

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

15 PRESIDENT JÚDICE: Thank you very much.

16 Bolivia, you have the floor.

17 CROSS-EXAMINATION

18 BY MR. SILVA ROMERO:

19 Q. Good morning, Mr. Blanco.

20 A. Good morning, sir.

21 Q. My name is Eduardo Silva Romero. I am one of the  
22 lawyers of the counsel team that defends your country in  
these

23 proceedings, and I am here to ask you some questions. Do  
you

24 understand the process?

25 A. Yes, I do understand it, sir.

09:55 1 Q. It is possible that during my examination, Mr.  
Blanco,  
2 I may resort to some documents, and my colleagues are going  
to  
3 give you, Claimants' counsel, and the Arbitrators a set of  
4 documents, which is in a binder that contains a number of  
5 documents that we are maybe going to examine together.

6 A. Very well.

7 Q. Thank you.

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

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

13 A. Business administration.

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

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

21 BY MR. SILVA ROMERO:

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

24 A. Yes.

25 Q. So, this had nothing to do with a thesis or a

09:57 1 dissertation at the end of your studies that you got this  
magna

2 cum laude degree?

3 A. Well, I don't know if you're familiar with the  
4 proceedings here in the United States, but the bachelor's is  
5 what we call a "licentiate" in Spanish. It doesn't  
necessarily

6 require a thesis, but each course that you take you have to  
do

7 a mini thesis for, so I had many mini theses, but I didn't  
have

8 to submit a final thesis.

9 Q. My second question has to do with something that is  
10 included in your second statement. You just made a  
correction

11 to your Second Statement. I understand that this was  
12 Paragraph 16 that you corrected?

13 A. Yes, sir.

14 Q. Perhaps you would like to refer to Paragraph 16,  
and  
15 in Paragraph 16 you wrote, "Secondly, like what Ms. Bejarano  
16 states, the Audited Financial Statements of Guaracachi for  
2010

17 and 2011, indicated that the company continued to obtain  
18 financing by Banco de Crédito, Banco Mercantil de Santa Cruz,  
19 et cetera.

to

20                   If I understand your correction correctly, we have

21 delete from this paragraph the words "Banco de Credito and

22 Banco Mercantil de Santa Cruz?

23         A.    Yes, for that period, yes.

24         Q.    So, it means that Ms. Bejarano was right in her

25 statement; correct?

09:58 1 A. Well, she was right--well, she wasn't right. When  
she  
2 says that there were no loans, she's not right because there  
3 were other loans from the Banco de Ser, Banco de Ganadero,  
was  
4 a Canadian company, so Ms. Bejarano is not right.

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

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

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

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

15 BY MR. SILVA ROMERO:

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

19 A. Yes.

20 Q. And you said that when you say "robust," we should  
21 read "solvent" or "creditworthy."

I 22 A. I cannot say what someone else is saying, but when  
23 say "robust," "robust" is creditworthy or that has the  
ability 24 to pay.  
25 So, to me, robust means creditworthy.



10:00 1 Q. But you used the word "robust," "robusto" in Spanish?

2 A. Yes.

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

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

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

14 A. Yes, that's what I said.

15 Q. What language did you write your statement in?

16 A. In Spanish.

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

19 A. I already explained it.

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

21 A. I think I have.

22                    In my opinion, the word is solvente in Spanish or  
23 creditworthy in English. The right word should be  
24 creditworthy.

25            Q.    Then, Mr. Blanco, if I understand you correctly, we

10:01 1 are referring to a translation from Spanish to Spanish.

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

3 Q. I am not interpreting anything, Mr. Blanco. I am  
4 trying to understand how you prepared a statement that you  
5 submitted before this international arbitration Tribunal,

and

6 you come here to say that where you say robust, we should  
7 understand creditworthy because of a translation issue. I

8 understand that you wrote your--I could understand that if  
you

9 wrote your statement in English and that it was translated  
into

10 Spanish, but you're telling me that you wrote it in Spanish,  
so

11 I would like to know where the translation problem is.

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

16 PRESIDENT JÚDICE: The Tribunal has a clear  
17 understanding of your interpretation of robust and  
18 creditworthy, but Mr. Silva Romero has a different question,  
19 whether your statement was written in Spanish and translated  
20 into English or it was written in English and translated

into

21 Spanish. But this is a little bit of a different issue, and,

22 if possible, you can answer it. There is no problem if it  
was

23 written in dear Portuguese or in English or in Spanish.

24 THE WITNESS: I wrote the statement in Spanish,

25 Mr. President.

10:03 1 PRESIDENT JÚDICE: Is it clear, Mr. Romero?

2 MR. SILVA ROMERO: Not really, but given time  
3 constraints, we are going to move on to other more important  
4 issues.

5 BY MR. SILVA ROMERO:

6 Q. Mr. Blanco, you use in your statement the word  
7 provisional or temporary; correct?

8 A. Yes.

9 Q. Is that word correct in Spanish?

10 A. In my opinion, it is.

11 Q. You're saying that liquidity problems with EGSA  
were  
12 temporary; is that correct?

13 A. In my opinion, it is.

14 Q. Well, Mr. Blanco, if we move on to Paragraph 1 in  
your  
15 First Statement, summing up, and also leaving aside your  
tenure  
16 as the Vice Minister, I understand that you were with EGSA  
17 since May 2009 to May 2010; correct?

18 A. Yes.

19 Q. And I understand that you were a Minister between  
2002  
20 and 2004; correct?

21 A. Yes.

22  
understand

Q. Between May 1st, 2010, Mr. Blanco--and as I

23 from your statement and later on and up until now you have  
been

24 a Rurelec employee; is that correct? So, you're saying

25 starting on May 1st, 2010?

10:05 1 A. Yes.

2 Q. So, I understand that you have a Contract with them;  
3 correct?

4 A. Yes, sir.

5 Q. Therefore, you have a monthly salary, don't you?

6 A. Yes, I do.

7 Q. Please wait for me to finish; otherwise, we're not  
8 going to have a clear transcript. Do we agree?

9 A. Yes.

10 Q. So, we can say that it is a temporary agreement.

11 In addition to the salary that you received as a  
12 Rurelec employee, do you have any other agreement for  
13 compensation in connection with this arbitration?

14 A. None.

15 Q. Very well.

16 If you agree, Mr. Blanco, why don't we talk about  
the  
17 regularly changes to Spot Prices and Capacity Prices, and  
let's  
18 move on to Paragraph 21 in your First Statement.

19 Are you there yet?

20 A. Yes.

21 Q. In Paragraph 21, you are referring to Resolution 40,  
22 and later on you say that between May 2007, when the law  
became

23 effective, and May 2010, the effect on the revenues of  
24 Guaracachi was immediate and substantial. Is that correct?

25 A. Yes, sir.



10:07 1 Q. So, we are agreed that that change became effective  
in

2 May 2007; correct?

3 A. Yes.

4 Q. If we look at Paragraph 24 in your statement,  
toward

5 the end of that paragraph you included a table. Do you see  
it?

6 A. Yes. Yes, sir.

7 Q. This is the one that you called Guaracachi's  
Financial

8 Statements?

9 A. Yes.

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

12 A. Yes.

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

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

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

16 You see those numbers; right?

17 A. Yes, I see that.

18 Q. And if we move to Paragraph 25, towards the end,  
you

19 say: "In fact, in 2008, Guaracachi recorded its highest  
profit

20 since its privatization in 1995."

21 A. Yes.

22 Q. It would seem, then, Mr. Blanco, that the impact on  
23 Guaracachi's revenues because of Resolution 40 was not  
24 immediate or significant.

25 A. That is not correct because if the revenues would  
have

10:09 1 been higher hadn't that measure been implemented and the  
impact

2 would have been lower.

3 Q. So, do you consider in your answer the existence of  
4 the Stabilization Fund?

5 A. The stabilization fund is different because the  
6 profits are booked differently. That is what we sell.

7 Q. So, you're telling me that in your answer, you did  
not  
8 consider the impact of the Stabilization Fund?

9 A. I am not saying that. You asked me a question,  
10 whether the measure implemented by the Government had an  
11 impact, and I am saying that it did have an impact; even  
though

12 we have profits, profits would have been higher hadn't that  
13 measure been implemented. You just have to multiply that  
times

14 20 percent, so it's a very simple mathematical exercise.

15 Q. If we continue here looking at this table at  
16 Paragraph 24, Mr. Blanco, we can see that in 2006 the total  
17 liabilities for Guaracachi were 35 million, more or less; in  
18 2007, it went over to 74 million; in 2008, 96 million; and,  
in

19 2009, 127 million; correct?

20 A. Yes, sir.

21 Q. So, we can see that from 2006 to 2009, the debt

22 increased by 92 million; correct?

23 A. Yes.

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

25 table for total liabilities is not adjusted based on the UFV?

10:12 1 A. But, if you allow me, Mr. President--

2 Q. Your answer is that the total liabilities were  
3 adjusted based on the UFV?

4 A. Yes, of course. But if you allow me, Mr. President,  
5 we cannot eliminate the context here. The lawyer is asking  
me

6 to look at total liabilities that have increased  
significantly,

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

8 that also increased significantly.

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

11 BY MR. SILVA ROMERO:

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

13 have an adjustment based on UFV?

14 A. Yes, they are adjusted based on the accounting  
15 standards that are accepted in Bolivia.

16 Q. And that includes Standard 3?

17 A. Yes, that includes Standard 3. That is part of the  
18 current regulations in Bolivia, and that also implements the  
19 payments of taxes.

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

21 adjusted by UFV?

22       A.    Yes.

23       Q.    And you are saying that the total liabilities is  
24 also--are also adjusted based on the UFV; correct?

25       A.    Well, everything is adjusted based on UFV.

10:13 1 Q. Okay. We will see that later on:  
2 In your first two statements, Mr. Blanco, you did  
not  
3 say that EGSA, in 2010, as you mentioned in your direct  
4 statement, had an illiquidity issue. You only say that in  
your  
5 Third Statement; correct?

6 A. Certainly.

7 Q. Why--

8 PRESIDENT JÚDICE: Certainly yes?

9 THE WITNESS: Yes, Mr. President.

10 BY MR. SILVA ROMERO:

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

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

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

18 Do you see that?

19 A. Yes.

20 Q. The liquidity of the company in 2010 is part of the  
21 financial performance of Guaracachi, isn't it?

22           A.    Yes.  But once again, that was not part of the  
context

23   of my statement.

24           Q.    If we move on now to your Third Statement, dated  
25   January 21, 2013, and if we look at Paragraph 16, here we  
also



10:16 1 see title Number 3. And I imagine that there is a context  
2 there, and it says Guaracachi's financial situation.

3 Do you see it?

4 A. Yes.

5 Q. And at Paragraph 16 you say Ms. Bejarano contests  
that

6 Guaracachi had a strong financial position or robust  
financial

7 position. She refers to several communications by members  
of

8 Guaracachi's management in 2009 and 2010, including my own,  
9 raising concerns with respect to the company's liquidity.

10 Guaracachi did have limited liquidity shortly before the  
11 nationalization. The situation was temporary in nature and  
did

12 not undermine the strong fundamentals of Guaracachi's  
finances

13 as I explained below.

14 Do you see this paragraph?

15 A. Yes, I see that.

16 Q. Indeed, you are here recognizing liquidity problems  
17 because Ms. Bejarano introduced in the record your e-mails  
in

18 which you acknowledge illiquidity problems in 2010; is that  
19 correct?

20 A. No, I don't know what e-mail correspondence you're

21 referring to, but if you would like to show it to me, that  
22 would be a good idea.

23 Q. If we move on to Paragraph 19, there you say the  
24 following: "Although Guaracachi's liquidity was rejected as  
a  
25 result of the above factors, this situation was temporary."

10:17 1                   And then if we look at Paragraph 22, there you say,  
2    "Even though Guaracachi was facing temporary liquidity  
3    restrictions, there was never any question as to  
Guaracachi's  
4    robust financial structure."

5                   To give context to what you say in your statement,  
now  
6    I understand that you base your position to say that the  
7    financial situation of the company was robust on three  
elements  
8    that I would like to analyze with you.

9                   First, you say that one of the sources of  
illiquidity  
10   was cost, the cost generated by the combined-cycle project;  
is  
11   that correct?

12       A.   Well, the increase in costs.

13       Q.   As a matter of fact, initially, you had budgeted  
14   \$40 million, and it ended up being \$68 million; correct?

15       A.   Yes.

16       Q.   And if we look at Paragraph 17 in your Third  
17   Statement, Page 11 and 12, there you say, "Guaracachi had  
18   limited liquidity prior to its nationalization for several  
19   reasons. First and foremost"--and this is the element I  
would

20   like to analyze with you--"this was because it was  
dedicating

the  
21 the bulk of its revenues to its large-scale investment in  
22 CCGT project, which had an approved revised budget of  
23 \$68 million, excluding taxes, financial costs, or accounting  
24 adjustments such as those under NA-3. It was more than  
25 90 percent complete at the time of the nationalization as

10:19 1 reported by the Project Manager Mr. Lanza."

2 Do you see that statement?

3 A. Yes, I do.

4 Q. Now, if we assumed that the project, when it was  
5 nationalized, was not complete by 90 percent, rather  
6 50 percent, the situation would be worse?

7 A. Well, I cannot assume something that did not happen.  
8 I cannot answer.

9 First, it did not reach 50 percent; and, second, I  
10 cannot state anything about technical aspects. I have a  
degree  
11 in business management. I am not an engineer, so I cannot  
12 answer yes or no to that question.

13 Q. If you move to the binder that we just gave you,  
14 Mr. Blanco and we look at Tab 21, there you're going to see  
a  
15 document that is the resolution of the Electricity Control  
16 Authority. That is Annex 24 to the statement by Mr. Eduardo  
17 Paz.

18 First of all, have you read Mr. Paz's statement?

19 A. Yes.

20 Q. And I imagine you have read his annexes; correct?

21 A. Yes.

22 Q. Are you familiar with this Resolution?

23 A. Of course I am.

24 Q. And if we look at Page 5 out of 7, you can you see  
the

25 small number at bottom of the page, to the bottom right-hand

10:21 1 corner, there is a third clause that refers to what EGSA  
said

2 in a note dated January 19, 2010, and EGSA there was telling  
3 the Authority that EGSA had completed the project by  
4 96 percent.

5 A. Where?

6 Q. That is the third paragraph.

7 A. Yes, I can see that.

8 Q. That is to say, EGSA submitted a note saying that  
EGSA

9 estimates that the project is complete--is 96 percent  
complete;

10 correct?

11 A. Yes, correct.

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

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

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

18 PRESIDENT JÚDICE: If you allow me, you said that  
you

19 do not have much experience in this type of proceeding.  
Things

20 here have this type of energy, so it is normal for the  
lawyer

21 of Bolivia to be a little bit less nice with you than the  
other  
22 lawyers, and then the situation is going to change. These  
are  
23 the rules of the game, but you can say whatever you think,  
and  
24 the Tribunal is paying full attention to what you are saying.

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



10:23 1 BY MR. SILVA ROMERO:

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

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

20 90 percent.

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

25           MR. SILVA ROMERO: Well, the witnesses here seem to

be

10:25 1 kicking the ball among themselves. Well, this looks like  
the

2 Barcelona team.

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

5 BY MR. SILVA ROMERO:

6 Q. Now, if we move on to Paragraph 19, I get to the  
7 second element that I wanted to discuss with you in  
connection

8 with the illiquidity situation or the so-called

9 "creditworthiness" of EGSA; and in Paragraph 19 you say, "In  
10 addition, we had already--we were expecting to receive a  
11 payment of €3.3 million from the development banks that had  
12 agreed to extend those credits." But €3.3 million, Mr.  
Blanco,

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

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

19 MR. SILVA ROMERO: Mr. Blanco, Mr. President, is  
not  
20 answering my questions. I will continue asking questions,  
but

21 at some point I will ask the assistance of the Tribunal so  
that

22 he's told that he has to answer my questions.

23 BY MR. SILVA ROMERO:

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

25 PRESIDENT JÚDICE: You can say whatever you want in

10:27 1 your answer, Mr. Blanco, but, Mr. Blanco, try to be as  
direct

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

3 is not negative for you.

4 So, you can answer the question may be different,  
but

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

7 THE WITNESS: I am going to repeat my answer.

8 Or can you ask me again the question?

9 BY MR. SILVA ROMERO:

10 Q. You were saying that you were receiving those  
11 points--€3.3 million. My question is: The €3.3 million  
were

12 not even enough to pay YPFB what you owed for the gas supply;  
13 is that correct?

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

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

17 €3.3 million, but the idea was to use this amount on the  
18 project because if you allow me to continue, we never  
received

19 an official letter from YPFB indicating that they were going  
to

20 interrupt the service. We have had the debt since November,  
21 and we were trying to make partial payments.

22 Q. Okay. You're saying that you owed about 12 million,  
23 but if I tell you that the debt as of May 1st, 2010, was  
about

24 14 million, do you agree or not?

25 A. There was another invoice that had an additional

10:29 1 period for payment, and that was 2.5 million.

2 Q. YPFB, is it a State-run company?

3 A. Yes, it is.

4 Q. And, clearly, this is going--the company's going to  
5 finance as much as it can, the company that is providing  
6 electricity to the population of Bolivia; correct?

7 A. Yes.

8 Q. Therefore, one way to finance the liquidity by EGSA  
in 9 2010 and part of 2009 was by delaying the payments to YPFB;  
10 correct?

11 A. Yes.

12 Q. Mr. Blanco, when a company decides to stop paying  
its 13 providers--its suppliers, it's close to cessation of  
payments;

14 is that correct, Mr. Blanco?

15 A. Are you talking about--specifically about YPFB, sir?

16 Q. I'm asking in general.

17 A. It depends on the environment in general. When you  
18 are in an important project such as the CCGT project, it's a  
19 big project, and the payments were going to be resumed in  
the 20 regular manner.

21 In the case of Guaracachi, the only pending payment

22 that we had that was substantial in nature was the one to  
YPFB.

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

25 A. Yes, yes.



10:31 1 Q. Gas, in fact, is necessary for the engines of the  
2 turbines to operate; right?

3 A. Yes, that's correct.

4 Q. Apart from that 14 million debt or 12 million,  
5 according to your calculation, EGSA had other commercial  
debts  
6 that were around \$20 million; right?

7 A. Yes, that they were not due--and that were not due.

8 Q. The other point that you mention to demonstrate the  
9 liquidity problems of EGSA were not as serious appears, if I  
10 read your statement correctly, on Paragraph 20. If I  
11 understand correctly, this has to do with the fact that EGSA  
12 was awaiting a new CAF loan; right?

13 A. It was not a new loan. It had to do with  
14 renegotiating the initial conditions of the loan.

15 Q. Yes, you're absolutely right. It was waiting to  
16 renegotiate the loan conditions with CAF; right?

17 A. Yes, that's right, sir.

18 Q. In fact, this was a loan whose funds were going to  
be  
19 used for the CCGT project exclusively?

20 A. Yes.

21 Q. In Paragraph 20 on Page 14, at the end, you say  
that

22 it appeared, then, that CAF was ready to accept the  
conditions

23 of the loan and accept our request.

24 A. Yes.

25 If you allow me to explain the reasons.

10:33 1 Q. Let me ask you the question, and then you can  
respond,  
2 and then can you explain whatever it is that you want to  
3 explain if the Tribunal sees fit, if not, Claimants' counsel  
4 will ask you questions further on.

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

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

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

13 We're having problems with the question and answer,  
so  
14 please, in the transcript, so please come closer to the mike  
15 and wait until I finish my question to provide your answer.

16 I will repeat the question because I see no answer.

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

19 A. Yes, I have.

20 Q. Have you read the annexes to such statements?

21 A. Yes, I have read them.

22 Q. Why don't we go to Tab 24 and look at the document  
23 that's behind it.

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

25 A. Yes.

551

10:35 1 Q. This is Annex 19 to Ms. Bejarano's statement. This  
is  
EGSA, 2 a letter that CAF sent to EGSA, to the General Manager of  
the 3 Jerges Mercado Suarez, and the letter states, first, that  
is 4 request made by EGSA is rejected, but it says, "however, CAF  
the 5 ready and willing to accommodate to the specific needs of  
with 6 company, and we will let you know that we are available to  
another 7 assess potential waivers that are temporary in connection  
8 the three-month waiver of the conditions to the three-month  
9 fulfillment of the conditions, nor we were referring to  
10 Guaracachi letter.

11 PRESIDENT JÚDICE: I'm going to ask the lawyers to  
let 12 us know what letter this is, and if it's in the record.

13 MR. SILVA ROMERO: We're going to consult on this,  
and 14 we're going to give you a reference.

15 MR. BLACKABY: The CAF's eventual response was one  
of 16 the documents that was refused to be admitted into the  
record.

17 PRESIDENT JÚDICE: Okay, thank you.

18 (Comment off microphone.)

19 MR. BLACKABY: I won't make any comment.

20 BY MR. SILVA ROMERO:

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

23 A. Very well.

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

25 And let's go to your Second Statement, Paragraphs 6  
to

10:38 1 8, just to give you context?

2 A. What paragraphs again?

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

6 I understand that in your First Statement you  
included

7 an annex, Annex 1, with the financial debt of Guaracachi as  
of  
8 30 April 2010.

9 A. Yes.

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

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

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

15 A. I prepared it on the basis of information that I  
had

16 when I was in Guaracachi. I had a record of everything that  
we  
17 had in Guaracachi.

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

20 A. No, no, I didn't. I knew the loans that I had. It

21 was an Excel spreadsheet, and we knew the loans that had  
been

22 taken and the loans that had not been taken.

23 Q. I suggest that we do the following: Let's take

24 Annex 1 from Mr. Blanco's statement, which is the annex to  
his

25 First Statement, and we have a book here. Let's go to Tab



10:40 1 Number 26, and we're going to compare these two charts.  
These

2 two tables, actually.

3 When did you prepare this table, Mr. Blanco?

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

6 Q. Before or after nationalization?

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

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

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

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

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

20 Q. But did you prepare it? Yes or no.

21 A. Yeah, perhaps I populated this myself, yes.

22 Q. But you're not sure if you prepared it yourself?

23 A. Yes. I prepared it myself with information I was

24 given.

25 Q. Okay. If you compare both tables, your table ends

in

10:42 1 the column named "Rate," tasa, T-A-S-A. But if we look at  
2 Annex 6 to Bejarano's statement, there is an additional  
table  
3 that says "Guarantee."

4 Do you see that?

5 A. Yes, yes.

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

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

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

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

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

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

17 BY MR. SILVA ROMERO:

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

21 A. Yes, because that is a requirement by the banks.

22 Mr. President, I would also like to say that a  
turbine

23 is a nominal guarantee because this is a public service that

24 cannot be attached, so this is what we know as a nominal

25 guarantee.

10:43 1 Q. But the bank, in order to provide the loan required  
2 these guarantees?

3 A. Yes.

4 Q. And if I were to tell you that all of EGSA's  
engines  
5 were given as a guarantee, would you agree with me or not?

6 A. I would have to look at this, but yes, all the  
7 generation assets were given as guarantees.

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

11 A. I don't agree.

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

15 PRESIDENT JÚDICE: Page 7?

16 BY MR. SILVA ROMERO:

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

20 A. Yes.

21 Q. I understand, Mr. Blanco, that you failed to  
mention

22 that Fitch had downgraded the rating up until the Third  
23 Statement.

24       A. I can explain you why--because Bejarano and Paz had  
25 mentioned it in their statements. I didn't mention Fitch

10:46 1 because Fitch was not Guaracachi's official credit rating  
2 agency. Fitch rated the first bond issuance, and the second  
3 one was rated by Pacific. According to the legislation of  
4 Bolivia, although Fitch did not rate Guaracachi, we had to  
5 retain them for six more months, and we retained them for  
six  
6 more months according to the law, but these were not direct  
7 ratings to Guaracachi. They did not work for Guaracachi,  
but  
8 the regulation stated that we had to retain them for six  
more  
9 months.

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

13 A. The answer was yes.

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

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

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

19 A. Yes.

20 Q. It's my duty. Don't worry about it.

21                    Paragraph 17, you say that it is necessary to state  
22 that when Bejarano prepared a report for the Audit Committee  
on  
23 the financial leverage of Guaracachi in April 2010, just  
before  
24 the nationalization, she did not state any of the concerns  
that  
25 she now expresses. I understand from your statements that  
you



10:47 1 criticize Ms. Bejarano because she didn't tell you that the  
2 leaders of the company, look, there is a financial problem  
in  
3 the company.

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

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

14 A. Yes, yes.

15 Q. This is a report addressed to you?

16 A. Yes.

17 Q. If we go to the last page, which is Page 3, here  
18 Ms. Bejarano says, "According to the foregoing analysis, the  
19 net profit that has been accounted for is 12 Bolivian pesos  
20 originated by the updating of the UFV factor in connection  
with

of 21 the dollar, and we recommend to conduct a periodic analysis

22 the values and adjusted by UFV."

to 23 A. Well, it doesn't say here that the adjustment has

24 be made. It is recommended, the adjustment. It would be

she's 25 contradictory for her to establish the adjustment because

10:49 1 the one that approved Standard 3, and she was a member of  
the

2 college of auditors.

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

5 A. That is not what she's saying.

6 I have to follow Bolivian GAAP, and Bolivian GAAP  
7 includes Standard 3. The Tax Law determines that taxes are  
to

8 be paid on the basis of the UFV.

9 Q. What Ms. Bejarano is saying is that it is  
recommended

10 that a periodic analysis be conducted of the values that  
arise

11 out of UFV in order to have an equitable relation of the  
12 inventories and fixed assets.

13 A. Yes. It's an analysis. She could have gone to the  
14 Audit Committee and to the Board of Directors and to say  
that

15 the Financial Statements that we were preparing did not meet  
16 regulations, but she never says this in any of her reports.

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

19 A. Yes, of course.

20 Q. And PriceWaterhouse was hired upon the  
recommendation

21 of Bejarano?

22 A. No.

23 Q. By the Committee of Auditors after the Committee of

24 Auditors heard the recommendations of Ms. Bejarano.

25 A. No.

10:51 1 Q. Now, PwC made certain recommendations in connection  
2 with this adjustment according to UFV; correct?

3 A. Yes, correct.

4 Q. Now, PwC recommended that the results of that  
5 adjustment be included in the adjustment in the reserve.

6 A. Sir, it doesn't say that the adjustment needs to be  
7 made. If that had been the case, when PwC, who were the  
8 external auditors of us audited the Financial Statements, if  
9 they had seen what you mentioned, they would not have  
approved  
10 the Financial Statements.

11 Q. Let's go to 13, please, Mr. Blanco.

12 ARBITRATOR VINUESA: Thirteen?

13 MR. SILVA ROMERO: Number 13, Mr. Vinuesa.

14 BY MR. SILVA ROMERO:

15 Q. This is Annex 17 to Ms. Bejarano's statement.  
These

16 are the conclusions of the PriceWaterhouse study on the UFV  
17 adjustment; is this correct?

18 A. Yes, that's correct.

19 Q. There are no page numbers on this report, but if  
you

20 go to five, Roman numeral five, but I have a question before  
21 that.

can

22                   The UFV adjustment, yields a profit; right? Or it

23 yield a profit?

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

25       Q.   Can it yield a profit?

10:53 1 A. Yes.

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

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

6 BY MR. SILVA ROMERO:

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

8 A. Yes, and also a gain.

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

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

13 BY MR. SILVA ROMERO:

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

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

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

22 A. Yes, I understand. I understand what you mean by  
23 little Roman numeral four. I like that. The Mexicans say

24 that, but I like it.

25 Q. Here it says that the corporation may opt to  
register



10:55 1 as a reserve for net worth the adjustment for inflation and  
2 exchange differences.

3 A. Yes, I see that.

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

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

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

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

11 Q. But this reserve was never created; right?

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

13 Q. Was it constituted or not?

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

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

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

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

19 A. The profit for 2007, well, part of it was  
distributed,

20 but just a portion of it. In 2008, it was declared, but  
21 nothing was distributed, and in '09 it was declared, but it  
22 wasn't distributed.

23 Q. I think you are using Mr. Earl's terminology?

24 A. I don't know what Mr. Earl's terminology is, with  
all

25 due respect. I don't know what Mr. Earl used as terminology.

10:56 1 Q. Have you spoken to Mr. Earl in connection with his  
2 statement? Yes or no.

3 A. No.

4 Q. If I were to tell you that 100 percent of the  
5 monetizable profit was distributed in 2009, would this be  
6 correct or not?

7 A. I don't know what you mean by monetizable profits.

I

8 don't understand what you mean by that. I have never heard

of

9 monetizable profit. Ms. Bejarano is trying to create a new  
10 accounting system. That does not exist.

a

11 Q. So, we cannot make a distinction between operating  
12 profit, and a profit that results from a UFV adjustment?

the

13 A. Profits are the ones determined by the accounting  
14 regulations. Those are profits. Now, the ones defining--

it

15 ones determining how to distribute those profits are the  
16 Shareholders, and at that time ENDE was a shareholder, and  
17 also made this determination.

no?

18 Q. In '09, all of the profit was distributed? Yes or

portion

19 A. No, it wasn't distributed. Part of the or a

20 of the profit was declared, but nothing was distributed.

21 Q. So, declaring means that dividends are going to be  
22 given to the Shareholders, but nothing will be paid.

23 A. Well, first, only a portion of the profit was  
24 declared.

25 Second, the distribution of profits is a liability

for

10:58 1 the company, and certain conditions have to be met. But  
there  
2 were liquidity issues. It would have been irresponsible to  
3 distribute this if the company didn't have any money to  
4 construct the CCGT project.

