

IN THE MATTER OF AN ARBITRATION UNDER THE TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF BOLIVIA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

-and-

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

-and-

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

-----	x	
	:	
In the Matter of Arbitration	:	
Between:	:	
	:	
GUARACACHI AMERICA, INC. (U.S.A.) and	:	
RURELEC PLC (UNITED KINGDOM),	:	
	:	
Claimants,	:	PCA Case No. 2011-17
	:	
and	:	
	:	
PLURINATIONAL STATE OF BOLIVIA,	:	
	:	
Respondent.	:	
-----	x	Volume 4

HEARING ON THE MERITS

Friday, April 5, 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 9:33 a.m. before:

DR. JOSÉ MIGUEL JÚDICE, President of the Tribunal

MR. MANUEL CONTHE, Arbitrator

PROF. RAÚL EMILIO VINUESA, Arbitrator

Registry:

MR. MARTIN DOE RODRIGUEZ

MS. AMANDA JIMÉNEZ PINTÓN

Day 4 English FINAL

Court Reporters:

MR. DAVID A. KASDAN
Registered Diplomat Reporter
Certified Realtime Reporter
Worldwide Reporting, LLP
529 14th Street, S.E.
Washington, D.C. 20003
+1 (202) 544-1903

SR. VIRGILIO DANTE RINALDI
D.R. Esteno
Colombres 566
Buenos Aires 1218ABE
Argentina
(5411) 4957-0083

Interpreters:

MS. SILVIA COLLA

MR. DANIEL GIGLIO

767

APPEARANCES:

On behalf of the Claimant:

MR. NIGEL BLACKABY
MS. CAROLINE RICHARD
MR. FRANCISCO ABRIANI
MS. BELINDA MCRAE
MS. GISELA MATION
MR. KATHERINE IBARRA
MR. CÉCILE ROCHE
Freshfields Bruckhaus Deringer U.S. LLP
701 Pennsylvania Avenue, N.W.

Day 4 English FINAL
Suite 600
Washington, DC 20004
(202) 777-4500

MR. NOAH RUBINS
Freshfields Bruckhaus Deringer
65 Fleet Street
London EC4Y 1HT
United Kingdom

MR. JEFFERY COMMISSION
Freshfields Bruckhaus Deringer U.S. LLP
601 Lexington Avenue
31st Floor
New York, New York 10022

SR. RODRIGO RIVERA
SR. RAMIRO GUEVARA
Guevara & Gutiérrez S.C.
Calle 15 No. 7715
Esquina Calle Sánchez Bustamante
Torre Ketal, Piso 4, Oficina No. 2
Casilla Postal 9332
La Paz, Bolivia

On behalf of Rurelec PLC:

MR. PETER EARL

MS. ELIZABETH SHAW

MS. SUSAN LAKER

MS. MARIA BRAVO

768

APPEARANCES: (Continued)

On behalf of the Respondent:

DR. HUGO MONTERO LARA
DRA. ELIZABETH ARISMENDI CHUMACERO
DRA. IDRA PENNYCOOK
Procuraduría General del Estado

MR. EDUARDO SILVA ROMERO
MR. JOSÉ MANUEL GARCÍA REPRESA
MR. ALVARO HERNÁN GALINDO CARDONA
MR. JUAN FELIPE MERIZALDE URDANETA
MS. ANA CAROLINA SIMÕES E SILVA
MR. ANTONIO MARZAL YETANO
MS. KATTIA HERNANDEZ MORALES
MS. LAURA GHITTI
MS. CELIA CAMPBELL
MR. JEREMY EICHLER
Dechert (Paris), LLP
32 rue de Monceau
75008 Paris, France

Day 4 English FINAL

769

INDEX

ITEMS	PAGE
WITNESSES:	
MARTHA LOURDES BEJARANO HURTADO	
Direct examination by Mr. Silva Romero	771
Cross-examination by Ms. Richard	778
Redirect examination by Mr. Silva Romero	829
Recross-examination by Ms. Richard	836
Questions from the Tribunal	838
EDUARDO PAZ CASTRO	
Direct examination by Mr. García Represa	859
Cross-examination by Mr. Blackaby	871
by Mr. Rubins	925
by Mr. Blackaby	975
Redirect examination by Mr. García Represa	984
Recross-examination by Mr. Blackaby	997
Questions from the Tribunal	1001

1
2 P R O C E E D I N G S
3 MARTHA LOURDES BEJARANO HURTADO, RESPONDENT'S WITNESS, CALLED
4 PRESIDENT JÚDICE: Good morning, Ms. Mártha Bejarano.
5 It's a pleasure to have you here with us.
6 Could you please say your name and later on read the
7 statement you have in front of you.
8 THE WITNESS: My name is Martha Lourdes Bejarano
9 Hurtado. I was born in Santa Cruz.
10 PRESIDENT JÚDICE: Just the name. Just the name.
11 And then the lawyers are going to ask you some more
12 questions.
13 Could you please read the statement you have in front
14 of you.
15 THE WITNESS: Witness Statement: I solemnly declare
16 upon my honor and conscience that I shall tell the truth, the
17 whole truth, and nothing but the truth.
18 PRESIDENT JÚDICE: Thank you very much.
19 I don't know if you have any experience with this type
20 of proceeding. It is not very complicated. To your right you
have a group of lawyers. These are the lawyers representing

21 Bolivia. They will be asking you some questions, and then we
22 have the lawyers for the Claimants who will be asking you some
23 questions, and obviously the lawyers to your left may ask you
24 some more complex questions, even though the contrary has also
25 been the case.

771

09:34 1 And then the Tribunal, the three of us sitting here,
2 will be asking you some questions in case we need some
3 additional clarification.

4 Thank you very much. Mr. Silva Romero will start with
5 your examination.

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

8 DIRECT EXAMINATION

9 BY MR. SILVA ROMERO:

10 Q. Good morning, Ms. Bejarano.

11 A. Good morning.

12 Q. I understand that in front of you have the four
13 statements that you have prepared in this case and the annexes
14 to them; is that correct?

15 A. Let me check my signature.

16 Correct.

17 Q. I understand, Mrs. Bejarano, that you would like to
18 make three corrections in connection with these statements, and
19 I understand that the first one is in Paragraphs 22 and 26.

20 Could you please explain.

21 A. Yes.

22 PRESIDENT JÚDICE: Twenty-two and 26?

23 MR. SILVA ROMERO: Yes.

24 THE WITNESS: In Paragraphs 22 and 26, I had said that
25 the Shareholders had distributed all of the profits, but I

09:36 1 wanted to say that they had distributed all of the profits that
2 were generated by the assets and also the non-monetary profits.

3 However, I'd also like to indicate that in my
4 Fourth Statement, Paragraph 26.

5 Q. I understand it's 23.

6 A. Paragraph 23, I was already including that statement.

7 Q. The second correction I understand, Mrs. Bejarano, is
8 in Paragraph 11 of your Third Statement. Could you please tell
9 us what that is.

10 A. Yes.

11 In Paragraph 11, Page 4, Line 4 when I said loans were
12 retained to repay CAF loans, I wanted to say that loans had
13 been obtained--loans were obtained as long as the CAF loan was
14 granted, but in Annex 11 I clearly stated the misinterpretation
15 that--the misinterpretation that was a result of transcription
16 there.

17 Q. And the last correction, Ms. Bejarano, I understand,
18 is at Paragraph 9.3 of your Fourth Statement. And when I say
19 .3, that would be the bullet point on Page 4.

20 A. Yes.

21 I had said that that 8.3 million were paid,
22 but--6.3 million were paid; and, to state it correctly, we need
23 to eliminate invoice number 120 because it was paid in 2009,
24 and add 237 and 238.

25 Q. Thank you very much.

Day 4 English FINAL

09:38 1 Do you confirm the rest of the statements?

2 A. Yes, I do.

3 Q. Very briefly, could you please tell us or sum up your
4 experience and the most salient stages of your professional
5 development.

6 A. Yes. I trained as a financial auditor and graduated
7 in 1997. I graduated in the Autonomous University Gabriel René
8 Moreno.

9 In 2008, I had a Master's degree at the Technological
10 University of Santa Cruz.

11 In parallel, I also got a Master's degree in finance
12 administration in Santa Cruz at Havana University. I am a
13 member of or I was a member of the Technical Board as an active
14 member, and also a technical member at the national level in
15 2009 and up to 2013.

16 My professional career started as soon as I finished
17 university. I worked for over 10 years with
18 PricewaterhouseCoopers. I worked for two years with the local
19 bank as an internal auditor, as an external consultant. I
20 reviewed all of the companies in Santa Cruz, including the
21 electricity Distribution Companies and, in fact, the telephone
22 company, all of the local banks, insurance companies, business,
23 commercial, oil companies and two international companies in
24 which I worked as a Manager. That was as an external auditor,
25 and then I audited EGSA in 2003, and the next year, end of

774

09:40 1 2004, I started to work as an internal in-house auditor, and
2 that is my current work, and that would be the--that would be
3 to sum up my professional career.

4 Q. What are your responsibilities as in-house auditor at

5 EGSA?

6 A. Well, based on my responsibilities, I planned
7 auditing, and I also implement the plant activities. I
8 controlled processes. I attend management meetings whenever I
9 am called. I also attend the Auditors' Committee, and that is
10 the one that actually works hand-in-hand with the management,
11 and that would be a summary of my work.

12 Q. In the remaining minutes, I would like to ask you some
13 questions about some of the issues addressed in your statement,
14 and, first of all, I would like to ask you to briefly state
15 your main conclusions on the investments that the Claimants say
16 they have done--made.

17 A. As I mentioned in my statement, the investments with
18 the equity contribution of the Shareholders were taking place
19 in 1999 as a result of the capitalization program. And onward,
20 all of the investments in the company have been the result of
21 EGSA's contribution, and also financing, and this is the way
22 that we have been working on over the last years; that is to
23 say, with this investment plan.

24 Q. In your statements you also referred to the borrowing,
25 EGSA's borrowing, between 2007 and 2010.

775

09:42 1 what are your main conclusions?

2 A. An investment plan was presented to the Board. A
3 turbine was bought with the operational capital of the company.
4 Seven engines were bought between 2007 and 2008, and finally
5 the steam turbine as part of a program to update technology.

6 However, all that was financed slowly. That was the
7 beginning of the combined cycle. With the approval of the bond
8 issuance at the beginning, 40 million were approved. There was
9 an initial issuance for 20 million, and they were waiting for

Day 4 English FINAL

10 the final--for the final loan that had already been approved
11 for 20 million by CAF.

12 And, in 2008, we had the first bond issuance, and the
13 placement of the seven engines in the batch that had already
14 been approved.

15 In 2008, we had most of the purchases for the combined
16 cycle. We borrowed the money little by little, given the
17 investment, the nature of the investment.

18 And in late April, we had \$92.7 million of debt as a
19 result of the investment throughout 2007, 2008, 2009, until we
20 got to the current liabilities.

21 Q. In your statements, you also referred to the
22 accounting or book liabilities, and could you tell me what your
23 main conclusions are.

24 A. In January 2008, the regulations were passed in
25 accordance with the Financial Statements of 2007. This is just

776

09:45 1 a mathematical exercise. The assets have a value that is
2 maintained, but EGSA has the business based on assets.
3 Therefore, we gained, but it is a mathematical exercise. It is
4 not the result of equipment generation. We call it a
5 non-monetizable profit. That's what I explained in my
6 statement.

7 Q. Yesterday, we listened to Mr. Blanco, who said that
8 the liabilities were adjusted by UFV. What do you think?

9 A. Well, the liabilities preserve the changed difference
10 because if I owe the money in euros or U.S. dollars, at the end
11 of the cycle I need to owe the money, the dollars, the U.S.
12 dollars, that I have committed or allocated. That is an
13 accounting difference, and that is also related to the

14 maintenance of the value or preservation of the value.

15 This difference or change difference may lead me
16 to--exchange difference--may lead me to gain more money or to
17 lose money. This is a mathematical exercise that is not giving
18 me losses or profits.

19 Q. In your statement, you also referred to EGSA's debt
20 with YPFB by May 1st, 2010. would you please share your
21 conclusions with us.

22 A. Yes.

23 When I wrote my statement, I said that in mid-2009, we
24 had a more complicated phase. we started to delay some
25 payments because all of the money that we were receiving had to

777

09:47 1 be invested into the combined cycle since this was created with
2 the 40 percent--with the 40 million budget; and, because of a
3 change in prices and a modification to the technology, the
4 value turned 68 million without taking into account interest
5 and taxes. But that was also part of the money that had to be
6 paid.

7 So, we started with the 40 million project, but
8 clearly finances have to change. In mid-2009, we had the
9 initial projections, but then we had some cash issues, and as
10 we were paid, we paid some of the installments of the so-called
11 "gas consumption," and by April 30th, we had accumulated,
12 including April consumption, \$14 million.

13 Q. Another comment--and I think this is the last one
14 since my colleagues are already very anxious to ask you
15 questions, what is the process you followed to prepare the four
16 statements?

17 A. We had workshops with the Office of the Attorney
18 General. Then we had the lawyers representing Bolivia. we sat

19 down, and we worked on the documentation that we were asked,
20 and also on the statements.

21 Basically, we sat down. We reviewed the documents
22 that had been written. And I don't remember how many times we
23 read the documents, but finally, we conveyed the idea, we made
24 sure that we had conveyed the idea that we wanted to--and
25 that's what we did in the four instances that I had to present

778

09:49 1 a written statement.

2 Q. Thank you very much, Mrs. Bejarano.

3 MR. SILVA ROMERO: I have no further questions.

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

5 Mr. Blackaby, you have the floor.

6 MR. BLACKABY: Ms. Richard will be conducting the
7 cross-examination.

8 CROSS-EXAMINATION

9 BY MS. RICHARD:

10 Q. My name is Caroline Richard. I am a lawyer the
11 Claimants. Since English is not my mother tongue, I am going
12 to ask you my questions in English. So, you will be able to
13 listen to the interpretation. I will continue in Spanish for
14 one more minute, and you will be able to listen to the
15 interpretation in English to avoid any misunderstandings.

16 we also have court reporters who are writing
17 everything, and we will be--we have to speak very clearly so
18 that our court reporters can do their work, and we need a pause
19 in between the question and the answer to allow interpreters to
20 finish their interpretation into English of what you're saying.

21 So, if we are going too fast for the interpreters, I
22 might ask you to slow down. Agreed?

23 MR. SILVA ROMERO: May I suggest something, Martha?
24 Move the mike closer to you so that we can hear you better.
25 Thank you.

779

09:51 1 MS. RICHARD: I'm going to do the same.
2 (Comment off microphone.)
3 BY MS. RICHARD:
4 Q. The last warning, unfortunately, we don't have much
5 time this morning, so to make sure that we can finish before
6 lunch, I'm going to ask for your cooperation and for you to
7 listen carefully to my questions and answer as straightforward
8 as possibly to my questions. The lawyers for Bolivia will have
9 the opportunity ask you further questions towards the end, so,
10 if necessary, if you need to add something, you can do so with
11 the lawyers.
12 So, given these instructions, please put on your
13 headset.
14 Okay. My colleagues will be giving you a bundle of
15 documents with tabs, and we may be turning to those documents
16 during our conversation this morning.
17 A. Okay.
18 Q. Ms. Bejarano, in response to counsel for Bolivia's
19 questions, you explained that you are a member of several
20 professional associations. I understand you're also a member
21 of the Institute of Internal Auditors, which is the
22 international professional association for internal auditors
23 based in the U.S.; correct?
24 A. Correct.
25 Q. I'd like to ask you a few questions about your role

09:53 1 and responsibilities as Guaracachi's internal auditor. I
2 believe you said a moment ago that you report directly to the
3 Board and that your--is it correct to say that your work is
4 supervised by the Audit Committee of the Board?

5 A. Yes. As a matter of fact, I report to the Committee
6 of Auditors, and that committee is the one that sends that
7 information to the Board.

8 Q. Exactly. So, the Audit Committee is charged with
9 overseeing the company's activities in order to manage risks;
10 correct?

11 A. Yes, in part, because it has some other roles, too.

12 Q. It has a role of oversight of the company in risk
13 management?

14 A. Yes, that is the role.

15 Q. And your job is to assist the Board and the Audit
16 Committee to monitor the company's activities and the controls
17 that it has in place?

18 A. Among other functions.

19 Q. You identify those risks, and you make
20 recommendations; correct?

21 A. That is correct.

22 Q. And you reported to the Audit Committee periodically
23 on the monitoring activities that you carried out?

24 A. A monthly summary is made based on the work that I
25 have conducted, and this also has to do with the schedule of

09:56 1 work that is developed in November. The chronology or the
2 timeline is prepared in November. It is approved, it is

Day 4 English FINAL

3 implemented. And at the beginning or at the end of the month,
4 the committee receives a summary of the work conducted.

5 Q. And in addition to your--in addition to your monthly
6 reports, you also submitted reports on specific issues to the
7 Audit Committee?

8 A. Yes.

9 Q. And you also had a duty to advise the company's
10 managers and departments in order to prevent identified risks
11 from materializing?

12 A. When you're telling me advice, the auditing work is
13 working on something that already happened, so let's say when I
14 see the wrong estimation of tax payment, for example, we tried
15 to identify the best way to try to correct that situation.
16 That is the type of advice that we offer to any management
17 office or any Manager that might have a question. I am not a
18 regular employee. I do my work based on what has been done
19 before.

20 Q. Perhaps you could turn to Tab 20 of your binder. This
21 is a summary of your functions as internal auditor. It is
22 Exhibit C-220 on the record. You will be familiar with this
23 document?

24 A. Yes.

25 Q. If you turn to Page 2, four bullet points from the

782

09:58 1 bottom, this is a description of your function. It says,
2 "advise the various management offices or departments for the
3 achievement of the goals by avoiding risk and determining
4 controls that could be implemented."

5 If you go to the bottom and count four bullet points
6 up, it starts with "Asesorar."

7 Do you agree that that's a correct description of your
8 function?

9 A. Yes.

10 Q. And you communicated your assessments and
11 recommendations through written memoranda, and you kept a list
12 of memoranda that you prepared so that you could follow up on
13 them in your recommendations?

14 A. Yes.

15 Q. So, if in the course of your activities you had any
16 concerns or you identified risks, you had a duty to raise these
17 in written memoranda to the Audit Committee as well as to
18 management?

19 A. Yes, that's correct.

20 Q. Have you submitted a few of those memos as annexes to
21 your Witness Statements in this case?

22 A. Yes, that's correct.

23 Q. So, for instance, as the internal auditor, you
24 monitored the company's compliance with the company's bylaws
25 and with applicable laws and regulations, so if in the course

783

10:00 1 of your monitoring activities you determined that the company
2 was not complying with applicable Laws or rules, then you had a
3 duty to report that to the Audit Committee?

4 A. Yes, within the schedule, of the Committee's schedule,
5 I conducted the work. Okay, so, my work had to do with making
6 sure that the implemented rules were established.

7 Q. So, my question was, if you identified that the
8 company was not complying with the applicable Laws, you had a
9 duty to raise that with the Audit Committee. I understand your
10 answer to be yes.

11 A. Yes, that is correct.

Day 4 English FINAL

12 Q. Right. And you also reviewed contracts and operations
13 with related parties?

14 A. Yes.

15 Q. And you did periodical reviews of the company's
16 Financial Statements?

17 A. Yes, that is correct.

18 Well, we go account by account to see how reasonable
19 each of them are.

20 Q. And you did this on a monthly basis?

21 A. No. The Financial Statements, we don't do a review
22 that is monthly.

23 In fact, I conduct a six-month review, and then I
24 issue a report. The next day, I do the following six months.
25 The next year, I do the following six months because auditing

784

10:02 1 was just one person.

2 So, we discharge our duties on the basis of the hours
3 that one person works.

4 Q. Understood.

5 So, when you were reviewing the Financial Statements
6 on a periodic basis, if you identified something that was
7 inaccurate or you saw something that was not in accordance with
8 Bolivian accounting rules, you had a duty to report that to the
9 Audit Committee?

10 A. Could you be more specific in your question. Your
11 question is very generic, so maybe I can make a mistake, so I
12 will say I can't give you an answer.

13 Q. My question is actually generic, and if you were
14 reviewing the Financial Statements and you saw something that
15 was not accurate, would you stay silent, or would you have to

16 advise the Audit Committee that there was an inaccuracy?

17 A. Yes, in fact, I did that. You have an annex there
18 from 2008 that has to do with the accounting profits, and that
19 was reported, and that was clarified. These were accounting
20 profits. This happened three months after the norm took place,
21 took effect.

22 Q. So, if I understand well, if in the course of your
23 internal auditing activities, and your review of the company's
24 Financial Statements, you identified significant risk or if you
25 had concerns about Guaracachi's financial situation, you had a

785

10:05 1 duty to raise that with the Audit Committee. That's what I
2 understand you to be saying.

3 A. Yes.

4 Q. You were also required to coordinate with the
5 company's external auditors and to provide them with the
6 information they needed to review and approve the company's
7 Financial Statements; correct?

8 PRESIDENT JÚDICE: You say it correctly, but...

9 (No interpretation.)

10 THE WITNESS: Initially, the ones responsible for
11 bringing the financial information to the external auditor was
12 the management.

13 I collaborated so that the auditor could have all the
14 information to perform its tasks, his or her tasks.

15 BY MS. RICHARD:

16 Q. If you still have the document we were referring to a
17 moment ago, if you would look at Page 3, there are bullet
18 points at the top. If you go to the fifth bullet point, it
19 says--and again this is a description of your functions as
20 internal auditor. It says that you had to--I will read it in
Page 18

Day 4 English FINAL

21 Spanish--coordinate the duties with the external auditor for
22 them to have information that is opportune and for them to be
23 able include in their work.

24 A. Yes, that's correct. They required information of the
25 management, and when they needed X or Y document, I expedited

786

10:07 1 that information to facilitate the auditor's work.