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

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

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

12 A. Yes, sir.

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

16 A. Yes.

17 Q. And then we see the minutes for 23 April '09. It's  
18 the following document. If we look at Item Number 4, we do  
not  
19 have a page number. There, you're going to see the results  
of  
20 2008. Are you aware of what happened in this Special  
Meeting

21 of the Shareholders?

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

23 Q. And here a decision was made to distribute. As we  
can

24 see at the end of Item Number 4, a recommendation was made  
to

25 distribute 14.7 Bolivian pesos based on the following table;

11:01 1 correct?

2 A. Yes.

3 Q. And the net profits of 17.9 Bolivian pesos. There  
is

4 a 5 percent legal reserve, and you have 68 million that's  
5 available dividends; correct?

6 A. Yes.

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

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

12 Q. A decision was made for that money to be given to  
the

13 Shareholders, but the payment was delayed; correct?

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

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

17 Q. When you say that this was delayed, it means that  
EGSA

18 had a debt towards the Shareholders; correct?

19 A. Correct.

20 Q. If we look now in the next two pages, we see in  
bold,

21 which reads that, upon voting, the Special Meeting of

of 22 Shareholders decided by majority to approve the distribution

23 dividends by 50 million Bolivian pesos, approximately?

24 A. Yes.

25 Q. And towards the end, right before Item Number 5, it



11:03 1 says that Mr. Walter Morales Carrasco, who is a representative

2 of PVUVA, and Carlos Cadriga Visareyes (ph.) representing  
AFP

3 for Bolivia were not in agreement; correct?

4 A. I can explain the context.

5 Q. Let me ask you a question, and then you explain the  
6 context. The question is: Did the Minority Shareholders  
that  
7 were represented by these two individuals oppose or object  
to

8 the statement of the dividends?

9 A. They objected because of a liquidity issue. They  
10 objected to this Declaration of dividends, and clearly there  
11 was a liquidity problem, and that is the reason why they  
12 objected to that Declaration of dividends. It would have  
been  
13 really bold to say that there was no problem. There was a  
14 problem. And with this or the other measure, they were  
15 delaying the distribution of dividends because there was  
also a  
16 delay until certain conditions were met, and that's the  
reason  
17 why the 2008-2009 dividends had not even been paid to date  
by  
18 Rurelec.

19 But as you said, there was an indication to  
capitalize

20 certain resources. That means not all of the profits were  
21 distributed.

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

24 And then it says, next, Mr. Walter Morales Carrasco  
25 took the floor as representative of PVUVA, and he expressed

11:05 1 that in payment of the dividends was helping support the  
2 dignity tariff, but the Shareholders who were working on the  
3 long-term support of the company thought that it was  
necessary  
4 to be consistent in connection with the maintenance of the  
5 corporation. Therefore, they decided that the decision  
should  
6 be made after the corporation is in a situation to do so.  
That  
7 is to say, the representative of the Minority Shareholders  
is  
8 saying we have no money to pay the dividends; correct?

9 A. Yes, and they were not paid because the Majority  
10 Shareholders said the same thing, we're not going to  
distribute  
11 them. They all agreed. The issue was how to record the  
12 profits. The dividends could be declared or something else  
13 could be done, but if they are saying that if it is not  
going  
14 to be distributed, they're not going to be distributed. It  
had  
15 to do with the way they were going to be distributed.

16 Q. Well, they couldn't be distributed because there  
was  
17 no money; right?

18 A. Well, it was beyond that. It was part of a very  
19 important project, and it was important to conclude the  
project

20 before we paid dividends to the Shareholders. That was the  
21 perception of the management. We have a project, there is a  
22 cost involved, and we have to pay. All of the Parties have  
to  
23 make an effort.

24                   The Shareholders, who offered their money, and  
those  
25 Shareholders, Rurelec and the other Shareholder, also

11:07 1 contributed their money had been waiting at this time, and  
they

2 all had to contribute to the financing of this.

3 Q. But the banks that had lent money to the company  
would

4 have never accepted that those declared dividends were paid;  
5 correct?

6 A. With due respect, what you are saying is not true,  
7 because since we were able to obtain a waiver with Jerges  
8 Mercado for some additional loans, in our administration, we  
9 would have had the ability to obtain another waiver or  
change

10 the ratios because ratios were established by CAF biased a  
11 42 million-dollar loan rather than a project that ended up  
12 costing much more money. If we explained that to the CAF,  
13 clearly the ratios would have changed.

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

16 A. I don't know. I am not aware. I wasn't there.  
But I

17 imagine there was a waiver because they got a loan for  
18 5 million for Corani and Valle Hermoso, and the ratios were  
not

19 met, so I imagine that this is a serious Government--the  
ratios

20 must have been met, and the only way was to--by obtaining a

21 waiver by CAF.

22 Q. But the Shareholders in this meeting did address  
the

23 bank issue, didn't they?

24 A. If you show me where.

25 Q. If we go back to Page--to the page right before

11:08 1 Item 5, the conclusion in bold, there is a condition there  
for  
2 the payment of dividends. That is based on the fulfillment  
of  
3 the commitments with the company Shareholders. That means  
that  
4 it was not possible to pay dividends prior to fulfilling the  
5 commitments with Shareholders and banks.

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

17 MR. SILVA ROMERO: I only have two lines of  
questions,

18 but if this is a good time for a break, I think that I can

19 pause here, and I just need a couple of minutes after the  
20 break.

21                   PRESIDENT JÚDICE: Mr. Blanco, we are going to have

a

22 15-minute break. Please do not discuss the case with anyone.

23 You cannot talk to the people here in the hearing or with

any

24 other person that is outside or has any relationship with

the

25 case.



11:10 1 THE WITNESS: I will just stay here.

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

4 THE WITNESS: Thank you, Mr. President.

5 PRESIDENT JÚDICE: Thank you.

6 (Brief recess.)

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

9 BY MR. SILVA ROMERO:

10 Q. Good morning again, Mr. Blanco.

11 A. Good morning, sir.

12 Q. I just have one last question. I just wanted to  
13 clarify one of the issues that we were discussing, and then  
14 Mr. García Represa is going to ask other questions of you.

15 A moment ago, you said that CAF did approve the  
ratio  
16 waiver; correct?

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

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

21 A. Yes, after nationalization, correct.

CAF

22 Q. So, after the--after the State intervened with the

23 to obtain the waiver?

sent

24 A. I don't know if this was related to the note we

25 or to another note that the government of Bolivia or the

11:36 1 administration of Guaracachi must have sent.

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

4 A. Thank you, sir.

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

6 BY MR. GARCÍA REPRESA:

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

8 A. Yes.

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

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

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

19 A. Yes, that's correct.

20 Q. And this morning you suggested that that pre-  
payment  
21 got delayed because of the fault of the State.

22           A.    I have not said that the State was at fault.  I  
just  
23   said that the Government, through its pertinent agency, had  
to  
24   appoint as participants in the project to CAF and to KfW,  
and  
25   that communication never came from the Government of Bolivia.

11:37 1 Q. Let me see if I understand your testimony correctly.  
2 Is the State responsible--and just to be clear and  
to  
3 clear all doubts because there were doubts with the CAF  
letter,  
4 I am interested in the period before May 1st, 2010.  
5 Before May 1st, 2010, was the State responsible in  
the  
6 delay connected to the pre-payment of the carbon credits?  
7 A. Can I put this in context?  
8 Q. Please first answer my question, and then we'll go  
to  
9 context.  
10 A. Partially, yes.  
11 Q. So, your testimony is that the State is partially  
12 responsible for the delay.  
13 A. Partially, yes.  
14 Q. And by "partially" you say because this is for a  
brief  
15 period of time?  
16 A. No, because the communication was also necessary  
from  
17 the Registry, then the Government of Bolivia had to appoint  
as  
18 participants those two banks.  
19 Q. So, there were two conditions then?  
20 A. Yes, that is correct.

21 Q. Let me ask you the question, and then you answer  
22 because otherwise things get messy.

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

11:39 1 A. Yes, you are correct, sir.

2 Q. Very well.

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

4 Nations?

5 A. It was close to nationalization.

6 Q. Could you be more specific?

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

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

9 A. When the communication of the UN came, I don't know.  
10 I think it was at the end of April, if I'm not mistaken.

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

12 of the company?

13 A. Yes, sir.

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

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

18 I cannot know everything in the project.

19 Q. But you saw this in Mr. Paz's statement?

20 A. Yes, I did.

21 Q. And here you see the registration date with the  
United Nations?

22 Nations.

23 A. Yes.

24 Q. I think--well, I'm sorry, I speak very fast, and I  
25 would like to apologize also because I'm speaking Spanish.



11:40 1 I was saying--well, I was asking you to confirm  
that

2 you saw the annexes to Mr. Paz's statement; is that true?

3 A. Yes, that's true.

4 Q. Among those annexes, we see the notice provided to  
the

5 company by e-mail that the project was registered with the

6 United Nations; right?

7 A. Yes, sir.

8 MR. GARCÍA REPRESA: I have a doubt here, and I  
would

9 like to consult the Tribunal in connection with this.

10 Would you want me to submit the document first and  
11 then ask the question, or would you want me to ask the  
question

12 of the witness directly in connection with the date?

13 PRESIDENT JÚDICE: Well, sometimes the witness  
would

14 like to see the document first, but for the Tribunal it's  
the

15 same thing.

16 BY MR. GARCÍA REPRESA:

17 Q. Let's do this in a traditional manner. I am going  
to

18 present this document to you, and I am going to ask you to

19 please look for the binder that we submitted for Mr. Earl's

copy 20 Statement. I think it's up there, and I'm going to give a

21 to the Members of the Tribunal.

of 22 Now, once you find this binder, let's go to Tab 25

23 this binder. This is Annex 34 of Paz's statement.

24 Mr. Blanco, when you find this, please let me know,

25 and it's Number 25. I will wait until you find it to ask

11:42 1 questions of you.

2 As you can see, Mr. Blanco, this is an e-mail chain,  
3 and some of the references are in German. The reason why it  
is

4 in German is the validator, tuv-süd is the one that  
registered

5 the company.

6 A. Yes, sir.

7 Q. If you go from the top to the bottom, you see the  
8 third e-mail block where it says "fund of" in German, CCGT  
9 project registration, here you see the one--the name of the  
10 Parties sending the notice, and here it says "Montag, 3,"  
which

11 is Monday, the 3rd May 2010?

12 A. Yes, that is correct.

13 Q. That is the date in which the registration is  
14 notified?

15 A. Yes.

16 Q. Before this date, the company would not have  
received

17 the pre-payment of the carbon credits; right?

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

19 Even though this is one of the conditions,  
20 negotiations were being undertaken with the Government.  
This

21 is what I understand because I wasn't in charge of the

22 negotiations with the Government. Mr. Earl was doing that.

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

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

25 Ministry, and there was an e-mail sent by Mr. Earl, and we  
were

11:43 1 trying for this condition to be a condition to be applied  
after

2 the moneys were paid, but what you're saying is correct.

3           There was a negotiation taking place--and I'm  
giving

4 you the context here, sir.

5           Q. I have no problems with context, sir, but first  
give

6 me the answer and then you talk about the context.

7           You said initially it's not correct, and then you  
said

8 that it was correct after you gave context, so I would like  
to

9 avoid all kinds of confusion.

10           Just to be clear, then, one thing is a reality,  
what

11 happened, and the other thing was what was being attempted.

12           A. Yes, that's right.

13           Q. What happened factually is the following: Isn't it  
14 true that at the time of the nationalization the pre-payment  
of

15 the carbon credits could not take place?

16           A. Yes, that is true.

17           MR. GARCÍA REPRESA: I have no further questions.

18 Thank you.

19           PRESIDENT JÚDICE: Thank you, Mr. García Represa.

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

21 questions.

22 REDIRECT EXAMINATION

23 BY MR. BLACKABY:

24 Q. Good morning, Mr. Blanco. I will just ask you a  
few

25 questions that have arisen out of the questions that you  
have

11:45 1 heard from my colleagues representing Bolivia.

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

5           Do you recall those questions?

6       A.   Yes, I do.

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

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

13       A.   Yes, sir.

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

18           MR. BLACKABY: We can get a copy for the witness.  
19 There is no screen within easy reach, one of the design  
faults  
20 of this building.

21           It wouldn't have happened when Mr. Silva Romero was

22 Deputy Secretary General.

23 MR. SILVA ROMERO: I'm afraid I participated in the  
24 Commission.

25 MR. BLACKABY: In this case, I reserve my rights.



11:47 1           PRESIDENT JÚDICE:  If this is the problem, all the  
2 rest is perfect.  Including the food.

3           MR. BLACKABY:  We're trying to get our computer  
4 connected up to the projection screen.

5           PRESIDENT JÚDICE:  Anyway, if the witness is handed  
6 the document, if the other Respondents are aware of document,  
7 please proceed because we will have here Mr. Conthe's  
document,  
8 and--

9           MR. BLACKABY:  I don't know what is technically  
10 preventing this happening.  No one available to help  
11 technically?

12           Okay.  All right.

13           BY MR. BLACKABY:

14         Q.  Okay.  Well, this is a letter, C-311, written by  
the  
15 CAF to it Mr. Earl.

16           Do you see that?

17         A.  Yes, I do.

18         Q.  You will see--or perhaps I will read into the  
19 record--a request from the CAF, (in Spanish):  In connection  
20 with your communication of 1st February 2010, I communicated  
to  
21 you that in order to extend the grace period or to  
flexibilize

fully 22 the Debt Covenant, the CAF has considered convenient to  
23 evaluate the loan of Empresa Eléctrica Guaracachi for  
24 \$20 million. So, the CAF is going to have to restate its  
25 current situation, it's going to have to update its

11:49 1 projections, and it's going to have to consider the delays,  
et  
2 cetera.

3 We would always be thankful if you could inform to  
us  
4 the conditions if you are going to require a modification  
5 because there may be certain restrictions that are going to  
be  
6 incorporated so the dividend policy into the future.

7 So, this is a letter of 12 March 2010. This is  
before  
8 nationalization; correct?

9 A. Yes, sir.

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

12 MR. BLACKABY: And we're going to provide a copy to  
13 the witness as well. It's Tab 24 of the bundle--

14 PRESIDENT JÚDICE: Talking about what we saw before?

15 MR. BLACKABY: Yes, we saw it before.

16 BY MR. BLACKABY:

17 Q. Okay. So, this is another letter from CAF dated  
18 3 November 2010.

19 Do you see that?

20 A. Yes, I do.

21 Q. Could you please read this document.

22                   And reference is made to different items of  
23 correspondence. I would like for you to make reference to  
the  
24 first one and whether this reference matches the reference  
on  
25 the previous letter, DAF0275.

11:51 1 A. Yes, sir. Yes, sir.

2 Q. What is the date of this document?

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

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

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

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

16 Could you please read out loud subsection D, please.

17 A. Corporate modifications of transformations, amongst  
18 others. On 22 March 2011, the company received letter  
19 RB2532011 from CAF. In this letter, the institution  
confirms  
20 its knowledge of the non-performance of the ratio under

21 Subsection B(i) hereinbefore that was reported by the  
company.

22 It accepted the temporary waiver up until December 2010 with  
a

23 modification of the financial ratio of the indebtedness for  
a

24 value less or open--less or equal to .75.

25 Q. So what was the answer of the CAF to this request?

11:55 1 A. It was a positive answer.

2 Q. Now, let's move on now to a different issue.

3 Mr. Blanco, you were asked a number of questions in  
4 connection with the re-expression of EGSA assets in constant  
5 monetary terms. Do you remember that?

6 A. Yes, sir.

7 Q. If we go to Tab 11 of your examination binder, we  
see

8 a report here by Ms. Bejarano. This is Annex 16 to  
Bejarano's

9 Statement.

10 Did you find it?

11 A. Yes, sir.

12 Q. At the end, there were a number of recommendations.

13 Do you remember that?

14 A. Yes, sir.

15 Q. And you remember that a recommendation was made to  
16 conduct a periodic analysis of the values that stem out of  
the

17 adjustment according to the UFV in order to maintain an

18 adequate valuation of the inventory and the fixed assets?

19 A. Yes, that's right.

20 Q. Please go to Tab Number 12 in the binder. This is  
the

21 report by Martha Bejarano, and it is a report of activities

22 conducted in July '08. There is a chart here.

23 Have you found it?

24 A. Yes. Page 2 of 3?

25 Q. Yes.



11:57 1           No, no. It's actually--it's just an annex. It's  
2 Annex 1.

3       A.   Yes, yes, I see it. Annex 1.

4       Q.   Yes, with all of the activities you conducted as of  
5 that date.

6       A.   Yes.

7       Q.   Go to Number 8. This was sent to you in your  
capacity

8 as Financial Director--or Finance Director. What was the  
9 activity conducted?

10      A.   A company was hired to value the assets. The  
11 accounting value is not different from the study conducted.

12      Q.   And here it talks about physical inventory; correct?

13      A.   Yes.

14      Q.   Was this a consequence of the conclusion and  
15 recommendation provided by Bejarano? Do you remember this?

16      A.   No, I don't remember. But these kinds of  
allegations

17 or impairments were done annually. We had to do them  
because

18 the external auditors required them of us.

19      Q.   But if we look at Ms. Bejarano--

20      A.   Yes, it had to do with what she said.

21           MR. SILVA ROMERO: Objection. Leading.

22           MR. BLACKABY: Well, he answered before I asked the

23 question.

24                   PRESIDENT JÚDICE: All of the lawyers know the  
rules,

25 the witness doesn't, but please let's conduct the proceeding  
as

11:59 1 we do it regularly. I want counsel to take care on these  
2 issues.

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

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

10 BY MR. BLACKABY:

11 Q. Well, I would like to know what the conclusion of  
12 Ms. Bejarano was.

13 A. That there was no difference between what the hired  
14 company prepared and what we had included in the accounts as  
15 inventory.

16 Q. Thank you very much.

17 MR. BLACKABY: I have no further questions. Thank  
18 you.

19 THE WITNESS: Thank you, sir.

20 MR. SILVA ROMERO: My colleague García Represa has  
21 just one question in connection with the last question by  
22 Mr. Blackaby.

23 MR. GARCÍA REPRESA: Thank you.

24 RE-CROSS-EXAMINATION

25 BY MR. GARCÍA REPRESA:

12:00 1 Q. Mr. Blanco, you were called to look at--you were  
asked

2 to look at Line 8. And there, there is reference to a  
report

3 directed to the Financial Director, and that refers to the  
4 benefits; correct?--to the profit.

5 So, as Financial Director, do you know the  
difference

6 between inventory and fixed assets on the balance sheet?

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

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

11 A. Yes.

12 Q. And this report was subsequent to the one my  
13 colleagues mentioned; correct?

14 A. Yes.

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

18 A. Aspects to take into account for the updating of  
the

19 UFV materials under way and the inventories, fixed assets,  
and

20 net worth.

21 Q. And these are four different issues; correct?

22 A. Yes. They're interrelated. Net worth is connected  
to

23 all of the accounts.

24 Q. If you now read the last column, the analysis of  
the

25 fixed assets by the general management still pending.

12:02 1 A. May I continue to give you a context?

2 Q. No.

3 MR. GARCÍA REPRESA: There are no further questions.

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

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

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

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

17 QUESTIONS FROM THE TRIBUNAL

18 ARBITRATOR CONTHE: Good morning. I'm going to ask  
19 you some questions. I'm going to try to be as slow as  
20 possible, and I'm first going to ask you about bonds--bond  
21 issuance for 2007 and 2009, and these are Guaracachi's bonds

22 and coupon for both emissions was different, 855 and 920.

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

25           THE WITNESS: They were at par, and if you wanted

to



12:04 1 know the difference, it's very easy.

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

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

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

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

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

7 increase, and there is no relationship--a positive

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

9 the Bolivian market rates.

10                   So, the increase is independent from any other

11 increase, and it's based on a higher increase in Bolivia.

12                   ARBITRATOR CONTHE: So, in spite of the fact that  
the

13 issuances were dollar-denominated?

14                   THE WITNESS: Yes, sir.

15                   ARBITRATOR CONTHE: So, you're saying that there  
was

16 the domestic rate from Bolivia that actually had an impact  
on

17 the dollar cost of the issuance that were placed in the

18 Bolivian market?

19                   THE WITNESS: Yes, sir.

20                   ARBITRATOR CONTHE: This is a related question, and

21 have seen that for the issuance the guarantee was a trust,  
what

22 we would call a pledge.

23 So, my question is whether that was a substantive

24 pledge rather than a guarantee, mortgage, or any other type  
of

25 pledge on specific electricity generation machines.

12:06 1 THE WITNESS: Yes. The issuance for \$40 million  
was

2 supported by--had no security.

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

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

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

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

14 I have another legal issue, but this is part of the  
15 prospectus, so I don't know if you can answer this question.  
16 In both prospectuses on the issuance--for the issuance, they  
17 referred to indigenous groups, and reference is also made to  
18 the protection of the investment under the BIT between the  
U.K.

19 and Bolivia, and that offers certain guarantees to the  
20 investor, but neither of the issuances referred to the BIT  
21 between the United States and Bolivia.

22 Do you know why?

23 THE WITNESS: To be honest with you, no.

24 ARBITRATOR CONTHE: And I have seen that in the  
second

25 prospectus of 2009, reference is made to the three legal

12:08 1 proceedings: One, a challenge on a tax Decision; and the  
other  
2 two references at 8-1 are the challenges to the resolution  
by  
3 the Superintendency on Spot and Capacity Prices.

4 But in connection with capacity of 2007, even  
though  
5 this measure was passed in 2007 February, and the bond  
issuance  
6 doesn't refer to that measure that Rurelec later on thought  
7 that it was very significant.

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

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

16 THE WITNESS: Yes, sir.

17 ARBITRATOR CONTHE: I don't know whether EGSA  
changed  
18 because later on I'm going to refer to the change of  
auditors,

19 but the change of auditors for a company is a red flag,  
they're

20 wondering what's going on, but I don't know whether you or  
EGSA

21 changed the credit rating agency or, rather, those were two  
22 different issuances. On the one--you used Fitch for one and  
a

23 different one for the second one.

24 THE WITNESS: Let me explain to you.

25 The first issuance was done with Fitch, and because  
of

12:10 1 the time we needed, we already delayed that one. To be  
timely,  
2 Fitch did not guarantee a rating in due time, so we looked  
for  
3 another credit rating agency, and someone that could offer  
us  
4 such a specific rating in the time that we needed.  
5 Fitch had maintained the rating up to December,  
6 but--for the first one, but the second one was not related  
to  
7 the first one. In the first quarter, our rating went down,  
and  
8 we maintain our relationship with them for another six  
months  
9 because they're saying that even if you're no longer related  
to  
10 an agency anymore, to a credit agency, you have to maintain  
the  
11 relationship six months.

12 And so far all of the ratings with--that were of  
13 Guaracachi were done with PCR.

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

18 THE WITNESS: Well, it wasn't better. Fitch's  
rating

kept

19 in December was the same as Pacific's, so the rating after  
20 Fitch and prior--after the issuance was lower because, even  
21 though Fitch did not have to rate anymore because we just  
22 the relationship because of the legislation, there was a  
23 downgrade by Fitch because of the bigger debt.

24 ARBITRATOR CONTHE: So, you're telling me that that  
25 is--that that happened after the second rating by the other



12:11 1 company?

2 THE WITNESS: Yes.

3 ARBITRATOR CONTHE: And Fitch told you then what  
the

4 rating was, but obviously you just told us that you had a  
short

5 deadline, and I was the Director of the Treasury in Spain,  
and

6 you were the Financial Director, and I imagine that you were

7 also in contact with credit rating agencies, and you could

8 imagine what the second credit rating was going to be with  
the

9 second issuance.

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

13 THE WITNESS: Well, even if the rating was lower,  
we

14 could have issued the bonds. Bondholders in Bolivia are  
15 pension funds. 90 percent of the funds such as Guaracachi's  
16 are acquired by pension funds, 20 percent by some other  
17 institutions, and individuals who wish to buy some bonds.

18 But regardless of the credit rating that we could  
have

19 received, bonds were basically sold already because they  
were

20 the bondholders, and it's like a monopoly. They even--we  
even  
21 need to define the rate with them. This is not supply and  
22 demand. It's--so, the issuance was already sold out, and we  
23 just did it because of the time we had. We needed to issue  
to  
24 continue with this project, which was so significant, so  
25 important, and we all wanted it to work.

12:13 1           ARBITRATOR CONTHE: So, the bondholders at the same  
2 time were members of the Board of Directors; right? So,  
this 3 could even distort the costs.

4           THE WITNESS: But there was a Chinese wall in  
between 5 because--let me explain to you that trust was so significant  
6 with Guaracachi--Bejarano and Eduardo were part of that, and  
7 they had Directors that were well-informed of the Financial  
8 Statements. They actually approved the statements; and,  
prior 9 to approving them, we were asked 50,000 questions. They  
were 10 really informed of the financial situation within Guaracachi.

11           So, these companies invested and bought bonds,  
12 well-aware of the situation within Guaracachi.

13           So, it was not feasible for the company--for them  
to 14 invest so heavily in the company, if the company was in such  
a 15 dire situation.

16           ARBITRATOR CONTHE: And why did you authorize only  
17 \$20 million for the first issuance but only placed 16?

18           THE WITNESS: One of the bondholders, a Spanish  
19 company, decided that there was another alternative, and  
they 20 had a lot of funds back then, and part of the funds they had

21 was devoted to a different alternative, and that's the  
reason  
22 why, when we designed this program, we did it as a program  
23 rather than individual issuances because, for an individual  
24 issuance, as you know, it is issued; and, if you're not able  
to  
25 place it fully, you cannot do the second one.

12:15 1                   But we did it because we knew that some companies  
may  
2                   not buy all of them, so we decided to have a program, so  
that  
3                   if we didn't sell all in the first place, then we were going  
to  
4                   have other placements, and second and third and fourth one--  
we  
5                   had up to four deadlines, so that's the reason why we  
decided  
6                   to do that.

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

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

12                  ARBITRATOR CONTHE: Yes.

13                  THE WITNESS: Guaracachi first started with Coopers,  
14                  Coopers & Lybrand were the auditors. Then we had two  
Directors  
15                  from the Minority Shareholders, and based on the auditor's  
16                  regulations--or rules and regulations, they are the ones  
that  
17                  have to elect someone, and they recommended to change  
auditors  
18                  because they were--they were losing--they were no longer as

an 19 objective as they were at very beginning, but that was not  
20 opinion that I shared, but--that was not an opinion that I  
21 shared.

22 The idea was to rotate and change auditors, have  
them  
23 for two years and then change them. So, we had Ernst &  
Young  
24 and then PriceWaterhouse.

25 ARBITRATOR CONTHE: Would you remind us when

12:17 1 PriceWaterhouse was in charge and then when they came back?  
2 And if there is any relationship between that timeline and  
what  
3 we talked about the development units.

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

6 ARBITRATOR CONTHE: They continued to work?

7 THE WITNESS: PriceWaterhouse continued to be there  
8 until the moment it was nationalized. But the one that was  
9 there the longest was Price, and the one that actually  
drafted

10 the report that the lawyer mentioned is PriceWaterhouse as  
11 auditor. We did not change them after that measure.

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

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

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

19 ARBITRATOR CONTHE: You already said this, but  
could  
20 you repeat it again. Why did you change? You're talking  
about  
21 independence of auditors.

of 22 THE WITNESS: Well, this goes beyond independence  
23 auditors.

24 The Directors of the Minority Shareholders, Ernst &  
25 Young--they were changing 2007, but the Directors of the



12:18 1 Minority Shareholders said that they stopped being objective  
2 after being there for a long time, so that means I'm going  
to  
3 change my lawyer because my lawyer is no longer neutral or  
4 objective. But if I trust my lawyer, I don't need to change  
5 that person, but that was an idea that came along with the  
6 Directors of the minority that were there after 2008. And  
then  
7 PriceWaterhouse came back.

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

11           ARBITRATOR CONTHE: Now, in connection with  
accounting  
12 issues and also referring to Guaracachi's statements, I'm  
going  
13 to ask you about the updating of statements based on the UFV.

14           The Bolivian GAAPs, did they award discretionary  
15 powers?

16           THE WITNESS: No, they considered it mandatory.  
And  
17 this is very important, and I might not have been able to  
18 express my ideas as clearly, but these principles are not  
only  
19 good to determine distribution of funds, but this is also  
the

20 one that determines that the profits are the ones used to  
pay  
21 taxes. Profits are not deducted from the UFV. Profits are  
the  
22 profits from that exercise, and there are some adjustments  
that  
23 have nothing to do with the UFV, and that's what we used to  
pay  
24 taxes in Bolivia.

25           So, it's not possible to try to show profits by

12:20 1 subtracting UFV, but then not to do it for the payment of  
2 taxes. So, if we are going to subtract it or deduct it, we  
3 are going to do it in both instances, and we have followed  
the  
4 principles by using the profits and also taking into account  
5 some future planning.

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

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

16 But in Bolivia, there was a depreciation of the  
17 Bolivian peso vis-à-vis the dollar--appreciation,  
appreciation  
18 of the Bolivian peso vis-à-vis the dollar, so inflation was  
no  
19 longer significant to show the financial and economic  
situation  
20 of the company.

21                   ARBITRATOR CONTHE:  And what was the logic behind  
that

22    rule?  Because Guaracachi's debt was dollar-denominated;

23    rather, most of the information you have, these were  
changing

24    to Bolivian pesos and then changed to the UFV rate and then

25    they were converted back to dollars.

12:22 1 THE WITNESS: We did our accounting in Bolivian pesos.