2 Q. Right. And you ensured that the external auditors
3 received complete and accurate information; correct?

4 A. Yes, that is correct.

5 Q. And it was the members of the Audit Committee who
6 chose the company's external auditors; right?

7 A. In actuality, the management invited audit companies
8 to come and present a bid. They were selected, and all that
9 information was submitted to the Audit Committee. The Audit
10 Committee reviewed the reasonableness, how the valuation had
11 taken place, and how independent they are for anyone who may
12 have reached the score.

13 Q. As the internal auditor, you were required to carry
14 out your functions independently and objectively?

15 A. Yes.

16 Q. And you had the necessary autonomy and authority to
17 request information in relation to any aspect of the company's
18 activities?

19 A. Yes. It was very complicated, but yes.

20 Q. I would like to ask you a few questions about the
21 Audit Committee that you reported to.

22 According to the company's bylaws, the Audit Committee
23 was composed of three members; correct?

24 A. In the bylaws of the company, there is no mention of

25 the Audit Committee. When the bylaws were prepared, it was a

787

10:09 1 Sociedad Anónima, a corporation. The Audit Committee was born
2 out of a Supreme Decree.

3 Q. Correct, and because it was a requirement for
4 capitalized companies to have active Audit Committees.

5 A. Yes.

6 Q. I was actually referring to a document called the
7 Reglamentos de Comité de Auditoría, the Rules of the Audit
8 Committee, which we have on the record.

9 My understanding is that two out of the three members
10 of the Audit Committee had to be Board members appointed by the
11 Minority Shareholders; correct?

12 A. Yes, that is correct. The Board was made up of five
13 individuals. Two represented the Minority Shareholders.

14 Q. My understanding was that the Board had seven members,
15 five of which were appointed by the Majority Shareholder.
16 Perhaps you can--

17 MR. SILVA ROMERO: Sorry to intervene, you're
18 referring to a committee, now you're referring to a Board.

19 MS. RICHARD: I am, and I understood Ms. Bejarano to
20 be referring to the Board as well. She said the Board.

21 MR. SILVA ROMERO: Oh, okay.

22 THE WITNESS: The Audit Committee was made up of two
23 from the Minority Shareholders and one from the capitalizing
24 entity, one member. Sometimes there were five members to the
25 Board of Directors, sometimes seven. Two of them were

788

10:11 1 representatives of the Minority Shareholders. That was the
2 structure.

3 BY MS. RICHARD:

4 Q. Right. And so you just said that the two Minority
5 Shareholders were appointed by the two pension funds. I
6 believe the name was Futuro de Bolivia and Previsión, and that
7 was until September 2009, when ENDE, the State-owned
8 electricity company, became the 49 percent Shareholder;
9 correct?

10 A. Yes, that is correct.

11 Q. Now, Ms. Bejarano, you mentioned a moment ago that you
12 met with counsel for Bolivia in the context of the preparation
13 of your witness statements.

14 A. Yes. We held a number of meetings in order to be able
15 to conclude the drafting of my testimony.

16 Q. I assumed that they told you that it was important
17 that your statements be accurate and complete; correct?

18 A. Yes.

19 Q. I notice that in your witness statements you refer to
20 documents as Annex 1, Annex 2, and that you attached those to
21 your witness statements. You did that because Bolivia's
22 counsel asked you to provide relevant documents that you had in
23 your possession?

24 A. In actuality, the way in which we did things is
25 that--well, first I wrote what documents I had to substantiate

789

10:13 1 what I was doing. The lawyers were not--were not telling me
2 what I had to place or what I had to do because that was my
3 idea.

4 Q. Documents supporting your statements, you attached
Page 21

5 them to your witness statements?

6 A. Yes, to the extent that we were reading the document,
7 well, of course, I have the document with me, and any auditor
8 must have the evidence of whatever it is that they're
9 discussing.

10 Q. In your statement, you expressed the view that
11 Guaracachi was in a precarious financial situation since 2007;
12 is that right?

13 A. No. I did not say that Guaracachi was in a precarious
14 situation in 2007. What I said in my First Statement--and I
15 can read it, if you want.

16 Q. Paragraph 15 you say--I will read it in Spanish, "For
17 2007, EGSA had exhausted its operating capital, and it was
18 being decapitalized by its shareholders, and it started to
19 borrow money substantially."

20 A. Yes. For 2007, the operating capital of the company
21 had been exhausted. In December 2007, we issued the first set
22 of bonds because we had no more money to continue purchasing
23 the equipment.

24 Q. And later, in another statement, you mentioned that in
25 2008 Guaracachi's financial situation was grave. I think you

790

10:15 1 use the word "gravé."

2 A. where? what page, please?

3 Q. I'm asking you if you agree with the statement.

4 MR. SILVA ROMERO: I think she has asked for the
5 paragraph, and I think it's just fair to take her to the
6 paragraph.

7 MS. RICHARD: I can take her to the paragraph.

8 MR. SILVA ROMERO: Great, excellent.

9 MS. RICHARD: If she was not certain about the
10 statement.

11 BY MS. RICHARD:

12 Q. It was your Fourth Statement, Paragraph 14. You say,
13 "In actuality the grave financial situation of EGSA in 2008."

14 So, I would ask you again, your position is that, in
15 2008, Guaracachi's situation was gravé.

16 A. Financially speaking, in 2008.

17 Q. Unfortunately, we have limited time, if you wouldn't
18 mind just answering whether yes or no, that is what--

19 MR. SILVA ROMERO: If I may--

20 THE WITNESS: I'm being limited because I'm not being
21 given an opportunity to--

22 PRESIDENT JÚDICE: Just a moment.

23 MR. SILVA ROMERO: Mr. Chairman, if I may, yesterday,
24 we saw how Claimants' witnesses expanded the answers for many
25 minutes. If counsel for Claimants are bringing our witnesses

791

10:17 1 now to a specific paragraph of the witness statements and our
2 witnesses want to develop what they said--I mean, they were
3 asking her why she said "gravé situación," and she wants to
4 explain why, I think as a matter of fact, it's to have her
5 develop.

6 And I have to say Ms. Bejarano answers very rapidly,
7 very concretely. She won't be explaining as much I'm sure as
8 the Claimants' witnesses.

9 PRESIDENT JÚDICE: Then if you understand, it's normal
10 that each Party always looks with different eyes, depending on
11 the position in this situation, then I understand the
12 constraints of time, but I also understand that it's very
13 difficult actually quite often to answer only yes or no. The

Day 4 English FINAL

14 Tribunal will try to help for the benefit of everybody that the
15 witness will not expand too much, and as we did before, in
16 certain situations, we remember that the other side could put
17 the questions when the direct happens.

18 But we need to have the possibility for the witness to
19 qualify a little more. And it's also a matter of culture, if
20 you know what I mean.

21 And, therefore, I suggest that, for the advantage of
22 everybody, get in there at least to understand that yes or no
23 may not be comfortable for the witness to answer.

24 Thank you.

25 MS. RICHARD: I understand, and I thank the Tribunal.

792

10:18 1 Just to clarify, I believe counsel for Bolivia thought
2 I asked why Guaracachi was in a grave financial situation, and
3 I just asked her whether she had stated that Guaracachi was in
4 a grave financial situation in 2008.

5 I don't want to stop the witness from explaining, but
6 I would--

7 PRESIDENT JÚDICE: She answered it. Okay.

8 MS. RICHARD: I will continue.

9 MR. SILVA ROMERO: I understand that she will answer.
10 Please.

11 THE WITNESS: The grave financial situation, well, we
12 had no cash in hand that was readily available. That is what I
13 am referring to.

14 BY MS. RICHARD:

15 Q. Okay. You said earlier that you had a duty to report
16 all of your concerns regarding Guaracachi's financial situation
17 to the Audit Committee, and so the members of the Audit

18 Committee would have been aware of these financial problems
19 that you discussed in your statements?

20 A. In fact, the Audit Committee--well, the executive
21 people and the Board of Directors, they knew in 2008 that
22 things were failing. That wasn't in the Financial Statements
23 because we were taking money with the idea of concluding the
24 works that had been started. That is what I had been
25 explaining.

793

10:20 1 Q. And you say that the Minority Shareholders and the
2 Audit Committee members were, in fact, concerned with
3 Guaracachi's financial situation; correct?

4 A. In connection with the liquidity of Guaracachi.

5 Q. Ms. Bejarano, you mentioned in your direct testimony
6 that Guaracachi issued bonds. It issued \$24 million's worth of
7 bonds in 2009; correct?

8 A. In 2009? From memory--well, I remember 20 million.
9 Perhaps we did in the second issuance of bonds we went up--it
10 would have been money in amount.

11 Q. Instead of the amount of the bond issue in Annex 6 to
12 your statement where you list all the debt and you said it was
13 24 million in March 2009, that's at Tab 5 of the bundle you
14 have in front of you.

15 A. This annex was submitted by Mr. Blanco. The only
16 thing that I did was to add the guarantee column because that
17 is what was being dealt with when I was preparing my statement.

18 What I was saying was that this guarantee section was
19 submitted, and I was presenting the full table.

20 Q. You agree that in March 2009 there was a second bond
21 issuance for 24 million as set out on the third line from the
22 bottom of Annex 6 to your statement.

23 A. Yes. This 24 million had been reported in this
24 document. But the meaning of my statement was that this was an
25 incomplete document that was being submitted.

794

10:23 1 Q. Do you recall who purchased the vast majority of those
2 bonds?

3 A. The GFP. That is to say, the Minority Shareholders.

4 Q. About what? 80 percent of the bond issue?

5 A. I don't have the percentages, but I think that they
6 were the ones that bought the vast majority of the bonds.

7 PRESIDENT JÚDICE: Sorry, the vast majority, could you
8 be more specific? Is it the vast majority of the bonds or just
9 a majority of the bonds?

10 THE WITNESS: The second issue, the 24 million? well,
11 the ones who bought were the ones from the AFP. They're the
12 two holders of the Minority Shareholders.

13 PRESIDENT JÚDICE: I didn't understand what you said.
14 I thought that--I thought you said the majority of the bonds.
15 I don't know if that's what you said, just to be clear.

16 THE WITNESS: If it we look at the figures--

17 PRESIDENT JÚDICE: No, you said you couldn't talk
18 about the figures exactly. You didn't remember, but is it
19 51 percent, is it 80 percent? what's the most probable figure?

20 THE WITNESS: I don't remember the number of coupons,
21 but I don't remember if it was 24 million or 18 or 16.

22 PRESIDENT JÚDICE: Yes, that helps me. Thank you.

23 BY MS. RICHARD:

24 Q. Did the same two pension funds buy almost all of the
25 bonds issued by Guaracachi when it did its first bond issue in

10:25 1 December 2007?

2 A. Yes.

3 Q. And these two pension funds that bought the majority
4 of Guaracachi's bonds are the same two Shareholders with
5 members on the Audit Committee with intimate knowledge of
6 Guaracachi's financial situation?

7 A. I don't know if they have that kind of knowledge,
8 intimate knowledge, I don't know if it's a translation issue,
9 but I don't know if the Committee Members had that kind of
10 knowledge, but they reviewed their accounts and they
11 represented these institutions.

12 Q. Ms. Bejarano, I have some questions regarding the
13 valuation of Guaracachi's assets in its Financial Statements.

14 Now, I understand that in 2007, a new accounting rule,
15 Accounting Norm 3, came into force, and required that
16 non-monetary assets--that is to say, inventory and fixed
17 assets--be indexed according to a Bolivian inflation index
18 called "Unidad de Fomento de la Vivienda," or UFV.

19 A. In actuality, Rule 3, what it says is that the amounts
20 have to be re-expressed on the basis of an important factor or
21 whenever there is a security that the assets reflect that
22 amount. There is a technical bulletin that links this to the
23 UFV, links the financial statements to the UFV.

24 Q. Right. The assets would be re-expressed in each
25 Financial Statement according to this index, and just for

10:27 1 clarity, my understanding is that the UFV is an index based on

2 the Consumer Price Index which is calculated by the Bolivian
3 Central Bank; is that correct?

4 A. I wouldn't be able to tell you where this has been
5 calculated by the Central Bank of Bolivia. There is another
6 organization that deals with raising statistics, but this is an
7 indicator that has been approved.

8 Q. And so, accounting norm Number 3 was the law in
9 Bolivia, the company was required to follow this accounting
10 rule?

11 A. Yes, and the same rule establishes that a periodic
12 review were to take place to see whether this indexing factor
13 is not overvaluing the assets, and there is, of course, a
14 limitation because the rule also establishes a limit, and each
15 company has to value and--to value and take its decisions.

16 So, in order to suspend things, the banks don't really
17 do this kind of application. So, sometimes there had been
18 losses, sometimes they only generate the provision of services,
19 apart from the constructions of building, for example.

20 And you have to apply this to every Financial
21 Statement, yes.

22 Q. And, in fact, before 2007, non-monetary assets were
23 re-expressed yet using a dollar index; correct?

24 A. Yes. And the purchases made by Guaracachi are in
25 dollars.

797

10:29 1 Q. So, in 2007, Bolivia abandoned the dollar index and
2 required companies to index assets based on the local index,
3 the UFV; correct?

4 A. Yes.

5 Q. And the purpose of this index is to ensure that than
6 monetary assets conserve their intrinsic value during periods

7 of inflation. So, in other words, to make sure that
8 non-monetary assets like fixed assets and inventory keep their
9 value in real terms or in constant currency or, in Spanish,
10 "moneda constante." Right?

11 A. Yes. That is the description given in the rule.

12 Q. Do you remember that you prepared a memo for
13 Mr. Blanco on the UFV adjustments in the first quarter of 2008?

14 A. If you tell me which, please.

15 Q. If you turn to Tab 10 of the bundle in front of you.
16 This is your memo of 21 April 2008, it is addressed to
17 Mr. Blanco, Director of Finance. For the record, it is
18 Bejarano Exhibit Annex 16.

19 And, in that memo on Page 1 you explain the purpose of
20 the UFV adjustment, just as we discussed now, to keep the
21 assets in moneda constante, and on Page 2 you look at the
22 impact of the application of that index.

23 And, on Page 3 you see the words, the title
24 "recomendaciones," and your recommendation, and I will read it,
25 it starts on the third line, it says, "The recommendation is to

798

10:32 1 periodically analyze the values resulting from the UFV
2 adjustment so as to maintain the proper valuation of the
3 inventories and fixed assets."

4 This is what you were referring to a moment ago;
5 correct?

6 A. But you started by reading at Line 3, and the message
7 is in the first line, in fact, where I say--and if you allow me
8 to read it, "Based on the analysis above, there is an
9 accounting net profit of 12.8 million originated by the
10 updating based on the housing unit factor, and because of

11 the--because of this, a recommendation is made to periodically
12 analyze the values resulting from the UFV adjustment so as to
13 maintain the proper valuation of the inventory and fixed
14 assets."

15 (Overlapping speakers and interpretation.)

16 Q. So, in this memo, you did not conclude that
17 Guaracachi's assets were inadequately valued as a result of
18 being re-expressed in constant monetary terms.

19 A. That's right, because if you look at the date, the
20 rule had been passed three months ago, and in 2006 we had
21 downgraded the value because there was a depreciation of the
22 dollar.

23 Therefore, by this date, the assets had a reasonable
24 valuation, and I did not recommend it, but because of this
25 report, the Auditors' Committee decided to hold several

799

10:34 1 meetings, and the general management was asked to conduct a
2 specific study on the impact.

3 Q. Understood.

4 And so, in accordance with your recommendation, there
5 was a periodic analysis of the value of Guaracachi's assets;
6 correct?

7 A. No, no, that's not the case. It was not reviewed
8 periodically. A study was conducted a year later--I don't
9 remember the name of the company right now--and in late 2008 it
10 was determined that the value of the assets preserved the
11 Market Value. And, from that moment onwards, there were no
12 further studies.

13 Q. So, it's your testimony that your recommendation was
14 not followed?

15 A. Well, it was, in fact, because--because of this

16 recommendation, a study was done, and a consultant company was
17 hired to consider the impact.

18 Q. And that analysis was not done on the periodic basis?

19 A. Up to 2008, that was the great concern of all of the
20 Directors, and an attempt was made to measure again in late
21 2008, but we did not review detail by detail as we did at the
22 beginning.

23 Q. And this must have been of concern to you because one
24 of your roles--and we saw it in the document summarizing your
25 functions--was to follow up on your recommendations and make

800

10:36 1 sure that they were implemented by the company.

2 A. That is correct.

3 So, you're asking me about my role and my work, but I
4 don't know how this is contributing to this case at issue.

5 In 2008, there was an incredible number of purchases
6 for the combined cycle, and the Board of Directors asked me for
7 all of the purchases, and that was inhuman, and that is the
8 work that was being accounted for.

9 PRESIDENT JÚDICE: Do you need a break?

10 THE WITNESS: I thought that I had to cooperate with
11 you.

12 PRESIDENT JÚDICE: Please understand, there are some
13 rules, and the Tribunal is here to protect you and the
14 witnesses if there are issues that are difficult, but based on
15 our interpretation, we are within the rules. I understand that
16 this may be emotional, but please understand that this has no
17 personal--there is nothing personal about it. It's your duty.

18 So, do you need a break? we can do a small break, we
19 can have a small break and come back in a couple of minutes,

20 but just be at ease that the Tribunal is doing their best for
21 everything to go very well. I don't know if you see many
22 movies with American lawyers.

23 THE WITNESS: No, I don't.

24 PRESIDENT JÚDICE: But I think that so far everything
25 is going well based on my experience, and if there is any

801

10:38 1 problem, please rest assured that the Tribunal will understand?

2 MS. RICHARD: Short break? Perhaps five minutes?

3 MR. SILVA ROMERO: She's now your witness. I just
4 believe five or 10 minutes for her to recover will be fine.

5 PRESIDENT JÚDICE: Okay.

6 We're going to have a short break.

7 THE WITNESS: No, it's okay.

8 MR. SILVA ROMERO: Five minutes will be okay, and then
9 Ms. Bejarano can be under advice.

10 PRESIDENT JÚDICE: Tribunal is deciding to stop by
11 five minutes--stop five minutes, but if you think later on that
12 you need another break, just tell me. We have some time
13 limitations, but not so many that you cannot be at ease during
14 your statement.

15 We're going to have five minutes.

16 (Brief recess.)

17 PRESIDENT JÚDICE: So, can we resume now?

18 To the best of our knowledge and interpretation, your
19 cross has been correct. It's understandable, but it's not a
20 matter of too excessive pressure at all.

21 MR. SILVA ROMERO: I'm happy to say, Mr. Chairman,
22 that this is my understanding as well, and if it wasn't the
23 case, I would have objected, obviously.

24 MS. RICHARD: Thank you.

25 BY MS. RICHARD:

802

10:52 1 Q. Ms. Bejarano, a moment ago we saw your recommendation
2 that the company conduct an analysis of the value of the
3 assets. You've testified that that recommendation was not
4 followed. You must have reported this to the Audit Committee
5 in accordance with your duties; correct?

6 A. would you please repeat the question?

7 Q. Certainly.

8 we saw your memo to Mr. Blanco where you make a
9 recommendation. You testified that that recommendation was not
10 followed. I understand that your functions as an internal
11 auditor include following up on your recommendations, and so if
12 those recommendations were not followed, you would have
13 reported this to the Audit Committee; correct?

14 A. When you said that the recommendations were not
15 observed, are you referring to the one that has to do with the
16 periodic review?

17 Q. Correct.

18 A. Indeed, that periodic review is the result of an
19 analysis that is conducted at the end of each exercise, but we
20 have something unclear. That has to be analyzed because at the
21 end of the year there is a determination of the valuation or
22 the overvaluation of the assets.

23 Now, the loss or the profit the assets is a different
24 story.

25 Q. Understood. So, just perhaps to reformulate the

803

Day 4 English FINAL

10:54 1 question, did you ever indicate to the Audit Committee that, in
2 your opinion, the assets were overvalued in Guaracachi's books?

3 A. I did not say that they are overvalued.

4 Q. Okay, thank you.

5 Ms. Bejarano, I understand that company profit tax in
6 Bolivia, which is called impuesto sobre las utilidades de las
7 empresas, is paid on the profits recorded in the company's
8 Financial Statements, including any adjustments relating to the
9 application of UFV; is that correct?

10 A. Correct.

11 So, there is a cleanup of whatever is accountable and
12 not accountable and expenses, but then it's based on the
13 Financial Statement.

14 Q. The profit tax rate is 25 percent; correct?

15 A. Yes.

16 Q. And did Guaracachi pay tax in 2009?

17 THE INTERPRETER: Did you say 2009?

18 THE WITNESS: Guaracachi paid all of the taxes. What
19 year did you say?

20 BY MS. RICHARD:

21 Q. 2009.

22 A. Yes. They are paid, and then they are compensated
23 with the UFV.

24 Q. Ms. Bejarano, were you paid an employee bonus or in
25 Spanish "una prima," in 2009 because the company made a profit?

804

10:56 1 A. Since this is a corporation, every year if there are
2 positive profits, the staff is paid this modification, and it
3 wasn't an exception with me.

4 Q. I understood you to have stated that Guaracachi should
5 have reported a loss in 2009 because the adjustment to the
6 Financial Statement should not be taken into account, and so my
7 question is, did you give the bonus back in 2009?

8 A. Whether I returned the bonus? Is that the question?

9 Q. Yes.

10 A. No, I didn't.

11 Q. I will move on.

12 Ms. Bejarano, you take the position that the
13 declaration of dividends, based on profits, re-expressed using
14 the UFV index constitutes a de-capitalization of the company;
15 correct?

16 A. Yes.

17 Q. And we established before that you had a duty to raise
18 your concerns with the Audit Committee members, so I assume
19 that you discussed this concern with them; correct?

20 A. Yes, I did talk to them, and they are aware of it.

21 Q. You've attached several memos to your witness
22 Statement, memos that you submitted to the Audit Committee, but
23 none of those memos raised this concern. Can you identify
24 where you raise this concern, in which memo.

25 A. Are you referring to the accounting profits?

805

10:59 1 Q. Your concern that the issuance of dividends, based on
2 profits re-expressed with UFV constituted a de-capitalization
3 of the company.

4 A. Yes. The Financial Statements include a line that
5 explains the profit and the loss, and it identified that it is
6 because of the re-expression.

7 Q. You verified the accounting which shows how the
8 profits were calculated, but my question is different. Did you

Day 4 English FINAL

9 advise the Audit Committee that it was imprudent to declare
10 dividends based on profits re-expressed using the UFV index?
11 Yes or no.

12 A. Yes, and we dealt with this issue quite a bit. In
13 fact--and this is something that I clarified in my First
14 Statement--I corrected this--well, I said that in 2007 and
15 2008, 28 percent of that re-expression was allocated to a
16 reserve.

17 Q. Can you point me to the memo where you raise the
18 concern about the de-capitalization of the company?

19 A. Let's see. When I prepared my statement, I understood
20 I didn't have to give a lot of paper to those reading the
21 documents, so if you look at my statement, you're going to see
22 that one of them pays at the beginning and then the other one
23 is at the end, March 2010. I didn't want to give a lot of
24 papers to the Tribunal. The reports are published all the
25 time.

806

11:01 1 Q. So, I understand that--we discussed earlier that you
2 provided documents to counsel for Bolivia. Was it counsel for
3 Bolivia that chose which documents to submit with your witness
4 Statement?

5 A. No. The documents that I included in my witness
6 Statement, I put them there just to substantiate what I was
7 saying.

8 what the lawyers told me is that there are more than
9 four giga of documents, so they said you shouldn't really fill
10 up the Tribunal with papers. Two examples will suffice, and
11 that was the message given to me.

12 Q. Didn't you think it was relevant to attach memos to

13 the Audit Committee supporting your position in this case, that
14 it was contrary to the criterion of prudence to declare
15 dividends based on profits re-expressed in constant monetary
16 terms?

17 A. If there is a specific report that says that
18 accounting profits should not be distributed, that is not
19 prohibited. The decision is made by the Shareholders of the
20 company, and they decide what they do with their profit. It's
21 not regulated whether they can distribute them or not.

22 I cannot say, well, they cannot distribute them. The
23 argument is who will prevent me from doing so.

24 Q. Ms. Bejarano, just to be clear, the Minority
25 Shareholders, the pension funds that we discussed before, they

807

11:03 1 did not object to distributing dividends in 2007; correct?

2 A. That is correct. In 2007, the re-expression was done
3 at the beginning of '08. The Fiscal Year had been closed
4 already, so the regulation went backward.

5 Q. What about 2009? ENDE, the State-owned electricity
6 company, was the 49 percent minority Shareholder in Guaracachi
7 at that time. Isn't it true that ENDE did not object to
8 declaring dividends in 2009?

9 A. No, it did not object. This was a complicated issue
10 because the people who were there didn't have any accounting
11 background.

12 Q. And so the only year in which the Declaration of
13 dividends generated a debate on the Board and within the
14 Shareholders was in relation to the financial year of 2008;
15 correct?

16 A. Yes.

17 Q. And isn't it true that none of the Directors, not even

18 the Directors appointed by the Minority Shareholders, the
19 pension funds, who were on the Audit Committee, raise the issue
20 of the UFV adjustment as a reason for objecting to the
21 Declaration of dividends in 2008?

22 A. Yes, indeed, the profits have always been taken as
23 profits from the Fiscal Year without discrimination whatsoever.

24 Q. Right.

25 Just before I move on, I wanted to clarify something

808

11:05 1 with you, Ms. Bejarano. In your First Witness Statement at
2 Paragraph 23, you said--and I'm going to read it in
3 Spanish--Paragraph 23, First Statement. You said, "The result
4 of this was the de-capitalization of EGSA starting in 2007."

5 Sorry, Paragraph 23.

6 A. Yes, I have it.

7 Q. You said, "The result was the de-capitalization of
8 EGSA starting in 2009 because EGSA paid dividends to its
9 Shareholders that did not correspond to the profits of the
10 company that were monetizable."

11 Just to be clear, you agreed dividends were declared
12 but not actually paid for the Financial Years 2008 and 2009;
13 correct?

14 A. That's correct. They were distributed, but they were
15 not paid.

16 Q. I just wanted to be clear because you didn't correct
17 that sentence earlier.

18 PRESIDENT JÚDICE: I'm sorry, I didn't understand.
19 They were distributed but they were not paid?

20 (No interpretation.)

21 BY MS. RICHARD:

22 Q. Ms. Bejarano, had those dividends been paid to
23 Guaracachi America, Inc., the shareholder, at the time they
24 were declared?

25 A. What year?

809

11:07 1 Q. 2008 and 2009.

2 A. No. The dividends were not able to be paid.

3 Q. would you agree that those dividends should be paid?

4 A. Yes. They are another liability of the company today.

5 Q. Ms. Bejarano, you are familiar with the combined-cycle
6 project; correct?

7 A. Yes.

8 Q. And you know that this was an investment that
9 Guaracachi had been carrying out since at least 2006; correct?

10 A. Yes. In late 2006, the investment plan was stated.

11 Q. And am I correct to say that the project cost over
12 80 million U.S. dollars?

13 A. Well, if you look at it from an accounting viewpoint,
14 it's 110, but I know that there has been--I think there has
15 been a re-expression from '07 onwards, all the material have
16 been re-expressed because these are non-monetizable assets, so,
17 yes, 80 million, yes, that's possible.

18 Q. Had Guaracachi not undertaken significant
19 infrastructure investment projects like the combined-cycle
20 project, would Guaracachi have had higher profits in 2007,
21 2008, and 2009?

22 A. I cannot answer that because we would have to re-do
23 all the accounting on the basis of the facts. I would not be
24 able to do all the accounting calculations in my head.

25 Q. Do you agree that the costs of those projects,

11:09 1 including the financial costs, reduced Guaracachi's revenues
2 and, therefore, its profits? Can we agree on that?

3 A. Let's see.

4 No. It has not reduced its profits.

5 Let's see what happens. When I am re-expressing the
6 asset, the value goes up, and in Bolivia my liabilities were
7 lower because the currency was being depreciated, and that is
8 what makes me earn more money. The more assets I have, the
9 more liabilities I have as well. I think it's 707 or
10 six-something now. So, it is very good to have liabilities in
11 dollars because I am updating the assets according to the UFV.

12 Q. Right, but you would have re-expressed the value of
13 the assets in any event in accordance with Bolivian law, and so
14 my question is: Did the costs of the investment project,
15 including the financial costs, reduce Guaracachi's revenues and
16 its profits?

17 A. I don't know if it reduced Guaracachi's income. We
18 took debt, we paid interest, and the assets are there. If
19 there was a reduction or not, well, I think we need to conduct
20 that analysis.

21 Q. But you're not prepared to agree that financial costs
22 and investment project costs reduce revenues?

23 A. No.

24 Q. Let's move on.

25 Ms. Bejarano, as part of your monitoring activities

11:11 1 you regularly monitored the company's accounts with its

2 suppliers; correct?

3 A. Yes. When I conducted the liability analysis, yes.

4 Q. In your First Witness Statement, in Paragraph 33, you
5 stated that--I will read it in Spanish--"EGSA stopped paying in
6 '09 and '010 before the nationalization. The invoices of its
7 raw material provider of gas, YPFB, this lack of payment risked
8 the whole operation because gas is indispensable for the
9 operation of the generation units of EGSA."

10 Now, you indicated earlier that you had a duty to
11 report to the Audit Committee when you had concerns, so I would
12 like you to turn to Tab 21 of the bundle that you have in front
13 of you. And this is your memo to the Audit Committee of
14 16 April 2010--this is Exhibit C-221--and this is your monthly
15 report of auditing activities undertaken in 2010.

16 Ms. Bejarano, you did not mention the outstanding gas
17 bills owed to YPFB in this memo, did you?

18 A. If you look at this report, it says "financial and
19 bank debt." That is what this report analyzes, the financial
20 and bank debt, which was from January and March. This is only
21 the financial debt. That is what this report analyzes.

22 Q. I will refer you to the subject line of the memo. I
23 think it says, "report of activities carried out during
24 March 2010."

25 Correct?

812

11:14 1 A. Where?

2 Q. Just under where it says members of the Audit
3 Committee. There is a line that says rest, which is the
4 subject line, and it says report of activities carried out
5 during March 2010.

6 A. Yes.

7 Q. This is a broader report than just a report on the
8 financial debt because it's a report on your activities in
9 March 2010; correct?

10 A. Yes, and I specifically detail the tasks that I
11 carried out during that month.

12 Q. I'll ask the question again: You did not mention the
13 outstanding gas bills owed to YPFB in this memo; correct?

14 A. No, because I did not review other suppliers. I only
15 looked at the financial debt right here. That is what the
16 report says.

17 Q. So, in this memo, you referred to--you completed an
18 analysis of the "procesos ingreso por venta de energía" you
19 looked at.

20 Do you see that? It's the second paragraph. It says,
21 "review of the compliance of the process for the income for
22 energy sales, accounts receivables, collections." That's
23 broader than just an analysis of financial debt; correct?

24 A. Where are you looking at now?

25 Q. The second paragraph.

813

11:17 1 A. Yes, this is an analysis of the revenue of the
2 company.

3 Q. But you did not analyze--so, this is a broader
4 analysis of your activities in the month of March 2010, but in
5 that month you did not review or warn the Audit Committee about
6 the pending gas bills, which in your statement, you say put the
7 company's operations at risk; is that right?

8 A. Can you make your question a little bit more specific.
9 I don't know where your question is headed to.

10 Q. Do I understand that you did not mention it?

Day 4 English FINAL

11 A. No, I don't mention the gas bills.

12 Q. At the end of your report, there is a table listing
13 the reports that you prepared up to this date.

14 Now, at the top of the table you'll see it says 2009,
15 and those are the memos you did in 2009; correct?

16 A. Yes, that's correct.

17 Q. Then you have a list of memos done in 2010, and if you
18 see there is a memo numbered--Memo Number 4 of the 26th of
19 January 2010, addressed to the Director Financiero, I
20 understand that's Mr. Marcelo Blanco, and the topic of the memo
21 is "analysis of the suppliers' account as at 31 December '09."

22 Ms. Bejarano, YPFB is the most important supplier to
23 Guaracachi; correct?

24 A. Yes.

25 Q. Now, your recommendation appears on the right-hand

814

11:20 1 column, and your recommendation here is, "we keep the
2 recommendations for the clarification of signatures, approval
3 of the evaluation."

4 Do you see that?

5 A. Where in the report?

6 Q. In Memo 4. If you follow the row all the way to the
7 last column, you have your--it's a column called--

8 A. Making reference to this report; right? To the report
9 itself?

10 Q. Yes. Number 4.

11 Do you see that?

12 So, Ms. Bejarano, even in January 2010--

13 A. Excuse me, excuse me, I can't find the report. Where
14 is it, please?

- 15 Q. You are on the page with the table; right?
- 16 A. Okay.
- 17 Q. You see in the middle of the table it says 2010, and
- 18 there is a list of memos from 2010?
- 19 A. Yes.
- 20 Q. And you have a memo Number 4 dated 26 January 2010
- 21 addressed to the Director Financiero, Mr. Blanco, and the title
- 22 of that memo is, "Analysis of accounts with suppliers on the
- 23 31st of December 2009."
- 24 A. Yes, yes.
- 25 Q. My question is: Even in January 2010, in a memo

815

- 11:21 1 specifically about payments to suppliers, you did not raise the
- 2 outstanding bills to YPF; correct?
- 3 A. I would have to look at the report because this is a
- 4 summary. This is what's stated here. I would have to look at
- 5 the components and the--which providers I had looked at out of
- 6 all the providers because it could be other providers all the
- 7 liabilities for the combined cycle.
- 8 Q. You did not attach this memo to your statement;
- 9 correct?
- 10 A. No, I did not. If it's not there, I didn't attach it.
- 11 Q. And you just said that this last column is a summary
- 12 of your memo, and so I assumed that if you raised in the memo
- 13 the issue of--
- 14 A. Yes.
- 15 Q. --Guaracachi's--the risk to Guaracachi's operation due
- 16 to the non-payment of gas, this would have appeared in the
- 17 summary; is that fair?
- 18 A. Again, depending on the kind of liability that I was
- 19 referring to.

20 Q. This memo is about the accounts to suppliers. You
21 said that YPFB was the largest supplier of Guaracachi, and you
22 earlier said that where there were memos that supported your
23 position you took in your statement, you have provided them
24 with your statement, but there is no memo on this one; correct?
25 A. Yes, that is correct.

816

11:24 1 Just to dispel all doubts, in this report,
2 hypothetically it could have been YPFB, what was being done
3 there? At the time we were paid, we made partial payments so
4 that we could lighten the burden for the account, and if we had
5 to pay the interest of a loan, we paid what we had to pay
6 first, and then we waited until we had liquidity to pay YPFB.

7 Q. So, you agree that Guaracachi was making payments to
8 YPFB on a regular basis in 2009 and 2010?

9 A. No. Regular payments we did until June '09, and then
10 we paid in installments according to the available funds we had
11 at our disposal.

12 Q. Guaracachi was paying at payments at least on a
13 monthly basis to YPFB?

14 A. Yes. And I've corrected myself, and I think I did it
15 during my direct statement.

16 Q. Did YPFB ever threaten to cut off the gas prior to the
17 nationalization?

18 A. I don't know. What I do know--

19 Q. As an internal auditor, would you not have been aware
20 if the gas was about to be cut off?

21 A. Yes. In fact, I sent the e-mails, and there were
22 collections; right? I know that, according to the Contract if
23 I don't make the payment, cutoffs are going to take place, and

24 this is stated specifically in a clause.

25 Q. And my question was, did YPFB threaten to cut off the

817

11:26 1 gas, to your knowledge?

2 MR. SILVA ROMERO: Objection, Mr. Chairman. Asked and
3 answered. She said that she didn't know the answer.

4 PRESIDENT JÚDICE: Dr. Richard, I'm afraid the answer
5 has been provided. You are rephrasing it--the answer is
6 paraphrased or you're insisting because you're collecting a
7 fact.

8 BY MS. RICHARD:

9 Q. Were you aware, Ms. Bejarano, that Jaime Aliaga was in
10 frequent contact with YPFB management about Guaracachi's
11 accounts?

12 A. Yes. In actuality, that is what we were trying to do
13 with all providers, maintain good relations because oftentimes
14 we had to postpone payment.

15 Q. Before the nationalization, was YPFB charging
16 Guaracachi interest on the outstanding bills?

17 A. Yes. We paid before at certain points, yes, if memory
18 serves. I would have to review that information. Usually I
19 don't say things just off memory.

20 Q. If you would like to refresh your memory, you can turn
21 to Tab 22. It's the YPFB Statement of Accounts 2010. For the
22 record, it's Exhibit C-274.

23 A. Yes.

24 Q. If you can just take a look.

25 As I was looking at this Statement of Accounts, I

11:28 1 couldn't see any evidence of interest. If you add up the
2 amounts of the bills.

3 Does this refresh your memory? Was Guaracachi paying
4 interest on the outstanding bills prior to the nationalization?

5 A. In this Statement of Accounts, the only thing that we
6 see is the consumption of gas. This is not related to
7 accounting. This is just a Statement of Account related to the
8 invoicing of gas. The liabilities account is elsewhere. This
9 is a statement of account that has to do with the invoicing
10 based on consumption of gas.

11 Q. If--

12 A. You will never find interest here.

13 Q. The statement shows the amounts that were invoiced and
14 the amounts that were paid and the balance. Assuming that
15 interest was being charged on these invoices, it would show up
16 in the payment column; correct?

17 A. Payment of the invoices, not of the interest. This is
18 a statement of account that has to do with expenses related to
19 consumption. This has to do with invoicing related to gas
20 consumption. You will never find here interest for non-payment
21 or interests that were paid.

22 Q. So, your testimony is, Ms. Bejarano, that you don't
23 recall whether--

24 MR. SILVA ROMERO: Objection. This is not her
25 testimony. Ms. Richard is misrepresenting what she said. She

11:31 1 didn't say that she didn't have any recollection of anything.
2 She's saying that this table does not contain any reference to
3 interest.

Day 4 English FINAL

4 PRESIDENT JÚDICE: The Tribunal is clearly
5 understanding what you're saying, Mr. Silva Romero, and it's
6 expected for lawyers to assume that it might be an accident,
7 but the Tribunal is very aware of this statement and what the
8 statements are. I apologize, Mr. Silva Romero. It is my duty.

9 MR. SILVA ROMERO: No, no, no.

10 PRESIDENT JÚDICE: Just rest assured that we are
11 paying attention, Mr. Silva Romero.

12 BY MS. RICHARD:

13 Q. To clarify what I understood, perhaps I was wrong,
14 that you did not recall whether interest was charged or not by
15 YPFB to Guaracachi; is that correct?

16 A. Yes, and we did pay interest. It's not bad for them
17 to pay interest if we are delayed because that is the agreement
18 in the Contract.

19 Q. So, do you recall whether interests were charged
20 before the nationalization?

21 A. I wouldn't be able to tell you.

22 Q. Ms. Bejarano, as Guaracachi's internal auditor, you
23 would review the company's annual Financial Statements; right?
24 We discussed this earlier.

25 A. Yes. I just made sure that they were properly

820

11:33 1 written, and that all the information was in the statements,
2 yes, correct.

3 Q. We said earlier that you ensured that the information
4 provided to the external auditors was complete and accurate.

5 As the internal auditor, you would also review the
6 state of progress of the company's major projects such as the
7 combined cycle; correct?

8 A. I did not review the progress made because I did not
9 work with turbines and equipment.

10 I did review the purchases just to make sure that the
11 procedures had been fulfilled. But in terms of the progress
12 made in the project, that is not my area of responsibility.

13 Q. If you turn to Tab 15 of your bundle, you will see
14 some minutes of a meeting of the Board of Directors,
15 6 November 2007. It's Exhibit C-140, for the record.

16 There are page numbers on the bottom left-hand corner
17 of the document which we've added to facilitate navigation.
18 This document sets out the "Programa del Comité de Auditoría,"
19 and it shows--

20 PRESIDENT JÚDICE: which page?

21 MS. RICHARD: It begins at Page 17 of the document if
22 you look at the numbers at the bottom in the left-hand corner.

23 PRESIDENT JÚDICE: Here?

24 MS. RICHARD: Yes. It's the "Programa del Comité de
25 Auditoría," "Program for the Auditors' Committee," and if you

821

11:36 1 go to Page 22, it sets out some of the activities that the
2 Audit Committee Audit Committee undertook--

3 THE WITNESS: But I attached this document to my
4 statement--no, I did not attach this document to my statement.

5 BY MS. RICHARD:

6 Q. Correct. This is a document that's in the record that
7 describes the programa del Comité de Auditoría, and I just
8 wanted to draw your attention to Page 22 of the document. If
9 you go to the third bullet point, it says that one of the
10 activities of the Audit Committee is to evaluate the execution
11 and the budget of the company's projects, including the
12 combined-cycle project. Correct?

Day 4 English FINAL

13 A. Where again? Where it says "se evaluará"? Okay.

14 Q. So, the Audit Committee would carry out this audit of
15 the execution of the project, and you testified earlier that
16 you assisted the Audit Committee with its activities.

17 Are you saying you were unaware of the progress of the
18 combined-cycle project?

19 A. No, I did not say that I was not informed. What I
20 told you is that all of the purchases that were carried out for
21 the combined cycle had to be reviewed, according to the
22 instructions by the committee so that we could control the
23 purchasing process, but that is not within my area of
24 responsibility. Just the purchases for the combined cycle.

25 Q. Can you turn to Tab 12 of your bundle in front of you.

822

11:38 1 This is Guaracachi's 2009 Financial Statements. You will be
2 familiar with Guaracachi's Financial Statements.

3 I would like you to turn--just for the record, this is
4 Exhibit C-36.

5 I would like you to turn to Page 65, Note 26 to the
6 Financial Statements.

7 MR. SILVA ROMERO: I'm sorry, just this document--

8 MS. RICHARD: Attached to it you'll find the Financial
9 Statement.

10 MR. SILVA ROMERO: The Annual Report. It includes the
11 Financial Statements, but this is not just the annual
12 statements, the yearly statements.

13 MS. RICHARD: I'm referring to the notes to the
14 Financial Statements, which are set out in Exhibit C-36. I'm
15 specifically referring to Note 26 which is at Page 65.

16 BY MS. RICHARD:

17 Q. At the top of the page it says "Note 26." Page 65.
18 The title of the note is, "works under construction combined
19 cycle." The first paragraph describes the project as relating
20 to a 96-megawatt steam turbine and a budget of 68 million. And
21 if you look at the second paragraph, it says, and I'll read it
22 in Spanish, "As of December 31, 2009, the percentage of
23 completion reaches 90 percent of the total."
24 So, would you agree that on the 31st of December 2009,
25 the project was 90 percent complete?

823

11:41 1 A. The project or the budgetary execution of the
2 purchases had completed by 90 percent; that was what was being
3 reported there, yes. Purchases, all of the purchases based on
4 the budget.

5 Q. I understand you to be saying that the percentage of
6 the project executed with 90 percent of the total?

7 PRESIDENT JÚDICE: When it's referring to the
8 budgetary execution, does it refer to the actual facts or does
9 it refer to the forecasts in the Financial Statements?

10 THE WITNESS: Well, there was a budget for the
11 financial--for the combined cycle; and as of 31 December 2009,
12 the budgetary execution to buy all of the pieces of equipment
13 was completed by 90 percent.

14 PRESIDENT JÚDICE: Are you referring to 40 million or
15 68 million?

16 THE WITNESS: 68 million.

17 BY MS. RICHARD:

18 Q. So, you agree that the 90 percent of the budget for
19 the combined cycle had been completed by the 31st of
20 December 2009?