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

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

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

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

20 THE WITNESS: Well, we have two ratios. One of

21 belongs to the CAF, and the other one to the bondholders.  
It

22 is the net worth, and it does not specify as to what  
includes

23 and what it excludes. The only difference is that CAF's has  
a

24 different leeway, and, and the financial liability is not  
total

25 liability. The CAF is total liability. In the case of the

12:24 1 bondholders, it's the total liabilities.

2           ARBITRATOR CONTHE: So, given CAF, if they replaced  
3 financial debt--or rather if they did not take financial  
CAF 4 borrowing with the financing of the suppliers, that solved  
5 problems, and I assume that that is what the company did so  
as 6 not to breach the Covenant they had with CAF. And those who  
7 live in the European Union these days, we know what the  
system 8 could be, but we do understand that there was an economic  
9 incentive to replace the financial debt with commercial debt  
10 because that commercial debt was not against the CAF ratio.

11           THE WITNESS: But CAF's ratio against any other  
12 standard in the world is very low, at least in the electric  
13 sector. It must be 1:1. They had the ability to lend 75--  
65 14 cents per dollar of the net worth before, and that's the way  
15 CAF worked. We had a loan with CAF--or a different  
16 Administration had a loan with CAF, and the ratio was  
17 completely different. But based on my experience and my  
work 18 with them, CAF takes the flow based and adjusts it based on  
19 the flow of the company. And based on that--based on the  
streams 20 of the company. And based on that, they assigned the ratios.

21           So, they adjust the stream based on their judgment.

22           ARBITRATOR CONTHE: And I don't want to be unfair  
with

23   CAF, and usually the institutions, the banks loan money to

24   those who do not need it.

25           But let me move on to an accounting question that  
goes



12:26 1 beyond CAF but that has to do with the consolidated  
accounting  
2 for Rurelec. As long as you were the Financial Director of  
the  
3 largest subsidiary of Rurelec, I imagine that you were in  
4 contact with the Financial Director of Rurelec and also the  
5 auditors working with Rurelec; correct?

6 THE WITNESS: Yes.

7 ARBITRATOR CONTHE: So, what was the Fair Market  
8 Value, that, based on GAAP, was applied by the main office  
to  
9 assess participation within Guaracachi?

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

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

17 ARBITRATOR CONTHE: I understand. But this is  
based  
18 on accounting standards and, as a Financial Director, you  
19 needed to provide information for them to do the Fair Market

20 Value assessment.

21                   THE WITNESS: Well, we sent the information that  
they  
22 requested. I think I only saw those people twice, and I  
23 basically sent the information; systematically, we sent  
24 adjusted information by UFV. But the standards in Bolivia  
are  
25 particular to Bolivia, and those of the United Kingdom are

12:28 1 observed in the United Kingdom and not in Bolivia.

2 ARBITRATOR CONTHE: And the last question is more  
of a

3 general question, and I don't know if you can answer it, but  
it

4 could be useful to me, and I guess to my colleagues too who  
5 says--who is from the euro region, Latin America has not  
been

6 in the peak of the financial crisis that we had in 2007-2008,  
7 but I understand that this crisis must have had some effect  
on

8 a country like Bolivia, and Guaracachi in particular, taking  
9 into account the Shareholder was an English company that  
10 suffered the very serious crisis that the euro countries  
have

11 also suffered.

12 So, throughout these critical years that we're  
13 analyzing, 2007 prior to the crisis, and 2008 and 2009, when  
at

14 least in the United States and in Europe there was a  
financial

15 crisis, what was the impact of that radical change in  
economic

16 situation on Guaracachi's situation as a large Bolivian  
17 company?

18 THE WITNESS: I can refer to the country context.

19 As Bolivians, we need to feel very proud because we

20 are the only country that has grown over the last--over the  
21 recent years because of the Measures that were implemented  
by  
22 the Government. We have not been affected by external  
shocks.

23 We continued to grow and to respond.

24 To answer your question, because of the  
macroeconomic

25 Measures taken by the Government, the administration of Mr.  
Evo

12:30 1 Morales, we haven't had any impact in our economy, and we  
2 haven't been affected by international crises.

3 ARBITRATOR CONTHE: There was something else that  
4 actually took me aback. The interest rates in Bolivia  
between

5 '08 and '07 went up, and in the industrialized countries, it  
6 was going down.

7 Why did it go up?

8 THE WITNESS: One of the Measures that the National  
9 Administration took was to Bolivianize the economy. All  
dollar

10 rates went up and all rates in Bolivian pesos went down.  
There

11 was an incentive to lend in dollars--I'm sorry, lend in  
12 Bolivian pesos, and provide transactions in Bolivian pesos.  
13 We're trying to Bolivianize the economy.

14 In the past few years, because of a series of  
Measures

15 taken by the Finance Minister, Mr. Arce, the Bolivian peso  
was

16 stronger than the dollar. The Bolivian peso was 8 pesos per  
17 dollar, now it's 6.7 Bolivian pesos per dollar. So the  
18 Bolivian peso is a relatively stronger--strong currency,  
just

19 like in other countries, like Brazil.

20 ARBITRATOR CONTHE: So, there was a carry trade,

21 according to financial terms; right?

22           So, people take debts in dollars and get Bolivian  
23 pesos?

24           THE WITNESS: No. There was incentive to loan in  
25 Bolivian pesos, so dollar rates went up for a number of

12:31 1 reasons. You can go through the reports of the Central Bank  
2 and of the Superintendency, and you're going to see that the  
3 rates went up in dollars and went down in Bolivian pesos.

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

13 THE WITNESS: The issue of the bonds, if you look  
at  
14 bond issuances at the time, almost all of them have the same  
15 cost. So, there was no subvention in connection with that.

16 CAF has two arms, a public and a private arm. The  
17 public arm lends to Government, so the rates are quite low.  
18 Then the private arm is just a commercial bank that lends at  
19 LIBOR plus a certain margin, and it just so happened that  
the  
20 LIBOR was quite low, it's not a rate that is being protected,  
21 and so the CAF is more demanding than the commercial banks  
22 themselves.

23                   And the rate was relatively low, but this has to do  
24 with the fact that LIBOR was very, very low because of the  
25 crisis.



12:33 1 But in the loan that we took before, there was a  
put 2 option because the rate was going up to 7.5, so the rate was  
3 going to show up. And I'm talking about 10 years ago.

4 So, the rate was going to shoot up. So, the CAF is  
a 5 bank just like any other bank, so they need to make money.  
6 They don't make money with the governments, but they make  
money 7 with the private sector.

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

10 THE WITNESS: Yes. Let me explain that.

11 Before Rurelec came into play, when it was still  
GPU, 12 there was a CAF loan for the turbines, Numbers 9 and 10, for  
13 \$25 million. So, the rates of the CAF were prohibitive.

All 14 of the assets had to be attached because of a 25 million  
loan.

15 So, they placed the conditions as they wanted; the  
16 security as they wanted--well, things--so, flexibilize  
things.

17 But one of the tasks that I undertook to do was to  
18 find alternative financing at better condition because the  
19 LIBOR was going up at the time, and individually distributed  
20 dividends--well, the data on the Contract was wrong. There

21 were waivers every year, et cetera, but there were two  
options

22 in Bolivia to do this. There were \$16.5 million that were  
owed

23 to the CAF, and we had to pay that. So, we had to look at  
24 options.

25 We had the Banco Viscayo, it was there, and also  
the

12:35 1 Banco Credito was there. So, why should we go to foreign  
2 banks? Because no bank in Bolivia had the capacity to--to  
3 pay--to lend 20 percent. So, the Banco Credito gave us the  
4 \$16.5 million, which say take advantage of the CAF. We paid  
5 the loan of the CAF. And the conditions that we got now  
were  
6 quite--the rates were quite competitive. The conditions  
were  
7 much more competitive--for the other loans I'm talking  
8 about--and this is the first loan that the Banco Credito  
gave  
9 of such size in Bolivia. It was very interesting to work  
with  
10 them. And when the opportunity came to go back to the  
11 CAF--because we did need the CAF--we did go back to the CAF,  
12 and they received it with open arms as they have always done.

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

15 PRESIDENT JÚDICE: I have a small question.

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

19 Did I understand this correctly?

20 THE WITNESS: The results that we expected from the

21 combined cycle we're seeing now because of the fruits it  
bore.

22 The profit of Guaracachi is important and the cash flow is  
23 quite substantial, and this is due, amongst other things--

24                   PRESIDENT JÚDICE: Yes, but this is your impression.

25 You don't have any rigorous knowledge of this?

12:37 1 THE WITNESS: I understand that the cash flow has  
2 increased.

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

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

7 PRESIDENT JÚDICE: Thank you very much. I  
understand.

8 It was just to clarify things for me.

9 Thank you very much for your participation, sir.  
You

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

12 THE WITNESS: Thank you very much, Mr. President.  
13 Thank you very much to the members of the Tribunal. Thank  
you  
14 to the counsel for Bolivia, and thank you to the Rurelec  
15 counsel. I hope my clarification has been enough to clarify  
16 some of the doubts that have been forth.

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

20 (Witness steps down.)

21                   MR. BLACKABY: I think the only question is that  
it's  
22 20 to 1:00, as an Anglo-Saxon--in America they would already  
23 have had lunch by now. In Britain we would be just about to  
24 have lunch. In Portugal, you're probably thinking about  
your  
25 mid-morning break. And Spain is not even having breakfast.

12:38 1                   So, I was just wondering whether it made sense,  
since  
2 the timing of the break will be the same whenever we have it,  
3 whether it makes sense to break for one hour now and to  
4 continue thereafter rather than having a witness which may  
then  
5 continue until--I don't know, even an hour, it's going to  
take  
6 us towards 2:00. So, I just throw that open. I think from  
our  
7 side we would prefer to have a lunch break now and start  
8 promptly in one hour, but I throw that out as a proposal.

9                   PRESIDENT JÚDICE: That's your suggestion.

10                   What's your point of view? What do you think?

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

16                   PRESIDENT JÚDICE: The Tribunal is not concerned  
with  
17 this. It's the same for the Tribunal, so perhaps we could  
do a  
18 15-minute direct.

19                   MR. BLACKABY: Of course, that means that the  
witness

And 20 is then sequestered over lunch and has to sit at the desk.

not 21 it's not a particularly--it's fine at a coffee break; it's

20 22 so easy over lunch. And we are doing it now and starting at

23 to 2:00, it doesn't make any difference in terms of timing.

24 PRESIDENT JÚDICE: That's a typical Reply argument.

25 What do you think?



12:40 1 MR. GARCÍA REPRESA: I don't see what the other  
Party  
2 is--what the other Party's consent is because the witness  
3 cannot look at the transcript or talk to the other witnesses,  
4 so--but if we do this, we are going to make this day longer.  
5 We have 15 minutes, and we should actually hear the witness.

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

9 JOSÉ ANTONIO LANZA, CLAIMANTS' WITNESS, CALLED

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

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

18 We're a little behind, so your name is--

19 THE WITNESS: José Antonio Lanza.

20 PRESIDENT JÚDICE: There is a sheet of paper there,

read 21 and I'm going to ask you to it read it, please, and please

22 it out loud so we can hear it.

23 THE WITNESS: I solemnly declare upon my honor and  
and 24 conscience that I shall speak the truth, the whole truth,

25 nothing but the truth.

12:43 1 PRESIDENT JÚDICE: Thank you very much.

2 I don't know if you had experience in proceedings  
such  
3 as these. The lawyers to your left are going to ask you  
4 questions of you for about 15 minutes, then we're going to  
have  
5 lunch break, and then you are going to hear questions from  
the  
6 lawyers to your right.

7 Other questions may be posed later, and the  
Tribunal  
8 may also pose questions. Thank you very much.

9 DIRECT EXAMINATION

10 BY MR. COMMISSION:

11 Q. Mr. Lanza, good afternoon. You submitted two  
Witness  
12 statements in this arbitration, which you should have in  
front  
13 of you; is that correct?

14 A. Yes.

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

17 A. That's correct.

18 Q. Thank you, Mr. Lanza.

19 Do you have any corrections to make to your  
statements  
20 here today?

21           A.    Yes, in my Second Statement, there is a mistake on  
22 Page 67--on Paragraph 67.  There is a typo.  It says that  
the  
23 seven engines were acquired from Rurelec.  Six were acquired  
24 from EPS, and the seventh was acquired from Energais.  
25           Q.    Okay.  Thank you, Mr. Lanza.

12:45 1                    Now, moving on, what was your position at  
Guaracachi

2    prior to the May 2010 nationalization?

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

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

6    Guaracachi?

7            A.    Since I started working in the project and  
development

8    management office in Guaracachi, I was in charge of all

9    development projects that the company undertook.

10            I was in charge of all the projects from the  
Jenbacher

11    projects, the GCH-11 turbine, and the combined cycle, and  
also

12    the Santa Cruz and San Matías plants.

13            Q.    Mr. Lanza, we've heard a lot about the combined-  
cycle

14    projects during the course of this week.

15            Could you briefly explain how it is and how it  
works.

16            A.    The CCGT project is one of the most efficient  
17    technologies that one can have in a combined operation. It  
18    includes thermal units that operate together with steam  
units,

19    so the combined cycle uses the heat coming from the

20 chimneys--from the gas turbines, in this case--or of any  
21 thermal unit, and this steam is introduced into a heat  
22 recuperator, and this steam is put at high pressure and at  
23 about 500-600 degrees of temperature to operate a steam  
24 turbine. And this is one of the most efficient thermal  
25 machines. And through the movement of the mechanical power

12:47 1 created in the steam turbine connected to a generator, you  
get

2 additional electricity power.

3           So, with the same initial amount of gas that is  
being

4 used up by the thermal units, you obtain an additional 60 to

5 70 percent additional power free without consuming a single

6 cubic meter of gas by the generation of steam. So, the

7 combined cycle is--is a very thermally efficient system.

And

8 in the case of the Guaracachi combined cycle, well, this

9 machine is the most efficient thermal machine of the whole

10 electrical system in Bolivia.

11           This logically represents a reduction in tariffs,  
and

12 this is what interests the Bolivian user the most.

13       Q. I have two more questions for you today. The first  
is

14 the combined-cycle project was originally budgeted to be a

15 project for 80 megawatts; is that correct?

16       A. Yes.

17       Q. And is it also correct that for Guaracachi to find

18 another turbine that was--that had a higher capacity than

19 80 megawatts--in fact, it was 96 megawatts; isn't that  
correct?

20       A. Yes, that is correct.

21                   Originally, the project was conceived to deliver  
22 additional power of 80 megawatts through the steam turbine.  
23 But, unfortunately, at the time the project started, all of  
the  
24 world electrical market was being built, all of the  
companies  
25 were developing projects and building generation plants, and



12:49 1 there were difficulties in connection with the delivery  
times  
2 for units. There was a waiting list, and you had to wait  
two  
3 or three years to buy a unit.

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

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

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

15 So, please don't ask any leading questions.

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

18 BY MR. COMMISSION:

19 Q. One final question, Mr. Lanza. What was the  
progress

20 of the combined-cycle project as of May 2010?

21 A. It was about 95 percent concluded, and the 68  
million

22 budgeted, about 97 or 96 percent of that had been used.

23 MR. COMMISSION: I have no further questions. I

24 believe counsel for Bolivia will have some questions for you  
at

25 this point.

12:51 1           PRESIDENT JÚDICE: Thank you very much. We are now  
2 going to break for an hour, if you agree, just to take  
3 advantage of the time, we are going to meet in an hour, so  
we  
4 are going to meet back here at 2:00.

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

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

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

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

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

18           PRESIDENT JÚDICE: Sometimes this happens to the  
19 Tribunal as well; right? If there are any doubts, you let  
us  
20 know.

21 MR. GARCÍA REPRESA: Well, now you need to instruct  
22 the witness.

23 PRESIDENT JÚDICE: Yes. I have said this already,  
but  
24 I will repeat it. During this period of one hour and a few  
25 minutes until we resume, you cannot have any contacts with  
any

12:53 1 person that has anything to do with these proceedings.  
Please.

2 THE WITNESS: Yes, understood.

3 PRESIDENT JÚDICE: Thank you very much.

4 (Whereupon, at 12:53 p.m., the hearing was  
adjourned

5 until 2:00 p.m., the same day.)

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1 AFTERNOON SESSION

2 PRESIDENT JÚDICE: Good afternoon. I hope you had  
a  
3 good lunch, and you are ready to work this afternoon, so I  
am  
4 going to give the floor to the lawyer to your right.

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

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

8 CROSS-EXAMINATION

9 BY MR. GARCÍA REPRESA:

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

11 A. Good afternoon.

12 Q. As you have heard already, my name is José Manuel  
13 García Represa, and I am representing your country in this  
14 arbitration with the colleagues from the Office of the  
Attorney  
15 General. I will be asking you some questions about the  
16 statement that you submitted in this arbitration on behalf  
of  
17 the Claimants, and I will be referring to some documents  
that  
18 are included in a binder similar to this one which we will  
be  
19 giving to you in the next couple of minutes.

20  
understand

And for the sake of clarity, if you do not

21 something, please ask me, and I will restate my question. I

22 imagine that my colleagues must have explained to you how  
the

23 system works, but let me remind you of some of the basic  
rules,

24 and the first one is that to facilitate the work of our  
court

25 reporters, please speak to the mike.



14:06 1                   Also, you need to wait for me to ask you the  
question,

2                   and then you can start answering, and I will try to do the  
same

3                   as long as your answers are brief and concise.

4                   And, in this regard, I should tell you that we have  
a

5                   limited amount of time; therefore, I am going to be thankful  
6                   for your efforts to answer my questions straight to the  
point,

7                   and also I would like to clarify to you that that there  
might

8                   be additional questions after my own examination.

9                   First of all, I would like to ask you about the  
10                  correction that you introduced to your statement before  
lunch,

11                  and I'm sure you remember that you corrected Paragraph 67 in  
12                  your Second Statement. Do you remember that?

13                  A. Yes.

14                  Q. And you told us in connection with that Paragraph  
67,

15                  that in the fourth line where it says "Rurelec," because  
this

16                  is a typo, it should read "EPS." Do you remember that?

17                  A. Yes.

18                  Q. Please speak up.

19                  A. Yes, I do remember that.

20 Q. And I thought that a typo is just a mistake in the  
21 letter or a syllable, but between Rurelec and EPS, the  
closest

22 you came is writing an E. Is that a typo?

23 A. At some point in the drafting, I imagine that was  
the

24 case, and I just didn't notice this when I reviewed it.

25 Q. But you're telling me that you drafted this  
statement

14:08 1 and you reviewed it?

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

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

4 explained that you worked for Rurelec; correct?

5 A. Starting in 2012.

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

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

8 Q. Thank you. And nowadays you're a consultant with  
9 Rurelec; correct?

10 A. Yes.

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

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

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

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

15 those projects. I spent time in Santiago.

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

17 are quite significant, I maintain an ongoing relationship  
with

18 Mr. Earl.

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

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

- 21 A. Yesterday.
- 22 Q. Yesterday evening?
- 23 A. No, yesterday afternoon.
- 24 Q. What time?
- 25 A. It was in the morning, actually, at breakfast.

14:10 1 Q. So, you're telling me yesterday at breakfast.

2 Did you talk about the arbitration?

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

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

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

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

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

17 Q. Do you receive a monthly payment?

18 A. Yes, I do.

19 Q. And in addition to that payment or salary, are you  
20 going to receive any bonus or punishment based on the  
21 arbitration?

22 A. No, I will not.

23 Q. And you mentioned that you started with the

24 consultancy in January 2012. And I understand that in May  
you

25 were dismissed from EGSA?

14:11 1 A. Yes, May 7 to be more accurate.

2 Q. I think that you have not forgotten that date?

3 A. Of course I haven't.

4 Q. And the reason is because of the conditions of the  
5 dismissal or the situation surrounding the dismissal was not  
6 very pleasant; right?

7 A. Well, being dismissed is not very pleasant,  
especially

8 when you think that you have done a good job, when you had  
been

9 working on the development of projects and knowing that the  
10 country had been experiencing outages for years.

11 Q. Now, between May 7, 2011, and the beginning of your  
12 consultancy with Rurelec, did you have any source of income?

13 A. I usually have consultancies in the country,  
14 consultancy--do consultancy work in the country. I have my  
15 regular source of income, the one that I get from my  
teaching

16 activities, and also because of the subjects that I teach,  
the

17 courses that I teach and various Master's degrees, I have  
18 income, and that has been my source of compensation in 2012.

19 But I took six months off.

20 Q. You're referring to 2011, not 2012?

21 A. Yes, correct, 2011.

end

22                   In 2010, I had a very demanding year that was the  
23 of the combined-cycle project; and, together with my team, I  
24 worked between 15 and 18 hours a day, over the weekends and  
25 holidays, so it was a great effort, and I decided upon being



14:13 1 dismissed by Guaracachi, I decided to take some time off.

2 Q. And after that well deserved time off, you started  
3 your consultancy with Rurelec; and, as part of that  
4 consultancy, you prepared the two statements that you have  
here  
5 before you. Correct?

6 A. Yes.

7 Q. Could you look at your Second Statement.

8 Just to confirm some dates, the first one is  
9 February 29, 2012, and the second one is January 21, 2013.  
10 So, they are one year apart, roughly; correct?

11 A. Yes.

12 Q. And for the Second Statement, if we look at  
13 Paragraph 3, you wrote the document or you described the  
14 documents that you were given by the attorneys of Rurelec;  
15 correct?

16 A. So, you're saying Item 3 of my First Statement?

17 Q. No, I'm sorry if I caused any confusion. It's  
18 Paragraph 3 of your Second Statement.

19 A. Yes.

20 Q. And one of the documents that you were given is the  
21 statement by Mr. Eduardo Paz, who is the current General  
22 Manager of EGSA?

23 A. Yes.

Paz 24 Q. But you were not given the Second Statement by Mr.

25 from November 2012; correct?

14:15 1 A. I don't think I got it.

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

4 A. I imagine it had nothing to do with my subject  
matter,  
5 my expertise.

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

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

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

13 A. Yes.

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

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

18 Q. Do you want to correct Paragraph Number 3?

19 A. No, I don't think so.

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

22 A. Yes.

23 Q. Weren't you surprised to react to the Second  
Statement

24 without referring to the first one?

25 A. Not really. I understand that by reading the  
Second

14:17 1 Statement by Mrs. Bejarano, I was addressing specific items  
2 that I addressed in my statement, so it was enough for me to  
3 know that they meant--that I was reading was in connection  
with  
4 what I had already--what she said before.

5 Q. But I should be more specific. The First Statement  
6 dates September 2012, so that is prior to your First  
Statement.

7 Were you aware of that, Mr. Lanza?

8 A. Yes, I did know that.

9 Q. And you knew that the First Statement by Mrs. Lanza  
10 (sic) was after your First Statement. Did you know that?

11 A. Yes.

12 Q. And you did not review the Third Statement; correct?

13 A. Yes, I did read the Third Statement by Mrs.  
Bejarano,

14 but the fact that I have not described it here doesn't mean  
15 that I haven't read it.

16 Q. Yes, I have no doubt that you have read it prior to  
17 this hearing, but before your Second Statement did you read  
the  
18 last statement by Mrs. Bejarano?

19 A. The last statement by Ms. Bejarano?

20 Q. And I am going to slow down a little bit so as not  
to  
21 not to get the dates wrong.

22                   Your First Statement is dated February 2012. The  
23 First Statement by Mrs. Bejarano is September 14th 2012.  
The  
24 Third Statement by Mrs. Bejarano dates November 26, 2012.  
And  
25 your Second Statement dates January 21, 2013.

14:19 1 So, I'm trying to find out why you were given  
certain

2 documents to review but not others. Is it clear?

3 A. Yes.

4 Q. So, it is clear that when you wrote your Second  
5 Statement in January 2013, you had not reviewed the  
statement

6 of November 2012 by Mrs. Bejarano; correct?

7 A. The third one? Probably, yes.

8 Q. Probably, yes, I am correct, or probably, yes, I  
did

9 review it?

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

11 Q. And in the third paragraph of your Second Statement  
I

12 don't want whether you want me to call you Mr. Lanza. I  
don't

13 want to call you Tuco.

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

16 Q. Fine. And I'm saying because in some documents we  
see

17 Tuco, and I thank you for allowing me to call you Tuco.

18 And as I was telling you, third paragraph, Second

19 Statement, you're also mentioning that you reviewed the

20 annexes, the relevant annexes to the two statements that you

you

21 reviewed. When you were saying the relevant annexes, are

22 referring to reviewing all of the exhibits or annexes?

23 A. I would say that I've read them all.

24 Q. And who selected the annexes that you had to read?

25 A. The annexes were part of the documentation that I



14:21 1 received. So, as I read the statement, it was referring to  
a  
2 statement, to an annex, and I would go and check that annex  
3 just to make sure I understood what the accompanying  
document  
4 was.

5 Q. Let me know, Mr. Lanza. Now I have some  
terminology  
6 questions before we go into the more substantive discussion.

7 What is a wholly owned subsidiary, in your opinion?

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

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

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

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

21                   This is Paragraph 18 of the First Statement.

22           Q.   And I am referring to the very first sentence in  
that

23 paragraph.  And it reads, and please correct me if I'm not

24 reading the content correctly.  There you are saying that a

25 Capitalization Contract was then entered into by Bolivia,  
the

14:23 1 wholly owned entity duly constituted.

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

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

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

7 A. Yes, with the help of the lawyers.

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

9 In what language did the lawyers write this?

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

11 Q. Well, now, let's move on to the binder, the one  
that

12 has the--to the binder, the white binder, and we're going to  
go

13 to Tab 14, and there you're going to find the English  
version;

14 and if we look at Paragraph 18, and if you look at the first  
15 line of that paragraph, I am going to do the same that I did  
in

16 the English version. It says: "A Capitalization Contract  
was

17 then entered into by Bolivia, the wholly owned entity."

18 That I understand that when in your statement  
you're

19 referring to a wholly owned entity, that is a translation of  
20 wholly owned entity in the other text, "entidad de propiedad

21 absoluta," would be a translation of wholly owned entity?

22 A. Yes.

23 Q. Okay. So, we're going to move on to something else,  
24 if that's okay with you. We are going to be discussing  
25 projects, and I would like for you to tell me, what is a

14:26 1 promising project?

2 PRESIDENT JÚDICE: Excuse me?

3 BY MR. GARCÍA REPRESA:

4 Q. What is a promising project?

5 A. I think that we need to think of it as a project  
that  
6 you expect to have good results from.

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

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

9 Q. But that is the translation we have at Paragraph 45  
of  
10 your First Statement.

11 I would like now to look at Paragraph 34 of your  
First  
12 Statement.

13 In Paragraph 34, you are referring to the well-  
known  
14 combined cycle, and you mentioned on Line 4 from the bottom  
15 that the technical development of the project up to its  
16 conclusion was in charge of independent--Integrated Energy  
17 Limited--Independent Power Operations Limited, and this is  
18 IPOL, the one company that we have mentioned many times so  
far.

19 I don't know I heard your answer. Once again, I'm  
20 sorry, but I'm going to ask you again.

21 Is that IPOL, the one that we were referring to

22 throughout the case?

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

24 my first day here at the--my day here at the hearing, so  
this

25 is the very first time that I hear the word IPOL.

14:28 1 Q. Well, I'm also referring to the pleadings.

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

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

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

14 BY MR. GARCÍA REPRESA:

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

16 A. Yes.

17 MR. BLACKABY: The objection is I heard the  
question

18 before, and I didn't object quickly.

19 The question is, is it a company that belongs to  
20 Mr. Earl, does it mean that Mr. Earl is a shareholder, an  
21 owner? Is he affiliated with it? Is he the Director, is he

22 the Shareholder? But he's trying to have an engineer say  
23 something else, and he will be using that later on, so I  
don't

24 think that that is right.

25                   PRESIDENT JÚDICE: Well, we know that he is an



14:30 1 engineer, he's not a legal expert, and the Tribunal will be  
2 analyzing his statements, taking that into account. Thank  
you  
3 very much.

4 But before answering, please think what you're  
going  
5 to say because oftentimes words have a legal meaning that  
you  
6 may not be aware of, so try to be as clear as possible to  
help  
7 the Tribunal later on. Thank you.

8 MR. GARCÍA REPRESA: Thank you.

9 BY MR. GARCÍA REPRESA:

10 Q. Now, to be clear, sir--and I'm not trying to put  
words  
11 in your mouth--in your understanding, just your  
understanding,

12 is IPOL a company that belongs to Mr. Earl? Yes or no.

13 PRESIDENT JÚDICE: That's better.

14 THE WITNESS: I just wanted to say that I'm a  
15 technical person, and the work that I performed in  
Guaracachi  
16 has been exclusively technical in nature, and I have been  
17 charged with operating the company initially, and then to  
18 develop the projects. I have not been involved in the  
19 administrative details as such, so I don't know if IPOL is  
or

20 is not a company that is owned by Peter Earl.

21 BY MR. GARCÍA REPRESA:

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

23 A. Yes, I know it because I have worked very closely  
with

24 one of his technical people for many years.

25 Q. Jerry Blake; right?

14:32 1 A. Yes, Jerry Blake.

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

4 A. No.

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

7 A. Yes, I've heard of it.

8 Q. In your understanding, is it a company of Mr.  
Earl's?  
9 A. I don't have knowledge to provide you with an  
answer  
10 to that question.

11 Q. Was IPOL the technical operator of EGSA?

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

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

20 A. Correct.

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

24 A. I don't know if they were large or not, but the  
25 Contract with IPOL was a contract that came from the very

14:34 1 beginning, and then it went until 2006, up until the end of  
the

2 CCGT. It was a contract for the total amount of \$50 million,  
3 and \$400,000 were paid, and I think IPOL is owned \$100,000.