21 A. In the reports submitted to the Board of Directors as
Page 51

22 issued by the office of development, there were two
23 explanations, the budgetary execution for the purchase of the
24 equipment, and the second, the progress made in the works as
25 such. This 90 percent refers to the totality of the purchases

824

11:43 1 for the equipment. That is what we were told, and that is the
2 way we were reporting it to the Board of Directors.

3 So, the purchases had already been completed. We had
4 bought all of the equipment.

5 Q. In your statement, you referred to a "sobrecosto del
6 proyecto ciclo combinado," and specifically I'm referring to
7 your Third Witness Statement at Paragraph 14.

8 Just a moment. I will give you the reference. I
9 meant to refer you to your Second Witness Statement at
10 Paragraph 12. In that paragraph, you compare the initial
11 40 million cost of the combined cycle with the final cost of
12 91 million.

13 Now, isn't it true that the initial budget of
14 40 million related to a smaller turbine of 80 megawatts and did
15 not take into account financial costs or taxes?

16 A. The 40 million, if you're telling me that the turbine
17 was--in connection with the 40 million, if you're telling me
18 that the turbine was smaller or larger, I don't know. That is
19 not my area of specialty, but I do know that there were
20 modifications, and that's the reason why the price was also
21 changed, and it reached 68 million before taxes and interest.

22 Q. Correct.

23 And that revised budget was approved by the Board and
24 the Shareholders?

25 A. Yes.

11:45 1 Q. And so, when you refer to 91 million in your
2 statement, you are referring to the final cost based on the
3 revised budget of 68 million, including financial costs and
4 taxes and accounting adjustments?

5 A. Yes. The amount includes everything that is recorded
6 in the combined-cycle account.

7 Q. You're comparing very different things. You're
8 comparing an initial budget relating to a different project
9 without financial costs or taxes, and you're comparing that to
10 a revised budget based on a different project which includes
11 financial costs and taxes; correct?

12 A. When I'm saying that there is an overvaluation, at the
13 beginning it was 40 million, and then it moved to 68. That is
14 the message here. But the first projection is thinking of the
15 40 million, with the modifications, because of the technology
16 and all of the changes, and that's how it ended up being more
17 than 48. That is this excess value that I'm referring to, this
18 overvaluation. It's initially 40 million, but then it was
19 modified to reach the other value, and we also had the second
20 issuance of bonds.

21 Q. Did the project costs surpass the amount approved by
22 the Shareholders, the \$68 million budget approved by the
23 Shareholders before the nationalization?

24 A. If we eliminate the interest and everything that--all
25 the excess, it was within what we had stipulated. Of course,

11:48 1 the other books also reflect other depreciations, but I am
2 referring to the actual money.

3 Q. Ms. Bejarano, you don't provide a source for your
4 \$91 million figure. I assumed that this comes from your review
5 of Guaracachi's accounts?

6 A. The 91 million is the figure that we got upon
7 reviewing all of the figures and as of April 30th.

8 Q. And you did that calculation?

9 A. Are you referring to the 91 million? That was when we
10 had the final audit.

11 Q. And so that's the total cost?

12 A. No. It's higher now.

13 Q. At the time, that was the total cost of the
14 combined-cycle project? 91 million?

15 A. The 91 million figure has to be as of 30th of April.

16 PRESIDENT JÚDICE: 30th of April 2010?

17 THE WITNESS: Yes.

18 BY MS. RICHARD:

19 Q. If someone told you that the costs at that date was
20 67 million, you would say that that was wrong?

21 A. Let's see. For the accounting people, the amount is
22 taken from the books, and it has all of the ingredients, all of
23 the elements that were not included by the development area,
24 the Development Department. Sixty-eight is just for the
25 purchase. Equipment and everything needed for the plant.

827

11:50 1 Financial interests, budgets, taxes--none of that was part of
2 the reports that were sent. That is what I would like to make
3 clear.

4 Q. The total cost, though, was 91 million.

5 A. Yes, yes. As of April 30, 2010.

Day 4 English FINAL

6 MR. BLACKABY: Just one minute just to check and see
7 if there's anything further. We may be able to save time.

8 PRESIDENT JÚDICE: Exactly.

9 (Pause.)

10 MS. RICHARD: Thank you.

11 BY MS. RICHARD:

12 Q. We established earlier that you would review
13 Guaracachi's Financial Statements.

14 Do you recall that in 2009, Guaracachi changed the way
15 in which it accounted for maintenance costs for its generation
16 assets? Do you remember?

17 A. Would you repeat your question?

18 Q. Yes.

19 Do you recall that in the financial year of 2009,
20 Guaracachi changed the way in which it accounted for
21 maintenance costs for its generation assets?

22 I can be more specific.

23 Do you recall that Guaracachi adopted an accounting
24 method that involved deferring the maintenance costs and
25 amortizing them based on the maintenance cycle of each

828

11:53 1 generation unit?

2 A. That is not a rule. Those are accounting principles
3 that are defined by the company managers.

4 Q. I think you still have the 2009 Financial Statements
5 in front of you. If you could turn to Page 47.

6 If you look at Point 3, "change of accounting policy,"
7 you will see Paragraph 2.

8 Are you on Page 47, Note 3, "cambio de política
9 contable"?

10 A. Yes.

11 Q. Paragraph 2 provides, and I will read it in Spanish,
12 "The change of accounting policy principle is basically based
13 on a better distribution of costs throughout the maintenance
14 cycle for each unit, and this is the way in which profits,
15 income, and expenses are linked.

16 If you skip two paragraphs, there is another paragraph
17 that starts, "This new policy is applied prospectively as of
18 January 2009, and the corporation considers that the new policy
19 will allow for the presentation of comparable figures--will
20 allow for the presentation of figures that can be comparable to
21 other companies that have similar activities with higher
22 maintenance tasks.

23 So, is that accounting method provided a better way to
24 associate revenues and costs?

25 A. In the case of Guaracachi, in my opinion, that was the

829

11:56 1 best, but--that was the best way to present the data, even
2 though most of the engineers did not agree. That was the best
3 way to record it because it is associated to the revenue in
4 connection with the life cycle.

5 BY MS. RICHARD:

6 Q. And this is consistent with international accounting
7 rules; correct?

8 A. Yes. The rules advise that, but this is more of an
9 accounting policy, and that is in the hands of the Shareholders
10 of the company.

11 Q. Thank you, Ms. Bejarano. I don't have any further
12 questions.

13 PRESIDENT JÚDICE: Thank you very much, Ms. Richard.

14 Now for the redirect.

Day 4 English FINAL

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

16 REDIRECT EXAMINATION

17 BY MR. SILVA ROMERO:

18 Q. Good afternoon, almost, Ms. Bejarano. I have very few
19 questions so that we can come to an end very quickly.

20 And the first question is: The lawyers for the
21 claimants asked you several questions about your role as an
22 internal auditor, as an in-house auditor with EGSA. Do you
23 remember?

24 A. Yes.

25 Q. And to answer one of those questions, you said

830

11:58 1 something that you could not complete because my colleagues
2 interrupted you. You said that an internal auditor works on
3 based on something that has already happened. Can you define
4 that. Can you explain that.

5 A. In November, we planned what we are going to do the
6 upcoming year. Oftentimes during the audit, we go back six
7 months--twelve months or six months, and we're just reviewing
8 the very--we're already in the very first months of the next
9 year. I was not working on the operational tasks. Therefore,
10 what I do is to review something that has already been done.
11 And if there is any mistake or if I need to introduce a
12 correction, that's when I would provide some advice. So, that
13 is what I wanted to explain.

14 Q. Also, to address the questions of my colleagues, you
15 referred to the size of the Auditing Department with EGSA, how
16 many people worked there?

17 A. Well, nowadays, we are three, but we used to be one.

18 Q. When?

19 A. Prior to the nationalization, I was the only person
20 there.

21 Q. Now, I'm going to keep on talking about your role.
22 You were asked questions about gas invoice payments. Do you
23 remember this?

24 A. Yes.

25 Q. Can you tell me what your functions are as an internal

831

12:00 1 auditor in connection with those gas invoices.

2 A. Well, when I have to look at the provider account or
3 suppliers' account, I do revise it, and I provide information
4 to the State in connection with the dates that my review has
5 included.

6 Q. Very well. Let us go back to a document that you were
7 shown by Claimants' lawyers. It has to do with an annex of
8 your statement. This is behind Tab 5 of the binder that you
9 were given by Claimants' counsel.

10 Do you remember that you discussed this document with
11 Ms. Richard?

12 A. Yes.

13 Q. In particular, you discussed this table. I was a bit
14 confused for a moment looking at my notes, but this is Annex 6
15 to your Statement. In connection with this document I had a
16 few questions that I wanted to ask you.

17 Who prepared this document, Ms. Bejarano?

18 A. The Finance Department did it. There is a person that
19 is in charge of preparing all the details related to the
20 financial debt.

21 Q. You commented on the column titled "guarantees."

22 MR. BLACKABY: Objection.

23 MR. SILVA ROMERO: I haven't asked any questions,

24 Mr. Chairman.

25 PRESIDENT JÚDICE: Objection a sport.

832

12:02 1 MR. BLACKABY: The objection here is this document was
2 simply used to establish the amount of the 24 million bond and
3 the date of that bond issue. It was not used for any other
4 purpose. That was his question. It cannot possibly arise out
5 of that issue that was raised in cross.

6 MR. SILVA ROMERO: Mr. President, when Ms. Bejarano
7 was patiently answering the questions both from my colleague,
8 she wanted to explain the source of these documents as she
9 talked about the guarantee column. It is their right to
10 continue asking questions, of course, but I asked to know, and
11 I said during my redirect I'm going to allow my witness to
12 develop the explanations for this document. I think that's my
13 right.

14 PRESIDENT JÚDICE: I think the Tribunal has understood
15 what the witness wanted to say, but a fast answer may be
16 useful.

17 BY MR. SILVA ROMERO:

18 Q. I simply wanted to ask you to comment on the guarantee
19 column in this document.

20 A. Mr. Blanco included dates, et cetera, here. But when
21 I was preparing my statement, what I was saying is that he had
22 failed to include the guarantees for the loans that we had
23 obtained.

24 The criticism that was made was the rate, but I was
25 telling him, look, yes, fine, but you mortgaged everything, I

12:04 1 was saying to him, so that is why I included this in my
2 statement.

3 PRESIDENT JÚDICE: The Tribunal had understood that.

4 BY MR. SILVA ROMERO:

5 Q. Let us now move on to a different document. You were
6 shown this document, Ms. Bejarano, and this is Annex 16 to your
7 statement. This is Tab 16 of the white binder.

8 Do you remember having discussed this document with
9 Ms. Richard?

10 A. Yes.

11 Q. You remember that you specifically referred to Page 3
12 when it comes to recommendations?

13 A. Yes.

14 PRESIDENT JÚDICE: Are you referring to C-184?

15 MR. SILVA ROMERO: This is Annex 16. It's Tab 10.
16 Annex 16, Tab 10.

17 BY MR. SILVA ROMERO:

18 Q. Ms. Bejarano, what were the consequences of your
19 recommendations? What were the consequences for EGSA?

20 A. This report came very early. The rule had just come
21 out. So, we discussed this issue for some time.

22 And, in 2007, we already saw the effect that it was
23 having, so what the committee did was to recommend for an
24 external person to do this in order to measure the impact on
25 the Fiscal Year.

12:06 1 specifically, when one looks at an accounting profit,
2 it's a mathematical number. It's not that you are earning

3 this. So, the audit was entrusted to someone, and we discussed
4 this issue for some time, and they recommended that the
5 permanent monitors--the values be permanently monitored and see
6 what impact this had on the Financial Statement.

7 Q. My colleagues are correcting the transcript;
8 Ms. Bejarano made reference to an external auditor and not to
9 an extreme auditor. It's a transcript issue. The Spanish
10 reporter is smiling.

11 who was this external auditor and now this "extreme
12 auditor" who was instructed with this task?

13 A. It was an international consultant; it was
14 PricewaterhouseCoopers. And they established the Audit
15 Committee, and this was taken to the Board of Directors to
16 measure the impact that this had on the Financial Statement.

17 Q. What were the recommendations that the PwC did on the
18 basis of the study that they did and on the basis of your
19 recommendation?

20 A. There was a section called improvement, so we were
21 asking PwC to provide advice in connection with the Bidding
22 Conditions. They stated that we could have better practices,
23 and that a reserve be established. That's the way I
24 interpreted this. That was the advice that was given to us.

25 PRESIDENT JÚDICE: Is this document in the record?

835

12:08 1 MR. SILVA ROMERO: Yes, yes, of course, Mr. President.
2 This is Annex 17 to Mrs. Bejarano's statement. It was a
3 PowerPoint presentation from PwC, and they recommended, amongst
4 other things, that a reserve be created.

5 BY MR. SILVA ROMERO:

6 Q. You also discussed with Ms. Richard the issue of
7 distribution of profits from '07 to '09.

8 Do you remember that conversation?

9 A. Yes.

10 Q. I thought that we kind of went through 2008 very fast.
11 Could you explain to the Tribunal what happened in 2008 in
12 connection with profit distribution.

13 A. Well, we had a little bit of everything. The
14 representatives of the minority Shareholders opposed the
15 distribution of dividends. They were distributed, but they
16 were not paid. So, this was a long-term account, but it became
17 a current liability.

18 So, we were asking them to wait because of the
19 illiquidity that existed at the time, and then people were
20 going to sit down and try to find the issue.

21 Q. One last question.

22 At some point during Claimants' examination, you were
23 asked whether project costs and financial costs reduce or not
24 EGSA's revenues. I have the impression that your answer was
25 not very clear. I would like for you to clarify why, in your

836

12:11 1 opinion, project and financial costs do not necessarily reduce
2 the income of the company.

3 A. The message that I wanted to say was that I'm not
4 going to do all the accounting in my head right this minute.

5 We have taken debt. We bought the equipment. They're
6 there. But they're being re-expressed, and they acquire
7 greater value.

8 What happened in Bolivia is that, from '07 until '08,
9 there was a depreciation of the dollar.

10 Let me give you an example. If I owe \$100 as of
11 December 30, 2007, I owed 700 Bolivian pesos. Next year, I

12 after six months, I still owe \$100, but in Bolivian pesos I owe
13 less than 700 Bolivian because the dollar was depreciated. The
14 value of the dollar went down. Our assets go up, but our
15 liabilities go down, relatively speaking, and that is why
16 profit is created.

17 That is what I was saying. That is why I said that I
18 couldn't answer right away because I cannot work from memory.
19 You have to do the calculations. I couldn't do them in my
20 head.

21 Q. Thank you very much, Ms. Bejarano.

22 MR. SILVA ROMERO: Mr. President, I have no further
23 questions.

24 PRESIDENT JÚDICE: Final questions, yes.

25 RE-CROSS-EXAMINATION

837

12:12 1 BY MS. RICHARD:

2 Q. Would you turn to Tab 20 of the binder in front of
3 you, and for the record, this is Exhibit C-220.

4 Now, you were--in response to questions from counsel
5 for Bolivia, you said that your job as an auditor was not to
6 prevent risk; it was to look backwards on what the company had
7 done.

8 Could you turn to Page 2 of the document on Tab 20.

9 MR. SILVA ROMERO: I'm not sure Ms. Richard has
10 properly characterized the answer from the witness. I'm not
11 objecting. I'm simply putting a mark. But I'm not sure that
12 the answer she gave was the one summarized by Ms. Richard.

13 PRESIDENT JÚDICE: That is not exactly the same spot.
14 It's quite a different one, but anyway the witness was for sure
15 explaining--

16 MR. SILVA ROMERO: She will explain. I'm not

17 objecting.

18 MS. RICHARD: Thank you.

19 PRESIDENT JÚDICE: Go ahead.

20 BY MS. RICHARD:

21 Q. This document sets out your functions as an internal
22 auditor. If you look on Page 2, four bullet points up from the
23 bottom, it says that your function is, and I will read it in
24 Spanish, "to provide advice to the different departments and
25 management offices in order to achieve the goals and to prevent

838

12:14 1 risks and to implement controls."

2 My question is: The word "previenendo," is this
3 looking forward or looking backwards?

4 A. The basic issue here, preveniendo, you have an invoice
5 that perhaps payment was not made correctly.

6 So, "prevenir," to prevent, what does it mean exactly?
7 There is a Contract, and perhaps the Contract has problems.
8 It's ill-structured, for example, in connection with the tax
9 matters. So, there is a clause that says all the taxes
10 according to the law are missing. We can say okay. That is
11 when it's being corrected. That's what I mean by "prevent."

12 There may be a payment of taxes that was not made
13 correctly, so you have the opportunity to correct this before
14 they review the internal taxes, and that is the duty that one
15 has to perform.

16 MS. RICHARD: I have no further questions.

17 PRESIDENT JÚDICE: Thank you very much.

18 Now, Mr. Conthe, has a few questions that he would
19 like to pose.

20 QUESTIONS FROM THE TRIBUNAL

21 ARBITRATOR CONTHE: Thank you very much.

22 I have a lot of questions, and they're going to be
23 easy questions. I have a sympathy towards internal auditors
24 because you are the one that defends both the doctrine--both
25 accounting doctrine and financial doctrines, but you are the

839

12:17 1 employee of the company, but you are in the hands of those who
2 lead the company, and sometimes our task can be a little bit
3 disagreeable, and sometimes you send the message and that
4 message is not liked by some of the employees.

5 So, my first question has to do with the relationship
6 that you establish internal auditors. There are two questions
7 here. Could you please clarify something for us.

8 The sequence of external auditors, you had
9 PriceWaterhouse, Ernst & Young, what was the period of time in
10 which each company audited EGSA?

11 And then what were the reasons for the changes in the
12 audit companies? For a financial regulator, one always looks
13 surely on a change in a financial auditor because sometimes you
14 see that an auditor that has been there for a long, long time
15 is incapable of seeing things that a new auditor may see,
16 but--so, perhaps you have an external auditor that says things
17 that the company doesn't really like and the company tries to
18 bring in a new one.

19 So, I wanted to ask why PwC was replaced by Ernst &
20 Young. Perhaps this had to do with the recommendation that PwC
21 did in connection with not allocating to assets the overvaluing
22 of the delivery units, of the UFV.

23 THE WITNESS: well, everything was submitted to the
24 committee, but having a preference because of a bad
25 recommendation, no, that has not happened. Ultimately, the

12:18 1 Audit Committee is the one that makes definitions and presents
2 everything to the Board of Directors.

3 In the case of EGSA, this did not happen because of a
4 poor recommendation.

5 ARBITRATOR CONTHE: So, the Tribunal has to forget
6 various--you don't smell a rat here, everything is fine, okay,
7 so the Tribunal can forget about this.

8 The second question has to do with the updating of
9 balance sheets based on the UFV related to Rule 3 applied in
10 2007.

11 My idea was that this was a rule that had to be
12 applied compulsorily by all Bolivian companies. So, if--here,
13 there was profits; right? And it was updated--well, the
14 updating of the balance sheets, according to inflation, can
15 only be based on profits; right?

16 I understood Rule 3--

17 PRESIDENT JÚDICE: There could be deflation?

18 ARBITRATOR CONTHE: I don't know if the Bolivian
19 regulator can believe this or not.

20 I thought that this rule was to be applied
21 compulsorily by companies, and the only discretion that the
22 company had was to put it in the Profit and Loss Statement and
23 then to distribute profits or then to put it in a reserve
24 account.

25 If I understood correctly, you said the banks and

Day 4 English FINAL

12:20 1 insurance companies in Bolivia--well, since there was this UFV
2 established, it was ultimately decided not to apply this.

3 Did I understand this incorrectly?

4 THE WITNESS: This is a rule of general application.
5 Banks and insurance companies submitted information and said
6 that they would not be able to apply this rule because this
7 would yield a loss for them.

8 Now, in connection with submissions to the relevant
9 authorities, what I understand was that an additional annex is
10 submitted that includes the UFV.

11 ARBITRATOR CONTHE: Why could they suffer a loss? An
12 adjustment according to inflation can only bring about profits.

13 THE WITNESS: Well, they don't have to re-express
14 anything because they're just providing services.

15 ARBITRATOR CONTHE: Very well.

16 My third question has to do with the re-expression of
17 interest. We talk about the entering interest--I don't know
18 how the translators are going to translate this--but we're
19 talking about the financial expenses that a project has before
20 it becomes operational, and these can be calculated as an
21 expense for the project.

22 I wanted to ask you whether you have these previous
23 interests or this preliminary interest. These are the costs,
24 for example, for a Concession of a highway. So, when you begin
25 to build a highway until the highway becomes original, five

842

12:22 1 years may elapse. So, you have financial expenses that are
2 incurred during the first five years, so the first five years
3 are going to be losses; right? And technically the company
4 would go bankrupt.

5 So, Spanish standards and international standards have
6 allowed for those financial costs that arise out of the
7 construction of an investment project are not calculated as
8 current expenses for the Financial Year, but for them to be
9 re-expressed.

10 So, this is a fictitious asset that will become real
11 when the project becomes operational.

12 Is this concept of preliminary interest present in
13 Bolivia?

14 THE WITNESS: well, we call this capitalization of
15 interest, and we apply the international standards. This is
16 not stated in the local regulations, but when the local
17 regulations are silent, we apply the international standards,
18 and we capitalize the interest on the projects.

19 So, we have to show that there has to be a recovery of
20 investment if capitalization doesn't exist.

21 ARBITRATOR CONTHE: If I understood you correctly, you
22 said at least in Bolivia the capitalization of interest or
23 these preliminary interests that we call in Spain is a free
24 decision that is based on an accounting policy made by the
25 Shareholders of the company, and this is not an obligation.

843

12:24 1 You say--you said that this was discretionary for the company
2 to say whether interest is going to be capitalized or not
3 capitalized.

4 THE WITNESS: Let me clarify. I think you're confused
5 in connection with accounting policies.

6 The capitalization of interest is a rule, and we apply
7 international standards. The overhaul of costs is an
8 accounting policy that, according to the activity of a given
9 business, the administrators of the business or the investors,

Day 4 English FINAL

10 maybe acting jointly, decide on what is the most adequate thing
11 for the business. Of course, you have to evidence this and
12 show this to a Board of Directors.

13 There are two different concepts. One thing is to
14 amortize an overhauling or a cost, and this is something else.

15 In a new project, I can find finance, and that creates
16 interest, and that amount of money I add to the project, and
17 this is included in the assets.

18 ARBITRATOR CONTHE: You include it in the price of the
19 assets, but you calculate it as an expense for the Fiscal Year
20 during that period of construction of the project?

21 THE WITNESS: No. It is part of the assets up until
22 the project becomes operational.

23 ARBITRATOR CONTHE: And it is no longer calculated as
24 a current expense during the period in which the project is
25 being constructed?

844

12:26 1 THE WITNESS: During the period the project is being
2 constructed until the work is concluded, I add all the interest
3 and the value of the construction plus interest, that is the
4 value of that asset.

5 ARBITRATOR CONTHE: Yes, I understand that.

6 But the financial expenses in the years from the
7 beginning of project until it becomes operational, those
8 expenses, apart from being included in the capital value of the
9 project, are they an expense for the Fiscal Year that reduces
10 the profit for each one ever Fiscal Years until the project
11 becomes operational?

12 THE WITNESS: No. It's not an expense. It
13 becomes--it becomes re-expressed.

14 ARBITRATOR CONTHE: Interest capitalization is an
15 alternative accounting technique because you're not considering
16 financial expenses as Fiscal-Year expenses, so you look at each
17 of the intervening years until the project becomes operational?

18 THE WITNESS: Interest capitalization is this: I
19 start the project. If I need financing, this is going to be a
20 part of the value of the project. It doesn't have anything to
21 do with profit and loss because it becomes re-expressed.

22 ARBITRATOR CONTHE: Okay. If I understand correctly,
23 the change in accounting policy that EGSA adopted in '09 was
24 completely sensible and according to international practice
25 because EGSA's practice until '09 was incredibly orthodox, and

845

12:27 1 it included losses to the profit-and-loss account because it
2 included interest that was related to the new CCGT project.
3 This project has not become operational, and it was going to be
4 operational in 2010.

5 So, in '08 and '09, I calculate as an expense
6 financial expenses, and this reduces profits, and the project
7 is going to become operational in 2010, I'm undervaluing my
8 profit. And that is the irregularity that EGSA corrected in
9 '09 when it adopted a policy that is fully in line with
10 International Accounting Standards that require that
11 preliminary expenses are stated and not expressed as current
12 expenses that reduce profits of the project before it becomes
13 operational.

14 Bolivia, in its defense, says this was an imprudent
15 change by EGSA in '09 when it began capitalizing interest. I
16 think it's actually the Contract. Up until '09, EGSA had had a
17 very orthodox policy that was not in agreement with accounting
18 standards, and starting in '09, the shareholders or someone

Day 4 English FINAL

19 said, Okay, we're being way too orthodox. We're going to apply
20 International Accounting Standards.

21 THE WITNESS: No, I'm sorry, you're mistaking two
22 things that are completely different, sir.

23 ARBITRATOR CONTHE: What are the two things that are
24 being confused by me?

25 THE WITNESS: In '09--and this has been mentioned by

846

12:29 1 the external auditor--has to do with the overhaul of the
2 equipment that is in operational.

3 ARBITRATOR CONTHE: Just overhaul?

4 THE WITNESS: Yes, just overhaul.

5 when you talked about construction, that is a new
6 project. When it's a new project, I add the interest, and that
7 becomes part of the asset.

8 The other thing is overhaul of other assets. For
9 example, when it comes to units, have you to take spare parts
10 out, put new spare parts in. That value is what becomes
11 deferred in time during the time the machine is operational.

12 ARBITRATOR CONTHE: So, we're only talking about
13 maintenance costs and not financial costs?

14 THE WITNESS: Yes.

15 ARBITRATOR CONTHE: So, it was my mistake because I
16 thought the change in policy also affected--or, rather,
17 impacted financial expenses.

18 THE WITNESS: Maintenance costs are costs associated
19 with an operation that has already started up. Interests are
20 part of the assets until it becomes operational.

21 PRESIDENT JÚDICE: Yes, this is your opinion. Your
22 opinion is that the change has been positive; correct? Or

23 inappropriate and negative?

24 THE WITNESS: In accounting practice, in the case of
25 EGSA, the advice is to defer in time those components during

847

12:31 1 the useful life period.

2 PRESIDENT JÚDICE: Are you talking about maintenance?

3 THE WITNESS: Yes, I'm talking about maintenance.

4 ARBITRATOR CONTHE: Okay. The maintenance costs that
5 we were talking about had to do with the equipment or the
6 projects that were related to the CCGT, or was this related to
7 other assets that EGSA had operational?

8 THE WITNESS: Yes, it was about other assets that EGSA
9 had in operation.

10 ARBITRATOR CONTHE: So, EGSA, what it did, is defer
11 these expenses.

12 And what was the reason--the reason why this deferral
13 took place? Because, according to this policy, it could have
14 also deferred in time the wages of employees and other current
15 expenses.

16 Why was this such an imprudent policy adopted?

17 THE WITNESS: It's not imprudent. The regulations
18 allow me to do so. I can defer any of the line items in the
19 balance sheet. What the rules allow me to do is to defer
20 things once the expense has been made during the time in which
21 the machine was in operation, and specifically for the period
22 of time of the maintenance.

23 In the case of EGSA, it's two-and-a-half years and
24 then you end with a zero value.

25 ARBITRATOR CONTHE: Yeah, we are talking about

12:32 1 allocation of assets, and they allocated to the useful life of
2 the units; we were not talking about the CCGT, but we're
3 talking about all of the operating costs of EGSA in their
4 entirety.

5 THE WITNESS: Yes, yes, that's right.

6 ARBITRATOR CONTHE: I'm sorry, I made a mistake when
7 interpreting the underlying problem.

8 The fourth question has to do with the guarantees in
9 connection with the financing obtained by EGSA because you were
10 saying in your Statement that EGSA exhausted its financing
11 capacity because it had guarantees that it had taken out on
12 each of their units.

13 What was the legal nature of this guarantee offered by
14 EGSA on the generator units, the one that EGSA was offering to
15 the financiers?

16 You were not here yesterday, but I told the Financial
17 Manager that the issuance of bonds had the link to a trust for
18 part of the revenue generated by EGSA, and in the prospectuses
19 for the bonuses, no reference is made to this guarantee. So,
20 that's the reason why I was asking you.

21 Was that a pledge? Was that a mortgage? What type of
22 guarantee was it that linked the assets to the financing
23 obtained from the banks and the bondholders?

24 THE WITNESS: In the case of the bond issuance, there
25 is no equipment pledge. It's stated in there that it is the

12:34 1 other type of credit, the other type of loan that actually
2 includes the guarantee.

Day 4 English FINAL

3 ARBITRATOR CONTHE: So, this was like a lien without
4 any sort of displacement?

5 MR. SILVA ROMERO: I have been very respectful, but
6 we're talking to an auditor, and the legal aspects are outside
7 her scope.

8 ARBITRATOR CONTHE: Well, if she doesn't know what the
9 legal nature of the guarantee is--well, this is legal, but she
10 should know the nature of the guarantee.

11 PRESIDENT JÚDICE: Do you know how to explain to the
12 Tribunal the characteristics of the guarantees if there were
13 any for the bonds?

14 THE WITNESS: In connection with the bond issuances,
15 there are some cash restrictions, but not for the equipment.

16 PRESIDENT JÚDICE: I think that she has answered.

17 ARBITRATOR CONTHE: But I was trying to try to
18 determine how much of a restriction this was. So, this was
19 kind of a covenant that limited borrowing, and this went beyond
20 the net worth. This was a limitation for borrowing in
21 connection with a specific good; correct?

22 THE WITNESS: Well, it was a limitation on the
23 available amount of cash for the company because we needed to
24 have some parameters for the reserve and to be able to pay back
25 in the case of the bonds.

850

12:36 1 ARBITRATOR CONTHE: But this was--this complemented or
2 this supplemented the percentage of debt vis-à-vis the net
3 worth, so if you had a covenant to limit the debt over the net
4 worth, and you also had a limit to the production equipment.

5 THE WITNESS: CAF imposed the Covenants. This was
6 guaranteed with an amount that I do not remember right now, but

7 in the case of the bonds, this is a limitation to 30 percent of
8 the amount of available cash; that is to say, any collection
9 had to be kept 30 percent by the company.

10 ARBITRATOR CONTHE: And my next question has to do
11 with the financing of the suppliers. You know--well, maybe you
12 don't know, but in the European Union, starting in 2000, we had
13 to issue a rule to limit arrears because, as you may know, in
14 Spain now, it is very frequent that whenever there are
15 liquidity issues or because of a credit crunch, the companies
16 try to delay payment to suppliers.

17 So, whenever there is a delay in the actual
18 circumstances, the company that is not creditworthy--that is to
19 say, that cannot pay--is in one situation. But at least in
20 Spain and in other countries, what countries do have--the
21 companies do have problems to finance, they tell the suppliers,
22 too bad for you, now you're going to finance me so that I do
23 not have to issue debt.

24 So, given that assumption that there are arrears or
25 there is an immediate arrear in the payment to the suppliers,

851

12:38 1 is that something that is common in Bolivia, or is it unknown
2 there?

3 THE WITNESS: If you allow me to tell you, generally,
4 I don't know if that is the norm; but in the case of
5 Guaracachi, we tried to comply as we received the funds.

6 ARBITRATOR CONTHE: I'm just telling you because, in
7 Spain, the regional governments and the State have started to
8 delay payment of items that used to be paid earlier because
9 that is the typical strategy of someone that has some liquidity
10 problems, so they obtain financing in a forced or unwilling way
11 by the suppliers. But this does not necessarily imply a

Day 4 English FINAL

12 situation of bankrupt--I mean, previous to the bankruptcy, a
13 pre-bankruptcy filing or anything of the sort.

14 So, there were some delays in the payments to YPFB;
15 therefore, there was an impact on the creditworthiness, and
16 there was insolvency. And I was wondering whether EGSA had
17 done the same and they had delayed payment to suppliers by
18 having the suppliers finance their debts. So, sellers like to
19 sell, but sometimes they need to accept a certain level of
20 arrears by the clients, by the customers.

21 So, was that something that EGSA did by itself or as
22 an internal auditor, and also an internal--an external auditor,
23 this is something that is also done by other companies in
24 Bolivia?

25 THE WITNESS: There are delays in payments.

852

12:40 1 Now, was that to finance companies? I was not in a
2 position to analyze that because I never saw that situation.
3 Someone that is being financed through the suppliers, but if it
4 is agreed and if it is in writing, I wouldn't see any problem.

5 ARBITRATOR CONTHE: well, but what we see in several
6 countries is that--

7 (Tribunal conferring.)

8 ARBITRATOR CONTHE: what I was saying is that if it is
9 agreed, okay.

10 But in many countries, without being agreed and also
11 with shorter timelines or deadlines, the company buys the
12 equipment and then delays the payment. This is what we see in
13 the various legal offices and in crisis, the customer that was
14 paying back in 60 days now is paying back in 90 days. This is
15 not agreed, but everyone, as a sport, accepts that in distress

16 or in difficult situations, those that have to pay delay the
17 payment, even though this was not agreed.

18 So I suspect that that was done in Bolivia by several
19 companies, not only EGSA--and that did not imply insolvency,
20 just that whenever the financial situations get tighter,
21 everyone is trying to negotiate and force their providers or
22 suppliers.

23 THE WITNESS: what I wanted to say was illiquidity;
24 cash was limited to face the obligations.

25 ARBITRATOR CONTHE: But that was obvious.

853

12:42 1 Now, my question is whether that was signaling
2 insolvency or a situation prior to bankruptcy.

3 So, they were not paying because--yeah, we already saw
4 in the e-mail that they were not paying because they had no
5 cash, but is that, in your opinion, consistent with the fact
6 that they were trying to twist the arm of YPF and try to force
7 them to finance EGSA?

8 Is that what you think?

9 THE WITNESS: We had to finance ourselves because we
10 had invested all of our money in the projects.

11 ARBITRATOR CONTHE: I move on to the next question.

12 When you were asked about the first bond issuance, you
13 said that EGSA issued bonds because they did not have money to
14 finance the project.

15 THE WITNESS: The combined cycle is--resulted from the
16 decision to finance it through bonds, so that was the beginning
17 of the project, and that's the way it was approved by the Board
18 of Directors.

19 ARBITRATOR CONTHE: I'm sorry, but I had implicitly
20 understood that it is better for the company to finance their

21 own projects and to not resort to external financing, but I
22 guess I was wrong.

23 What are the practices in Bolivia in terms of external
24 financing? We saw that CAF applied 0.65 Covenant for the debt
25 vis-à-vis the net worth of 0.65. So, debt cannot be higher

854

12:43 1 than 0.65 of the net worth, but for an investment banker who
2 has worked with Goldman Sachs, that is a very restrictive
3 measure.

4 So, in your opinion, a prudent borrowing policy or
5 indebtedness policy considers what type of ratio of debt
6 vis-à-vis principal?

7 THE WITNESS: well, in the case of EGSA, we were
8 already restricted by the Contract that we had signed, so
9 that's what I said in my statement. We were restricted, and we
10 were trying to get released from that obligation.

11 ARBITRATOR CONTHE: But, in addition to that contract
12 obligation, there were some other prudent principles from the
13 accounting point of view that had to be observed and that the
14 internal auditor has to communicate to the management of the
15 company.

16 And to determine what is--what you called prudent and
17 what is the beginning of something imprudent from the
18 accounting point of view, that requires some sort of analysis.

19 So, my question is: As an internal auditor, in your
20 opinion, where was the line? And leaving aside Contract
21 commitments and the Covenants introduced by CAF.

22 From your point of view as an internal auditor, where
23 was the line between accounting prudence and imprudence in
24 terms of debt-equity ratio and debt principal?

25 THE WITNESS: So, for each peso you have as part of

855

12:45 1 the liabilities, you should have a relative margin of--a
2 relative margin that allows me, based on the streams, to
3 pay--to finally pay. That is based on the company, on each
4 company. But if you give me--or if you ask me something
5 general, that depends on the operations of the company.

6 ARBITRATOR CONTHE: So, in your opinion, there is no
7 magic figure, 0.65 used by CAF?

8 THE WITNESS: Well, that was our own restriction
9 because we signed the Contract.

10 ARBITRATOR CONTHE: And my last question is technical.
11 Could you please clarify something is that I witness mentioned
12 yesterday, and I failed to understand fully.

13 Yesterday we heard about this pledge or this
14 guarantee, and I understood that this was something that EGSA
15 had to deposit to the Superintendency or to the authority.
16 This was sort of like a percentage of the investment project.

17 And yesterday another witness told us that to mitigate
18 the amount of that guarantee that I understood was like a
19 guarantee bond, an agreement was made so that the
20 combined-cycle project that was going to have a budget over
21 \$60 million was kept fictionally at a lower budget, so--at a
22 lower level, so that this guarantee bond was lower.

23 I don't know--I'm not the sure if you have any
24 information about this guarantee bond as an internal auditor
25 and whether you can clarify the terms of that circumstance.

856

Day 4 English FINAL

12:47 1 That may be relevant as long as it may explain the degree of
2 execution of the project, the combined-cycle project, in
3 April 2009 and April 2010.

4 THE WITNESS: Whenever a project is presented, the
5 Electricity Authority is requesting a guarantee to make sure
6 that the commitments are fulfilled. The guarantee requires the
7 payment based on the value of the good that you have committed
8 for execution within a specific period of time.

9 ARBITRATOR CONTHE: So, that means that if the amount
10 of the project was updated with the authority, more money had
11 to be deposited before the Superintendency; that is to say, the
12 incentive--there was an incentive to hide before the
13 authorities that the project was now more expensive because
14 otherwise the guarantee would go up?

15 THE WITNESS: It is hard to hide the value of a
16 project because the people go and they assess whether the
17 investment that was committed was actually complied with. And
18 that reminds me that the guarantee bond was maintained, but
19 then I think that we were asked to renew it. I don't know how
20 we finally solved that situation.

21 ARBITRATOR CONTHE: Thank you very much.

22 ARBITRATOR VINUESA: I don't have any questions. It
23 doesn't mean that I have everything clear in my mind, but you
24 might not be able to solve my doubts, either.

25 PRESIDENT JÚDICE: So, thank you very much. It's a

857

12:49 1 pleasure to be--it was a pleasure to be here with you. Your
2 presentation was very clear, and it's impossible to know
3 whether all of our doubts have been--it was clear, but we still
4 have some doubts. It wasn't totally clear, but now you

Day 4 English FINAL

5 are--you're excused, you can leave the room or stay with us.

6 (Witness steps down.)

7 PRESIDENT JÚDICE: Next witness?

8 MR. BLACKABY: I think probably we could sensibly get
9 through direct. I'm in counsel for Bolivia's hands as to
10 whether they want to start or whether they want to have lunch.
11 I don't mind. It's the same amount of time either way. I
12 think maybe it makes sense to have lunch.

13 COURT REPORTER: Lunch.

14 MR. BLACKABY: Lunch signs from David.

15 MR. SILVA ROMERO: Well, David has already decided
16 that we should have a break.

17 PRESIDENT JÚDICE: We will stop now, and return, I
18 would say, at 2:00 o'clock.

19 Do you think this afternoon will be enough for
20 Mr. Paz's cross-examination and the direct?

21 The question is a different one: Shall we ask the
22 other gentlemen to come at what hour? I'm speaking of CNDC,
23 MEC, and so on. What do you think, without compromising your
24 side on this issue?

25 MR. BLACKABY: I think from our perspective, he's a

858

12:51 1 very substantive witness in the sense he covers an awful lot of
2 ground. I can't imagine that we will be through it in
3 any--before the end of the day. That may change, one never
4 knows, depending on the responses. But probably in the
5 afternoon break we would have a better sense, but my sense at
6 the moment is that we will not be ready to hear the gentlemen
7 today.

8 PRESIDENT JÚDICE: Is it possible to inform them that

Day 4 English FINAL

9 perhaps it may happen later on, but not in the say, up to 4:00,
10 5:00, they may be called, but after 5:00 they will be free for
11 this beautiful city?

12 MR. BLACKABY: I suspect they will be free all
13 afternoon. We never know.

14 PRESIDENT JÚDICE: Thank you very much.

15 (Whereupon, at 12:53 p.m., the hearing was adjourned
16 until 2:00 p.m., the same day.)

17

18

19

20

21

22

23

24

25

859

1 AFTERNOON SESSION

2 EDUARDO PAZ CASTRO, RESPONDENT'S WITNESS, CALLED

3 PRESIDENT JÚDICE: Good afternoon, Mr. Paz. It's a
4 pleasure for us to have you here. Thank you very much for
5 coming.

6 Please state your name, and please read the sheet of
7 paper you have right in front of you, and then we're going to
8 proceed as we regularly do in these proceedings. You are going
9 to be asking questions from the lawyers to your right, and then
10 the lawyers to your left are going to ask you questions as
11 well. Then there may be other questions. The Tribunal may
12 also ask questions of you if the need arises.

13 THE WITNESS: Thank you very much, sir. My name is
Page 82

Day 4 English FINAL

14 Eduardo Paz Castro.

15 I solemnly declare upon my honor and conscience that I
16 shall speak the truth, the whole truth, and nothing but the
17 truth.

18 PRESIDENT JÚDICE: Thank you very much.

19 Mr. García Represa, you have the floor.

20 MR. GARCÍA REPRESA: Thank you very much,
21 Mr. President.

22 DIRECT EXAMINATION

23 BY MR. GARCÍA REPRESA:

24 Q. Sir, you submitted three witness statements in this
25 arbitration. Could you please look at the book you have on

860

14:04 1 your table. Are these the three statements that you prepared
2 and you've signed?

3 A. Yes, that's correct.

4 Q. I understand that you would like to make a few
5 corrections to the First Statements. Could you please indicate
6 to the Tribunal what they are about.

7 A. The first correction has to do with Paragraph Number
8 46. The third line of 46 says it was delayed by two years, and
9 it should be it was delayed by one year.

10 The second correction is Paragraph 50, where it says
11 May 25, '04, and it should read 20 July '04.

12 Paragraph 46, I already talked about it.

13 And then Paragraph 50, I already said that.

14 And then Paragraph 51 it says who then was the
15 Majority Shareholder of EGSA, and it should be Rurelec.

16 Q. Just a little slower because we have the stenographers
17 here that are transcribing your statement.

18 You mentioned a correction to Paragraph 51.

19 Could you please explain what needs to be deleted and
20 what needs to be added.

21 A. Yes, of course.

22 Third line, and it says sale of EGSA's shares to the
23 then Majority Shareholder of EGSA. What I wanted to say was
24 sale of EGSA's shares to Rurelec, this in the understanding
25 that up until the moment I prepared this statement, my

861

14:06 1 understanding was that Mr. Peter Earl was the Majority
2 Shareholder of EGSA, and he was the representative of the
3 Majority Shareholder of EGSA, and I knew him as the Majority
4 Shareholder of EGSA.

5 Q. With these corrections, do you ratify the contents of
6 the three statements?

7 A. Yes.

8 Q. Could you please briefly describe to the Tribunal your
9 background.

10 A. Yes, of course.

11 I am an industrial engineer by profession. I have a
12 Master's degree in business administration, and I conducted
13 doctoral studies at the University of Barcelona, this in
14 connection with my academic background.

15 I have been a university professor, and I had been a
16 professor at the university for more than 20 years in the
17 subject called decision-making costs and financing modeling and
18 simulation, and also financing prognosis, and also a course
19 that had to do with climate change and CDM at the Comunidad
20 Andina de Naciones at the Universidad de Simón Bolívar from
21 La Paz.