4 But also IPOL had a payment for having found a turbine.

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

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

9 BY MR. GARCÍA REPRESA:

10 Q. You had mentioned that the financial terms or the  
11 payment terms of this Contract are here, and if you go to  
3.0

12 commercial, I don't know if you see it--

13 A. Yes, I do.

14 Q. And you see that there are four points in  
connection

15 with the commercial part?

16 A. Yes, yes.

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

20 A. Yes.

21 Q. And if you go to Item 2, it says that for the

22 activities conducted--that is to say, the prior search of  
the

23 STG, which is the steam generator; right?

24 A. Right.

25 Q. For that search of the STG, the generator,

14:36 1 100,000 pounds are paid to it. Is this correct?

2 A. Yes. This is what the contract states.

3 Q. Now, you do remember the payment that was mentioned  
a 4 minute ago?

5 A. Yes. Yes, now that I read it, I do.

6 Q. But if you look at Paragraph 3, it says that for  
7 additional work that may come up, Guaracachi would make  
8 additional payments.

9 Do you see that?

10 A. Yes, that's what it says.

11 Q. Now, apart from the payments--from these payments  
for 12 the other Contract, the Management Contract, IPOL would  
receive 13 monthly payments; correct?

14 A. Yes, that is my understanding.

15 Q. Do you know how much those monthly payments were  
for, 16 approximately?

17 A. I don't remember, as I sit here.

18 Q. Yes, but you were the General Manager of EGSA;  
right?

19 A. Yes. But when I was the General Manager, that  
20 contract was already annulled.

21 Q. But the combined cycle Contract would still--was  
still

22 current; right?

23 A. The combined cycle Contract was annulled de  
24 facto--actually, it was never--the rescission of the  
Contract

25 was never signed. At the beginning of the capitalization,  
this



14:37 1 Contract was annulled de facto because the administration at  
2 that time understood that that was the case, and it did not  
3 want to have any Contract with anything that could be linked  
to  
4 a British presence in Guaracachi.

5 PRESIDENT JÚDICE: Did you say capitalization or  
6 nationalization?

7 MR. GARCÍA REPRESA: Well, yes. It was  
8 nationalization.

9 You saved the question I was going to ask,  
10 Mr. President.

11 BY MR. GARCÍA REPRESA:

12 Q. Isn't it true that Jerry Blake cooperated with EGSA?

13 A. I would like to give you a little bit of context.

14 Q. Could you please answer my question and then  
provide  
15 context.

16 A. Jerry Blake went to Guaracachi in January 2011 at  
my  
17 request and because of my asking him to do so, and this  
18 requires an additional explanation because once  
nationalization

19 took place and once Mr. Jerges Mercado was the Manager, all  
20 communication was cut with any English Party, so there was  
no

ones 21 way for us to get any kind of assistance, for example, the  
22 in this case that had to do with the combined cycle Contract,  
23 in order to develop the duties that we had to do and that  
were 24 still outstanding.

25 I talked to Mr. Mercado many times to explain this  
to

14:39 1 him, but there was a misunderstanding at that time because  
they  
2 thought when they broke the Administration Contract, they  
also  
3 broke the combined-cycle contract as well. It took a long  
time  
4 for them to understand that these were two different  
contracts;  
5 and, unfortunately, up until the time Mr. Mercado left the  
6 company when he was retired, it was practically  
7 impossible--well, and that is why I was saying that the  
8 Contract was annulled in fact.

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

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

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

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

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

21 THE WITNESS: When Mr. Joaquin Rodriguez came to be

22 the General Manager, he understood these things were  
important,

I 23 and he understood that these were two different contracts.

24 drafted the invitation letter, and Mr. Paz's statement has

25 annexed this letter. This is a letter sent by IPOL to Mike,

14:41 1 and Jerry Blake came to Bolivia around 25-26 January 2011,  
2 about a year after the nationalization took place.

3 PRESIDENT JÚDICE: Thank you very much. That's  
enough 4 for now.

5 BY MR. GARCÍA REPRESA:

6 Q. Sir, you said that it was very complicated, almost  
7 impossible for the British to come after nationalization,  
and 8 it's not very clear to me what that means, and I wanted to  
9 explore this with you.

10 Was there prohibition for all British passport  
holders 11 to work with EGSA?

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

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

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

20 And there was a third contract that we had in the  
San 21 Matías project. There was a British company there called  
First

22 Energy, and it was very difficult for them to understand  
that  
23 this Contract had to be performed so that the San Matías  
Plant  
24 could become operational. So, after a few months of  
speaking  
25 and trying to convince them these are different contracts  
and

14:43 1 they're different companies, First Energy, for example, had  
2 nothing to do with Rurelec--well, then, they agreed to  
conduct 3 the work that had to be conducted in the machines that were  
4 being installed in San Matías.

5 Q. But you just said to me that First Energy had  
nothing 6 to do with Rurelec. Do you know who the Shareholders of  
First 7 Energy are?

8 A. I was with the owner of First Energy and met with  
the 9 owner of First Energy in London because I had to arrange the  
10 arrival of these technical people. They didn't want to come  
to 11 Bolivia because they were scared, they were afraid that  
12 something could happen to them, and I met Mr. Dwight Evans.  
13 He's one of the majority Shareholders of the company.

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

16 A. No.

17 Q. But that is on file, so I'm not going to ask any  
more 18 questions.

19 PRESIDENT JÚDICE: Wasn't this Mr. Evans one of the  
20 Shareholders or was he the Majority Shareholders?

21 THE WITNESS: One of the Majority Shareholders is  
my

22 understanding.

23 MR. BLACKABY: Could I make one point, an objection,  
24 which is since I'm often called to order by the other side,  
I'd

25 like to call one point of order, which is that counsel does  
not



14:44 1 comment on the evidence or make statements whilst  
questioning a

2 witness such as the one we have just had, which was did you  
3 know that--it is on the file, so I'm not going to ask any  
more

4 questions. It is on the file is a statement. It's a  
5 submission. That's what closing submissions are for. You  
can

6 prove it in due course, but it's not the commenting in the  
7 middle of the witness examination.

8 PRESIDENT JÚDICE: As we said before, quite often,  
9 counsel, even both as experienced as is the case, do  
something

10 that is not exactly I would say by the book, and, therefore,  
we

11 understand that any reference out of the final pleadings  
will

12 be repeated at the final pleadings, and it's no reference  
13 whatsoever before it, okay?

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

16 MR. GARCÍA REPRESA: Thank you, and just so that  
there

17 is no doubt, R-63 will have the reference that you're  
looking

18 for?

19 MR. BLACKABY: That is just another submission  
which

20 has been made and which I again object to, and I really do  
21 request the other side respect the rules of the game as I  
have  
22 been asked to respect. Otherwise, I will start interrupting  
23 without asking, and I don't think that's very helpful.  
24 MR. GARCÍA REPRESA: I will proceed not so that we  
25 don't waste more time.

14:46 1 I'm going to do it in Spanish, of course.

2 BY MR. GARCÍA REPRESA:

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

6 A. Yes.

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

10 A. Yes.

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

13 A. Seventy-one.

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

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

17 As all of us know, generally speaking, the first thermal  
18 machine during the industrial revolution was the steam  
machine,  
19 so the steam machine has also evolved technologically,  
20 specifically in the mechanical portion of it.

21                   From the 1950s to today, a machine is not different  
22 now from what it was in the 1950s, so the latest technology  
is  
23 applied to the control system of the different units. What  
we  
24 have done with this machine is the following.

25                   Well, the machine dates back to 1971, but it only  
had

14:48 1 10,000 hours of operation. It's an hour-and-a-half of  
2 operations that it has, just to give you context for those  
of  
3 you who don't know much about operations.

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

5           So, what we've done is to make sure that all  
controls  
6 be designed and built with the latest technology,  
7 state-of-the-art technology, and a German company designed  
the

8 control system. The PLC system has been developed with  
9 microprocessors, current microprocessors, the ones that  
existed

10 in the market at the time of installation, and all the  
11 excitation system, the AVR system, we got rid of the old  
12 system, and we bought new system in the factory in France,  
in

13 the southern part of France, this in 2009. So, that's why  
it

14 says here that it is cutting edge technology because this  
15 cutting-edge combined-cycle system because it has been added,  
16 this cutting edge technology has been added to this machine.

17           Just to finish, there are two elements when it  
comes

18 to combined system; right? The generator and the steam  
19 turbine. We bought this of the secondary market. The rest  
of

20 the equipment, and it's very large, heat recovery system,  
21 boilers, pumps, cooling towers--all that equipment that  
22 represents 95 percent of the combined cycle budget is new.  
It

23 was bought of the largest manufacturers in the world,  
Siemens,

24 KfW, top of the art--state-of-the-art companies that built  
25 these kind of companies.

14:50 1                   So, this combined-cycle system that we have  
designed  
2                   and installed in the country is a combined-cycle project  
that  
3                   is cutting edge.

4           Q.     And you confirmed that the generator that was  
searched  
5           by IPOL was a 1971 generator?

6           A.     Yes.

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

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

13                   Do you see that?

14           A.     Yes.

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

19                   Have I correctly described your statement? Yes or  
no.

20 Then you can give me your explanation?

21 A. Can you repeat your question, please?

22 Q. Yes, of course.

23 In Paragraphs 34--and I'm only trying to avoid

24 comments in the sense that I'm trying to put words in your

25 mouth--you say that the operation, functioning or  
commissioning



14:52 1 of the main equipment of the CCGT was entrusted to IPOL; is  
2 this correct?

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

5 Q. You confirm that what you just said a moment ago is  
6 reflected in the Terms and Conditions of the contracts  
signed

7 with Santos, a construction company, and IPOL.

8 Do you see that?

9 A. Yes.

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

12 A. I'm not sure whether I reviewed them, but I used my  
13 memory to try and remember the conceptual differences  
between

14 the role of one company and the role of the other company.

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

17 you mentioned the agreements.

18 Do you see that?

19 A. Yes.

20 Q. I assumed that before making reference to this in  
your

21 statement you read this and you reviewed this.

the

22       A.    I have read these agreements many times throughout

23 whole project.

24       Q.    So, I understand that you know them well.

25       A.    Yes, one could say that.

14:54 1 Q. Very well.

2 The Contract I'm interested in is the one that has  
to  
3 do with IPOL, and it's behind Tab 3 of your ringed binder.

4 And could you please tell me where IPOL is  
entrusted  
5 with the operation, function, or commissioning of the main  
6 equipment of the CCGT?

7 A. It's right here on Page 2, 5, it says,  
"construction,  
8 erection, and commissioning." This is one of the roles that  
9 IPOL played under this agreement. So, where it says  
10 decommissioned, one has to understand that commissioning is  
a  
11 stage where all the equipment is tested. People are trained  
so  
12 they can have the necessary expertise to operate equipment.  
13 The equipment is started up, and it is made operational.

14 So, that was what Guaracachi had to do, to start up  
15 the equipment, to test the equipment, to operate the  
equipment,  
16 and to deliver the equipment to the people in charge of this  
17 operation.

18 According to the view we had of the matter, as I  
say  
19 in my statement, this should have been prepared by IPOL's

the 20 people, and using one of the companies that Rurelec has in

21 Argentina Patagonia, Rurelec had to do this because they had  
22 the knowledge and expertise.

23 Q. Sir, you were asked about the mission that IPOL had  
24 under this Contract, and you have referred me to Clause 2  
that

25 described the project and also the schedule for this project.

14:57 1 Specifically, I had--in particular, you had referred me to  
the  
2 final portion of this schedule, and this was the last 15  
3 months.

4           The fifth stage talks about construction and  
5 commissioning, just to simplify things.

6       A.    Yes.

7       Q.    The construction was not entrusted to IPOL; right?

8       A.    No.

9       Q.    It was to be done by Santos CMI; right?

10      A.    Yes.

11      Q.    So, this is not defining the role of IPOL,  
12 necessarily, but I would like for you to look at the next  
page,

13 2(1), Paragraph 2(1). There is a section--well, actually a  
14 phrase that I'm going to translate into Spanish. If you  
don't  
15 agree with the translation, you tell me. It says EGSA hires  
16 IPOL to do the following things. Is my translation more or  
17 less correct?

18      A.    Yes.

19      Q.    And I understand that all of the functions of IPOL  
are  
20 listed there?

21      A.    Yes.

22 Q. The general ones; yes?

23 A. Yes.

24 Q. Amongst those roles, I don't see the operation or  
25 functioning of the combined cycle, sir. Do you see--do you

640

14:58 1 agree with me?

2 A. It says operator trainer and operation, training  
and  
3 manuals, and then it says, "continuous coordination in all  
the  
4 design and construction process." All of these items are  
5 explained in detail in the appendices.

6 Q. Thank you, sir.

7 I can read as well, and I was told that  
8 cross-examination is not a reading exercise. I will repeat  
my  
9 question.

10 In this list of functions of IPOL, I don't see that  
11 IPOL is entrusted with the operation of the combined cycle.  
Do  
12 you agree with me or not?

13 A. The operation has never been included in IPOL's  
14 Contract. What I'm trying to explain to you is that the  
15 commissioning of the CCGT, until such time as this is  
16 transferred to the operations people from Guaracachi, this  
was  
17 supervised by IPOL.

18 Q. So, we have to correct Paragraph 34 of your Second  
19 Statement that we were looking at a moment ago, and we have  
to  
20 delete the word "operation"; correct?

21           A.    In the way in which you are understanding operation,  
22 well, apparently you're trying to say that operation is  
23 referring to the period after the commercial operation of  
the  
24 machine once the project has ended.  In my understanding, as  
I  
25 had written this here, operations here means the process



15:00 1 between the commissioning, the start-up of the machine and  
the  
2 commercial operation of the machine. When the machine  
starts  
3 up, the commissioning has taken place, and the operation  
takes  
4 place, this will be supervised by Guaracachi or, rather, by  
5 IPOL, and this, the whole version is coming to a transfer to  
6 the owners of the companies.

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

9 A. Yes.

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

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

18 Do you see it?

19 A. Yes.

20 Q. And if we look at the sequence of these

21 paragraphs--and because of time constraints, please read it  
to  
22 yourself, but I have checked the figures, and we've seen  
that  
23 the figures went from \$40 million at Paragraph 34 in 2006 to  
24 \$68 million in 2008; correct?

25 A. Yes.

15:02 1 Q. And that is--and the reason for that, as you state  
in  
2 Paragraph 36, is that there was a significant increase of  
raw  
3 material necessary for the equipment and electricity  
4 generation; correct?

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

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

10 A. If my memory is serving me right because I drafted  
the  
11 report for the Board of Directors, I would say that it  
12 represents 60 percent in significance, and 40 percent--so,  
13 60 percent due to the raw material and 40 percent because of  
14 the increase in the size of the project.

15 Q. And so that there are no doubts, at Paragraph 37,  
in  
16 the last sentence, you say--and here I quote--"the necessary  
17 raw materials"--rather, this meant that the prices for raw  
18 materials needed for electricity plants increased  
considerably,  
19 in the English version. But don't you think it should be

20 "considerable" instead of "considerably" in the Spanish  
21 version?

22 A. Yes.

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

25 Would you say that this increase in the cost of raw

15:04 1 materials was unexceptional or special increase that was not  
2 expected when the original project was created or planned?

3 A. Well, it was expected because as Mr. Flores, the  
4 Expert hired by Bolivia stated in his first report, when he  
5 showed a table with the increases in prices, in connection  
with  
6 this type of product, he refers to this paragraph, to the  
7 paragraph that I wrote; and, in that table, you can see that  
in  
8 2005-2006, there was the regular inflation-related increase,  
9 but starting in 2008, the increase is dramatic. And if we  
go  
10 back to those times, and if we review what happened in the  
11 world, we're going to agree that China was having  
exceptional  
12 growth. China was buying all of the raw material that was  
13 available. They bought most of the steel available, and  
they  
14 led to shortages somewhere else, and the value of raw  
material,  
15 given the shortages, also increased, so this phenomenon was  
not  
16 expected, and it was not expected for economists in general  
17 that they would not know--they wouldn't have known what was  
18 going to happen.

19 Q. And what happened with the IPP Turbine Index?

is  
20           A.    I can tell you that up until 2008, 2009, 2010, that  
working  
21 the period that I studied, at the beginning I was just  
22 on the technical issues.  And I wouldn't be able to tell you  
23 whether the trend continued or not.  This is not so recent  
in  
24 my memory.

25           Q.    But I thought that you had reviewed the report by

15:07 1 Mr. Flores?

2 A. Yes, I did.

3 Q. And did you review the graph or the table that  
showed

4 the increase? Did you review it in whole or in part?

5 A. Well, based on my memory, I think I reviewed up to  
6 2008, 2009.

7 Q. So, you didn't review 2010?

8 A. Well, I did review it, but I would be lying to you  
if

9 I told you that I remember whether it maintained--the trend  
10 maintained or not or it increased, and we're going to go now  
11 back to the Second Statement, Paragraph 62, and I'm sorry  
for

12 going back and forth, but since you go over the same issues,  
we

13 have to do so.

14 Q. You refer again to IPOL. In the first sentence  
you're

15 referring to the loss of Rurelec and IPOL support. Is there  
16 any reason why you put them together in that sentence?

17 A. Could you please repeat your question.

18 Q. In the first sentence you are referring to Rurelec  
and

19 IPOL together. Is there any reason why you mentioned them  
20 together?

21           A.    Because it was obvious.  The nationalization of  
22   May 1st, 2010, implied that simultaneously we lost the  
support  
23   of both companies, one, because of nationalization, and the  
24   other one because of the indirect effect of nationalization.  
25           Q.    So, here goes my question again:  Is there any  
reason



15:09 1 why you put together the two companies in these sentences--  
in

2 this sentence? Yes or no.

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

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

7 PRESIDENT JÚDICE: Well, then to clarify.

8 BY MR. GARCÍA REPRESA:

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

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

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

21 Do you see it?

22 A. Yes.

23 Q. And next in the same paragraph you list what you  
24 call--what, in your opinion, are the problems resulting from  
25 the dismissal of IPOL and Rurelec; correct?

15:10 1       A.   No, I don't think you are interpreting what I wrote  
2       there.  Here I am describing some technical events that we  
had  
3       after the nationalization in recent months with the CCGT  
that,  
4       in my opinion, could have been mitigated if IPOL had been--  
had  
5       participated with Jerry Blake, who could have provided  
support  
6       to solve these issues.  That's what I tried to say here.

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

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

18                So, I think that the paragraph is clear enough.  We  
19      have suffered technical problems that could have been  
mitigated

20 with other solutions had IPOL participated.

21 Q. And if I ask you the questions is because you

22 mentioned that one of the problems caused by the absence of

23 IPOL and the arrival of the new General Manager, an  
unexpected

24 short circuit in the CCGT generator.

25 A. Yes, but you're saying that these problems could  
have

15:13 1 been avoided with Rurelec and IPOL's participation.

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

3 to answer that later on.

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

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

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

8 A. The situation that I faced, together with my team,  
9 follows a chronology of the problems we faced. Had we  
avoided,

10 for example, the problem in October 2010 where it says that  
the

11 generator seals were not working properly, this is something  
12 very simple, but caused us many problems, we would have  
never

13 gotten to the short circuit.

14 Let me explain you why. When we had the short  
circuit

15 on January 31, 2011, one of the saddest days of my life  
because

16 of that sad event, I had the good idea of asking General

17 Electric and Siemens, the largest companies in the world, to

18 come over and write a report about what had happened. This

19 implied a lot of money. We had hired two very important

the 20 insurance services, one for risk days and another one for  
21 commissioning. Therefore, we needed international companies  
to 22 be able to provide a report on what happened, so that the  
23 insurance companies paid, and this actually happened. They  
24 paid \$11 million to Guaracachi because of this event.

a 25 The reports say that on Sunday, January 31, we had

15:15 1 combination of various factors, rains in Santa Cruz, very  
high  
2 humidity level, a very sunny day on Sunday, and this led to  
a  
3 highly humid situation that combined with the oil in the  
4 generator and produced an event that, according to the  
reports,  
5 has only one--has another episode or event that is similar,  
and  
6 that was in 1990.

7           So, that event, 1994, in a country in Europe. So,  
8 because of that, because of the combination of all those  
9 events, we had that episode. Had we solved an earlier  
problem,  
10 the expertise of Mr. Jerry Blake could have solved the  
problem,  
11 we'd have never had the short circuit, and that's the reason  
12 why I put it there.

13       Q.    Had you finished?

14       A.    Yes.

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

18       A.    Yes.

19       Q.    And then you also referred to two government delays,  
20 and there is one title for each of them, but I am going to

21 simplify this. One of them is the authorization to replace  
the

22 Units 7 and 8 at Guaracachi, and the other one is the  
issuance

23 of permits to drill two water wells; correct?

24 A. Yes.

25 Q. And my proposal is to look at both events  
separately.



15:18 1 At Paragraph 45, you mention permit authorization to transport

2 Guaracachi Units 7 and 8, and this implies moving them from the

3 Guaracachi Plant to Santa Cruz, that is also in Santa Cruz, but

4 that is in the industrial section of Santa Cruz.

5 A. Yes.

6 Q. And you state at Paragraph 45 that, in November 2007,

7 EGSA requested the Electricity Authority permits to transport

8 Guaracachi Units 7 and 8.

9 A. Yes.

10 Q. Would you like to correct that date?

11 A. No, I don't. I maintain the date, even though I know

12 the answer by Mr. Paz.

13 Q. And that's the reason why I wanted to save some time,

14 but let's look at Tab Number 6. This is Annex 61 to the

15 statement of Mr. Paz, and if you look at the top of the page,

16 this is addressed to the Superintendent of Electricity, but you

17 mentioned the Electricity Authority. Back then, the name had

18 not changed; right?

19 A. It may have.

20 Q. Had it changed names?

21 PRESIDENT JÚDICE: I did not understand your answer.

22 I did not understand the answer by the witness.

23 THE WITNESS: I said that it might be right.

24 BY MR. GARCÍA REPRESA:

25 Q. So, we need to correct that at Paragraph 45; right?

15:20 1 A. I think we should.

2 Q. So, I was telling you that this is a document  
3 addressed to the Superintendent of Electricity, and on the  
top  
4 right it says that a request is made to modify the License  
for  
5 generation at the Guaracachi plants for the relocation of  
units  
6 seven and eight at the industrial park of the same City of  
7 Santa Cruz. And if you look at the stamp on top, this is  
the  
8 stamp that showed the registration, and that date is April  
29,  
9 2008; correct?

10 A. Yes.

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

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

15 Q. Yes.

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

18 A. I am referring to the permits to move Units 7 and 8  
to  
19 the industrial park.

20 Q. And you're saying that that permit was requested in  
21 November 2007?

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

23 Q. And where was it actually requested?

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

25 As I mentioned, we started to work on this

15:22 1 immediately. And I'm saying "immediately," because in the  
2 original chronology of the CCGT, we were going to move the  
3 units in early 2008. And our General Manager, Mr. Aliaga,  
and  
4 myself, in various occasions, sent the relevant notes, the  
5 pertinent notes, to the Secretary, and we also had meetings  
6 with the Superintendent and the authorities from the  
National  
7 Dispatch Center. So, we had notes going back and forth, and,  
8 unfortunately, I cannot attach them because they belong to  
9 Guaracachi, and I do not have those notes, but there were  
notes  
10 going and responses coming back in the sense that we need to  
11 start with the paperwork.

12           But the great problem we had--and I think that this  
is  
13 something important to mention--this was a relatively  
serious  
14 problem for the authorities, the regulatory entity, and also  
15 the regulator of electricity in Bolivia. The  
decommissioning  
16 of these units meant that there could be outages. And so we  
17 had back and forth between the Superintendency and the  
National  
18 Commission of Dispatches, because neither wanted to make the  
19 decision to say, okay, give us your documents and you will  
be

20 authorized. That's why I ratified that we started our  
21 paperwork, we discussed back and forth until it was the time  
to  
22 say, okay, let's streamline this process. The dates have  
23 already been moved, the dates already showed that one of  
them  
24 is going to be in late 2008 and the other one in early 2009.  
25 We changed the original chronology of the Contractor.

15:24 1                   And based on the agreements that we had, we said we  
2 could probably get the authorization for moving the  
equipment,  
3 so this final document is dated on that date just because  
after  
4 so many back and forth between Guaracachi and the  
authorities  
5 from this sector.

6                   PRESIDENT JÚDICE: Are you going to change subjects?

7                   MR. GARCÍA REPRESA: Not yet.

8                   PRESIDENT JÚDICE: Because our court reporters need  
a  
9 break.

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

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

15                  (Brief recess.)

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

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

19                  BY MR. GARCÍA REPRESA:

20                  Q. Mr. Lanza, I suggest we take up where we left off,  
but

21 I'm going to try to go a little faster. If you get lost at  
22 some point in time, let me know, and we're going to go a  
little  
23 slower.

24 On Paragraph 45 of your Second Statement, you talk  
25 about a request made to the Superintendency in November 2007.



15:41 1 Do you see that?

2 A. Yes.

3 Q. That request--please confirm this--has to do with  
the

4 modification of the License to include Guaracachi 12; is  
this

5 correct?

6 A. No.

7 Q. Could you please go to Tab 7. This is C-164, and  
this

8 is the resolution of the SSDE 365-2008, and if you look at  
the

9 first paragraph, it talks about a request for the extension  
of

10 the License submitted by Guaracachi via a document dated 16  
11 November '07.

12 Do you see that?

13 A. Yes.

14 Q. That request for the extension of the License was  
for

15 the inclusion of Guaracachi 12; correct?

16 A. No.

17 Let's see.

18 Q. Well, excuse me. I'm going to go a little faster,  
but

19 you need to explain this to me.

20 When one requests a license extension, it is to

21 include another generator unit that is not included in the  
22 License; correct?

23 A. Yes.

24 Q. And then, when in November '07 EGSA asked for an  
25 extension of the License, it was to include a generator unit

15:43 1 that was not included in the License up until that date;  
2 correct?

3 A. Yes.

4 Q. The only unit that was not included in the License  
at 5 that date and that was then included in the License was  
6 Guaracachi 12; correct?

7 A. Yes.

8 Q. I'm not going to change the subject. Don't worry.  
9 We're going to stay on this issue.

10 So, let us look at Tab 6 now, which is Annex 61.  
This 11 is a request for the modification of the License; correct?

12 A. Yes.

13 Q. So, when one modifies a license, one does it  
because

14 one of the units that are included already in the License  
have 15 undergone some change, either because it disappeared or they  
16 are relocated; correct?

17 A. Yes.

18 Q. In this case, Guaracachi 7 and Guaracachi 8 are  
being 19 relocated; correct?

20 A. Correct.

21 Q. And this request is dated 29 April '08; correct?

22 A. Yes, that's what I read.

23 Q. Let us now look at Tab 8. This is a resolution of  
the

24 SSDE that provides a response to the request for the

25 modification of the License to relocate Guaracachi 7 and

15:45 1 Guaracachi 8; correct?

2 A. Yes, that's correct.

3 Q. If you look at Page 2, you see the whereas clauses,  
4 and the second whereas mention is made that through a legal  
5 opinion of May 2008, the request was analyzed--the request  
was

6 presented in April--and EGSA was asked to complete the  
7 information; correct?

8 A. Yes, correct.

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

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

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

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

15 MR. GARCÍA REPRESA: Thank you, sir.

16 PRESIDENT JÚDICE: Where was it?

17 MR. GARCÍA REPRESA: At Page 3. On the top of Page  
3.

18 BY MR. GARCÍA REPRESA:

19 Q. After providing supplementary information in  
20 June 2008, you can look at the other whereas clauses, but  
what

21 I'm interested in is the date where the Superintendency

22 approved the request, which is 30 January '09; right?

23 A. Yes, that's correct.

24 Q. I'm now going to move on to a different topic.

This

25 was the first issue that you mentioned, but now we're going  
to

15:46 1 move on to the second issue.

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

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

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

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

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

13 Do you remember this?

14 A. Yes.

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

18 What process are you referring to?

19 A. The process of hiring a consultant.

20 Q. You can explain this to me. You said, we contacted  
a  
21 consulting firm very early on in the process, September '04.

if 22 I understand that the process--you can correct me

23 I'm wrong--is the process to determine how to drill these

24 wells; correct?

25 A. Yes, correct.



15:48 1 Q. And then, if you go to 51, you say that, in  
2 December '04, 3 months after the process started, a  
3 recommendation was made by a consulting firm; correct?

4 A. Yes, correct.

5 Q. And that recommendation is that EGSA use two 300-  
meter  
6 wells. I understand that these are 300-meter-deep wells for  
7 the CCGT.

8 I assume that this is the CCGT project; right?

9 A. Yes.

10 Q. And on the basis of this technical recommendation,  
11 EGSA had to request for authorization of the authorities of  
12 Santa Cruz in order to be able to drill these wells; correct?

13 A. Yes, in due time.

14 Q. Should I understand that your answer is yes, in due  
15 time?

16 A. No.

17 I'm going to perhaps jump ahead in your question  
18 because a moment ago you didn't let me answer.

19 Q. Sir, I'm going to object to this.

20 PRESIDENT JÚDICE: Well, this is a legal expression.  
21 The idea of Mr. Represa is that since you have limited time,  
22 the lawyers from Claimants are going to ask about that.

the  
23

THE WITNESS: I'm not going to make reference to

24 question posed to me before.

25 MR. GARCÍA REPRESA: But the fact that he said he's

15:49 1 going to jump ahead and answer my next question, of course,  
2 that doesn't really convince me.

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

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

10 Do you agree?

11 THE WITNESS: Yes, we agree.

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

13 BY MR. GARCÍA REPRESA:

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

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

20 Q. On the basis of the technical recommendation, you  
had  
21 to ask for authorization in order to be able to drill two

22 wells? Yes or no?

23 A. Yes, but in due time.

24 Q. Thank you very much. I finally got the answer to  
my

25 question.

15:51 1                   And the due time, according to you, is November '07;  
2 correct?

3       A.   Yes, correct.

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

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

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

12       Q.   Excuse me. I thought you had finished.

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

16               The only way--

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

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

20               I have not dealt with the economic aspect of the  
CCGT.

clear 21 PRESIDENT JÚDICE: I think the question has been

22 for the Tribunal.

23 Before asking further authorization of the  
24 authorities, many things had to be analyzed. I think  
25 Mr. García Represa is asking questions because he wanted to

15:52 1 clarify things.

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

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

5           BY MR. GARCÍA REPRESA:

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

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

16           So, starting at that date, we had to look at all  
the  
17 technical issues related to the project. Before that, it  
would  
18 have been impossible because we had to look at the financial  
19 viability of the project, and the financial viability of  
this

20 project was linked to the obtention of the carbon credits,  
and

21 we dealt with that.

22 Q. You mentioned November 2006. I don't know if it  
was a

23 mistake or not.

24 Is it November '06 or November '07?

25 A. Well, I was saying that in November '06 is what--it



15:54 1 was the time when the Board of Directors approved the execution

2 of the CCGT. And starting as of that date, everything becomes

3 official.

4 Q. Yes, I understand.

5 And the authorization to the municipality, the

6 municipality--Santa Cruz's authorization was asked in

7 December '07; right?

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

9 Q. And the authorization, in response to that

10 December 2000--the request in response of that November 2007

11 authorization was provided in 2008; correct?

12 A. Yes.

13 Q. So, between November 2007 and September 2008, seven

14 months have elapsed and not 14 months.

15 A. Yes.

16 Could you be more clear when you mention 14 months?

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

18 Let us talk about the combined cycle.

19 Could you please confirm or deny the following:

20 Nowhere in your two statements have you mentioned the impact  
of

21 the illiquidity of EGSA in the delays related to the CCGT;

22 correct?

23       A.    Yes, correct.

24       Q.    Do you think that this was a relevant issue that  
25 should be informed to the Arbitral Tribunal, Mr. Lanza?

15:56 1           A.   No, because if we look at the real facts related to  
2 the project, the circumstantial problems related to the lack  
of  
3 cash that Guaracachi has had at the end of 2009, well, in  
spite  
4 of the fact that we had made statements in the Board of  
5 Directors or some mails, et cetera, where it was said that  
this  
6 may happen, the lack of cash that Guaracachi has suffered at  
7 some point in time has not had an impact on the CCGT.

8                   And we have continued placing purchase orders. Our  
9 suppliers have not delayed their deliveries. Thanks to the  
10 fact we had been able to work very well with them from the  
11 management standpoint, and there was a bit of a delay, and  
they  
12 have understood that this was a temporary problem, and both  
the  
13 purchase orders and the deliveries have all been made in  
time,  
14 and thank God the lack of cash, which was just a temporary  
15 situation in Guaracachi, has had no impact on the CCGT.

16           Q.   Has anyone mentioned to you or recommended to you  
not  
17 to mention in your Statements the illiquidity situation of  
18 EGSA?

19           A.   No, no one recommended this to me.

20                   I did not include this in my Statement because it

21 wasn't an event that was permanent. I decided not to--not  
to

22 use it.

23 Q. Please go to Number 19 of your binder. This is the  
24 last document, is Annex 29, to Paz's statements. And this  
is a

25 document that you had mentioned in your Second Statement.

15:58 1                   And we don't have to refer to it. It is mentioned  
in

2 Footnote Number 68.

3                   Do you recognize this document, sir?

4       A.    Yes, I prepared it.

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

6       A.    Yes, correct.

7       Q.    Twenty-two days after nationalization; correct?

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

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

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

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

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

20                   Do you see that?

21      A.    Yes.

22  
introduce

Q. The first phrase says, Next we are going to

23 a list of the purchase orders and outstanding contracts.  
And

24 then it continues, Many of these purchase orders and/or

25 contracts have excessive delays for various reasons.

16:00 1 Do you continue to see it?

2 A. Yes, yes, for various reasons.

3 Q. And as one of those reasons, you mentioned the  
4 following: First, lack of cash, company cash, which led us  
not  
5 to place new orders or pay suppliers within the deadlines.

6 Do you want to correct your Statement before this  
7 Tribunal?

8 A. No, because what I am stating is something that  
took  
9 place later, and I certify that regardless of the content of  
10 this report--and if we look at the details of the purchase  
11 orders that you can see mentioned below, you can see that  
12 almost all of the purchase orders are included here, and  
only a  
13 few say funds are required for Spot purchases.

14 So, six of them said that funds were required for  
Spot  
15 purchases, and the rest have been awarded, and some others  
are  
16 awaiting delivery.

17 So, as I mentioned before, even though the company  
18 experienced this, this fact has not led to delays in the  
CCGT.

19 The delays were due to other events that had been described.

20 Q. Thank you.

21                   If we look at the next one, schedule--and I think  
that  
22   that is related to the delays, it says, first, next, the  
23   detailed schedule is presented; second paragraph, to be able  
to  
24   obtain these deadlines, the following requirements have to  
be  
25   met.



16:02 1 Do you see it?

2 A. Yes.

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

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

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

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

20 the purchase orders after this document were placed in due  
21 course and in due time.

22 Q. Thank you, Engineer.

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

24 at the date of this document, there were cash-flow problems;

25 correct? Yes or no?

16:04 1       A.    I am not an expert to tell you whether there were  
2 cash-flow problems.  There is a Financial Management Office  
3 that is in charge of that, and that's the one that is in  
charge  
4 of the funds.

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

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

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

17           That's what you are stating; right?

18           Just tell me whether you knew it or not.  That  
would  
19 be the beginning; and, based on your knowledge, we can  
develop  
20 our questions.

the  
were

21           A.    Everyone who was managing the executive portion of  
22 project indeed understood that the financial requirements  
23 not abundant in Guaracachi because this was a significant  
24 project that was using up a lot of resources, and because we  
25 were also going into another project, the San Matías project,

16:06 1 that weakened our financial position, and also the  
Government

2 denied to sign a letter for us to obtain the carbon credits  
and

3 be able to inject \$5 million into the company.

4 So, clearly, we were aware that we did not have too  
5 much money, and we needed to make the necessary efforts to  
6 manage the scarce resources or the non-abundant resources,  
to

7 continue with this project.

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

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

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

15 A. Yes.

16 Q. What was the goal behind that letter?

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

19 Q. Included once--you mean after approval by the  
United  
20 Nations?

21       A.    If you allow me, I cannot give you exact details  
22 whether one should happen before the other because I have  
23 information about the general--the global project, but not  
24 about specific items.

25       Q.    So, you're telling me that you did not know whether

16:08 1 the responsibility--or you knew about the responsibility of  
the  
2 State?

3 A. Well, I participated in some of the meetings before  
4 and after the nationalization. I worked with the Government  
to  
5 obtain the signatures.

6 Q. So, you were looking for a letter to be signed by  
the  
7 State to serve a notice to the United Nations that CAF and  
KfW  
8 were authorized to be part of the project; correct?

9 A. Yes.

10 Q. Do you know if that letter was necessary before or  
11 after the registration with the United Nations?

12 A. No, I do not have specific information.

13 Q. If it was necessary after registration with the  
United  
14 Nations, do you agree with me that the State was not  
15 responsible for any delays in the payment of the carbon  
16 credits?

17 MR. BLACKABY: Objection. Those are six different  
18 questions with separate legal and very--

19 PRESIDENT JÚDICE: Mr. García Represa?

20 MR. GARCÍA REPRESA: I'm willing to go step by step.

21 PRESIDENT JÚDICE: But clearly you're asking the

not 22 witness to answer a question that he already told you he is

23 aware of.

24 MR. GARCÍA REPRESA: Well, that's why I have  
started

25 my question with "if."



16:09 1 PRESIDENT JÚDICE: But witnesses are not here to  
draw

2 assumptions, but you may get--you might get this from  
somewhere

3 else.

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

6 BY MR. GARCÍA REPRESA:

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

8 PRESIDENT JÚDICE: Twenty-three?

9 MR. GARCÍA REPRESA: Twenty-three.

10 BY MR. GARCÍA REPRESA:

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

12 A. Yes.

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

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

18 A. Apparently, I mean--I don't seem to see any  
19 mistakes.

20 Q. You're saying there that Guaracachi 3 and 5 were  
the

21 most efficient units--

22 A. Inefficient. I said inefficient.

23 THE INTERPRETER: The witness corrects the lawyer.

24 BY MR. GARCÍA REPRESA:

25 Q. Yes. Most inefficient units in the system and were

16:11 1 not being considered as firm capacity units; correct?

2 A. Yes.

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

6 To support that assertion, you say on the sixth  
line,  
7 the CNDC's medium-term plan.

8 I'm sorry, but I'm not aware of any document that  
is

9 called CNDC's medium-term plan. Are you aware of the  
existence  
10 of any plan like that?

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

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

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

18 A. Yes.

19 Q. And we and move on to Number 14 and look at your  
20 Statement, paragraph--so, we're going to go to Tab 14, where  
21 you have the First Statement, English and Spanish version;  
and

22 then the same for the second version, we're going to look at  
23 Paragraph 23.

24                   And on top of Page 10--so, this is in the First  
25 Statement. You have a blue page. Just--behind the blue  
page,

16:13 1 just go up to Page 10 and Paragraph 23. I am right now  
looking

2 at the top of Page 10.

3 First line, 2001 medium-term plan.

4 Do you see it?

5 A. Yes.

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

8 A. I don't think so.

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

10 In the sixth line you're referring to the medium-  
term

11 plan for 2001, but I understand that the medium-term plan is  
12 published every six months; correct?

13 A. Yes.

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

16 A. Based on the reference, 32, it says CNDC medium-  
term

17 program and report May 2001-April 2005, Annex 8 to Paz.

18 Q. And if we look at Annex 8 to Mr. Paz's Statement--  
I'm

19 afraid that that is not the medium-term plan; rather, the  
nodal

20 price--nodal prices for 2008-2010. I don't think that that  
is

21 under discussion.

22                   But please correct me if I'm wrong, but when we are  
23 going to project or calculate firm capacity, we need to  
study  
24 medium-term schedules and plans that includes all of the  
25 databases except for just the nodal prices; correct?

16:15 1 A. Yes.

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

5 Do you see it?

6 A. Yes.

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

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

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

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

17 A. Of course not. Inefficiency cost is--in concept is  
18 very is different from the operational cost.

19 MR. GARCÍA REPRESA: If you allow me to answer  
20 Mr. Blackaby--well, you're answering the Witness's question.  
21 Please do not interrupt.

22 BY MR. GARCÍA REPRESA:

23 Q. When you're saying that Guaracachi 3 and 5 were the  
24 most inefficient units, you referred to the efficiency  
concept  
25 in connection with the units. I understand, and please  
correct



16:18 1 me if that is not right, efficiency has to do with the total  
2 cost of dollar per megawatt hour.

3 A. That is a mistaken concept in Mr. Paz's statement.  
4 He's not an electrical or mechanical engineer, so Mr. Paz  
5 confuses or misconstrues efficiency and operational cost.

6 To clarify efficiency, this is a unit that has  
nothing  
7 to do with dimension. It has to do with the amount of  
energy  
8 necessary for a process vis-à-vis the outcome energy, the  
9 resulting energy. The difference between the input and the  
10 output would give you or would yield a unit level or value  
that  
11 will measure the efficiency.

12 And efficiency can be measured in percentages. But  
13 that has nothing to do with the operating or operational  
cost  
14 because that is linked to the cost of fuel. So, if my unit  
is  
15 gas-fired, the price of the unit is going to be different  
from  
16 diesel. That is a more expensive fuel.

17 Q. Now, tell me, the efficiency of a unit in Bolivia,  
is  
18 it measured in connection with the capacity of that unit  
taking  
19 into account height, temperature, and BTU, BTU units and  
also

and 20 taking into the account costs for maintenance and operation  
21 then determining the heat power or the heat-producing power,  
22 all this in a model to represent the cost that represents  
the 23 input and the output?

24 Is that your concept?

25 A. No, that is your concept. That is called  
operational

16:20 1 cost. That is the megawatt cost of operating that unit.

2 Q. But at Paragraph 23 of your Second Statement, when  
3 you're referring to the efficiency of the system, could you  
4 please tell me how you measure the efficiency of Guaracachi  
3  
5 and 5 compared to the remaining units in the system?

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

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

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

11 PRESIDENT JÚDICE: Tab 1?

12 THE WITNESS: Yes, Tab 1.

13 MR. GARCÍA REPRESA: And for the Tribunal, 01--I  
mean,

14 Tab 1 is document 276. We have printed two of the tables.

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

16 THE WITNESS: Well, rather, 3(a). 3(a).

17 In the third column--

18 PRESIDENT JÚDICE: I'm sorry, but--so you're  
talking  
19 about the final graphs?

20 THE WITNESS: Yes.

21 PRESIDENT JÚDICE: Go ahead.

22 THE WITNESS: The third column shows the yield or  
the  
23 efficiency, and it refers to the thermal yield, and it  
refers  
24 to 50 percent, 75 percent, and then 100 percent.  
25 If we look at 100 percent and if we go down and we

16:22 1 look at Guaracachi 3, we're going to see that Guaracachi 3  
2 shows 12,884, and Guaracachi 5 shows 13,315. And these are  
the  
3 highest numbers out of the whole list. Then these are the  
most  
4 inefficient units in the generating--in the generation park  
5 back then because the rest of the units, if you look  
downward,  
6 has a thermal yield or a thermal capacity that is lower as  
7 measured in calorific--British calorific units based on  
8 kilowatt hour.

9           So that's why I'm saying that the most inefficient  
10 ones are Guaracachi 3 and 5.

11           BY MR. GARCÍA REPRESA:

12       Q.   So, your efficiency concept is BTU, British thermal  
13 unit, over Kwh; correct?

14       A.   Yes.

15       Q.   So, this has nothing to do with the cost of the  
units,  
16 the operating cost or the cost for using the machines?

17       A.   These units will work with some sort of fuel. That  
18 fuel has a price. And depending on the value of that fuel,  
19 you're going to have the operational costs for that unit in  
20 Bolivia.

21           For example, in Bolivia, the cost of gas is very

22 inexpensive. If you use liquid fuel such as diesel that we  
23 need to import, to import, the cost--the operational cost  
going  
24 to be much higher than if using natural gas.  
25           So, that is the difference between both concepts.

16:24 1 Q. And for all of us to agree, in this table, in  
addition  
2 to the thermal efficiency, in the fourth column, if we  
continue  
3 and move to the right, we have another one that says "cost  
over  
4 megawatt hour."

5 A. Correct. That is the cost for operating the  
machine.

6 Q. But in Bolivia, dispatch based on efficiency, the  
7 efficiency of the generation units. So, when we're talking  
8 about thermal units, that efficiency is based on the thermal  
9 yield measured by CNDC or the megawatt-hour yield?

10 A. Well, we need to forget about the efficiency.

11 Q. Could you just please answer my question.

12 A. I am answering.

13 You need to leave aside efficiency. And whenever  
you  
14 determine firm capacity, you need to look into operational  
15 costs in megawatt hour. And it has nothing to do with the  
cost  
16 of the unit.

17 Q. Well, but this goes beyond the firm capacity  
estimate.

18 A. Well, for the estimates of the firm capacity and  
also  
19 to determine the dispatch of power, you will look into the  
most

20 inexpensive up to the most expensive one.

21 Q. So, you're telling me to forget about efficiency.  
And

22 I understand that that is a covered--or is a covered  
correction

23 or a way to do a subtle correction.

24 So, you're telling me that in order to define

25 something as inefficient, we need to qualify it as thermally



16:26 1 inefficient.

2 A. I do not understand what you told me that I had  
made a

3 veiled or a hidden correction.

4 Q. But at Paragraph 23, when you say that Guaracachi  
5 Units 3 and 5 are the least efficient, are they least  
efficient

6 thermally or from the dispatch point of view?

7 A. Well, for the engineers, the word "efficiency" only  
8 has one meaning, and it is the one that you see there in the  
9 report.

10 PRESIDENT JÚDICE: So, what you see there is clear.

11 MR. GARCÍA REPRESA: Yes. But Paragraph 23,  
12 Mr. President, is not clear, and I need his confirmation.

13 PRESIDENT JÚDICE: But that is your confirmation,  
so

14 now we move on to another issue.

15 BY MR. GARCÍA REPRESA:

16 Q. In the same paragraph you're saying that the same  
17 units were not considered by CNDC as firm capacity units.

18 A. Yes, correct.

19 Q. They should be base units as opposed to firm  
capacity

20 units.

21 Tell me, units are not firm. They are base units.

22 That is to say, units that have compensated as firm capacity  
or

23 not.

24 A. The answer is no. The Bolivian legislation doesn't

25 work that way. One can have an explanation as to how the  
first

16:28 1 estimate work, and first of all, you estimate all the units  
2 that are going to be compensated on the basis of firm  
capacity,  
3 the ones that are recognized, and those recognized units are  
4 put into a list. That's the list you have towards the end  
of  
5 the document, and those lists go into the model, the SDL,  
the  
6 short-term or the medium-term plan or program, and there  
were  
7 have simulation with the units that are recognized as firm  
8 capacity. Those are not considered as firm capacity or not  
9 even considered for the dispatch in the simulation of the  
short  
10 or medium-term simulation.

11 Q. So, you're telling me that we need to look at the  
12 medium-term plan data to determine firm capacity?

13 A. Well, if that has firm capacity, there will be  
14 compensation. If there is no allocation of the capacity,  
it's  
15 like those machines do not exist in the generation park.

16 Q. So, at Paragraph 23, when you're justifying  
17 decommissioning of the units, the reason is that they were  
not  
18 included in the medium-term plan; is that correct?

19 A. Yes.

20 Q. You also tell us in this paragraph, the third line

to 21 towards the end, that those units would not be called upon

22 dispatch; is that correct?

23 A. Yes. For the next four years, just to be exact.

about 24 Q. Now, to get our words right, when you're talking

25 units called upon to dispatch, we go from the less costly to

16:30 1 the most costly, and that is called the generation cost;  
2 correct?

3 A. Yes, correct.

4 Q. What you're telling me is Guaracachi 3 and 5, since,  
5 according to the medium-term schedule, were now going to be  
6 paid on the basis of fixed capacity and that were not going  
to  
7 be called upon to dispatch, it was possible to ask that they  
be  
8 withdrawn from the Licensee--from the License.

9 A. Yes, of course, if you're going to have a machine  
that  
10 is there that is not going to work, it's going to just go to  
11 waste, yes, it's unproductive.

12 Q. Yes, and I understand that Units Guaracachi 3 and  
13 Guaracachi 5 were not the only ones that were going to be in  
a  
14 situation like that.

15 A. Yes, also the administrative units of Valle  
Hermoso--

16 (Pause.)

17 A. Well, I was saying that there were other three  
units  
18 from Valle Hermoso that were in the same situation, and--and  
19 Valle Hermoso had also requested that they be withdrawn from  
20 the License and to do the same paperwork that Guaracachi did.

was

21 Q. Apart from Guaracachi 3 and 5 and Valle Hermoso,

22 there another unit in the interconnected system that was not

23 going to be called upon for fixed capacity until 2005?

24 A. I don't remember. I don't think so.

25 Q. Let us look at the PNP and--PMP, and this is

16:31 1 behind--let's look at behind Tab 1.

2                   And if we look at the thermoelectrical units for  
the  
3 period of May 2001 to October 2005, we see that Guaracachi 3  
4 and Guaracachi 5 are zero up until 2005; correct?

5           A.    Yes, correct.

6           Q.    The only other units that have zero for the five  
years  
7 are Aranjuez 1 and Aranjuez 6; correct?

8           A.    Yes, correct.

9           Q.    So, those units could have been withdrawn from the  
10 system as well, if we follow the same logic; right?

11          A.    Yes, of course.

12                   MR. GARCÍA REPRESA: I have no further questions.

13                   THE WITNESS: Excuse me, I would like to say  
something  
14 else.

15                   PRESIDENT JÚDICE: Well, you can respond now, if  
you  
16 want.

17                   THE WITNESS: But I just wanted to tell you, in  
18 connection with your last statement that in Guaracachi, we  
19 tried to rid ourselves of these Aranjuez engines. We hired  
an  
20 American company that's called Beleya, to lobby here in the

21 States and look for purchasers of these units, and we have  
this

22 other Guaracachi records, and this company, this American

23 company, Beleya, say that these companies were impossible to

24 sell.

25 PRESIDENT JÚDICE: Yes, the Tribunal is clear as to



16:33 1 that. Thank you.

2 MR. GARCÍA REPRESA: Just one more minute because I  
3 think we're still within my time limit.

4 (Pause.)

5 MR. GARCÍA REPRESA: And that is the end of my time.  
6 Thank you.

7 PRESIDENT JÚDICE: Yes, please go ahead.

8 MR. BLACKABY: We're going to distribute some  
9 documents that are in the record. Thank you.

10 REDIRECT EXAMINATION

11 BY MR. BLACKABY:

12 Q. Mr. Lanza, I had a couple of questions that I  
wanted  
13 to ask.

14 MR. BLACKABY: Mr. Lanza also needs the document.

15 BY MR. BLACKABY:

16 Q. Mr. Lanza, a number of questions were asked of you,  
17 and they had to do with the fact whether you reviewed or not  
18 certain testimonies of other witnesses in this case.

19 Do you remember those questions?

20 A. Yes.

21 Q. Yes, I wanted to talk about some extracts of the  
22 pleadings in this file, and you were observing the fact  
23 that--or it was observed that you did not review the First

24 Statement of Ms. Bejarano. This is a document that was put  
25 forth by Claimant.

16:36 1                   And if you can please read the second paragraph of  
the

2   first page, this is the Memorial to the objections to  
3   jurisdiction.

4       A.   These objections include the statements of Martha  
5   Lourdes Bejarano and Mr. Carlos Quispe Lima, and the Annexes,  
6   R-1 to R-36; and their legal Annexes, RL-29 and RL-60, which  
7   are the legal authorities.

8       Q.   Okay. That's enough. Up to there.

9            Are you aware whether there is anything relevant in  
10   your testimony in connection with the objections to  
11   jurisdiction or the merits in this case?

12           Are you aware that your testimony has to do with  
the

13   objections to jurisdiction of the case or has to do with the  
14   merits of the case?

15           Were you involved in any way with the  
jurisdictional

16   matters in this case?

17       A.   No, I don't think so.

18       Q.   Can you go please go a couple of pages ahead, and  
we

19   are now dealing with the Reply to the Counter-Memorial of  
the

20   Claimants on jurisdiction of the Tribunal. Please read the

21 second paragraph of this document where it says "this  
Reply."

22 A. This Reply includes the Third Witness Statement of  
23 Martha Lourdes Bejarano Entrádo, Bejarano 3, and the Second  
24 Witness Statement of Mr. Eduardo Paz Castro, Paz 2.

25 Q. That's enough. Thank you.

16:38 1                   Then, taking into account your understanding in  
this  
2                   arbitration and the role you play in this arbitration--well,  
3                   taking into account the role you play in this arbitration,  
what  
4                   do you think about the fact that you were not shown the  
5                   relevant documents that have to do with the objections to  
6                   jurisdiction?

7                   MR. GARCÍA REPRESA: I don't think you can answer  
yes  
8                   or no to that.

9                   MR. BLACKABY: That's my question.  
10                  Okay. I withdraw the question. We are going to  
move  
11                  on to a different issue.

12                  We're going to distribute another document. This  
is  
13                  C-161, which is a presentation to the General Assembly--the  
14                  general meeting of the Guaracachi Shareholders in connection  
15                  with the conversion project of the CCGT dated September '08.

16                  BY MR. BLACKABY:  
17                  Q. A number of questions were asked of you in  
connection  
18                  with the increase in the budget of the CCGT project.

19                  Do you remember this?

20                  A. Yes.

21 Q. Could you please identify this document--what is  
this

22 document?

23 A. This is a document that was submitted to the  
general

24 meeting of Shareholders that was held in September 2008 to  
ask

25 request the approval of the increase in the budget from

16:40 1 \$40 million to \$68 million. This was the CCGT project.

2 Q. Could you please go to Page 2, which is the main  
page  
3 of this document. Could you please read the last paragraph.

4 A. Page 2?

5 Q. Yes, Page 2.

6 A. Below we present an analysis of the reasons that  
have  
7 brought about the increase in the budget, and a detailed  
8 description of each one of the line items of the budget.  
9 Annex 1 shows the detail of the approved budget and of the  
10 revised budget.

11 Q. Thank you very much.

12 Could you please go to price analysis. I think  
it's  
13 Page 3--Page 6.

6  
14 So, what issues are being dealt with between Pages  
15 and 8? What is being discussed here, and what is being  
16 presented to the Shareholders' meeting here?

17 A. Here we are showing curves in connection with price  
18 variations that the main components have suffered--for  
example,  
19 main components being steel, copper, nickel, and aluminum--  
and  
20 also the enormous variation of prices that has existed  
between

21 2006 and 2008, and the variation is about two or three times  
22 their price during those years.

23 Q. Turn to Pages 9 and 10, what's being explained  
there?

24 A. Pages 9 and 10, we are showing data from the World  
25 Bank where we're showing the price increase of the CCGT  
project



16:42 1 from '04 to '09. And, undoubtedly, there has been a  
2 substantial price increase. And, in 2009 we find a price of  
3 1.2 million per installed megawatt.

4 So, this project, in spite of the 68 million  
increase,

5 our CCGT project has a cost of \$800,00 per installed  
megawatt,

6 which is much lower than prices at that time, which was  
7 1.5--1.2 to \$1.5 million. The prices go from \$1.2 million  
and

8 \$1.5 million per installed megawatt, and our CCGT project  
was

9 very competitive. The price was quite low, which was lower  
10 than \$800,000.

11 And this had our project to be an excellent project,  
12 and--so this is something that we could see in the daily  
13 operations and the excellent income that Guaracachi has had.

14 Q. What was your recommendation to the general meeting  
of  
15 Shareholders?

16 A. Our recommendation was that the increase be  
approved

17 by the meeting because of the excellent returns that this  
18 project has, even though there was an increase to 68 million  
in

19 the budget, the return was going to be very good. It was  
about

the  
20 15 percent return, and this was going to yield benefits to  
21 company. We were going to double EBITDA. This project was  
a  
22 money-making machine.

23 Q. If we go to the very last page of this document,  
what  
24 can we see there? We see figures there on this page.

25 A. This is the original budget that was submitted

16:45 1 originally in 2006 for \$40 million. Then we see the amended  
2 budget, \$66.5 million, and the Shareholders' meeting  
3 recommended that the increase be a \$68 million increase.

4 Q. What did the Shareholders' meeting do?

5 A. The Shareholders' meeting approved this document  
and  
6 recommended that 66.5 be approved, and it approved a new  
budget

7 that was a little higher, 1.5 million higher, or \$68 million.

8 Q. Thank you very much. I'm going to move on to a  
9 different issue.

10 This has to do with a letter. This is C-320, and  
11 this--I don't know if the witness has a copy of it. This is  
a  
12 letter that Jerges Mercado, the first General Manager of  
13 Guaracachi after the nationalization, was sent to Peter Vonk  
14 from the CAF.

15 So, you remember that a number of questions were  
posed  
16 to you, and this had to do with the reasons for the delay of  
17 the combined cycle?

18 A. Yes, the reasons related to Guaracachi 7 and 8 and  
the  
19 wells, for example.

20 Q. This is a report--or, rather, a letter that was  
21 prepared for the CAF explaining a number of things and this

22 admission with the reasons for the delay.

23 Remember questions were posed to you in connection  
24 with the delay?

25 There is a report that has been annexed to this

16:47 1 letter. It is titled "Delays of the CCGT project  
commissioning

2 and start-up."

3           Could you please read the first paragraph. Please  
4 read slowly.

5       A.    Delay?

6       Q.    No, I'm sorry, the very first paragraph.

7       A.    The reasons for the delay of the commissioning of  
the

8 combined-cycle project until November 2010 are due to  
different

9 reasons, and mainly they are directly related to delays  
related

10 to authorizations from the competent entities, technical  
11 complexities, engineering complexities, and the mounting of  
the

12 equipment. And the difficulty that our country poses in  
13 connection with the acquisition of different equipment and  
14 accessories for them to be transported during reasonable  
15 timelines.

16       Q.    When you're talking about the authorizations, for  
17 example, the transfer or the wells, were you referring to  
this?

18       A.    Yes. Here, it says delay in authorizations: One,  
it

19 says, relocation of Guaracachi 7, Guaracachi 8, to the  
20 industrial park.

21           Can I read this, or shall I just explain this?

22       Q.   Well, only if you remember.  But there were other  
23 issues in connection with the delay; right?

24       A.   Yes, there were issues with the water wells.

25       Q.   Okay.  Thank you very much.  I think we can now

move

16:49 1 on to a different matter.

2 A number of questions were asked of you in  
connection

3 with a document that was behind Tab 19 of this binder. If  
you

4 can go to it, please.

5 You were asked questions in connection with the  
6 payment to suppliers. Do you remember the questions that  
you

7 were asked in connection with the impact that the payments  
to

8 suppliers had allegedly, this was caused--was the cause of  
9 illiquidity?

10 MR. BLACKABY: Unfortunately, the copy that we have  
11 here has a very nice table, but it's illegible. Had this  
been  
12 a work of art, it would have been beautiful.

13 THE WITNESS: Yes, it is difficult to understand  
this  
14 in connection with the progress in the CCGT.

15 BY MR. BLACKABY:

16 Q. We have a better copy, thank God. But before that,  
17 before showing it to you, could you read the last phrase of  
the  
18 document behind Tab 19.