22 Apart from these activities, I have worked together

23 with the consultant doing evaluation work, and you can see that
24 in my CV. The company is called Ingeniería de Valuación, and
25 we have done this work for a number of companies, and I was a

862

14:08 1 consultant, and my brother worked in that place.

2 Q. Please try to go a little slower.

3 what had been your main functions and roles in EGSA
4 when you started working for the company in 1995?

5 A. In 1995, I was transferred from and then to EGSA. The
6 work that I did there had to do with developing and analyzing
7 medium-term programming studies, node price programming, the
8 analysis of the pre-dispatch and the post-dispatch daily on,
9 cost analysis projections for energy and capacity, and cost
10 projections, financial models, preparation.

11 And, starting in 2004, I worked as a technical person
12 for the whole process of registration of the CCGT project as a
13 CDM project or carbon credit project, and I did that until it
14 was registered before the Executive Board on 30 January 2010,
15 and this was registered on 4 May 2010.

16 Q. You made a number of dispatch projections and capacity
17 projections as at the nationalization date. This is Annex 41
18 of your First Statement. Could you please explain how these
19 projections are conducted. I understand that you have prepared
20 a presentation and copies of that presentation have been
21 distributed to the Members of the Tribunal.

22 This is also being shown on the screen.

23 A. The information that you have here has to do with
24 basic information as at May 1st, 2010, the reference date.
25 We're going to deal with how the fixed capacity is run and how

14:11 1 the power is run and projected.

2 And I also conducted an analysis on the basis of what
3 I was shown to me that was prepared by Compass Lexecon, and I'm
4 going to show some of the mistakes that in my belief exists
5 there.

6 In order to make a projection of capacity and energy
7 as at 1st May 2010, the first thing that we have to do is
8 define the timeline, and the lawyers have asked me to do this
9 in an eight-year period, which is somewhat similar to Compass
10 Lexecon's, and there was the latest POES, of the interconnected
11 national system, and the document contains the energy demand
12 projections for the whole timeline, the ten years in this case,
13 the extension of the generation, and the extension for the
14 transmission system as at 1 May 2010, the 2010-2020 POES was
15 the one available. This was prepared by the CNC, which is the
16 National Committee for Load Dispatch. This document, because
17 of a decree and a Ministry decision, is an obligatory document
18 for ENDE and for YPFB. What does that mean? Well, it means
19 that ENDE has to look at this extension plan, and it would have
20 the support of the Bolivian State by the Banco Central Bolivia,
21 and YPFB and any thermoelectrical plant is going to look for
22 natural gas; right? So, what that means is that ENDE must
23 execute the POES, and YPFB has to guarantee the natural gas for
24 the thermoelectrical plants.

25 The fundamental document is the PMP, which is based on

14:13 1 the software. The software is called SDDP, and this is used to

2 project fixed capacity. This is known as MCP.

3 So, POES handles demand in a more general way. The
4 PMP looks at it from a more disaggregated manner, in a more
5 disaggregated manner.

6 On the left of this chart, you have all the expansion
7 of generation that was expected at that time, and then the
8 expansion of the transmission system that was provided for in
9 that plan. So, this is how we're going to guarantee the supply
10 of electricity that was projected.

11 Next, you can see the evolution of the capacity
12 balance. Red shows demand and blue shows supply.

13 One of the objectives of the POES was to guarantee the
14 supply and to improve reserves levels, reserve levels. You see
15 the blue line, and there are jumps on the chart here, and this
16 means that new plants became part of the system, so we were
17 trying to reduce the growth of thermoelectric turbines and to
18 increase the growth of the large hydroelectrical plants.

19 You have here the Rositas project that includes
20 400 megawatts of capacity, and the reserve for the whole
21 country becomes quite substantial.

22 If you see this as the Year 2018.

23 Here, you see a screen of the SDDP software program.
24 You see a gray line here, and it says SDDP, and the information
25 is included or rather entered into the program. The next page

865

14:16 1 shows the features of the thermoelectrical units, and I want to
2 underscore the fact that here we have on the left all the
3 details related to the units. Their capacity in Borns, which
4 is the output. We have the thermal yield, which is measured in
5 BTUs per finished product or kilowatt hour, and also the
6 operations costs, and here you also have the cost in dollars

Day 4 English FINAL

7 per megawatt hour according to the different capacity levels.
8 We took as a reference point 90 percent. This software program
9 should go from the lowest cost units to the highest cost units.
10 This is very basic information.

11 we also look at hydrological information and also the
12 data of the whole transmission network that were fed to the
13 program. This allows us to process the SDDP program, and then
14 we process the MEDPLA program.

15 So, with this we have all the SDDP and the POES and
16 PMP program, so we run the SDDP, we run MEDPLA, which is a sort
17 of program that has been exclusively developed by the CNDC by
18 applying operating Rule Number 3. The software calculates the
19 marginal costs or Spot Prices of all generation units in 16
20 hydrological series, from the wettest series to the driest
21 series, so when there is a lot of water and when there is very
22 little water.

23 So, MEDPLA summarizes these 16 series and into a
24 single one, and they calculate the average, and we try to look
25 at the most probable event.

866

14:19 1 we have the output database that includes generation
2 for all of the units, marginal and spot spaces and demands for
3 all distributors, and also additional information for other
4 purposes.

5 We see the first element connected to projection. The
6 second is fixed capacity or paid capacity. The information
7 that we input is POES and PMP, and we calculate the maximum
8 demand for the whole system that occurs in 15 minute-intervals,
9 and we introduce into this program the peak capacity that the
10 units can contribute to supply the demand at that time.

11 we consider that hydroelectrical units have as a cost
12 the cost of the thermal unit that is the lowest in price for
13 energy, and that one is Guaracachi. The price is
14 1.28 megawatts hour, and then we do the dispatch for one hour
15 where we take into account the whole of the guarantee capacity
16 for all thermoelectrical units, and here you see the maximum
17 demand that is produced according to the information obtained
18 from the PMP.

19 PRESIDENT JÚDICE: You talked about Guaracachi, and
20 you also talked about another one, Guariba. Is that right?
21 What is Guariba?

22 THE WITNESS: It's GBE. You have it on Page 7.

23 MR. BLACKABY: You will recall that we had a rather
24 long debate on the first day about a maximum of 15 minutes for
25 direct; and, as a consequence of that, we agreed that there

867

14:21 1 would be a maximum of 15 minutes direct.

2 Now, there's two ways of resolving this. Either
3 we--and we've worked on that basis and we've not exceeded 15
4 minutes for any of our witnesses. Actually, we're not even
5 halfway through this presentation. We are about halfway
6 through. So, the--either we stop, or the alternative is, since
7 the issues that are being discussed by Mr. Paz relate directly
8 to the exercise undertaken by Compass Lexecon is that any time
9 taken in addition to the 15 minutes be added to the time that
10 Mr. Abdala has to explain similar things in his direct
11 examination. I don't know what the solution is. That is an
12 offer. Otherwise, we should respect the rules and the direct
13 examination should terminate here.

14 Thank you.

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

Day 4 English FINAL

16 Dr. García Represa.

17 MR. GARCÍA REPRESA: Yes, I see the Anglo-Saxon
18 punctuality, because he has placed objection at minute 1601, so
19 we have to understand very well what's going on. The Claimants
20 have submitted the reports of MEC and of EdI that you know
21 about. You're going to listen to the presentations by MEC and
22 by EdI before Mr. Abdala. Mr. Paz is explaining how these
23 projections are conducted. This is the technical matter.

24 I have no further questions to pose to Mr. Paz. I
25 understand that we are coming to the end. It's nine, and now

868

14:23 1 10 and 11 don't have any text, and 13, 14, and 15 are the most
2 interesting ones for you, so perhaps five minutes, eight
3 minutes, I think we would have finished.

4 Thank you very much.

5 PRESIDENT JÚDICE: My co-Arbitrators will correct me
6 if I'm wrong, but the solution is to go as fast as we can right
7 now, and the Tribunal will later on decide on the solution for
8 the overtime that you have used over 15 minutes. We can go
9 with your suggestion, Mr. Blackaby, or with any other
10 suggestion that the Tribunal deems convenient.

11 MR. GARCÍA REPRESA: You should have said that those
12 five additional minutes should go to Mr. Abdala.

13 MR. BLACKABY: Provided that there is an equal
14 opportunity for us to extend our direct from the half an hour
15 which was originally agreed with regard to Mr. Abdala. If we
16 could work on that, because I think there is an agreement.

17 PRESIDENT JÚDICE: I spoke a little before because I
18 was thinking that you're saying nothing more after that moment
19 in which I intervened. Then we have a solution, that's okay.

20 Thank you.

21 Continue, Mr. Paz.

22 THE WITNESS: Let us move on to 10.

23 If we go to 10, you will find an example of that
24 software. I just wanted to show you that all the hydrological
25 plants are included as included in the software, and then you

869

14:24 1 have the information included from the POES 2010-2020.

2 Next you see how the program runs, there's a screen
3 capture, so the database is prepared, we run the program, and
4 we have an output database, and this contains the fixed
5 capacity of all hydroelectrical and thermoelectrical plants.

6 Next you see an example of the cold reserve according
7 to Rule 2, you find for the calculation of fixed capacity, and
8 here it says that the thermal units not considered or
9 dispatched in a firm capacity are allocated to cold reserves
10 until their reserve in the system reaches 17.5 percent, so if
11 we reach the reserve, these units are considered peak capacity
12 generated units, and they are paid fixed capacity when they
13 operate.

14 Q. I'm sorry. Time is running, but also the information
15 has to flow, so I'm going to ask you to go fast but not as fast
16 as you usually speak.

17 A. On Page 13, I've analyzed this information, and I've
18 made the comparison with the information submitted by Compass
19 Lexecon.

20 How is it possible for units with a fuel cost of \$40
21 per megawatt hour as shown in this table more than double that
22 a gas turbine that is much more efficient operates 50 percent
23 of the time, that is to say, more than 4500 hours a year as if
24 these were base units or very efficient units.

25 Page 14, you see my comparison, and here you can see

870

14:27 1 that these units are almost not subject to dispatch, and they
2 operate only if there is a failure if they're included in the
3 system.

4 On 15, you have something important that I included in
5 my statement. Here, you have the projection for fixed
6 capacity, and then on the right you have cold reserve.

7 My run of fixed capacity is consistent with the energy
8 run that I had conducted.

9 The unit is not operating or is almost not operating
10 for the possibility for this unit to be dispatch is almost
11 null.

12 And then you have a mix run. If you go back to Page
13 13, you are going to find the orange lines that shows zero, and
14 you show a permanent fixed capacity for these units.

15 Members of the Tribunal, in my experience, this is an
16 inconsistency. It's a mistake. They have not run fixed
17 capacity.

18 Thank you very much.

19 PRESIDENT JÚDICE: I think you have finished your
20 presentation.

21 Mr. García Represa, is there anything else?

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

23 Thank you very much, sir.

24 We've used four additional minutes, and I'm not going
25 to take any more time now, sir. My colleagues are going to ask

871

Day 4 English FINAL

14:28 1 questions.

2 PRESIDENT JÚDICE: Mr. Blackaby, you have the floor.

3 MR. BLACKABY: Thank you very much, Mr. President.

4 CROSS-EXAMINATION

5 BY MR. BLACKABY:

6 Q. Mr. Paz, I'm going to give you a few more binders. I
7 don't think you're going to need those two binders they have
8 next to you because I'm sure we are going to have the same
9 copies. I'm so sad and sorry for the planet.

10 PRESIDENT JÚDICE: Yes, tradition, first of all.

11 BY MR. BLACKABY:

12 Q. I'm sorry we're distributing these binders, but there
13 were many issues you dealt with in your statements.

14 My name is Nigel Blackaby. Allow me to introduce
15 myself. I work for a firm called Freshfields. We are the
16 lawyers for the Claimants in this arbitration.

17 I'm going to explain to you how we're going to do
18 things this afternoon. I'm going to ask you a few factual
19 questions in these arbitration proceedings, and my colleague,
20 Mr. Rubins, to my left, is going to ask you about more
21 financial, more complex financial issues that I am not able to
22 understand as well as my colleagues.

23 It is possible for me to stop my examination, then for
24 Mr. Rubins to start his examination, and then for me to go back
25 to my factual line of questioning. If you see fit, that's the

872

14:30 1 way we're going to proceed.

2 Because of time constraints, we've seen that we run
3 the risk of speaking really, really fast in these hearings, so

4 we need to speak slowly enough so that there is a true
5 transcription of what you have to say, a true transcript, and
6 we are not that short of time, and you also need for me to wait
7 with my question. Otherwise, our voices overlap, and we need
8 to have a good record of what we have just said. Good?

9 A. Yes.

10 Q. Let's start with your statements. You presented three
11 statements in this case; is that correct?

12 A. Yes.

13 Q. One dated October 12, 2012.

14 A. Yes.

15 Q. The second one is November 26, 2012.

16 A. Yes.

17 Q. And March 1st (sic), 2013?

18 A. Yes, March 1st, 2013, but the lawyer had mentioned
19 March 3rd, 2013.

20 Q. You worked at Guaracachi for about 15 years; right?

21 A. I worked with Guaracachi; and, as I mentioned at the
22 beginning, I was hired by ENDE in March 1990. I was
23 transferred by ENDE to Guaracachi, and that's where I work.

24 Q. Well, what I meant is that prior to the
25 nationalization, you had worked for almost 15 years in

873

14:33 1 Guaracachi?

2 A. I have been working with Guaracachi at least what we
3 see in papers since July 1995, when I was transferred by ENDE,
4 and obviously up-to-date.

5 Q. And your position out of those 15 years has always
6 been the same up to the nationalization; that is, you have
7 always been an analyst? Correct?

8 A. Yes.

Day 4 English FINAL

9 Q. And Mr. Juan Carlos Andrade was your boss between 1996
10 and July 2010; correct?

11 A. Yes, it is correct.

12 Q. Mr. Juan Carlos Andrade was the one that you expressed
13 your appreciation and respect for; correct?

14 A. Well, I appreciate and respect everyone. Juan Carlos,
15 Marcelo, Mr. Lanza, Mrs. Bejarano, and all of my colleagues at
16 the company.

17 Q. Well, I know that 14 years with the same boss must
18 have meant some appreciation. I know that from my colleagues.
19 So, who introduced you as a witness here?

20 A. Well, the Office of the Attorney General of the
21 Plurinational State.

22 Q. Do you know why no other witnesses from Guaracachi
23 were introduced to this arbitration?

24 A. I don't know. You should ask the Attorney General or
25 the lawyers. I don't know.

874

14:34 1 Q. So, as General Manager with your colleagues, did you
2 ask them whether they were asked to participate in this
3 arbitration?

4 A. Well, it is not my role to define that. Had I been
5 asked that or had I been asked to inquire about that, I could
6 have done so.

7 Q. And who's paying for your time devoted to this
8 arbitration and your attendance here?

9 A. Well, I received my salary from Guaracachi. Travel
10 expenses are also covered by Guaracachi.

11 Q. Agreed.

12 So, it is the company itself the one that is covering

13 your expenses?

14 A. Correct.

15 Q. So, do you consider it that you report to Government
16 in this case?

17 A. No, I am an employee of Guaracachi Sociedad Anónima.

18 Q. And why would Guaracachi pay for all of your expenses
19 to send you to defend a case versus the Plurinational State of
20 Bolivia?

21 A. Well, the proper report was presented to the Board of
22 Directors of EGSA, and the Board of Directors asked me to come.

23 Q. Well, because the State is the main shareholder of
24 EGSA; correct?

25 A. Yes, it is EGSA's shareholder.

875

14:36 1 Q. Now, let's move on to your statements.

2 Did you write them, or were they written by the
3 lawyers?

4 A. I wrote my statements.

5 Q. Did your lawyers help you?

6 A. Just by formatting them and verifying some of the
7 elements and that's about it.

8 Q. Did anyone from the Bolivian representation read your
9 statement before you signed it?

10 A. No.

11 Q. Did you read the statements by the other witnesses
12 presented by Bolivia in this case, for example, the statement
13 by Mrs. Bejarano, Mr. Quispe?

14 A. I did not read Mr. Quispe's. In the case of
15 Mrs. Bejarano, she works with me. I did not read her statement
16 before she signed it.

17 Q. When you were preparing your statements with Dechert,

Day 4 English FINAL

18 I'm imagine that you include in your statement that you
19 thought--I imagine that you included everything that you
20 considered relevant; right?

21 A. Could you please reformulate your question in a
22 clearer way.

23 Q. Yes.

24 You address several issues in your statement; correct,
25 and do you consider that you included all of the relevant

876

14:37 1 aspects to this topics in your statements based on your
2 personal knowledge?

3 A. Yes, based on my personal knowledge, yes, but if
4 something is missing and if I can clarify it, I would be glad
5 to do so. We would have to see what the doubt is.

6 Q. You referred to several documents in your statements.
7 We have those two binders that are filled with documents;
8 correct?

9 A. Yes.

10 Q. Did you select those documents, or did the lawyers
11 help you select the documents?

12 A. I selected them.

13 Q. So, I imagine that with all of this documentation,
14 whenever there was a supporting piece of document to one of
15 your statements, you attached the relevant document; correct?

16 MR. GARCÍA REPRESA: This is no objection. The
17 transcript in Spanish says no, I did not select them, but the
18 answer was yes, I selected them. It's in the Spanish
19 transcript.

20 BY MR. BLACKABY:

21 Q. So, you're referring to some factual statements, and

22 we see that you have selected documents that you said you
23 selected when you explained a position, and you said that there
24 was a supporting document. I'm asking you, did you attach
25 every single document?

877

14:39 1 A. Well, I would like to clarify that I selected the
2 documents that had to do with that topic out of all of the
3 documents that I had available. They're not documents to
4 support something.

5 Q. Okay. Thank you.

6 Today, you are the General Manager of Guaracachi;
7 correct?

8 A. Yes, that is correct.

9 Q. And you were promoted in May 2011 after Mr. Lanza
10 left; correct?

11 A. Yes.

12 Q. And, prior to that, you were the Business Manager, and
13 you were appointed June 2010--correct?--after the
14 nationalization.

15 A. Correct.

16 Q. So, that means that you were promoted twice quite soon
17 after the nationalization; correct?

18 A. Yes, correct.

19 Q. And you have had a good performance from the
20 professional point of view after the nationalization; correct?

21 A. No.

22 Q. Why not?

23 A. Because first I would like to clarify to you and to
24 the Members of the Tribunal, and this is also included in
25 documents that are not attached to my Statement, that I did not

14:40 1 request these positions, these appointments, and this is
2 already stated in the staff evaluation papers.

3 Q. Why you were not looking forward to getting a
4 promotion?

5 A. Well, because the responsibility as a General Manager
6 is quite significant.

7 Q. Why did you accept?

8 A. Because I found a way to solve some of the company
9 issues.

10 Q. So, I understand that you are attracted by the
11 responsibilities. If you wanted to solve the problems of the
12 company, that entails responsibility.

13 A. I respect your opinion.

14 Q. Well, I'm trying to understand. You wanted to be the
15 General Manager to solve the problems, or you didn't want to be
16 the Manager in that case, and in that case why did you accept
17 the position?

18 A. I would like to clearly state the following: I was
19 asked to be the General Manager. I was asked to be in charge
20 of the company, and back then there were two goals. First of
21 all, to Commission San Matías and second to also Commission the
22 combined cycle.

23 The person with the most experience in the company was
24 me back then, and I think that that is the reason why they
25 chose me.

14:42 1 Q. Very well. Thank you.

Day 4 English FINAL

2 You are here in this arbitration as a fact witness;
3 correct?

4 A. Well, I am not aware of the accurate terminology for
5 arbitration, but I understand that an expert is the person who
6 analyzes something, and the fact witness is the person who
7 actually submits facts, information on facts. I think that I
8 should be an expert/witness. I don't know. I personally do
9 not know.

10 Q. So, you're telling me you don't know whether you're an
11 expert, a witness, or maybe both?

12 A. Well, I imagine I might be both.

13 Q. You were working with ENDE between 1990 and 1995; is
14 that correct?

15 A. Yes.

16 Q. And one of the--well, let me cover each of the topics
17 so that I can understand the scope of your statement.

18 First of all, you referred to the Electricity Sector
19 prior to privatization; correct?

20 A. Yes.

21 Q. Why? Because you were part of ENDE between 1990 and
22 1995?

23 A. Yes.

24 Q. And then you referred to the Regulatory Framework for
25 the Electricity Sector; correct?

880

14:43 1 A. Yes.

2 Q. But you did not participate in the drafting of the
3 Regulatory Framework; right?

4 A. No, I did not. The Regulatory Framework was handled
5 by international consultants. Clearly, once it was published,

6 we were interested in studying this framework in depth.

7 Q. And you're not a lawyer, are you?

8 A. I am not--well, the Regulatory Framework for
9 electricity has a technical configuration.

10 Q. That was not my question. I asked you: Are you a
11 lawyer?

12 A. No, I'm not a lawyer. I am an engineer.

13 Q. And I--

14 MR. GARCÍA REPRESA: I am being very patient, but you
15 keep saying "you say, you say, you say." At least you should
16 point out where he stated that in his statement.

17 MR. BLACKABY: Well, I would be wasting too much time
18 if he is not in agreement with what I say. I will be glad to
19 go to the statement, to the paragraph. I don't think it is
20 necessary for hours to go over the paragraphs.

21 MR. GARCÍA REPRESA: I am just repeating some of the
22 comments that were made before during other examinations about
23 showing documents to the witness.

24 PRESIDENT JÚDICE: I think that we're going to
25 continue this way because this is faster, but if you believe

881

14:45 1 that you need to see a document before you answer, please say
2 so because we want for everything to work in a very safe way.
3 Please do not answer, do not provide any answer just because
4 you have to answer. If you need to look at a document, please
5 ask for it.

6 Thank you.

7 BY MR. BLACKABY:

8 Q. If I ask, were you a lawyer or are you a lawyer, I
9 don't think that we need to look at a certificate for that.

10 So, in terms of your description of the Regulatory
Page 101

Day 4 English FINAL

11 Framework and the concept that we shared, that has to do with
12 your understanding as to how it works from the business point
13 of view; right?