19 I think this is Annex 29--Annex 29.

there

20 A. Yes, this is dated 23 May 2010, and it says that  
21 is a total progress of 95.1 percent and 216 workers from the  
22 Contractor are currently working.

23 Q. What was the purpose of indicating this to  
24 Mr. Mercado? What was the reason for this memorandum?

the

25 A. The reason for this memo was to inform Mr. Mercado



16:52 1 real progress made in the CCGT project. And we showed a  
95.1

2 progress, and then when we looked at the different areas  
system

3 by system, we basically showed that the project is actually  
4 almost concluded.

5 Q. Go to Page 15 of this document. Let's look at the  
6 text of the text here, Page 15. It says--

7 A. Page 15?

8 Q. It says "To this date." It says the schedule--the  
9 second paragraph. It says "To this date."

10 A. "To this date, purchase orders have been placed for  
11 \$66 million, which is equivalent to 97.5 1 percent of the  
12 approved amounts, and \$63.5 million have been disbursed to  
13 date. These amounts do not consider financial expenses and  
14 they do not consider taxes either."

15 Q. So, the amounts to be paid, what were they at that  
16 time?

17 A. About \$3 million.

18 Q. Thank you.

19 As I was promising, and as I was saying, I have a  
20 better copy of the chart on the first page. I think you can  
21 find this in your Second Statement.

22 A. Second Statement?

23 Q. Yes, Paragraph 57.

24 A. Yes, I found it.

25 Q. And here we can see a beautiful green colored table.

16:54 1 Splendid. It's also white and some intermediate colors.

2 Well, could you please read where it says current  
3 accumulation.

4 If I understand this correctly, this has to do with  
5 the progress of the project, and this is summarized in this  
6 table that you can read here.

7 Could you please look at purchases and supplies.  
What  
8 was the level of current accumulation?

9 A. On this chart?

10 Q. Well, let's take engineering, for example.

11 A. Well, engineering has in progress of 96.8 percent.

12 Q. And what about purchases and supplies?

13 A. 98.2 percent.

14 Q. And services?

15 A. It's 89.4 percent.

16 So, if we weigh these figures, these figures, you  
see  
17 that there is a 95.1 percent progress as of 23 May 2010.

18 Q. Thank you, Mr. Lanza.

19 MR. BLACKABY: We have no further questions.

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

Just

21 one moment.

22 (Pause.)

23

RECROSS-EXAMINATION

24

BY MR. GARCÍA REPRESA:

25

Q. Sir, let's look at the document we were looking at

16:56 1 before, which is behind Tab 19 of your book. And let's look  
at

2 Page 15, which is the page that we were looking at before,  
and

3 where we left off.

4 On the top of this page, we have a schedule; right?

5 A. Yes, correct.

6 Q. What we see right here are months; correct? On the  
7 top line?

8 A. Yes, exactly.

9 Q. And they're divided in weeks; right?

10 A. Yes.

11 Q. Could you please tell me when the commercial  
12 operation, according to this schedule, was provided for?

13 A. 1st November 2010.

14 Q. You said to me a moment ago--well, do you remember  
if

15 this is the date that Mr. Flores--the date that Mr. Flores  
uses

16 in it his report?

17 A. Mr. Flores in his report?

18 Q. Yes, you read the Expert Report of Claimant (sic)  
in

19 this case; right?

20 A. I'm not sure, but I don't know that--if this is--I  
21 don't think he uses this date.

22 Q. So, you don't know whether Mr. Daniel Flores uses  
23 November 1st?

24 A. No, I don't know.

25 Q. But November 1st was the date that was scheduled

for

16:57 1 the conclusion of the CCGT, but here we're talking about  
2 23 May 2010.

it 3           Would you say that at the date of nationalization  
4 was scheduled for this to be completed as of November?

5       A.    In the last report that I presented to the Board of  
of 6 Directors, I think it was 23 March 2010. I think it's one  
7 the documents that's annexed here.

8           We had problems with a Brazilian company called  
9 Hebisa, and we had problems with isolation in the generator.  
10 Well, this was going to cause a delay and said that we  
11 were--we're not going to Commission this by May 1st, 2010.

So, 12 I told the Board of Directors that we were going to start  
13 operations on 1st August 2010.

14           Two months later, after this event, when I prepared  
15 the report, and--and as we can read in the report, we see  
the 16 problem with the installation in the generator--we were  
still 17 working on that--and I told Mr. Jerges Mercado that the most

18 probable date was 1st November 2010.

19       Q.    So then, between March and the--23 May, when this  
20 schedule was pushed forward, it was pushed forward to  
21 November 2010; correct?

22 A. Yes, correct.

23 Q. And looking at this Page Number 15, mention was  
made

24 of the budget under Paragraph 5. And you said that there  
were

25 about \$3 million that needed to be paid to complete the



16:59 1 combined-cycle project.

2 PRESIDENT JÚDICE: Well, I think they were talking  
3 about the difference between the different purchase orders,  
the  
4 ones that are paid and the ones that are not paid.

5 Maybe I didn't read this correctly.

6 THE WITNESS: Yes, your interpretation is correct.  
7 The difference was whatever had been awarded up to until  
that  
8 time and the reimbursement made.

9 BY MR. GARCÍA REPRESA:

10 Q. If you could please turn the page--I was trying to  
get  
11 this kind of interpretation.

12 If you turn the page, could you please--the second  
13 paragraph, if you would be so kind.

14 A. The requirements for cash flows up to the  
termination  
15 of the project, unless there were any contingencies, would  
16 reach 8,587,928 and 26 cents based on the following  
17 information.

18 Q. And my colleagues also mentioned to you in the  
19 document that they provided the Statements by Mrs. Bejarano  
and  
20 Mr. Paz.

21                    In your Statement, you referred to EGSA's  
investments.

22    Do you remember that?

23            A.    If you tell me where.

24            Q.    For example, Title III of your Second Statement, it  
25    says, "the important investments"--

17:01 1 A. I'm sorry. I think I'm looking somewhere else.  
That

2 is the Second Statement?

3 Q. Yes.

4 A. What item?

5 Q. For example, Page 4, Roman III, and there it says  
6 "significant investments."

7 Do you see it?

8 A. Yes.

9 Q. So, if Ms. Bejarano had referred to the investments  
in

10 her First Statement, that is something that you--would have  
11 been interesting to you; right?

12 A. It depends on the context. If it is related to  
some

13 technical issues, the answer is probably yes.

14 Q. And if Mr. Paz, for example, in his Second  
Statement

15 that you analyzed, had mentioned the alleged thrust to  
16 Rurelec's investment, that would have been something  
17 interesting to you; correct?

18 A. I did not understand what you call the alleged  
thrust

19 or the alleged support.

20 Q. I think it is quite clear to us. Don't worry.

21 MR. GARCÍA REPRESA: I have no further questions.

22

QUESTIONS FROM THE TRIBUNAL

23

ARBITRATOR CONTHE: I have two very brief questions.

24

The first one has to do with something that was

25

discussed before in connection with the three units, 1, 2, 3,

17:02 1 at the Aranjuez Plant, and they were the ones that were  
2 thermally inefficient, and that cost 38 to \$40 per kilowatt.

3 And you are saying that you ordered the company to  
4 sell them, but it was impossible to sell them, so the  
5 conclusion--what was the conclusion?

6 Why were they impossible to sell?

7 THE WITNESS: What actually happened--and this is  
8 something that should be mentioned--the node where these  
units

9 are installed, the Aranjuez node in the electricity system  
in  
10 Bolivia, had some problems; to regulate voltage, to be more  
11 specific.

12 And that meant that these units that had high  
13 operational costs were key to the operation to be able to  
14 maintain the voltage levels and be able to provide or supply  
15 power to Sucre, given that the inefficient unit, Aranjuez 8,  
16 was decommissioned. Because the grid coming from the  
17 interconnected system had very small transformers at the  
18 Aranjuez Plant, so, they were unable to convey that--to  
19 dispatch or to transport the necessary energy to the  
Aranjuez  
20 population.

21 These units were kept as compelled or required  
units.

22 They were compensated based on the operational cost. They  
did  
23 not produce any marginal costs back then. They were  
24 compensated based on firm capacity at the operational cost  
so  
25 that if they might work, they might solve the problem in

17:05 1 Aranjuez.  
2                   We were unable to sell them, but they provided  
support  
3 and security in the southern area for Potosi and Aranjuez,  
even  
4 at a higher operational cost.  
5                   ARBITRATOR CONTHE: So, the idea of voltage and  
6 security in Sucre had some technical consideration that, in  
7 your opinion, made it reasonable to have such a high price,  
\$38  
8 per kilowatt, so that it wasn't considered a marginal price  
9 throughout the system; correct?  
10                   THE WITNESS: Well, if the units were not  
compensated  
11 based on firm capacity, and because of the area they needed  
to  
12 it operate, those costs were not marginal costs for the  
system,  
13 and they were paid based on the operational costs of the  
units.  
14 As we saw later on when the reserve dropped in the system,  
no  
15 one invested in the country, just Guaracachi was the only  
one  
16 to invest and saved the country from outages between 2006  
and  
17 2011. As the reserve was dropping and these units became  
firm

were 18 capacity, when these units were necessary to operate and

19 being compensated based on firm capacity, they marked the  
20 marginal costs for the system.

21 ARBITRATOR CONTHE: So, in 2008, the  
Superintendency

22 more or less applied--even when these technically obsolete  
23 units became firm capacity, they applied the same system  
that

24 was applied when firm capacity was not available based on  
that

25 a technical problem in the area?



17:06 1 THE WITNESS: Well, if we think of 2008, the  
reserves  
2 are very low in the system. So, all of the units in the  
3 generation park, those are expensive, and the ones that are  
4 inexpensive are compensated on the basis of firm capacity.  
5 So, whenever they generate, they have a price.  
They  
6 have a marginal cost. When the Worthington units started to  
7 work, they also marked a lower price. So, a lower cost.  
When  
8 they said, okay, this is not going to set the price anymore,  
9 let's have them operate if the system needs them, because we  
do  
10 not want to have outages and they were going to operate as  
long  
11 as they needed to, but they were not creating a marginal  
cost  
12 or creating prices for the system.  
13 ARBITRATOR CONTHE: I'm sorry to insist, just to  
make  
14 sure I understand this--and I still do not have the  
technical  
15 background you do--but prior to the regulatory reform in  
2008,  
16 there were some situations in which the three units did  
produce  
17 electricity, even though they were not considered part of  
the

18 firm capacity, and they were paid the variable cost, but  
that  
19 variable cost of \$38 per kilowatt hour was not applied to  
the  
20 rest of the system.

21           That means that the other generators in Guaracachi  
22 were not benefiting from such a high cost in the three  
engines  
23 at Aranjuez because the three engines back then did not--  
were  
24 not considered firm capacity, and they were not creating  
25 marginal cost--or setting marginal cost.

17:08 1 THE WITNESS: Yes, but the difference is that these  
2 machines were not dispatching. So, whenever they were  
called  
3 to operate, it was because of a contingency; when they  
operated  
4 a couple of hours to solve the problem up to the solution of  
5 the problem.

6 For example, let's say Aranjuez 8 is not working  
7 properly, so the other unit was commissioned, and half an  
hour  
8 later the engines were shut off and we went back to the old  
9 machine, to the old unit--or the other units. They worked  
for  
10 very few hours, but in 2008 when these units were required,  
11 they operated for a long time, and the damage to the  
regulatory  
12 system was significant and dramatic.

13 As Engineer Paz showed in some the annexes studied  
by  
14 Mr. Enrique Gómez, who is a very important person in the  
15 Electricity Sector in Bolivia, Mr. Gómez, in the report  
16 presented by Mr. Paz, shows the drop in reserves starting in  
17 2006-2008 in the system; and, clearly with this--with the  
18 consequences of the intervention with the regulation, prices  
19 continued to grow, and this goes contrary to the rules of  
the  
20 market. Prices should go up, but they went down, actually.

21 And that signal sent to the rest of the generator was the  
wrong  
22 market signal; therefore, none of the other six generators  
that  
23 we had in the electricity market invested.  
24                   Therefore, given the wrong signals of the market,  
25 Guaracachi was the only one that invested and also led to  
the

17:10 1 shortages that resulted in 2010.

2 ARBITRATOR CONTHE: And I'm sorry for the very  
simple  
3 terms of my next question, but I'm trying to figure out if I  
4 understand it.

5 Guaracachi had very ambitious projects. We had  
6 already seen the combined cycle with 80 and then 96  
megawatts,  
7 and in Sucre Aranjuez 2 and 3 had no more than 8 megawatts,  
and  
8 each had 2.7.

9 So, why did Guaracachi, out of their own--why  
didn't  
10 Guaracachi, even if they couldn't sell it, decide, Okay, I'm  
11 going to assign 8 efficient megawatts whose operational cost  
is  
12 not going to be 38 hours per hour, 38 hours per hour but 18,  
so  
13 whenever they need to produce marginal cost, it will be at  
18  
14 rather than 38?

15 THE WITNESS: In 2010, that was the plan Guaracachi  
16 had. We had introduced to the Board in late 2009 that in  
17 Aranjuez, given the problems that the node had in terms of  
18 regulation and supply, we decided to decommission  
Karachipampa

19 and connect one or two units at Aranjuez. We decided to buy  
a

the  
20 Trent unit, highly efficient Trent unit, or to take one of  
21 units from Guaracachi. Guaracachi 2 or 4 could be taken to  
22 Aranjuez, either 20 or 40 megawatts, and that is part of the  
23 records of the Board of Directors at Guaracachi, and this is  
24 also part of a submitted presented to the Superintendency.

25                   So, with this change, to go from 20 to 40, we had

17:13 1 decided that Aranjuez 1 and Aranjuez 3 were decommissioned.

was 2 ARBITRATOR CONTHE: But why didn't you do it if it  
3 so logical and so efficient? Why didn't you transfer 20 or  
4 40 megawatts?

5 THE WITNESS: Also you're talking about 2010?

6 ARBITRATOR CONTHE: Yes.

than 7 But couldn't you have done that before, earlier  
8 2008 before these three units were marginalized?

are 9 THE WITNESS: We attempted it in 2005, and there  
10 some documents here that prove that. EGSA was created for  
11 isolated systems. And this company managed isolated systems,  
12 and this was the property of Guaracachi. And the idea was  
to 13 manage inefficient and high-cost and operationally expensive  
14 equipment, such as what we had in Karachipampa and Aranjuez.

in 15 The idea was to decommission them and install them  
16 isolated systems because this was a company for isolated  
17 systems. So, our goal was to take the equipment to  
populations

18 that did not have power. And this plan failed, and the  
19 Superintendency didn't approve it, and we had to go back.

20 We made several attempts to improve the supply

21 conditions in the southern system, but unfortunately we  
weren't

22 able to.

23           PRESIDENT JÚDICE: But if I do not--if I am not  
24 mistaken, it means that you had to sell them or use them or  
25 place them as part of isolated systems, and you didn't--why



17:14 1 didn't you consider to dismantle them, destroy them, so that  
2 this would be positive from the economic point of view and  
have  
3 something that would produce at \$18 a kilowatt hour?

4 THE WITNESS: Well, there is a key economic  
principle  
5 that says that the most expensive energy is the energy that  
you  
6 do not have.

7 And in the country, we have had low investments--or  
a  
8 low level of investments, and a high likelihood of outages  
due  
9 to lack of supply implied that part of the population did  
not  
10 have power supply.

11 So, I think that from the point of view of the  
12 responsible, efficient supplier, it is better to supply  
energy  
13 to the Bolivian citizen at 30, \$35, than to provide nothing.  
14 Because the cost is very high; that cost of not providing  
the  
15 energy is very high for the country.

16 ARBITRATOR CONTHE: Of course, of course it's  
better  
17 to pay 38 than not to have it. But why didn't you, in  
18 2007-2008, try to change those 40 megawatts to a technology  
19 that had a lower cost at \$18 a kilowatt hour?

with 20                   Guaracachi was going to increase power in Sucre  
21 the new CCGT, but seeing that you could not transfer the  
22 engines to EGSA for isolated systems before the engines  
became 23 firm capacity and started to be marginalized and also  
distorted  
24 the marginal cost of energy, why didn't Guaracachi make a  
new  
25 investment which would have been really small, in 20 or

17:17 1 40 kilowatts, to make sure that the supply was at 18 rather  
2 than \$38?

3 THE WITNESS: Well, there were several ideas that  
we  
4 analyzed. But as you have seen our record of investments,  
we  
5 have continued to invest in 2007, 2008, '9, '10. We have  
quite  
6 an impressive record of investments. But even though  
7 Guaracachi was the largest company in the country, it is,  
8 indeed, a small company. Guaracachi had not even 70  
employees,  
9 and the 70 individuals were in charge of developing all of  
10 these projects.

11 So, this was beyond the human resources we had to  
try  
12 to focus on other projects to assign resources, but we did  
try  
13 it, and we tried it several times.

14 ARBITRATOR CONTHE: I'm sorry to insist, but this  
is  
15 related to a claim. I have not been an energy regulator,  
but I  
16 have been a financial regulator, and regulators usually have  
a  
17 dirty mind and we always have to think that companies might  
be  
18 doing something wrong.

19                    But let's say that I'm an energy regulator and I  
can  
20 say, Why? Well, Guaracachi is dragging its feet and they do  
21 not want to replace these three old engines, they're saying  
22 that they'd like to decommission them, they have tried to  
sell  
23 them, but they do not want to put 20 inexpensive megawatts  
in  
24 Sucre because they say that whenever demand grows, these old  
25 systems are going to create a marginal cost, and they're  
going

17:19 1 to have a windfall profit--windfall profit with the rest of  
the  
2 grid, not with these three pieces of equipment.

3           Then Guaracachi had a conflict of interest, a  
conflict  
4 of interest to have some additional benefit to have these  
three  
5 pieces of equipment as marginal, and this could have been an  
6 incentive to replace them, even though it was a mid-term  
policy  
7 with the investment in the CCGT.

8           But in Aranjuez, a regulator could not have the  
9 shrewdness to--could have had the shrewdness to deduct or to  
10 conclude that the company was dragging their feet to replace  
11 the equipment and to exclude the marginal price, even though  
12 the three units, because of the supply have--of the demand  
have  
13 become firm capacity.

14           THE WITNESS: I think that the regulator had the  
15 opposite conduct.

16           Guaracachi made several attempts to withdraw, to  
17 decommission these units. I told you that we tried to sell  
18 them in 2000. It was impossible to sell them. 2005--or  
2004,  
19 we created EGSA. We wanted to decommission all of the  
engines.

20 We presented the request to the Superintendency, and the

21 regulator, instead of saying "Wonderful, we're going to get  
rid  
22 of these," and, "To supply the needs of Sucre, we need  
another  
23 investment," we were denied of that option.

24           In 2006 or '7--the dates are not very clear in my  
25 mind. Equipments 5 and 6--Units 5 and 6 were decommissioned.

17:21 1 We were not given the License, but all of sudden it was  
2 extended, we could not decommission them, and when EGSA  
tried  
3 to decommission them, the Superintendency said no. They  
said  
4 no from the point of view of the regulator that was also  
acting  
5 as the regulator who said, "Why am I going to let them  
remove 1  
6 megawatt from the system if the system is short of  
megawatts?"  
7 So, that was the logic behind the rationale of the regulator.  
8 Generators were not interested in investing.  
Megawatt  
9 numbers were going down. This would have led to outages,  
and  
10 the Superintendency did not allow to remove a single  
megawatt  
11 to avoid outages, but Guaracachi did try this throughout the  
12 years.  
13 ARBITRATOR CONTHE: And this is the last question.  
I  
14 think that you must have been the General Manager that had  
the  
15 shortest tenure because in March 2011, you were appointed  
16 General Manager, and in May, two or three months later, you  
17 were dismissed.  
18 So, could you please tell us why you survived

19 nationalization when the rest of the managers were replaced  
20 immediately?

21           And why--I understand that the brief period of your  
22 tenure is also connected to the Restatement of the Financial  
23 Statements in 2010, but the Bolivian authorities, I guess,  
24 never thought that you would have that reaction. But could

you

25 give us--or could you elaborate on why you continued after



17:23 1 nationalization and you were extended, and later on--you  
were

2 extended the Contract, and later on you were dismissed?

3 THE WITNESS: Well, based on my understanding and  
4 based on the situation, I remained with Guaracachi starting  
5 May 1st because of my knowledge of the CCGT. I was one of  
the  
6 few persons in Bolivia that had knowledge about this type of  
7 technology, and I was one of the few persons who could take  
8 this to completion.

9 Clearly, they could have hired someone else, but I  
10 think that I was left there because of my strategic  
knowledge.

11 And the combined cycle was seen in the country as the hope  
we  
12 had to avoid outage. But now--clearly, nowadays, with CCGT,  
13 outages are being avoided. I remained because of my  
knowledge,  
14 my technical knowledge.

15 How did I get to be General Manager? ENDE's  
Manager,  
16 Mr. Caballero, was a friend of mine, and in the Electricity  
17 Sector in Bolivia, now we know everyone. It's a very small  
18 sector. So, I had been working with him at ENDE since we  
were  
19 very young. We had very parallel careers. We--our agencies  
20 are even similar. He's just a little bit younger than I am,

21 than me.

22                   And because of a problem with Joaquin Rodriguez, he

23 called me one morning at 5:30 and he told me, "Joaquin has  
to

24 leave because that is the Minister's decision, and I need  
your

25 help. And I would like you to be the General Manager."

17:25 1 I told him, "Please do not put me in this situation  
2 because I know I'm not going to last long."  
3 I have--I was not a person that was highly regarded  
in  
4 the energy sector among the people who were actually  
managing  
5 the sector because of some differences in concepts. And I  
am  
6 going to lose my job, they're going to vote you, I'm going  
to  
7 get--I'm not going to get the votes, you're going to get the  
8 votes, and I am going to lose the job that I currently have.  
9 And he asked me for help, and the Minister has your  
10 name, so you don't have any other option.  
11 I didn't have much time. My wife heard yes, and  
she  
12 complained because she said, This is just your--this is just  
13 the decision that is going to put an end to your current job,  
14 and in a short time you're going to be out of a job.  
15 And the staff he had was not the best, so I lent  
him  
16 the most important resources that we had with--at Guaracachi  
to  
17 help him. The lawyer started to work for ENDE 100 percent.  
I  
18 also lent him our financier and Eduardo Paz so that they can  
19 work with him and help him execute the project.

20                   Everything went well until the day when he said we  
21 need to change the profit and loss, and I objected because I  
22 did not agree. We had our differences, because--this was  
23 understandable. He had to follow a path, and I was not  
willing  
24 to follow that path.

25                   ARBITRATOR CONTHE: It's very clear. Thank you.

17:27 1           PRESIDENT JÚDICE: I have just a question. I  
2 understand, based on my life experience, that oftentimes  
there  
3 are various interpretations of the facts, and the same  
applies  
4 to technical matters.

5           But here I hear you say that in April-May 2010, the  
6 combined cycle was completed by 95 percent, and in January  
Paz  
7 was saying that it was completed by 50 percent. The  
difference  
8 is so significant that at least you have a very significant  
9 problem in perceiving or understanding this problem, or a  
very  
10 different concept. These things are completely different.

11           THE WITNESS: I think that Mr. Paz is talking about  
12 something different and writing that in a very leading way.  
13 He's saying that the budgetary process is 50 percent. He  
14 doesn't say the project progress. That is technically  
15 50 percent. He's talking about the progress made from the  
16 budgetary point of view.

17           Now, the Superintendency never wanted to change our  
18 \$68 million budget. They always had the \$40 million budget.  
19 But when they drafted the report, the Superintendency is  
saying  
20 there is a budgetary progress of 50 percent, and they're  
saying

21 that Guaracachi has spent \$20 million. But they had already  
22 spent 68 million.

23 PRESIDENT JÚDICE: Yes, I knew that. But I don't  
24 really don't understand it.

25 You were saying it was \$20 million. I know that--

what

17:29 1 the numbers were, but the numbers say that it was 60 million.

2 THE WITNESS: Let me explain. It was a gentlemen's  
3 agreement between Guaracachi and the authorities--the  
4 Superintendency--I don't know what the name is.

5 The purpose for this Resolution was for the level  
of  
6 our guarantee to go down from \$2 million to \$1 million.  
This

7 means that for Guaracachi--well, we would have \$1 million to  
8 solve our cash problems that we had at the time.

9 The Superintendency never wanted to go up to 68,  
for  
10 whatever reason. So, they said, I'm going to put in  
11 50 percent. I'm going to return 50 percent to you only.  
And

12 I'm going to reduce the amount from 2 million to 1 million.  
13 This is simply speaking what happened. It had nothing to do  
14 with an analysis of the amounts that were reviewed.

15 The purchase of the boiler was \$17 million. That  
was  
16 almost 50 percent of the \$40 million. So, this was a  
17 gentlemen's agreement so that the amount of the guarantee  
could  
18 be reduced.

19 PRESIDENT JÚDICE: Mr. Paz has seen your First  
20 Statement. There is a photograph dated October 2009--and  
this

I

21 is a matter for a lawyer. It seems quite backward here, but

22 don't know if you remember this photograph.

23 Do you remember the intention of it?

24 THE WITNESS: Yes, yes, I remember the photograph.

of

25 It's a photograph that I took. And I think I make comment



17:32 1 it in my Statement.

2           So, this was a photograph of October 2009. So, it  
was  
3 a few months after we were able to withdraw Guaracachi 7 and  
4 Guaracachi 8. After we were able to withdraw those two  
units,  
5 we were able to start building the structure where the  
turbines  
6 and the generators were to be housed.

7           So, after the withdrawal, for three or four months  
8 after the withdrawal, we made enormous progress.

9           PRESIDENT JÚDICE: Are you sure when you wrote  
10 95 percent, isn't this a mistake? Is this something not  
11 intentional? This is your conviction, 95 percent of  
progress?

12           THE WITNESS: Two important things in connection  
with  
13 the percentages that I have submitted to the report to the  
14 Board of Directors and to the reports that I submitted here.  
15 The progress percentages are based on weekly and monthly  
16 reports respects that were reported to it by Santos CMI, the  
17 construction company. This is not something that we did, my  
18 team or myself, no; this is based on the contractor in  
19 connection with the weekly and monthly reports.

20           PRESIDENT JÚDICE: But you have accepted this?

21           THE WITNESS: Well, we had a team of engineers that

22 supervised all duties, civil work duties and also  
23 certifications of weekly progress. So, we had a daily  
report  
24 of the project, a weekly report of the project. If you  
would  
25 like for me to send you this information, I would be happy  
to

17:33 1 send it to you.

2 PRESIDENT JÚDICE: No, we don't really want any  
more  
3 information.

4 ARBITRATOR CONTHE: Yes.

5 There was something in your answer that I wanted to  
6 talk about. There was a gentlemen's agreement to reduce the  
7 security so that Guaracachi could save \$1 million. This was  
a  
8 gentlemen's agreement.

9 Could you explain this to me. I didn't really  
10 understand this.

11 THE WITNESS: When you request a license for  
12 generation--and Mr. Aliaga, who is an engineer, knows more  
13 about this than I do because he was in charge of all this,  
so  
14 if I make a mistake, please forgive me.

15 So, when you ask for a license, you have to deposit  
a  
16 guarantee for 5 percent of the total cost of the project.

The  
17 total cost of the project was \$40 million, so we had to post  
a  
18 guarantee for \$2 million. So, these \$2 million, of course,  
19 this was a guarantee and, well, have you to post the  
guarantee

20 and this makes the flow of cash inviolable.

21                   ARBITRATOR CONTHE: This deposit was in cash? It  
22 wasn't a bank security?

23                   THE WITNESS: It is a bank security, but in order  
to  
24 do that, you had to deposit those amounts in the bank, to  
make  
25 them immovable in the bank. So, this is a very interesting

17:35 1 amount of money that Guaracachi contributed at that time.

2 PRESIDENT JÚDICE: Thank you very much.

3 MR. GARCÍA REPRESA: Mr. President, I know that we  
are

4 all impatient and we want to examine the next witness, and  
I'm

5 sure the current witness is very, very impatient to step  
down

6 as well, but on behalf of Bolivia, I would like to ask a few  
7 questions.

8 PRESIDENT JÚDICE: Yes, of course. We're going to  
9 give the other Party also this opportunity, but please be  
very

10 brief and only deal with very, very important issues from  
your  
11 viewpoint.

12 MR. GARCÍA REPRESA: Yes, of course.

13 RE-CROSS-EXAMINATION

14 BY MR. GARCÍA REPRESA:

15 Q. You said, sir, that the Aranjuez engines you tried  
to  
16 sell them to a company called EGSA. Do you remember that?

17 A. Yes.

18 Q. You were the founding Shareholder of EGSA; correct?

19 A. As the Commercial Code of Bolivia says, to form a  
20 corporation, at least three Parties have to be involved in  
this

21 formation. This was a 100 percent company of Guaracachi, so,  
22 99.99 percent was Guaracachi's. And I had one share. It  
was  
23 .001. Another engineer who was the plant manager, his name  
was  
24 Alvarez, had the other .00 something. So, this was the way  
in  
25 which the corporation could be formed in Bolivia.

17:37 1  
connection

Q. There was an investigation by the State in  
2 with the conditions of that projected--that scheduled engine  
3 sale.

4 PRESIDENT JÚDICE: I don't know, was this was  
5 mentioned?

6 No, I'm sorry, that's not an issue that you can ask  
7 about.

8 MR. GARCÍA REPRESA: All right.

9 BY MR. GARCÍA REPRESA:

10 Q. I will talk about another issue.

11 The Co-Arbitrator, Mr. Conthe, asked questions with  
12 why would Guaracachi 3 and 5 have to be withdrawn and why  
13 wasn't an investment made later on.