14 A. I'm sorry?

15 Q. Your description of the Regulatory Framework. You're
16 describing it from--

17 A. Can you tell me where I describe the Regulatory
18 Framework?

19 Q. You refer to the Regulatory Framework in the
20 Electricity Sector.

21 A. I did not describe the Regulatory Framework.

22 Q. Okay. Well, that is not too important.

23 Then you address all of the aspects of Guaracachi's
24 investment in new generation capacity for over 15 years;
25 correct?

882

14:46 1 A. Yes. I address investments and also disinvestments,
2 EGSA's disinvestments, for over 15 years.

3 Q. And you were responsible--were you responsible of
4 those investment decisions, or did you participate in those as
5 an analyst?

6 A. I was not responsible for those decisions.

7 Q. Did you participate in those decisions?

8 A. No. First, you asked me if I was responsible, and the
9 answer is I was not responsible for them.

10 As an analyst, I was doing what the people above me
11 were asking me to do.

12 Q. So, the next question--and I'm sorry for asking you
13 both questions at the same time--is whether you participated in
14 the decision-making process to invest?

15 A. No, I did not because that was not part of my job.

16 Q. Now, you also stated a lot of information about the
17 financial situation of Guaracachi; is that correct?

18 A. If I am not wrong, I do not address the financial
19 situation of Guaracachi in my Second Statement. I was asked to
20 do something in connection with the risk rating for EGSA to
21 work with Fitch, and I do not remember addressing Financial
22 Statements and all that. If you remind me, if you help me
23 recall this, I will be glad to look into it.

24 Q. I understand, then, that you do not refer to the
25 Financial Statement of Guaracachi. I understand that's what

883

14:48 1 you're stating, okay. Because that was not your area; right?

2 A. Yes, because based on the lawyers, that is something
3 that had to be addressed by Ms. Bejarano, and I understand that
4 she addressed it.

5 Q. Very well. Because you reported to Mr. Andrade but
6 not to Mr. Blanco, who was the Finance Director; is that
7 correct?

8 A. Yes. I reported to Mr. Andrade rather than
9 Mr. Blanco, but once again, upon request by my superiors and
10 Mr. Andrade, I would do whatever they asked me to do.

11 Q. So, I seem to understand that you were not responsible
12 and you did not participate in the decision-making process for
13 the financing of the company?

14 A. Yes.

15 Q. As part of your statement, you criticized the work
16 carried out by the damage experts presented by the Claimants;
17 correct?

18 A. Yes. In my Statements--in my First Statement, I make
19 some observations that are closely related or strongly related

20 to the presentation that I made at the very beginning for the
21 Tribunal.

22 Q. And do you consider yourself to be an expert economist
23 to make those statements?

24 A. I presented and I developed energy and capacity
25 projections, which I have been performing at EGSA for over 14

884

14:50 1 years.

2 Q. For example, in your First Statement, at
3 Paragraph 137, you make a comment on a mistake in the
4 calculation of taxes.

5 A. Yes, that is correct.

6 Q. Mainly the payment of the corporate taxes.

7 A. Correct.

8 Q. Do you think that that is a financial issue that has
9 to do with projections?

10 A. Well, if you recall what I told you and what my
11 Statement says, I am a professor for financial simulation
12 models at the undergraduate and graduate levels, and this is
13 part of the creation of a financial simulation model.

14 Q. But you're referring to a mistake in the estimation of
15 the tax.

16 A. I am referring to a mistake in the formula used to
17 determine the tax.

18 Q. And even though you did not have any financial
19 responsibility, you did that; right?

20 A. Well, once again, it is a mistake in the Excel sheet.

21 Q. And in connection with the topics that you addressed
22 in your three Statements, do you have personal and direct
23 knowledge of each of the facts that you described?

24 A. My Statement is very clear. whenever I have direct
25 and personal knowledge, I said so; and, whenever my knowledge

885

14:52 1 was derived from reviewing materials, I also indicated that.

2 Q. I would like to talk about the combined cycle, the
3 most important investment by Guaracachi.

4 A. Could you please tell me where?

5 Q. I'm just introducing the topic.

6 Do you agree that this was the most important
7 investment project for Guaracachi in the electricity generation
8 sector back then? That is, starting in 2005.

9 A. The CCGT project was the most important one, yes.

10 Q. And who was the technical--who was the person who was
11 technically responsible for the progress made in this
12 combined-cycle project?

13 A. Well, Jose Antonio Lanza was the Manager. IPOL was
14 the consultant with one of the Contracts, and Santos EMI was
15 also--CMI was also in charge of this for the--for putting
16 together the project.

17 Q. And was Mr. Lanza the one who was responsible for
18 updating the Board in connection with this project?

19 A. Yes.

20 Q. And Mr. Lanza remained with Guaracachi for some time
21 after nationalization; correct?

22 A. Yes.

23 Q. And, as a matter of fact, he was in your position
24 as--he had the same position you currently have, he was the
25 General Manager; correct?

14:54 1 A. Yes.

2 Q. You also attended Board meetings in connection with
3 the combined cycle; correct?

4 A. Well, you need to refer to the dates.

5 Q. In general. Have you ever attended a Board meeting or
6 a meeting of Shareholders?

7 A. Well, I attended the meetings since--after becoming
8 the General Manager, but never before.

9 Q. Okay. Mr. Paz, you're referring to the progress of
10 the combined-cycle project in each of the Statements; correct?

11 A. No, I don't think so. I don't think I mentioned that
12 in my Second Statement. In my Second Statement I only referred
13 to something else, but--yeah, in the Third Statement I did say
14 something, but not in the second one, unless there is a word or
15 something, so please clarify.

16 Q. Yes. Paragraph 10 in your Second Statement refers to
17 that.

18 A. I am referring to my First Statement. I am referring
19 to my First Statement. As I explained in my First Statement,
20 EGSA had a contract with IPOL, et cetera, et cetera. That is
21 Paragraph 10 of my Second Statement.

22 Q. I'm not referring to that.

23 Your Second Statement, in Paragraphs 9 and 10, refers
24 to the combined-cycle project; correct?

25 A. No, it does not. It talks about the alleged thrust of

14:56 1 Rurelec to the investment through EGSA's investments.

2 Q. Could you please read it out loud.

3 A. Yes, Number 9.

Day 4 English FINAL

4 I do not agree with Mr. Blanco's statement based on
5 which technical knowledge of Rurelec, in his experience, EGSA
6 would not have been able to make the investments between 2006
7 and 2010, and in particular the combined-cycle project.

8 Q. And then you referred to the various contracts in
9 Paragraph 10 for the combined-cycle project?

10 A. Correct.

11 Q. So, you are talking about the combined cycle?

12 A. Well, you asked me about the progress made. You did
13 not ask me about the combined cycle.

14 Q. Okay. As for the progress of the project, we have
15 seen in your direct examination that you--that you liked the
16 graphs, the graphs in the plan.

17 A. I'm sorry, but--

18 Q. We're going to be more specific. We're going to be
19 more specific. Don't worry.

20 Is it true that the progress made in the
21 combined-cycle project was reflected in a plan?

22 I'm asking you do you know that the progress of that
23 project was reflected in a plan?

24 A. No, I did not.

25 Q. So, you didn't know that there was a plan based on the

888

14:58 1 model concept that showed the progress made in the various work
2 areas?

3 A. Are you talking before or after the nationalization?

4 Q. I am saying before the nationalization.

5 Well, you were not aware?

6 A. No, I was not aware of that. I was working on carbon
7 credits.

8 Q. After the nationalization, you knew that these plans
9 were used to reflect the progress made in the project?

10 A. Well, after I became the General Manager, Mr. García
11 presented these schedules that reflected the progress made and
12 also the progress made in general with the combined-cycle
13 project and the generators.

14 Q. Would you please look at Tab Number 16. That would be
15 the second binder.

16 A. Is it C-313?

17 Q. Yes.

18 A. Very well.

19 Q. This is a report on the progress of the CCGT dated
20 26 March 2010 before the nationalization.

21 A. Yes. Yes, I imagine so. I haven't looked at the
22 date.

23 Q. There is no date on here. Could you tell me what the
24 date is, please.

25 A. I don't see any date here.

889

15:00 1 Q. This is C-313 file, and here you wrote 26 March 2010,
2 but the document bears no date.

3 well, there is no date in the section--it's not really
4 important because the date I'm interested in is 20 March 2010,
5 and this is to be found within the document, this date.

6 A. Okay, very well.

7 Q. The lawyers are not going to be able to help you
8 during your testimony, sir.

9 A. I know what to do.

10 Q. Well, I would like you to answer the question that I'm
11 going to ask you, and no one is questioning its veracity.

12 This kind of graph, it's very, very small. It's very
Page 108

Day 4 English FINAL

13 small. It is a chart that we saw, and it is consistent with
14 the ones you saw before nationalization?

15 A. No. I'm talking about the same format. Well, I
16 repeat, when Carlos García did this in connection with progress
17 on Microsoft, it did not bear this format.

18 Q. It did not bear this format?

19 A. No.

20 Q. You can see that this table here shows four different
21 areas of work, the main areas of work, and the headings are in
22 English. The first one says "design" in English.

23 Do you see it?

24 A. Yes, sir.

25 Q. Then the blue one is called "procurement"?

890

15:02 1 A. Yes.

2 Q. Then--

3 PRESIDENT JÚDICE: Mr. Blackaby, excuse me, there is
4 an objection for foundation because there is no basis on which
5 to ask questions of the witness in connection with this.

6 MR. BLACKABY: I'm trying to establish with the
7 witness whether the elements included here with the project
8 analysis were also the same elements that they have later.

9 MR. GARCÍA REPRESA: If you have no questions on the
10 document, that's fine, but to ask questions about the document,
11 you have to establish with the witness whether the witness has
12 seen the document or not.

13 BY MR. BLACKABY:

14 Q. I'm going to ask a question.

15 A. Yes, of course.

16 Q. Do you agree, don't you, that that the project

17 progress includes four areas of work: Design, procurement,
18 services, and commissioning. This would be consistent with the
19 knowledge that you have of the project after nationalization?

20 A. Yes. I don't know where the--the mounting of the
21 project.

22 Q. Yes. The design, procurement, services, and
23 commissioning.

24 A. Well, we used the word "commissioning" and "start-up."
25 And so we use--we use different terms, commissioning and

891

15:04 1 start-up; commissionado y puesta en marcha.

2 This does not correspond to the formal structure that
3 Mr. García showed me.

4 Q. To be clear, you have never seen any chart as this
5 before for the viewpoint of Mr. Lanza?

6 A. No, at least I haven't--I don't remember.

7 Q. But in this arbitration, you talk about the progress
8 of the CCGT.

9 A. Yes, I do mention that, of course.

10 Q. And your lawyers, did they give you any
11 document--well, have you seen these documents in the course of
12 this arbitration?

13 A. This document in particular? C-313?

14 Q. Or a similar document.

15 Any document that talks about the progress of the
16 CCGT.

17 A. I saw the Statement of Mr. Lanza.

18 Q. And the annexes?

19 A. No, I didn't see the annexes, but I didn't review
20 them.

21 Q. You just read them?

Day 4 English FINAL

- 22 A. Just the document.
23 Q. And you didn't read the annexes?
24 A. No.
25 Q. So, before nationalization, you did not really know of

892

15:05 1 the report or the progress of CCGT as it was submitted to the
2 Board of Directors?

3 A. Before the nationalization, no. After the
4 nationalization, I did have access to these documents.

5 Q. I would like you to go to Tab 28. It's also in
6 volume 2. This is a document that you do recognize; right?

7 A. Yes.

8 Q. It is very similar to the other document. This is a
9 document that shows the progress of the CCGT project.

10 A. I don't know. The other document is much larger.
11 I'm looking at Annex 29. I do recognize this. It is
12 a memorandum.

13 Q. And you annexed this to your Statement?

14 A. Yes.

15 Q. It was a report by Lanza to Mr. Jerges Mercado. Who
16 was Mr. Jerges Mercado?

17 A. He was the General Manager as of May 1st until
18 mid-September or October.

19 Q. So, before you it was Mr. Lanza. And before
20 Mr. Lanza, it was Mr. Mercado; right?

21 A. No.

22 Q. Please explain this to me.

23 A. Before I became, Mr. Lanza; and before Mr. Lanza,
24 Joachim Rodriguez, for two months; and before Mr. Joachim
25 Rodriguez, we had Mr. Mercado; and before Mr. Mercado, we had

15:07 1 Jaime Aliaga.

2 Q. So, four general managers of Guaracachi from the time
3 of nationalization?

4 A. Yes, that is correct.

5 Q. Apparently no one wants that position.

6 A. Yeah, that's why I was saying.

7 Q. Okay. I'm not going to bet on it.

8 PRESIDENT JÚDICE: I don't think this should be on the
9 record.

10 BY MR. BLACKABY:

11 Q. Okay. At the end of the first page, it says that the
12 CCGT process was completed by 51.1 percent.

13 Do you see that?

14 A. Yes, that's what it says.

15 Q. I think there is an error. It says 51, but it's
16 95.1 percent.

17 PRESIDENT JÚDICE: No, you said 55.

18 MR. BLACKABY: Well, it's a problem of asking
19 questions in a language that's not your own. I should go back
20 to English at some point, then.

21 PRESIDENT JÚDICE: I would be very happy if my Spanish
22 were half as good as yours.

23 MR. BLACKABY: No, no, Mr. President. It's okay.

24 BY MR. BLACKABY:

25 Q. Let us now look at a document that you have attached

15:09 1 to your Statement. And yes, you agree that the progress was
2 95.1 percent.

3 Go to Tab 18.

4 A. We go back to the other document?

5 Q. Yes, yes, exactly.

6 I'm sorry, I'm not looking at the right document.

7 Yes, it is Tab 18, but it's not the same document.

8 This is a report to the Board on the CCGT project
9 dated December 2010.

10 A. Excuse me?

11 Q. This is a report to the Board, and it's behind Tab 18;
12 right?

13 A. Yes, no problem.

14 Q. Is this 313?

15 A. No, that's 17.

16 Q. Go to 18.

17 That's the one, I think.

18 Very well. You find it, 18.

19 So, this is a report prepared six months after
20 nationalization?

21 A. Yes.

22 Q. So, what was your role at that time in the company,
23 December 2010?

24 A. I was the Business Manager.

25 Q. As the Business Manager, did you ever receive a copy

895

15:12 1 of this document?

2 A. At that time, no.

3 Q. When did you receive a copy of this document?

4 A. Well, never, actually.

5 Q. Never?

6 well, you said at that time, so I thought you had
7 received a copy.

8 So, you were not aware of the conclusions--the
9 conclusions reached on Page 3 that the CCGT project was
10 completed--was 99.9 percent completed.

11 A. No, at that time, no, I wasn't.

12 Q. So, you didn't speak with Mr. Lanza about this?

13 A. Yes, I have spoken to Mr. Lanza many times about this
14 issue, but never about the progress status.

15 Q. Is this figure consistent with your understanding of
16 the progress of the CCGT?

17 A. It is my current understanding of the CCGT, after
18 having reviewed all the documentation, but no.

19 Q. Are you saying that Mr. Lanza, as a General
20 Manager--well, actually, Mr. Lanza, he was the Project Manager
21 of the company, you're saying that the Project Manager's Office
22 of the company in December 2010 after nationalization submitted
23 a report that was not consistent with reality related to the
24 progress of the CCGT?

25 A. That's what you're saying. I never said that

896

15:13 1 anywhere.

2 Q. Is it correct or not that, in your understanding, at
3 that time, December 2010, the project had been completed by
4 99.99 percent, the CCGT project? December 2010.

5 THE WITNESS: Again, Members of the Tribunal, I think
6 this issue needs to be clarified, and the answer should be a
7 bit more comprehensive.

8 PRESIDENT JÚDICE: Yes, go ahead.

9 THE WITNESS: Thank you.

10 First, I would like to say that I am not an expert in
11 the installation of CCGT projects. I'm not an expert. On the
12 basis that--the information that we--that I have revised, we
13 have Santos CMI, which was the Contractor; IPOL, they were the
14 experts, specifically Mr. Jerry Blake.

15 Now, in connection with the physical progress--and we
16 have to talk about this because there are two kinds of
17 progress: The physical progress and the budgetary program.

18 One thing is the physical progress, and a different
19 progress is the one related to budget. Budget execution,
20 according to the documents I have reviewed, indicated that the
21 progress was 95, 93, 94, 99 percent progress.

22 Now, physical progress, according to the documentation
23 I have reviewed, leads me to a different kind of understanding.
24 And I can't talk from memory about these annexes, but I can
25 tell you right now that there are two reports--I'm sorry, there

897

15:15 1 is one report and one schedule.

2 Let me try to find it. Just one moment.

3 BY MR. BLACKABY:

4 Q. Yes, we're going to talk about all these issues.

5 I am specifically talking about the report--the
6 progress as of December 2010, and your understanding of what
7 the physical progress was.

8 MR. GARCÍA REPRESA: Yes, I think the witness was
9 going to direct you to two reports or at least one report to
10 clarify this matter.

11 Mr. President, I think he should be allowed to do
12 that.

13 THE WITNESS: If we go to Annex 59 of my Third
14 Statement, this is a Technical Report after the visit of IPOL

Day 4 English FINAL

15 to EGSA on 17 to 27 January of 2011. This is 20 days after the
16 date that you were indicating to me. I don't know if I have to
17 look at it here.

18 BY MR. BLACKABY:

19 Q. What number?

20 A. Well, it's Annex 59.

21 There is an analysis report, and it details every
22 single incident that the CCGT has had. It speaks of the
23 current situation. It speaks of the performance of the plant.
24 It makes recommendations. It talks about failure in
25 generation.

898

15:17 1 It also talks about the first tests. It talks about
2 the incidents we had.

3 Q. Yes, you talk about the first tests.

4 A. Yes.

5 Q. Well, if we're going to read the whole document, we're
6 going to be here for the whole weekend.

7 PRESIDENT JÚDICE: The document has been identified.
8 The lawyer may ask questions about this document. If he wants
9 to ask questions about the document, we're going to do that
10 whenever Mr. Blackaby is ready to ask the questions.

11 If there are no questions about this document, I would
12 like to hear another explanation or some explanation of this
13 document.

14 Do you understand?

15 MR. BLACKABY: Yes.

16 THE WITNESS: One moment, please.

17 So, the current situation--

18 BY MR. BLACKABY:

19 Q. Just to be clear, sir, there was my question, and I
20 would like to clarify the question. I was talking about the
21 progress of the project.

22 A. Yes, me, too.

23 PRESIDENT JÚDICE: So, the lawyer has to finish his
24 question, and then you can answer.

25 THE WITNESS: Very well.

899

15:19 1 PRESIDENT JÚDICE: If not, this creates confusion.

2 THE WITNESS: Yes, thank you, sir.

3 BY MR. BLACKABY:

4 Q. You talked about testing--please don't stop me when
5 I'm trying to ask a question. Please let me finish and then
6 you can answer or do something else.

7 You talked about testing for the CCGT to enter the
8 testing stage. What should be the degree of progress of the
9 project to enter the testing stage?

10 You talked about testing, so what should be the degree
11 of progress of the project to enter the testing stage?

12 THE WITNESS: Mr. President, I would like to find the
13 information in this document, and then I'm going to talk about
14 the tests that had to do with the start-up.

15 PRESIDENT JÚDICE: The question by Mr. Blackaby is
16 independent of the document.

17 In order to test the equipment, what stage should that
18 equipment be in?

19 Now, a different issue is this Annex 59 of
20 January 2011; this is a different issue. You understand that?

21 Could you please answer the question?

22 THE WITNESS: For a project to enter the start-up
23 testing stage, Mr. President--I would like to clarify this--the

24 project should be fully completed, and I say "should be" fully
25 completed. The CCGT was not fully completed, and this report

900

15:21 1 by IPOL proves that. This report by IPOL--

2 PRESIDENT JÚDICE: I understand.

3 Mr. Blackaby, do you have any other questions on this
4 matter?

5 MR. BLACKABY: I don't have any questions about this
6 document. I wasn't asking questions about this document.

7 PRESIDENT JÚDICE: No, I'm referring to the answer
8 that the witness gave in connection with the fact that the
9 project should be completed in order to start the testing
10 stage.

11 MR. BLACKABY: Yes, I understand from the witness's
12 answer that it had to be completed in 100 percent--or by 100
13 percent, and this was not the case.

14 BY MR. BLACKABY:

15 Q. Five minutes ago you said that you were not an expert
16 in this matter; correct?

17 A. Yes, that's correct.

18 Q. The experts were the people from IPOL.

19 A. Yes, that's what it says here. Jerry Blake indicates
20 that he's an expert.

21 Q. What happened to IPOL from the time of nationalization
22 in December 2010? Was IPOL present to help with the start-up
23 of the CCGT?

24 THE WITNESS: Mr. President, I would like to be posed
25 a precise question so that I can answer it.

15:22 1 PRESIDENT JÚDICE: The question was very simple: Was
2 it or wasn't it?

3 And then you can clarify your answer.

4 THE WITNESS: From May to December, up until this
5 report, it wasn't. Now, before nationalization, it wasn't
6 either.

7 PRESIDENT JÚDICE: I never asked about before. Does
8 your testimony talk about that?

9 Perhaps Mr. Blackaby is going to put this forth. If
10 it's puts forth, the Tribunal is going to take this into
11 consideration-- don't know how--and we're going to consider
12 your statement. Everything will be read by us.

13 To avail ourselves of the time, you have to remember
14 this, that the Tribunal always reads the statements.

15 BY MR. BLACKABY:

16 Q. Just to be clear, I'm going to summarize a little bit
17 because we've had a lot of exchanges.

18 From your testimony, I understand that from the
19 nationalization and December 2010, IPOL people were not present
20 on site assisting with the start-up of the combined-cycle
21 plant; correct?