14 I wanted to confirm with you a number of issues.  
Each

15 one of these units, Guaracachi 3 and 5, accounted for about  
16 90 megawatts; correct?

17 A. Yes, correct.

18 Q. And, in Paragraph 24 of your Second Statement, at  
the

19 end of that paragraph, it said that it made more sense to  
sell

20 them and to reinvest the funds in more efficient technology.

21 And I would like for you to go to Document Number 2  
in

22 your binder. Please go to it. And this is Annex 53 of  
23 Mr. Paz's statement. You told me you had reviewed the  
annexes  
24 by Mr. Paz, so please go to Page Number 3. Please let me  
know  
25 when you find Number 3.



17:38 1                   And this is Note 4. Note 4 on Page 3.

2                   Do you see it?

3           A.    Yes.

4           Q.    And this Note 4 makes reference to the sale of  
5 Guaracachi 3 and 5.

6           A.    Yes. That's what the heading says.

7                   MR. BLACKABY: Objection.

8                   PRESIDENT JÚDICE: Mr. García Represa, you're going  
9 back to doing something that I asked you not to do. I asked  
10 that--you to ask questions arising directly from the  
questions  
11 posed by the Tribunal and not to bring to the table new  
matters

12 that you should have brought during your cross.

13                   MR. GARCÍA REPRESA: With respect, Mr. President, I  
14 completely understand.

15                   The question that was asked by Mr. Conthe had to do  
16 with why Guaracachi 3 and 5 were sold instead of other units  
17 and why wasn't the amount invested in additional capacity.

18                   PRESIDENT JÚDICE: I insist that you are going way  
19 beyond the scope of the line of questioning.

20                   MR. GARCÍA REPRESA: Yes, I take note, Mr.  
President.

21 We are going to make reserve of our rights.

22                   PRESIDENT JÚDICE: Any other question?

23 MR. GARCÍA REPRESA: No, apart from my reservation.

24 PRESIDENT JÚDICE: Thank you very much for having

25 cooperated with the Tribunal. You can step down, if you  
want.

17:40 1 THE WITNESS: Thank you very much.

2 (Witness steps down.)

3 PRESIDENT JÚDICE: We're going to now move on to  
the

4 next witness. Perhaps, if we can have a short recess.  
Fifteen

5 minutes. And then we are going to come back to the witness

6 that is going to be examined by you. Thank you.

7 (Brief recess.)

8 CARLOS QUISPE LIMA, RESPONDENT'S WITNESS, CALLED

9 PRESIDENT JÚDICE: Good afternoon, Mr. Quispe.  
Thank

10 you very much for attending the hearing.

11 Would you please first say your name and then read  
the

12 piece of paper that you have in front of you.

13 THE WITNESS: My name is Carlos Quispe Lima. I was  
14 called to appear as a witness by the counsel of Bolivia.

15 Shall I read?

16 PRESIDENT JÚDICE: Yes, please, if you agree.

17 THE WITNESS: Witness Statement, I solemnly declare  
18 upon my honor and conscience that I shall say the truth, the  
19 whole truth, and nothing but the truth.

20 PRESIDENT JÚDICE: Thank you.

21 I trust that you know how the tribunals work.  
You're

22 going to have some questions by the lawyers to your right  
23 first, and then to your left, and then finally the Tribunal.  
24 Just take the time you need.

25 THE WITNESS: Thank you.

18:01 1 MR. SILVA ROMERO: Mr. Merizalde will question the  
2 witness.

3 DIRECT EXAMINATION

4 BY MR. MERIZALDE:

5 Q. Thank you very much, Dr. Silva.

6 Mr. Quispe, you have your statements in front of  
you;  
7 correct?

8 A. Yes, I have my three statements.

9 Q. And they are signed by you; right?

10 A. Yes, I signed them.

11 Q. Would you like to make any formal changes to those  
12 statements?

13 A. Yes. I'd like to introduce three corrections that  
14 have to do with the--they're not substitutive. They're  
style  
15 changes, three style changes, in my statements.

16 First Statement, Paragraph 29. There, I refer to  
the  
17 date of Resolution 40/2007. In my First Statement I had  
18 indicated August 8th, 2007.

19 I would like to correct that date. It is February  
8,  
20 2007.

21 And this is consistent with my Third Statement  
where I

22 had already referred to the right date. Paragraph 30 of my  
23 First Statement.

24                   There, I say that Guaracachi presented an appeal  
onto

25 Resolution 40/2007, but I should say February 15, 2007.

18:03 1           And, finally, in my Third Statement, Paragraph 7,  
in  
2           this paragraph, there is a description of the time it took  
for  
3           the administrative remedies, and in Line Number 5 I'm saying  
4           that it took more than nine months to decide on  
5           Resolution 40/2007; and as a result of the second  
6           clarification, it should be corrected to 11 months. That is  
to  
7           say, 11 months that was the time it took to decide on  
8           Resolution 40/2007.

9           That's all I had to say.

10          Q.    So, do you confirm the contents of the three  
11           statements?

12          A.    Yes. Beyond those three, I confirm the statements.

13          Q.    Could you briefly explain to the Tribunal your  
current  
14           responsibilities.

15          A.    Towards August 2009, I started to work with the  
16           Ministry of Hydrocarbons and Energy; and, starting in  
October  
17           the same year I became the General Director of Control  
within  
18           the same Ministry. And as part of that position, I am in  
19           charge of solving challenges presented by users, suppliers  
from  
20           the electricity and hydrocarbons area, and the National

21 Hydrocarbons Agency and the National Electricity Authority.  
22 That is to say, the former Hydrocarbons Main Offices,  
23 Superintendences, and all of my responsibilities are on  
behalf  
24 of the former Superintendency.

25 Q. So, could you please explain the difference between



18:05 1 the administrative and the judicial remedies and also the  
2 suspension of the administrative remedy.

of 3 A. In Bolivia, we have two instances for the control  
4 administrative acts.

5 PRESIDENT JÚDICE: But this is not only in South  
6 America.

of 7 THE WITNESS: Well, let's say in several countries  
8 the world. The first instance or the administrative step  
9 includes the appeal and the appeal to a higher  
administrative

10 authority. A citizen who may feel affected by a decision by  
11 the Government may resort first to the same authority that  
12 issued a decision that that individual considered  
detrimental,

13 and may ask for the reconsideration. If that is not  
favorable,

14 the same citizen may resort to a higher administrative  
15 authority and present an appeal. If this is not favorable,  
16 this person can resort to the next step within the judicial  
17 system and present an administrative challenge, and this is  
18 presented before or submitted before the Supreme Court of

19 Justice in Bolivia, and he or she may claim the  
nullification

20 of the decision, the abrogation of the decision or the part

21 that is being questioned.

22           The citizen has the power granted by the  
23 administrative law at Article 59, Paragraph 2, rather  
24 Paragraph 1, where it is stated that any appeal does not  
25 interrupt the performance of the Act, that in Paragraph 2 it

18:08 1 says the citizen may request the authority the suspension of  
2 the Act.

3           First, there could be serious damage to the Party  
or  
4 because of public reasons. Based on these two causes, this  
5 person may resort to the authority and say I request for the  
6 suspension of the performance of the act, but this request  
for  
7 suspension is not binding. The administration may assess  
the  
8 case and determine whether they are going to continue or not  
9 with the performance of the act.

10           In the next stage, the civil proceeding or  
procedure  
11 that is the one that governs this process is not very clear  
in  
12 stating whether the suspension remedy may be used or not.  
13 There is no clear rejection or validation, but based my own  
14 practice of the profession within the industry, I have been  
15 able to see that the Supreme Court has granted the  
suspension  
16 of this--has granted the stay. And the Civil Code has  
actually  
17 considered the stay, and in some other cases it has been  
18 rejected, but basically those would be the ways to decide on  
19 the stay of an act.

20       Q. I understand that you had the possibility to review

by 21 CL-190, and this is a document that was recently presented

22 the Claimants.

23 A. Yes, I understand that this is about a document, an

24 Article that I wrote in 2008.

25 Q. Yes.

18:10 1                   And could you please explain the context.

Article 2           A.    Yes.  I was a little bit surprised to see that  
3 that I wrote when I was a student of administrative law in  
4 La Paz, Bolivia, between 2007 and 2009.  I was a student,  
and I 5 was asked to write an article about one of the institutions  
of 6 administrative law, and I chose this topic.  And if I recall  
7 was 8 correctly, I wrote something not very thorough about--that  
of 9 six or seven pages long to analyze from the academic point  
was 10 view the laws and also the Supreme Court decisions, and I  
very 11 working with the municipal Government of La Paz, and I had  
12 scarce experience in this administrative--in administrative  
13 cases.

13       Q.    Was this a Master's program or a Ph.D.?

14       A.    This was just a Master's degree.  And as part of  
that 15 writing I am saying that the goal of that analysis is to  
16 analyze the legislation and the case law, the regulations  
and 17 the case law.

18       Q.    The Claimants say that the duration of the--the

19 duration of the proceedings to solve the issues regarding  
power

20 have been too long.

21 A. And I explained that I do not share that opinion.  
I

22 said that in my First Statement in the sense that the delay  
in

23 Bolivia. I don't know if this is the case in other  
countries,

24 too. The judicial delay is something that happens, is

25 something that happens just because of the high case

18:12 1 law--caseload, and I don't think that this is a delay  
because

2 of the specific proceeding.

3 This is just standard for all of the proceedings,  
and

4 it is not unjustified because the Government of Bolivia has  
had

5 executive and legislative actions to overcome that situation

6 and, for example, we can mention the appointment of  
authorities

7 on an interim basis to cover the vacancies within the  
Supreme

8 Court, and we can also think of Law 212 that was passed in

9 2011, together with other Laws, and that decided to divide  
the

10 caseload within the Supreme Court and assign them to the  
Main

11 Justices and to the alternate justices.

12 So, here, we have two collegiate bodies in charge  
of

13 the caseload, and I can again support my opinion that  
decisions

14 were made to solve that situation.

15 MR. MERIZALDE: Mr. President, we have no further

16 questions.

17 Thank you very much.

18 PRESIDENT JÚDICE: Mr. Blackaby, please, you have  
the

19 floor.

20 CROSS-EXAMINATION

21 BY MR. BLACKABY:

22 Q. Good afternoon, Mr. Quispe.

23 A. Good afternoon.

24 Q. We are going to distribute a binder with documents  
25 that could be useful for your cross-examination; and, in the



18:14 1 meantime, I think that we can start with some rules so that  
you

2 know how this is going to work. If you do not understand a  
3 question, please let me know so that I can repeat it, and  
4 please give clear answers and go beyond nodding or just  
moving  
5 your head because this is not going to be recorded.

6 A. Okay.

7 Q. I have a preliminary question, Mr. Quispe: Do you  
8 consider yourself an expert or a fact witness?

9 A. Could you please explain the difference?

10 Q. A fact witness is someone who has lived through the  
11 facts that are the object of the case, so I'd like to know  
12 whether you have lived the facts of the case in a personal  
and  
13 direct way.

14 A. In my First Statement--

15 Q. I have not referred to your statements. I am just  
16 referring to your role here.

17 So, once again my question: Do you think that  
you're

18 a fact witness based on this?

19 A. I'm not because I did not learn of the facts that I  
am

20 referring to in these statements, but I think that I should

21 state the following: When the lawyers of Bolivia asked me  
to  
22 introduce a statement, I reviewed the data, and that's the  
23 reason why I am referring to the First Statement.  
24 I said that I learned of these facts based on the  
25 review, my own review of the documents, and because of my  
role

18:16 1 with the Ministry of Hydrocarbons. I am doing what the  
2 Superintendency of SIRESE used to do, and many of the  
questions

3 here or the issues here at stake--many of the issues at  
stake

4 here were part of the responsibilities of the  
Superintendency

5 of SIRESE. So, I did not sign any of the appeals or  
6 the--appeal for reconsideration, and I have taken the role  
of  
7 the people who used to do that.

8 Q. So, you were told about certain facts that are  
9 relevant to this case, otherwise you would not be here. And  
10 with that information you issued an opinion on some remedies  
11 within the Bolivian system?

12 PRESIDENT JÚDICE: Please just allow time so that  
13 there is no confusion and no overlap of voices.

14 BY MR. BLACKABY:

15 Q. Was that your role?

16 A. Yes, it was. I reviewed all of the administrative  
17 proceedings.

18 Q. And this would be more of an expert; right?  
Someone

19 who receives information about the facts and who expresses  
his

20 or her opinion about the facts. That's what you did; right?

21           A.    Personally, I had asked you for the difference  
between  
22   a witness and an expert.  Personally, I do not know much  
about  
23   this, and this is what I was asked to do, and I was asked to  
24   come here to provide information in connection with that.  
25   That's what I wanted to tell you.

18:18 1 Q. So, are you aware that experts who offered  
technical  
2 information are independent of the Parties? Are you aware  
of  
3 that?  
4 A. Yes.  
5 Q. Do you consider yourself independent from the  
6 Government of Bolivia?  
7 A. I work for a Ministry.  
8 Q. Do you consider yourself independent?  
9 A. No, I'm not independent.  
10 Q. So, you're a lawyer.  
11 A. Yes.  
12 Q. When did you graduate?  
13 A. 2003.  
14 Q. And based on my reading of your résumé, after 2004  
you  
15 worked with D&A Consultores; correct?  
16 A. Yes, correct.  
17 Q. Would it be fair to say that you were a junior  
lawyer  
18 on commercial, criminal, labor issues?  
19 A. Yes.  
20 Q. And did you work on any claim that had any  
21 relationship with the Electricity Law?

22       A.    No, I did not.

23       Q.    Then based on your résumé, I understand that you  
24 worked on three cases and a case related to criminal law and  
25 that had nothing to do with electricity; correct?

18:19 1 A. Correct.

2 Q. And then up to August 2005, you worked with an NGO  
on  
3 issues that had to do with youth and the rights of  
indigenous  
4 populations; correct?

5 A. Yes.

6 Q. And later on you started to work for the Government  
in  
7 September 2005?

8 A. Yes, correct.

9 Q. And your first job was with the Ministry of justice  
up  
10 to February 2006; correct?

11 A. Yes.

12 Q. And that included work with electricity for the  
13 Electricity Law?

14 A. No, it did not.

15 Q. And then you changed your role within the  
Government  
16 and you started to work as a lawyer for the municipality of  
La  
17 Paz up to March 2008.

18 A. Yes.

19 Q. And I understand that you worked on cases related  
to  
20 the municipality.

21       A.    Well, that was mainly administrative law.

22       Q.    Did that include anything that had to do with  
23 electricity or the Electricity Law?

24       A.    No, it did not.

25       Q.    And then you started to work with the Bolivian



18:20 1 Administrator of Highways in 2008; correct?

2 A. Yes.

3 Q. And then you worked on the administration of  
contracts

4 for highways; correct?

5 A. Yes.

6 Q. And bidding?

7 A. Yes.

8 Q. The bidding process for Public Works, and that does  
9 not include anything connected to the Electricity Law;  
correct?

10 A. Well, I was the Legal Adviser to the highway agency,  
11 and I was mainly in charge of contracts, and eventually  
there  
12 could have been review of a dispute between--with one of the  
13 electricity operators, Electro Plata distributor. So I got  
to  
14 see--that was my very first experience, but it was not key  
in  
15 my work.

16 Q. You did not mention that?

17 A. I didn't mention that because it was only just one  
of  
18 out of many cases that I had seen with the authority.

19 Q. And you were there for a year; correct?

20 A. Yes.

21 Q. And then you moved to the Ministry of Production  
and  
22 Rural Development, and there you worked as a director of  
legal  
23 issues up to May 2009.

24 A. Yes.

25 Q. So, you were General Director for only one month?

18:22 1 A. Yes, I was.

2 Q. And did you include any cases connected to the  
3 Electricity Law?

4 A. No, I did not.

5 Q. And finally, you got to the Ministry of  
Hydrocarbons

6 and Energy in 2009; correct? October 2009.

7 A. No, it was August 2009, and in October I was the  
8 Director. I became the Director.

9 Q. Would it be fair to say that the first time that  
you

10 had a significant professional experience in connection with  
11 the Electricity Sector was upon arriving to the Ministry of  
12 Hydrocarbons and Energy?

13 A. Yes, that would be correct to say.

14 Q. And as part of that role, you are responsible  
15 representing the Government in challenges, administrative  
16 challenges, initiated by agencies against the Ministry of  
17 Hydrocarbons and Energy, and this might be just a repetition,  
18 but just to clarify as a lawyer who represents the  
Government

19 of Bolivia in this type of cases, you do not consider  
yourself

20 an expert, an independent expert, because you conveyed the  
21 vision of the Government?

22  
responded

MR. MERIZALDE: Objection. He had already

23 to that question.

24 PRESIDENT JÚDICE: Yes, he's wasting his time, but

25 this is not something very serious at this point.

18:23 1 BY MR. BLACKABY:

2 Q. Have you ever taught administrative law or  
procedural  
3 law?

4 A. I have taught courses on private international law  
and  
5 some talks on administrative law.

6 Q. But they're not part of your résumé?

7 A. No, they're not.

8 Q. And with the modification of the Capacity Payments  
9 based on Resolution 40/2007, you were not working with the  
10 Ministry of Hydrocarbons; correct?

11 A. No, I wasn't.

12 Q. And you were not working with the challenges that  
had  
13 been presented against the Superintendency whenever they  
were  
14 rejected by SIRESE?

15 A. I started to work in 2009, so whatever was prior to  
16 that date is not something that I did.

17 Q. So, you're not aware of the administrative  
authorities  
18 claims; right?

19 A. No.

20 Q. So, let me go back to Paragraph 26 of your First  
21 Statement. Paragraph 26.

work, 22                    There you say that within the framework of your  
23 you're aware of the regulation of the estimation system to  
24 determine the compensation based on capacity. And as I  
explain  
25 later on, there are currently--there are two pending cases  
that

18:25 1 are of an administrative nature before the Supreme Court of  
2 Justice; is this correct?

3 A. Yes.

4 Q. And are you referring to the decisions that have to  
do  
5 to the challenge presented by Guaracachi?

6 A. I have analyzed the administrative remedies that  
have  
7 been presented in this case.

8 Q. And is it because in your new role you're  
representing

9 the Government; therefore, you had to get to know the  
pending

10 cases, the pending cases before the Supreme Court of Justice?

11 A. Yes, that is correct.

12 Q. So, you had to study in detail all of those pending  
13 cases?

14 A. Well, I studied the documentation that was part of  
the  
15 Administrative File.

16 Q. And you did the same for all of the cases?

17 A. Well, the cases that are here. If I have a claim,  
I

18 need to review of all of the cases, all of the  
administrative

19 performances--acts in connection with the case.

20 Q. So, when you got to the Ministry in October 2009,

21 those cases had been with the Supreme Court for over a year.  
22 So, what was the decision or what explained your decision to  
23 review these two measures, these two actions, or is it that  
you  
24 study all of the challenges with the Supreme Court? Is that  
25 part of your professional responsibilities, or you were  
asked



18:27 1 to study these two specific challenges?

2 A. Well, these are two different cases. I do not  
review

3 all of the pending proceedings because all of the actions  
are

4 steps that have taken place, and there is not much to do.

5 So, as a representative of the Ministry, I need to  
6 just be informed of these processes, and the Resolution 40,  
7 040, and the actions in connection with this Resolution were  
8 part of the request to study in depth, and this is the  
request

9 I received from the Office of the Attorney General.

10 Q. So, can we say at the end of paragraph--can we look  
at

11 the end of Paragraph 26. You're saying that the Supreme  
Court

12 of Justice currently has two administrative claims, and I  
was

13 forced to analyze in detail, and these cases are pending.

14 Would it be fair to say that, since I was requested  
by

15 the Government of Bolivia, you're not studying them because

16 they are pending with the Supreme Court. You're studying  
them

17 because you were asked to do so?

18 A. Well, in the first paragraph, in the first part I  
say

19 that the lawyers have asked me to provide my statement.

20 Q. Well, I continue with Paragraph 26, and Paragraph  
21 says, currently, there are two administrative cases pending  
22 before the Supreme Court of Justice in connection with  
23 electricity regulation, and this has led me to study this in  
24 detail.

25 So, what I'm saying is that you studied the subject

18:29 1 matter because they were pending before the Supreme Court of  
2 Justice, but that is not the case.

3 A. Well, that was not the only reason, yes, agreed,  
but  
4 that is what I say at Paragraph 7. I am saying that what I  
was  
5 asked to analyze is what I actually studied.

6 Q. We could probably restate your statement and say  
that  
7 claims against the modification to this regulation in 2007  
8 which has led me to analyze the subject matter because of  
this  
9 arbitration.

10 A. Yes, I see no objection.

11 Q. Just to be clear, then, your employer, the  
Government  
12 of Bolivia, asked you to use your talent as a government  
lawyer  
13 to find arguments in support of the case in this arbitration;  
14 correct?

15 A. I don't agree with your statement, sir. The  
16 government for the State of Bolivia and the Attorney  
General's  
17 Office, I don't know if it was because of my talent because  
of  
18 the functions I discharge with the Ministry, and because I  
am  
19 responsible for the actions before the Administrative Courts,

20 and because I know how administrative appeals for the  
21 electricity sector are brought. That's why they asked me to  
22 appear here. I don't know if that's the reason why the  
lawyers  
23 or the Attorney General's Office asked me to conduct the  
study,  
24 but you would have to ask them.

25 Q. Do you see any difference because it was you who

18:31 1 prepared the--you see the difference whether it was you who  
2 prepared the statements or the Attorney General's Office or  
3 someone else because they also know about these facts? They  
4 were also specialists in administrative law. Why you?

5 A. I don't understand your question. I don't  
understand  
6 it.

7 Q. Well, I'm trying to understand why are you a  
witness  
8 and why you're not a lawyer sitting just across from me.

9 What is the difference of having the testimony of a  
10 government attorney submitted as a statement just like a  
11 colleague of mine that can submit a statement saying I'm an  
12 expert in such-and-such an area. I don't know if you see  
the  
13 difference?

14 A. Sir, the question, I think, is addressed to the  
15 lawyers of the State. Why have they chosen a statement over  
16 another statement?

17 Q. It's not your fault. I was just trying to  
understand  
18 what role you were playing.

19 MR. SILVA ROMERO: It's not a question, Mr.  
President,

20 it's just a comment. It's important for every single one of  
21 us. Mr. Quispe says that he does not consider himself an

22 independent expert for the State because he works for the  
23 State. So, if we pursue this line of questioning, we are  
24 wasting time. We don't have a lot of time. And I just  
wanted  
25 to say that because then I don't want them to say later on

18:32 1 that--

is  
in  
2 PRESIDENT JÚDICE: No, no, I don't think anything  
3 being said. I think each of the Parties can use their time  
4 whatever way they see fit.

5 MR. BLACKABY: So, I would be grateful--

6 BY MR. BLACKABY:

7 Q. Anyway, I'm going to talk about another issue.

to  
8 In your statements you talked about the challenges  
9 the system in Bolivia and how it works?

10 A. Yes, that's correct.

11 Q. For example, in Paragraph 17, you explain how the  
12 first challenges were conducted before specialized bodies of  
13 the administration; correct?

14 A. Yes.

before  
15 Q. And that is known as the administrative claims  
16 the authorities?

17 A. Yes.

18 Q. You need to say yes verbally for the  
19 transcriptionists.

20 If the injured party is not satisfied, there is an  
21 appeal before the courts, and here you say that these are

22 specialized administrative justices--judges; correct?

23 A. Yes.

24 Q. And this is the Supreme Court?

25 A. Yes, correct.



18:33 1 Q. And if I understand correctly, the Supreme Court is  
2 the first judicial instance or the first and only judicial  
3 instance in these matters?

start 4 A. Yes. It's the highest. It's the highest if you  
5 counting from up above.

the 6 Q. Well, if we want from the administrative claims to  
7 judicial claims, I have to go through these reports; right?

8 A. Well, the administrative proceedings and the civil  
9 procedural legislation says that one has to exhaust  
10 administrative remedies to be able to resort to the judicial  
11 remedies.

12 Q. Yes. We agree. Assuming that we had exhausted  
13 administrative remedies, the only judicial instance and the  
14 first initial instance is the Supreme Court.

15 A. Yes, that is correct.

16 Q. It is a single instance proceedings.

17 A. Yes, proceeding, yes.

you 18 Q. I wanted to clarify that. And Paragraphs 29 to 34  
19 explain specifically how Guaracachi S.A. followed that  
20 procedure?

21 A. Yes, that's correct.

I

22 Q. If I look at Paragraphs 29 to 34 of your Statement,  
23 looked at your explanation, and I compared your explanation,  
24 which was theoretical with a more specific explanation. I  
25 think that Guaracachi--you described specifically how it  
works;

18:35 1 is that correct?

2 A. No, that's not correct.

3 In my statement, in Paragraphs 29 to 34, I  
explained

4 general speaking what the appeal system was.

5 Now, governments of the Bolivian State provided me  
6 with the statements of other witnesses when I was preparing  
my

7 Witness Statement where reference was made to this procedure  
to  
8 challenge.

9 The procedure to challenge was much, much more  
complex

10 than this. Here, mention is made of the most important  
11 decisions that led to the resolution of this case.

12 Now, if, in my statement, if in my statement I had  
had  
13 to explain the whole proceedings, it would have been very  
14 confusing because it is really, really complex.

15 MR. MERIZALDE: I'm sorry to interrupt, Mr. Nigel.  
16 You asked the witness a moment ago whether he followed word  
by  
17 word the proceedings that he's stated. Can you let him  
finish.

18 PRESIDENT JÚDICE: Yes--I'm sorry, I would ask for  
the  
19 Parties not to interrupt either Party.

20 BY MR. BLACKABY:

21 Q. Yes, I am following your statement because this is  
the

22 only thing that I have at my disposal to know what your  
opinion

23 is.

24 I don't know why you didn't go deeper into detail,  
25 just two pages. Would it be worthwhile to enter into  
details

18:37 1 here?

2 A. Yes, I can explain this.

3 These remedies--well, let's see. The company  
brought

4 two claims in connection with this matter. I would have to

5 draw a chart--and I can't do this from memory--there are

6 Decrees and resolutions that were issued by the  
Superintendency

7 that have made the processing of these proceedings very,  
very

8 complicated. This was not the essence of the controversy,  
so I

9 had to make observations to the statements, and my comments  
are

10 summarized in these paragraphs, at least the most important

11 ones.

12 Q. In Paragraph 19 you say that the first instance has  
to

13 do with the Appeal for Revocation.

14 A. Yes, that's correct.

15 Q. Guaracachi brought an Appeal for Revocation?

16 A. Yes, against Resolution 40/2007, yes.

17 Q. In Paragraph 20 you say that if a decision is  
18 disfavorable for the appellant, he can bring an appeal  
before a

19 higher administrative authority; and, as a consequence, this

20 appeal to a higher authority was actually brought; right?

21 A. Yes.

22 Q. And at the end of this paragraph it says, if the  
23 appeal by the appellant is rejected, then we can resort to  
the  
24 courts because the administrative proceedings are exhausted?

25 A. Yes, that's correct.

18:38 1 Q. And this was rejected for Guaracachi; yes?

2 A. Yes.

3 Q. So, the administrative claims were exhausted and  
then

4 we can go to the courts; right?

5 A. Yes.

6 Q. So, according to your description of the facts here,  
7 Guaracachi followed what you indicated in Paragraph 19 and  
20?

8 A. Yes. If you go to Paragraphs 32 and 34, I describe  
9 the different appeals that were brought by Guaracachi  
against

10 Resolution 40/2007, 20/2007, but there is also another one  
11 that's numbered 18 and other numbers, but the most important  
12 one is Number 40.

13 Q. In your statement, you do not criticize Guaracachi  
14 because of the way it sought to challenge the decisions by  
the  
15 Superintendency.

16 A. What I do is I explain how the proceedings were  
done  
17 and how the administrative appeals were done by Guaracachi.

18 Q. You did not--you did not criticize, I said.

19 A. So, the answer is no, I did not criticize.

20 Q. In your First Statement, you mentioned other  
remedies

that 21 that were at the disposal of Guaracachi or a different way  
22 it could have taken in connection with the Measures related  
to 23 Capacity Payments.

24 A. Are we talking about the basic Capacity Price?

25 Q. Yes, correct, in this statement.



18:40 1 A. No. The proceedings that are adequate to put in  
2 question an administrative act is the administrative  
3 proceeding, and this is what I stated in my statement.

4 Q. And Guaracachi followed administrative proceedings?

5 A. Yes, it did.

6 Q. In your Second Statement you mentioned for the  
first  
7 time the possibility of asking for a stay of the resolutions  
8 related to Capacity Payments under Article 59 of the  
9 administrative proceedings law; correct?

10 A. Yes.

11 Q. This is Paragraph 5 of your Second Statement?

12 A. Yes, that is correct.

13 Q. In your second testimony you also mentioned for the  
14 first time the possibility of asking for a stay of the  
15 resolutions related to Capacity Payments under Articles 167  
and  
16 169 of the Code of Civil Procedure. This is Paragraph 6.

17 A. Yes, that's correct. I'm following what you're  
18 saying.

19 Q. Was there any reason why you mentioned Article 59  
of  
20 the law of administrative proceedings or Articles 167 and  
169  
21 of the Code of Civil Procedure in your Second Statement and  
you

22 didn't mention this in your First Statement?

23 A. Actually, Paragraph 3 of my second--or rather,

24 Paragraph 4 of my Second Statement says, I find  
contradictory

25 the statement of the Claimants in connection with the  
critical

18:42 1 importance of this for their operations. I had read one of  
the  
2 documents submitted by the Claimants, and reference was made  
3 there to a critical situation in connection with the  
4 operations.

5 In my First Statement, I talk about--I talked about  
6 the appeals that Guaracachi had at its disposal to challenge  
an  
7 administrative decision.

8 In my Second Statement, I made reference to the  
9 options that the person under the jurisdiction of the State  
had  
10 in order to stay proceedings. This is different from  
bringing  
11 an appeal.

12 In my Second Statement, I make a reference to the  
13 possibility that the person under the jurisdiction of the  
State  
14 has to bring an appeal for reconsideration or an appeal to a  
15 higher administrative authority. Well, if the situation was  
so  
16 complicated, if the company was in such danger, I saw there  
the  
17 possibility for the appellant to have other options, to have  
18 other possibilities to request a stay of proceedings, and  
19 oftentimes this stay is granted; in many cases, yes, it's  
20 granted.

21 Q. We're going to go back to that issue. So, in your  
22 First Statement you didn't really realize that those  
positions  
23 that were being examined by international tribunals were  
24 important for the appellant, and they were critically  
25 important?

18:44 1 A. I did not say they were not important or that I  
failed

2 to see that they were important. What I said in my First  
3 Statement is that I was describing the administrative  
4 proceedings that has to be followed in order to challenge an  
5 administrative act.

6 Q. Didn't the lawyers for Bolivia perhaps extend the  
7 reference to administrative remedies in your second  
testimony?

8 A. Yes, probably yes.

9 Q. In your Second Statement, you cited a portion of  
10 Article 59 of the Law of Administrative Procedure, Paragraph  
5.

11 Do you see that?

12 A. Yes.

13 Q. You had cited no case law in your Second Statement  
in  
14 support of your opinion in the sense that this appeal or the  
15 appeal that you mentioned in Paragraph 6--that is to say  
16 Articles 167 and 169 of the Code of Civil Procedure--are  
viable  
17 options for Guaracachi.

18 Why did you decide not to annex case law to support  
19 your opinion?

20 A. Well, perhaps I didn't consider it necessary or  
21 because perhaps the regulations don't require so. In

22 Paragraph 5, when I make reference to Article 59(2), I have  
23 annexed no example of an action that stays execution or  
24 performance, so perhaps it was not necessary to add those  
25 documents.

18:45 1 Q. But you did this in your Second Statement. Why  
didn't  
2 you do it before? Why did you think it was important for  
the  
3 Third Statement, not for the Second Statement?

4 A. Because, if I remember correctly, it was in the  
Reply  
5 Memorial that the Claimant put this aspect into question.  
This  
6 was a disputed issue, so we could find protection in Article  
59  
7 of the Administrative Procedure Code, and so I had to  
support  
8 my position with a Supreme Decision that showed the contrary  
to  
9 say that this was possible.

10 Q. Now, as a Bolivian lawyer, when you were consulted  
11 about different issues, did you think it was important,  
12 especially in this context, where you are an international  
13 lawyer to support your assertions with case law or with  
opinion  
14 of legal scholars or with some objective element, especially  
15 because you are not an independent witness? It would have  
been  
16 good for the Tribunal and for us to have received some kind  
of  
17 case law.

18 A. Well, possibly, yes, it may have been useful, but  
this

19 has to do with whether this is a disputed fact or not. I  
don't  
20 think we have to prove the law, so you can prove facts but  
you  
21 can allege the law, so I didn't think it was necessary,  
22 this--since it was a disputed position, later on I thought  
it  
23 was necessary to support my position.

24 Q. You said that, in your experience, in certain cases  
25 the stay of the proceedings had been awarded, and in other



18:47 1 cases no. So, this is not something very clear in Bolivian  
law

2 because it happened in some cases and doesn't happen in  
other  
3 cases.

4 If you knew this, why do you consider that the  
5 regulations were so clear that it wasn't necessary to  
provide  
6 case law?

7 A. Because the regulations allow me to do so.

8 Q. Yes, the regulations allow--the regulations allow  
it  
9 to happen but the courts rejected it.

10 Don't you think that this is not very transparent,  
the  
11 fact that you didn't contribute to this arbitration the case  
12 law that shows the real interpretation of that provision by  
13 Bolivian courts?

14 A. What I said in my Second Statement is that the  
15 possibility exists to request the stay of the proceeding.

So,

16 I said this possibility existed, and I showed a specific  
case  
17 where this was accepted.

18 Q. Very well. We are going to talk about this. This  
is

19 Annex 3 to your Third Witness Statement; correct?

20 A. Yes.

21 Q. And you know that this case law was also submitted  
by

22 Bolivia in its Rejoinder as RL-143?

23 A. I don't know about that, no.

24 Q. You provided the relevant cases in connection with  
25 this issue to the lawyers of Bolivia?

18:49 1 A. I gave them the one that I had included in my  
2 statement.

3 Q. And any other cases on this issue?

4 A. Yes, I think the numbers--I gave them the numbers  
of  
5 cases that I had studied. Yes, I think I did.

6 Q. So, is it possible that the lawyers from Bolivia  
have  
7 received from you case law that you have not annexed to your  
8 statement?

9 A. Yes. Amongst other documents, probably, yes.

10 Q. And the cases that you communicated to Bolivia but  
you  
11 did not annex to your statement, are these cases in favor of  
12 staying the proceedings or against the stay of the  
proceedings?

13 A. Both.

14 Q. Both?

15 A. Yes. There were some that allowed for it and--  
allowed  
16 it, and some of them rejected it.

17 Q. Didn't you think it was important in your opinion  
to  
18 indicate that this case law existed but there was also case  
law  
19 in the negative?

20 A. Yes, I could have done this, but in my Second

21 Statement I talked about the possibility of requesting the  
stay  
22 of proceedings within an administrative court proceeding.

23 Q. From what I understand--and let's see if you agree  
24 with me--you conducted some research, and you found a number  
of  
25 cases. You provided those cases to the lawyers for Bolivia;

18:50 1 and, out of those cases, you only used one to support your  
2 theory that it was possible to request the stay; is that  
3 correct?

4 A. Yes, that's correct.

5 Q. If you go to your Third Statement, Paragraph 21,  
you

6 say--you said that this stay could be requested under the  
Code

7 of Civil Procedure or under Article 59 of the Administrative  
8 Proceedings Law. And then in Paragraph 22 you introduce the  
9 only case that we have discussed, the only case law that you  
10 have included here.

11 According to you, the Court awarded the stay by the  
12 application of norms from the Code of Civil Procedure and  
the

13 Code of Administrative Procedure.

14 A. Yes.

15 Q. But the decision that you have annexed makes no  
16 reference to Article 59 of the Law of Administrative  
17 Proceedings.

18 A. I would have to look at it.

19 Q. Yes, let's look at it.

20 A. It's behind Tab 3. I think I have it here.

21 We're talking about the Supreme Decision 112/2008.

22 Q. Yes, that's right.

the 23 In your statement, you talked about Article 59 of  
24 Law of Administrative Procedure, and I would like for you to  
25 tell me where a reference is made to that Article.

18:52 1 A. Well, not in this case. Reference is made here to  
2 Article 54 of that law.

3 Q. Do you mention Article 54 in your--in any of your  
4 three statements?

5 A. No, I don't.

6 Q. In your Second Statement, you made reference to the  
7 possibility of using Articles 167 and 169 of the Code of  
Civil  
8 Procedure; right?

9 A. Yes, that's correct.

10 Q. And you also used that case law.

11 In those cases, is mention made to Articles 167 and  
12 169 of the Code of Civil Procedure?

13 A. No.

14 Q. No, I don't either.

15 So, this decision does not prove that Guaracachi  
could  
16 have brought an appeal under 59 of the Law on Administrative  
17 Procedure or under Articles 167 and 169 of the Code of Civil  
18 Procedure. So, this case does not help you in that purpose.

19 A. No. In connection with the application of those  
two  
20 regulations, no, but what it does prove is that the Supreme  
21 Court did award the stay.

22 Q. Would you agree with me, Mr. Quispe, that there is

23 constant case law from the Supreme Court of Bolivia that  
24 consistently maintains that administrative acts are presumed  
25 legitimate and that the effects of these acts are not stayed



18:54 1 because of the submission of appeals for stay?

2 A. No, I don't agree with that.

3 If you allow me, the statement that you have made I  
4 have read in some Supreme Decisions in the preliminary  
process.

5 It's just a reflection of what the Law on Administrative  
6 Procedure states. But this is not something that is uniform,  
7 so I have not found many decisions. I haven't really done a  
8 lot of research. Sometimes the stay has been accepted.

9 Q. You said you have not found many cases. More than  
10 one?

11 A. More than one of what?

12 Q. In cases where the stay is awarded.

13 A. I have only found one.

14 Q. Well, you said before, in many cases--at the  
beginning

15 of your testimony, in many cases, a stay had been granted,  
and

16 then you said in some other cases the stay was granted. Are  
17 you changing your testimony?

18 A. I said "many cases" when I was talking about cases  
19 that were brought as administrative proceedings.

20 Q. Yes, but I'm talking about the courts now. The  
only

21 example that you found where an administrative act was  
stayed

22 was the case that you annexed to your statement.

up

23 A. Yes, that I have found, yes, because I don't follow

24 every single Supreme Decision that the Supreme Court issues

25 every single day.

18:56 1 Q. Yes, but you're here to try to explain to us how  
this

2 works. This is the purpose of your statement before this  
3 Tribunal.

4 A. Yes, yes, of course.

5 Q. I'm going to ask you to please look at CL-187  
that's

6 behind Tab 5. This was one of the cases that you submitted  
to

7 Respondent's counsel. Do you remember that before you said

8 that there was a research that you made, and you  
communicated

9 this to Respondent's counsel. Was this one of those  
decisions

10 that you submitted to Respondent's counsel?

11 A. Yes, it's possible. I don't remember exactly, but  
I

12 think so.

13 Q. Okay, yes, very well.

14 This document was annexed by the State of Bolivia  
as

15 one of the three cases that they included as RL-142, and  
this

16 was annexed to their Rejoinder.

17 MR. MERIZALDE: Yes, it was also submitted by you  
as

18 the new exhibits.

19 MR. BLACKABY: Yes, that's correct.

20 BY MR. BLACKABY:

21 Q. You were annexed--you said that you were annexed  
22 first, but there were three different cases, and we didn't  
23 really realize.

24 But, didn't you consider that it was important to  
25 Annex this case to your Statement so we could have a general

18:58 1 view of--on the matter of stay?

2 A. Yes, I said this before.

3 In my Second Statement, I had talked about the  
4 possibility of requesting the stay and for the--for the stay  
to  
5 be granted. And then I showed a case where the stay was  
6 awarded.

7 Q. So, you didn't include this because this was  
negative  
8 for the purpose of your Statement?

9 A. Yes, this did not support my Second Statement.

10 Q. This is a decision by the Supreme Court in  
connection  
11 with a request for stay of the effects of an administrative  
act  
12 that was adopted by SIRESE; is that correct?

13 A. Yes, correct.

14 Q. Now, in the case of Guaracachi's challenges, this  
was  
15 also an appeal that involved SIRESE; right?

16 A. Yes.

17 Q. Could you please read the third whereas clauses,  
the  
18 third whereas clause that says "that the administrative  
act."

19 A. That the administrative act has a number of natures:

a

20 Legitimacy that makes it valid if it's not declared null by  
21 competent authority; second, its performance that has an  
22 obligatory force since its notification; and, therefore,  
23 administrative resolutions cannot be challenged by a  
24 contentious action. This has been stated by Supreme Decree  
25 038/2004.

18:59 1 Q. So, here they rejected the request for stay;  
correct?

2 A. Correct.

3 Q. Would it be correct to say that Claimant wanted  
find

4 protection under Article 167 of the Code of Civil Procedure;  
is

5 this correct?

6 A. Yes.

7 Q. And under Article 59 of the Law on Administrative  
8 Procedure; correct?

9 A. Yes, correct.

10 Q. These were the two articles that you made reference  
to

11 in your Second Statement.

12 A. Yes.

13 Q. What was the conclusion of the Court?

14 It was the Claimant company could find protection  
15 under two of those articles?

16 A. What the Court said that the bringing of the claims  
17 does not suspend, per se, the administrative act.

18 Let me clarify, sir, if you allow me. Each case is  
a

19 specific case. I understand that the Supreme Court has to

20 assess the circumstances of each case to either grant the  
stay

21 or to reject the stay. So, I understand that the Supreme  
Court

22 has issued not only this decision but other decisions to  
which

23 we made reference. Sometimes the stay was granted,  
sometimes

24 it was not granted.

25                   When I talk about--when I talk about 167 and 59(2),



19:01 1 well, I don't say the Administrative Court always grants the  
2 stay.

3 Q. But this is a request for Precautionary Measure?

4 A. Yes, but this doesn't mean that because we bring a  
5 case to the Court that we are going to suspend  
administrative  
6 action.

7 But Line 3 says the effects of the administrative  
8 resolutions challenged cannot be stayed by the bringing of  
the  
9 Court action, and this is what the Supreme Decision said.

10 This is not saying--and I don't know of any other  
11 Supreme Decision that says this--Article 167 and 169--well,  
12 that the Supreme Court can never stay an administrative act.

13 Q. Yes, but it also says that the Claimant, the  
company,  
14 cannot find protection under Articles 167 of the Code of  
Civil  
15 Procedural or Article 59 of the Law of Administrative  
16 Procedure; correct?

17 A. Yes, correct.

18 Q. Before we move on to the next item, you're saying  
that  
19 each case is different, so the Supreme Court has to analyze  
it  
20 again.

21 A. They have to assess the case.

22 Q. Would it be correct to say that, in this decision,  
the

23 Supreme Court is supporting their decision on their case law?

24 If we look at the last sentence of the paragraph that we  
read

25 together, that reads as understood by the Supreme Court in  
the

19:03 1 Supreme Decision Number 038 issued on April 2nd?

the 2 A. Yes, but they're saying that the presentation of  
3 claim does not stay the Act.

4 Q. Now, let's--next case, next case law, that would be  
5 Number 6. This is another decision by the Supreme Court;  
6 correct?

7 A. Yes.

8 Q. And here there is a request for a stay on the  
9 performance of an administrative act, so here it says that  
the

10 full body of the Court and the request of a stay, so this is  
11 not a request, this--of an automatic stay. This is just the  
12 request, and this also involves SIRESE; correct?

13 A. Yes.

14 Q. And the reasoning that we see in this third whereas  
15 clause is identical to the reasoning in the case that we  
just

16 saw.

17 So, here it says that the administrative act has  
18 several characteristics such as the legitimacy, and this is  
19 identical to the other case. And I was also reading the  
other  
20 case; it is important to compare, and the language identical.

21 A. Once again, the same paragraph that you're reading

22 also indicates that effect of the administrative resolutions  
23 that were challenged cannot be suspended even given the  
24 administrative claim.

25                   So, once again, they add that comment to the  
decision

19:05 1 by the Supreme Court.

2 Q. This is a request for a stay. This is a specific  
3 request for a stay. And after that reasoning, the Tribunal  
4 says that, Therefore, as a consequence of that reasoning--  
was  
5 the Court sitting en banc? The Court sitting en banc the  
6 request of State given the challenges.

7 So, the Supreme Court also considers that the  
8 reasoning is applied to a request for stay, that is  
expressed  
9 in specific.

10 A. The reasoning used in this case is the fact that it  
is  
11 an action that can be performed. It is assumed to be  
12 legitimate, and the stay is rejected.

13 Q. And if we go back to the previous paragraph, the  
14 Supreme Court also considers that they're following the  
settled  
15 case law of the Court sitting en banc.

16 A. Yes.

17 Q. And they mention another three cases under the same  
18 guidelines--two cases.

19 A. Yes, you're right, two cases.

20 Q. Let's quickly move on to the next case, CL-189.  
This

21 is another decision by the Supreme Court, request of stay.  
So

22 this is a request of stay of the effects of an  
administrative

23 resolution that was issued by the Superintendency of

24 Hydrocarbons.

25 A. Correct.

19:06 1 Q. So, in this case, the stay request was also  
rejected?

2 A. Yes.

3 Q. And the Supreme Court also resorted to the same  
4 settled case law in connection with the possibility of  
5 suspending or staying the administrative act.

6 A. Yes, I can read it, but it is very similar.

7 But this is what I'm telling you. The Supreme  
Court  
8 may assess several cases, study several cases, and in the  
cases  
9 they decide that stay does not--is not right, and they can  
also  
10 get fine protection under the other case law. But it  
doesn't  
11 mean that the stay is not granted in any case. I understand  
12 that they may have done it once, and the stay may be granted.

13 Q. But every time we collect various decisions, we  
also  
14 see a decision to the contrary that is unfounded. And this  
was  
15 also rejected based on Article 59 of the law--that is to say,  
16 support was rejected in Article 59 of the administrative law.

17 PRESIDENT JÚDICE: Dr. Blackaby, how much longer do  
18 you need?

19 MR. BLACKABY: May I finish in the next 10 minutes?  
20 10 minutes, David?

21 BY MR. BLACKABY:

22 Q. We're going to continue with this analysis. We're  
23 going to devote another 10 minutes on analyzing the case law,  
24 and now we have devoted a long time to technical issue, but  
25 it's easier to get enthusiastic about these legal issues for

now



19:08 1 the lawyers.

2           Could you look at Tab 9. CL-191. I would like to  
3 know if you could review it quickly and confirm if that was  
one  
4 of the decisions that you provided to the representatives of  
5 Bolivia, but you did not annex to your own Statement.

6           A. I do not remember the numbers of the resolutions  
that  
7 I gave them; I may have given them three. This might be one  
of  
8 them.

9           Q. Yes. You said that you provided three, and this  
was  
10 one of them because this was annexed by Bolivia as part of  
11 this.

12           And there the Supreme Court also rejects a request  
for  
13 a Precautionary Measure; correct?

14           A. Yes.

15           Q. Of the effects of the Administrative Act as adopted  
by  
16 the Ministry of Labor; correct?

17           A. Yes.

18           Q. And if you can look at this sentence where--right  
19 before the conclusion where it says por (lo) tanto,  
therefore,

20 the--wherefore, it says the Court sitting en banc of the  
nation

21 rejected the request of the--to stay the effects of the  
22 Resolutions challenged with this Precautionary Measure.

23 A. So, my reading is different.

24 In the case of Article 120 or Article 59 of the  
25 procedural law, here it says that it does not encompass the

19:10 1 jurisdictional body.

2 Q. And you thought that that was a decision that was  
3 important enough to convey to the lawyers of the other Party  
4 but not to attach that to the other--to your Statement  
because  
5 you considered that this was negative; right?

6 A. I already told you several times, but this is it  
not  
7 connected to this case. All of the cases, in my Statement I  
8 said that it can be done. That's the reason why I have  
9 attached the decision of one case that showed a stay, and it  
10 has a very important consequence for the represented Party.  
11 So, the possibility of not to present a request for stay may  
12 have--does have an important impact on the case that I  
13 represent.

14 Q. Now, let's move on to Annex 2 to your statement.  
Your  
15 statement.

16 A. Yes.

17 Q. That is at Tab Number 2.

18 A. Tab 2.

19 Q. I understand that all of the cases in connection  
with  
20 hydrocarbons and electricity that have not been decided are  
21 part of the pending cases that are under your responsibility  
as

22 representative of the Government; correct?

23 A. Yes.

24 Q. So, I imagine you have a lot of work?

25 A. Well, that is part of my work.

19:11 1 Q. Part of your work?

2 A. Yes.

3 Q. So, I was complaining about my 15 or 20 cases, but  
you  
4 have much more.

5 So, I counted 167 pending cases in the electricity  
6 sector. I was not quite certain about the meaning of some  
7 things, for example, when it talked about the prescription  
of  
8 the instance, but are you aware that here only one case had  
the  
9 judicial stay by the Supreme Court of an administrative  
10 decision?

11 A. I don't know whether that is the case or not. I  
have  
12 not reviewed the judicial processes. And you need to  
13 understand that, in most cases, processes are about to be  
14 decided. That means that they are still undecided, and the  
15 processes are part of a file.

16 Q. Don't you think that in this case, since this is a  
17 case about electricity, it would have been interesting to  
look  
18 at the stay awarded by the Supreme Court?

19 A. Well, but as you said, there's over a hundred cases,  
20 and this would have taken me a long time.

21 Q. Well, I would like to move over now to--I would  
like

22 to look at Article 8. And you already explained the  
23 consequences of this Article.

24 This was published, I understand, by the  
Association

25 of--by the bar, sorry.

19:14 1 A. By the bar in La Paz, but this is my own  
publication

2 online. This is like publishing on Facebook.

3 Q. But I would like for you to confirm that here you  
4 consider that the relevant names for an administrative case  
are

5 related to 178 to 180 of the Civil Code; right?

6 A. Yes.

7 Q. And those are--sorry, 778 to 780, and those are in  
8 connection with the claims presented by Guaracachi?

9 A. Yes.

10 Q. And do you think, in connection with this Article,  
11 that it would be important to refer to the stay and refer to  
12 167 and 169 of the civil proceedings procedure law?

13 A. Well, I think that the object of my work is to  
analyze  
14 the effect of bringing the claim.

15 So, back then, my focus was to just the claim  
itself.

16 Does it stay the performance of the act or not? As we have  
17 seen in some other jurisdictions that can be compared to  
this

18 one--and if you allow me, on the regulation for the  
19 administrative profession here, Page 5 in this document, I  
20 indicate the following: In the case of the legal profession

21 and the challenges in connection with Measures that have to  
do  
22 with the legal profession--and here we include challenges as  
23 the only way to modify a decision under this claim, and this  
24 law that has been regulated by Article 139, and this is the  
one  
25 that through Article 39 authorizes through the  
administrative



19:16 1 proceeding. And in all of the cases that we have cited, we  
2 should--

3 Q. I am lost.

4 A. This is Page 5 of the document--of the article.

5 Q. But I was reading your Statement, not your article.

6 I wouldn't like to interrupt you, but this was a  
very

7 simple question: Whether you had referred to 167 or 169 of  
the

8 Code of Civil Procedure.

9 A. Yes, but my answer is that the object of this  
Article

10 was to analyze the effect of bringing the claim rather than  
11 its--the whole process. And I have not--here I have  
referred

12 to the analysis of the regulations, and also the  
constitutional

13 case law, on the one hand; and, on the other hand, you  
should

14 also take into account, and I had already mentioned this  
when

15 Dr. Merizalde asked me the question, in 2008 I was a  
Master's

16 degree--this is an academic article. Therefore, the other  
17 articles are the result of experience.

18 Q. In your Third Statement, at the very end, you are  
19 referring to the challenges to a Supreme Decree. I would  
like

20 to know whether you are indicating that here there is any  
21 additional claim or remedy that Guaracachi could have used.

22           This is Paragraph 23 in your in your Statement.

23       A.    So, this is in connection with the challenges to a  
24 Supreme Decree.  And once again, you should consider that I  
25 understand that here we are questioning--or they are

19:19 1 questioning application of Spot Prices.

you 2 No, that is not the Spot Price. Sorry. What do  
3 call this?

asked 4 Here it reads that the lawyers of the State have  
5 me to explain the Bolivian administrative law, and if there  
is 6 the existence of any remedy to request the four months or  
7 execution of a Supreme Decree. Any--any remedy.

8 So, I am referring to the possibility to present a  
9 request or to apply for a remedy.

10 Q. But my question is: What is the connection to this  
11 case? So, what do you have to say about--what is the  
12 relationship to Guaracachi?

13 It says that Guaracachi should have used  
14 constitutional law for the Administrative Resolution not to  
be 15 applied, and it also refers to the decision by the Supreme  
16 Court, and also to bring a case before the Constitutional  
17 Court.

18 I fail to understand the meaning. So, just so that  
it 19 is clear, I wanted to ask you.

20 A. Well, this is in connection with Paragraph 22. The

21 reason I included this analysis, at the request of the  
lawyers,

22 they asked me whether in Bolivian law there is any remedy of  
23 that sort.

24 Q. Well, instructions are one thing, but to set the  
25 record clear, you're not saying that there was a special  
remedy

19:20 1 to stay the effects of a Supreme Decision.

2 A. No, I didn't say that.

3 Q. And there is no other performance action that could  
be

4 applied in this context?

5 A. I did not say that Guaracachi could apply this to  
6 request the nonperformance or the non-application of a  
decree.

7 Q. We're coming to the end.

8 Let's assume, Mr. Quispe, that Guaracachi gets the  
9 Supreme Court to issue a decision on both processes that are  
10 still pending for over five years, and that those decisions  
11 favored Guaracachi, and the Supreme Court decided to nullify  
12 the decision. So, the effect of this decision would be the  
13 nullification of the Administrative Act. Well, this would  
be  
14 the annulment of this administrative act.

15 MR. GARCÍA REPRESA: This is an objection because I  
16 was told that we cannot present a hypothesis to the fact  
17 witness, so I'm requesting the same type of treatment.

18 MR. BLACKABY: But he already indicated that he's  
not

19 a fact witness and that he was instructed to give his  
opinion

20 about certain remedies that are available under the Bolivian  
21 law.

22                   He's not independent. But as a person that is  
23 contributing his expertise to the arbitration, I think that  
it  
24 is my right to this ask this question to a Bolivian lawyer  
that  
25 has nothing to do with the facts, and I have a right to ask

19:22 1 about his opinion about his own statement that is Bolivian  
law.

2 PRESIDENT JÚDICE: The Tribunal would rather not go  
3 into this debate, whether this is a fact witness or an  
expert;  
4 but the Tribunal understands that it could be useful to hear  
5 Mr. Quispe's opinion, who is a Bolivian lawyer, and the only  
6 one we are going to have here. And we always know that  
legal  
7 opinions can be discussed. This is--can be argued. This is  
8 just an opinion, a legal opinion, and we are not compelled  
to  
9 agree with you, I'm sorry.

10 But we thought it would be useful to listen to you,  
11 so, please you can ask, and you can answer.

12 BY MR. BLACKABY:

13 Q. To repeat the question, assuming that the Supreme  
14 Court decides on other pending proceedings and that those  
15 decisions favor Guaracachi and the Supreme Court decides to  
16 nullify decision 40/2007, would you confirm that the effect  
of  
17 such a decision would be the nullification--the annulment of  
18 the Act?

19 A. Well, it depends.

20 PRESIDENT JÚDICE: Well, that's the way it usually  
is.

21 THE WITNESS: It depends on the request. It  
depends

22 on the sequence of administrative acts.

23 Usually, the Supreme Court could decide the  
annulment

24 of the Act, and also the Act that decides on the other

25 challenge presented to the higher body. But it could also  
be



19:24 1 that because of due process, only the--only the appeal to a  
2 higher administrative authority is annulled.

3 BY MR. BLACKABY:

4 Q. So, in the case of Guaracachi that you have studied  
in  
5 detail, there is a request; correct?

6 A. Yes, there is a request for annulment.

7 Q. Finally, I would like to know if you consider five  
8 years--and this is an objective question, as a legal person--  
-if  
9 five years to get to a First Instance Decision, in the  
10 judicial--via the courts is a reasonable timeline?

11 A. Well, first of all, this type of proceeding is  
12 only--this proceeding by the Courts only has one instance.

13 Q. I am just asking you whether five years to get to a  
14 First Instance Decision by a court is reasonable.

15 PRESIDENT JÚDICE: This is not a question as a  
lawyer  
16 but as a witness. I think that all the of the lawyers have  
17 different opinions.

18 MR. BLACKABY: So, I'm going to withdraw the  
question,  
19 and we are going to conclude now your cross-examination. I  
20 thank you for your time, your patience, and I don't know if  
the  
21 other Party has any questions.



19:26 1           ARBITRATOR VINUESA: I have a very brief question.  
2 And if you answer, I will ask you a second question--if you  
3 answer yes, I will ask you the second one.

4           Your statements are prior to the later developments  
in  
5 the Supreme Court of Justice for these cases that we are  
6 referring to, so my question is whether you had the  
opportunity  
7 to know what happened between your last Statement and the  
8 current date.

9           THE WITNESS: There hasn't been any change.

10          ARBITRATOR VINUESA: So, you saw them. So, you  
know  
11 what is going on.

12          Well, then you might be in a position to answer my  
13 second question: What is the status of those cases? Just  
to  
14 know the situation.

15          THE WITNESS: Well, the cases are from 2008, of  
16 April-June 2008, and that's when both claims were brought  
17 before the courts. And in November-December, the decision--  
the  
18 cases were ready to be decided, and they are just waiting  
for  
19 the right time because there is--they're waiting because of  
20 their backlog, so that the decision is finally issued. So,

21 they have been waiting since 2008.

22                   ARBITRATOR VINUESA: So, there hasn't been any  
change

23 in the situation?

24                   THE WITNESS: And there couldn't be because the  
25 proceeding before the courts takes time, and there couldn't  
be.

19:28 1           PRESIDENT JÚDICE: Thank you very much for your  
2 presence here. It's always a pleasure to have a lawyer as a  
3 witness. And if you want to stay tomorrow here, you are  
4 invited to because you have concluded with your statement.

5           Thank you very much for your cooperation.

6           (Witness steps down.)

7           (Whereupon, at 7:29 p.m., the hearing was adjourned  
8 until 9:30 a.m. the following day.)

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## CERTIFICATE OF REPORTER

hereby I, David A. Kasdan, RDR-CRR, Court Reporter, do  
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.

action I further certify that I am neither counsel for,  
related to, nor employed by any of the parties to this  
in this proceeding, nor financially or otherwise interested  
the outcome of this litigation.

---

DAVID A. KASDAN