22 A. Yes.

23 Q. And you said the IPOL people were the experts on this
24 issue in connection with the start-up of the CCGT; correct?

25 A. That is what I read in the testimonies.

15:24 1 Q. And I understand that the problems that that have
2 arisen with the start-up of the CCGT without the presence of

3 the experts that you have just indicated could have contributed
4 to the problems that you've indicated appear in the report that
5 you have just read?

6 A. Can I answer this question in a more broad manner?

7 PRESIDENT JÚDICE: Please answer the question, and
8 then you can give a brief clarification if you think it's
9 necessary to clarify.

10 That's a rule. There is no rule without an exception.

11 THE WITNESS: I'm not an expert on this issue, but
12 according to what the experts told me--the experts from IPOL in
13 particular--and Mr. Carlos García, who was the one to start up
14 the CCGT in March or April 2012, well, all these deficiencies
15 that are included here required long manufacturing periods.
16 This report shows that the CCGT would not be ready until
17 March 2011.

18 PRESIDENT JÚDICE: March 2011 or 2012?

19 THE WITNESS: March 2011.

20 PRESIDENT JÚDICE: You talked about García in 2012.
21 Is it the same date?

22 THE WITNESS: No, it's not the same date,
23 Mr. President.

24 BY MR. BLACKABY:

25 Q. I would like to go back to the document that started

903

15:26 1 this debate. It's behind Tab 18. This was the progress report
2 for the CCGT, December 2010.

3 You've told me--well, let's see. Let's go step by
4 step.

5 You would agree with me that in connection with
6 technical issues and commissioning issues related to CCGT,
7 Mr. Lanza is the Expert in those issues, mechanical issues and

Day 4 English FINAL

8 engineering issues of the CCGT. This is the field of expertise
9 of Mr. Lanza?

10 A. I respect Mr. Lanza a lot, as I do my former and past
11 colleagues. What I've read from the testimony of
12 Mr. Lanza--please allow me, sir.

13 Q. That wasn't my question.

14 A. You are asking whether he was an Expert or I consider
15 him not to be an Expert. He's an Expert of the--he's an Expert
16 in the project for installing electrical energy generation
17 projects.

18 Q. Do you consider Mr. Lanza as an honest person?

19 A. I can only speak about me. I can't speak for others.
20 I don't know if he's honest and--or he's not honest. Please
21 don't ask me to issue a value judgment on a person.

22 Q. Do you think there is any reason why Mr. Lanza would
23 lie in connection with the progress of the project in a
24 presentation of EGSA's Board of Directors after
25 nationalization?

904

15:27 1 A. I insist. One thing is the progress when it comes to
2 the execution of the process and the budget, purchase orders,
3 placement, et cetera. And a different thing is what happened
4 when I took office as General Manager; a lot of problems had
5 been left behind, and we were trying to move forward and try to
6 implement this project.

7 Please don't ask me to issue value judgments in
8 connection with other people.

9 Q. Please go to Page 3 of this document.

10 A. What document?

11 Q. It's behind Tab 18.

12 You indicated that there is a difference between
13 budget progress and engineering progress, so to speak. And you
14 talked about the progress of the physical project; correct?

15 A. Yes, there is a difference between the physical and
16 the budget progress, yes.

17 Q. The table on Page 3 refers to the physical progress of
18 the project and not the budget progress of the project.

19 MR. GARCÍA REPRESA: Objection. You asked before if
20 he had received this document, and the witness said no, so the
21 objection is lack of foundation.

22 MR. BLACKABY: The foundation of the question is that
23 at that time, the witness was the head of the business
24 activities of Guaracachi, and then in his testimony he talks
25 about the progress of the project.

905

15:29 1 He was present at the company at that time. He had a
2 very high-ranking position. And I'm simply asking whether this
3 shows--this chart shows the difference that he had made between
4 the physical and budgetary project.

5 PRESIDENT JÚDICE: Thank you.

6 I think that Mr. Paz has said in his Statement about
7 the--has talked about the percentage of progress.

8 I'm going to ask you to answer Mr. Blackaby's question
9 in any way you want, but this is important for the Tribunal.

10 THE WITNESS: Thank you very much. I would be pleased
11 to do so.

12 What I have reviewed--and I had not seen this document
13 before, sir--excuse me, but I'm going to have to preface my
14 comments.

15 I have reviewed Annex 58--

16 BY MR. BLACKABY:

Day 4 English FINAL

17 Q. Excuse me, sir. Please answer the question, and
18 then--

19 PRESIDENT JÚDICE: Yes, please answer the question,
20 and then you can clarify the reasons for your answer.

21 THE WITNESS: Could you please restate the question?
22 Could he please restate the question?

23 PRESIDENT JÚDICE: Mr. Blackaby, could you please
24 restate the question.

25 BY MR. BLACKABY:

906

15:31 1 Q. The question is that this table refers to the physical
2 progress made during the combined-cycle project rather than the
3 financial progress because it refers to engineering, purchases,
4 supplies, services; correct?

5 A. This table does refer to the physical progress made,
6 yes.

7 Q. And as Business Manager, is there anything that is
8 more important for the future of Guaracachi S.A. than the
9 combined-cycle project?

10 A. Something more important? Yes, the people.

11 Q. Beyond the people at the company in terms of projects
12 that could generate future streams of cash, is there anything
13 more important as of December 2010 than the combined-cycle
14 project?

15 A. In December 2010, the combined-cycle project was the
16 most important topic for EGSA. That's why I was asked after
17 May 2011 to commission it.

18 Q. But, as a Business Manager, you had no idea about the
19 progress made physically within the project, even though you
20 were the Business Manager of the company; correct?

21 A. The reports I received are reports on the budgetary
22 progress made. Later on, we saw something that is already in
23 my statement, and that is request to the Electricity Authority
24 to extend the deadlines for the combined-cycle project.

25 Q. And why is it that if you didn't have any

907

15:33 1 responsible--you had no financial responsibility, you were
2 receiving information on budgetary progress, and you were not
3 receiving reports on the physical progress made with the
4 project, when I imagine that as a manager you were interested
5 in when this project was going to become operational?

6 A. That is not my--a question that should be addressed to
7 me. That should have been addressed to the then-General
8 Manager.

9 Q. But as Business Manager, you had access to reports on
10 physical progress made so that, as a Commercial Manager or as a
11 Business Manager, you could establish your chart and also
12 determine the future path of the company.

13 A. You have as part of my records an e-mail from
14 Mr. Lanza to me, which shows the potential date for
15 commissioning of the CCGT. You have that information, and I
16 imagine you read it. This is part of the record.

17 Q. I do have that document, and that is Annex 60 to your
18 Statement. The date is December 3rd, 2010?

19 A. December 3rd, 2010?

20 Q. Yes, it says December 3rd.

21 MR. BLACKABY: This is not in the bundle. This is
22 Annex 60.

23 BY MR. BLACKABY:

24 Q. On December 3rd, 2010, Mr. Lanza was having
25 communications with you about the combined cycle and its

15:35 1 start-up.

2 A. Well, that's the evidence you have.

3 Q. Well, I am confused. How come you did not ask for the
4 report on the same date for the progress made on the project?

5 A. I'm sorry, but I wasn't aware.

6 PRESIDENT JÚDICE: Is it the same date or the same
7 month?

8 MR. BLACKABY: The same month.

9 BY MR. BLACKABY:

10 Q. As an analyst, I understand from your Second
11 Statement, Paragraph 7, that you had a communication with the
12 credit-rating agencies?

13 A. Correct.

14 Q. And at one point it was Fitch; correct?

15 A. Yes.

16 Q. And then it was Pacific Credit Ratings?

17 A. Correct.

18 Q. So, you would have received--or you had some sort of
19 contact with them in terms of the ratings, in particular after
20 the nationalization.

21 A. No, that was not the case, because as the Business
22 Manager I was not in charge of that. And after
23 nationalization, there was a specific division in charge of
24 that.

25 Q. But I imagine that, as a General Manager of the

Day 4 English FINAL

15:37 1 company or as a Business Manager, you must have received a copy
2 of the credit rating that was issued by a credit-rating agency
3 during the period when you were General Manager or Business
4 Manager.

5 A. Yes, I did receive the last report.

6 Q. It's not in the record.

7 Can we look at Number 8 in the binder?

8 A. My binder?

9 Q. One of the white binders we gave you.

10 Do you recognize this document?

11 A. Yes, this looks like a PCR report.

12 Q. This is a rating of Guaracachi's bonds; is that right?

13 A. Yes, correct.

14 Q. And the date is December 31, 2010; correct?

15 A. Yes.

16 Q. And you were the Business Manager; right?

17 A. Yes.

18 Q. Can we look at the third page.

19 A. Yes.

20 Q. And can you read something that starts "the
21 combined-cycle project"?

22 It says, "The construction risks in the
23 pre-operational stage are mitigated by the experience of the
24 plant builders and also the equipment providers for the plant."
25 Likewise, today--"Likewise, as of the date of this report, the

910

15:39 1 progress made in the works is at 96 percent based on the
2 schedule."

3 so, let's say that--it's correct to say that in late
4 December 2010 or early 2011 you had been informed that the

5 level completion was 96 percent?

6 A. Once again, you're the one who got to that conclusion.
7 I was not informed of the document that you mentioned before,
8 and I was not informed of this document. I have the e-mails
9 that I mentioned before, and that was one of my documents.

10 Q. But you said you recognized this document?

11 A. Yes, and I also told you--I recognized the document
12 because of the way it looks.

13 I received the last PCR document.

14 Q. You just explained in your First Statement that you
15 had a relationship with the credit-rating agencies. Now you
16 were the Business Manager for Guaracachi. So, you are telling
17 me that you didn't read the report by Pacific Credit Rating on
18 the bonds it issued on December 2010?

19 A. No, I did not because it was not one of my
20 responsibilities. I did not receive this document. I did not
21 receive this document.

22 what I told you is that now, as General Manager, I had
23 received the new report. And that's the reason why I
24 recognized the layout. I do not have and have not seen this
25 document.

911

15:41 1 Q. Even though you were in charge of the relationship
2 with the credit-rating agencies?

3 A. It is not my responsibility to have a relationship
4 with Pacific Credit Rating. That was the responsibility of the
5 financial office.

6 Q. Do you think that Pacific Credit Rating is a serious
7 company, based on your experience with them?

8 A. Well, we continue to work with them.

9 Q. Yes, you continue to work with them, so I imagine that

Day 4 English FINAL

10 you continue to believe in them; right?

11 PRESIDENT JÚDICE: There is no reason for you to
12 believe that they would have introduced the wrong figure;
13 right?

14 THE WITNESS: Credit-rating agencies usually have to
15 be serious; otherwise, we have a complicated issue.

16 May I leave this aside?

17 MR. BLACKABY: I think so.

18 That's a very good moment. If you could instruct the
19 witness, Mr. President, then that would be fine. Thank you.

20 PRESIDENT JÚDICE: Mr. Paz, we're going to have a
21 15-minute break, but based on the rules, you cannot talk to any
22 of the persons here in the room or any person connected or
23 related to this proceeding. Fifteen minutes.

24 But, of course, you can leave the room. You can go to
25 the bathroom. We offer the facilities to you, but 15 minutes

912

15:43 1 max.

2 (Brief recess.)

3 PRESIDENT JÚDICE: Very well. I think we could
4 resume.

5 Mr. Blackaby.

6 MR. BLACKABY: Thank you very much, Mr. President.

7 BY MR. BLACKABY:

8 Q. Mr. Paz, I would like to go back to Annex 29 of your
9 statement--I'm sorry, yes, yes, it's Annex 29 of your
10 statement. It is behind Tab 28 of the binder.

11 A. Yes.

12 Very well, sir. I'm all ears. What would you like to
13 know?

14 Q. This is one of the memos sent by Mr. Lanza to
15 Mr. Mercado, dated 23 May 2010.

16 You know this document; right?

17 A. Yes.

18 Q. How do you know this document?

19 A. When I became the General Manager and when I was
20 preparing all the documents, we found this document.

21 Q. Just to be clear, you remember that before the break
22 we looked at a document. It was a report to the Board in
23 connection with the progress, and it was dated December 2010.

24 You remember that document?

25 A. Yes. The one you showed me a while ago?

913

16:06 1 Q. Yes.

2 A. Yes, I do. Yes, yes.

3 Q. And you did not find that document?

4 A. No, I didn't.

5 Q. And it was not shown to you during this arbitration by
6 the lawyers?

7 A. No, I did not see it.

8 Q. Unfortunately, the table here cannot be made out very
9 well. The copy is not very good. I don't know if you saw the
10 original. The original one was in color; right?

11 A. No.

12 Q. It also had this problem; right?

13 A. Yes, I think so.

14 Q. But then at the bottom here Mr. Lanza was saying that
15 the CCGT project was completed in 95.1 percent; correct?

16 A. Yes, correct.

17 Q. I imagine that this was the case because Mr. Lanza
18 deals with physical issues, engineering issues, and the

Day 4 English FINAL

19 progress of the project itself.
20 So, this has to do with the physical completion of the
21 project.
22 A. I cannot assure that, sir.
23 Q. Nothing is said about that here.
24 well, the problem is that you see a list here. It
25 says turbines, rotor, generator, and then a little bit it talks

914

16:07 1 about piping, assembly of the equipment, et cetera.
2 A. It says here 95.1 percent, but what you can see the
3 list of work to be done.
4 Q. Yes, because it's not one hundred percent. It's not a
5 100 percent completion. It is a 95.1 completion. So, we still
6 have 4.9 percent.
7 A. I'm not an expert, so I will refer to the report by
8 IPOL.
9 Q. But the IPOL report did not talk about the degree of
10 progress.
11 A. It didn't indicate that, but it indicated the date of
12 conclusion.
13 Q. Yes, very well.
14 You will remember that Guaracachi had to send a bond
15 to guarantee the fulfillment of their investment commitments to
16 the electrical authority which was the Superintendency of
17 Electricity.
18 A. Bond, what kind of bond?
19 Q. well, the bond that you mention in your First
20 Statement, Paragraph Number 72.
21 A. I don't see any mention of a bond here, sir. Could
22 you read it to me, and then I would be thankful if you could do

23 that.

24 Q. I'm sorry, it was called a guarantee.

25 A. Yes, a bond is a different thing, sir.

915

16:09 1 Q. Yes, I'm sorry. That's the danger that I was
2 referring to before.

3 A. Yes, yes.

4 PRESIDENT JÚDICE: The guarantee, yes.

5 BY MR. BLACKABY:

6 Q. I don't think there is express reference here, but I
7 think both he and I are talking about the same thing.

8 Do you remember that this guarantee--

9 MR. BLACKABY: Well, my questions have been
10 interpreted by an Argentinean. I think maybe it's a bond in
11 Argentina.

12 BY MR. BLACKABY:

13 Q. But do you remember that this was 5 percent of the
14 investment that was promised? Does this ring a bell?

15 A. No, in my testimony, I do not talk about that issue.
16 I would have to refer to the regulations, and the rules for the
17 Concession of the License would have to be referred to in
18 connection with the issue that you're putting to me. If memory
19 serves, this has to do with the rules on concessions and
20 licensees.

21 Q. Okay. Very well. Let's move to a different annex,
22 which is Annex 25 to your own statement. It's behind 44.

23 A. Yes, 44, Annex 25 of my statement, okay.

24 Q. Yes. I want to make sure that the arbitrators and
25 Respondents have this as well.

16:11 1 A. Yes, this is Annex 25.

2 Q. And you reviewed the documents that you attached to
3 your statement?

4 A. Yes, of course.

5 Q. So, I was asking about this 5 percent and where this
6 5 percent comes from; and, if we go to Page 4, at the end of
7 the fourth paragraph, it says that, according to Article 51 of
8 the rules on concessions, licensees, and provisional licenses,
9 the guarantee can be adjusted according to the amount executed
10 in the project so that the guarantee covers 5 percent of the
11 unexecuted project. That's your understanding?

12 A. Yes. It's to approve the--yes, this is Resolution
13 Number 2, to approve the reduction of the performance bond of
14 the investment that corresponds to 5 percent of the
15 non-performed part of the project, which is \$331,000.

16 Q. Very well.

17 We're talking about this basic concept that has to do
18 with this guarantee, which is 5 percent of the project with the
19 possibility of returning a portion of the guarantee--and I'm
20 not making any calculation. I'm talking about concepts for
21 time being.

22 So, this guarantee covers 5 percent of the project.
23 The company that is building the project can request that a
24 part of this guarantee be returned according to how far the
25 project has advanced.

16:13 1 Please answer, and then you can clarify. Am I
2 correct?

Day 4 English FINAL

3 A. Yes, you are correct, but you have the things
4 reversed. You can ask the authorities to modify the guarantee
5 or the performance bond.

6 Q. If you look at this paragraph, you are going to see
7 that it says here that it was verified that the investment on
8 the CCGT project is 33.4, which is equivalent to 35.3 percent
9 of the approved budget. You are a man of numbers, and they're
10 speaking here of a 40 million budget and not 68 million?

11 A. What paragraph have you read?

12 Q. The same paragraph. Same paragraph on Page 4.

13 A. I'm sorry, I would have to calculate this. I'm not
14 sure.

15 I think as at that date, the budget had been modified.

16 But if you allow me, please, sir...

17 (Witness calculates.)

18 Q. Do we agree that when we're talking about
19 83.45 percent, this is equivalent to 33,400,000 and
20 100 percent, the budget would be a little bit over \$40 million;
21 correct?

22 A. I can't find the last section that you've mentioned.
23 Where are you?

24 Q. Page 4, last paragraph.

25 A. And here it says to improve the reduction of the

918

16:16 1 performance bond. I am on Page 4 or 5?

2 Q. I think you're on the wrong page.

3 A. I didn't really understand, sir. I'm sorry.

4 So, this is 33 million, which is equivalent to
5 83.45 percent of approved of the budget, yes, that's what it
6 says exactly.

7 Q. We can look at the Resolution, but in this Resolution
8 the budget of 40 million was established. This was the budget
9 accepted by the Superintendency of Electricity or the
10 Electricity Authority; correct?

11 A. I'm not sure about the date, sir. I'm sorry, if
12 memory serves because you're talking about something that is
13 not clear in my testimony, well, the budget increase was
14 informed, but I'm not sure, sir. I cannot answer. Sorry.

15 Q. Can we now look at Number 43, Tab 43, and this is a
16 request for an expansion of the Generation License to include
17 the CCGT?

18 A. Are you asking me that?

19 Q. Yes.

20 A. That is what it is. No, I'm sorry, I'm sorry, sir.
21 You're wrong. This is the resolution that authorizes the
22 modification of the License, sir.

23 Q. Yes, I stand corrected, then.

24 MR. GARCÍA REPRESA: I'm being very patient again, but
25 I'm forced to remember this is not an exercise just to show

919

16:18 1 documents to the Tribunal. If we're going to show documents to
2 the witness, the least you can do is show them to the witness.

3 MR. BLACKABY: Yes, we're making reference to Annex 25
4 of Mr. Paz's statements, and 25 makes reference to a series of
5 numbers and a resolution, so I am referring him to the document
6 because he said he didn't remember.

7 So, he's asking to see the document, and he is being
8 shown the document he was asked to see, just to see that this
9 was based on the budget for \$40 million.

10 MR. GARCÍA REPRESA: This Administrative Decision is
11 not the one that he attached as Annex 25.

Day 4 English FINAL

12 PRESIDENT JÚDICE: I'm going to say the following: In
13 connection with the prior document, prior document, the
14 Tribunal will reach its conclusion as to where the 83 percent
15 comes from and what it--and what 100 percent of that value
16 corresponds to. To teach--the witness has said that he could
17 not answer. It is normal for Dr. Blackaby to go to other
18 documents so Mr. Paz can answer. That is the intention. I
19 don't think you should waste a lot of time with this, but this
20 is your time.

21 MR. BLACKABY: I have no interest in going to this
22 document. It was just a request from the witness.

23 BY MR. BLACKABY:

24 Q. So, you agree with me that before that date in
25 September 2008, Empresa Eléctrica Guaracachi increased the

920

16:20 1 budget to 68 million; correct?

2 A. No. I know that the budget was increased according to
3 the documentation that I reviewed, but I don't know about the
4 date. I couldn't give you the exact date. I would have to
5 review things.

6 Q. Was it before 20 October 2010; right?

7 A. I don't know, sir.

8 Q. You don't know, okay.

9 A. If you show me the document, I would be glad to
10 answer.

11 Q. Go to Number 41. This is C-162.

12 A. This is Tab 41; right?

13 Q. Yes.

14 A. Is the minutes for the Board of Directors meeting of
15 Guaracachi; correct?

- 16 Q. Correct.
- 17 I'm sorry, move on to 42, rather. This is the minutes
- 18 of the meeting of Shareholders of Empresa Eléctrica Guaracachi?
- 19 A. Yes.
- 20 Q. Very well.
- 21 A. Yeah, it was 66-46. That's why I was confused.
- 22 Q. And here you see on the last page this increased to
- 23 \$66.5 million, and the date of the document is 25
- 24 September '08; correct?
- 25 A. Yes.

921

- 16:21 1 Q. With this, we agree that the increase of the budget
- 2 occurred before 20 October 2010?
- 3 A. No, sir, we don't agree on that. You have said
- 4 something quite serious. You said that the budget was
- 5 increased, and this was not reported to the Electricity
- 6 Authority. That is what you have just said.
- 7 Q. No, I have not said that.
- 8 A. Excuse me, sir. That is what you have just said. You
- 9 said EGSA increased the budget and failed to communicate this
- 10 to the authorities.
- 11 PRESIDENT JÚDICE: Mr. Paz, I think it's worse for a
- 12 witness to put words in the mouths of a lawyer than when a
- 13 lawyer puts words in the mouth of a witness.
- 14 Let's not say what Dr. Blackaby has said or has failed
- 15 to say.
- 16 what would you like to say?
- 17 THE WITNESS: what I want to say is that, if there was
- 18 an increase in the budget, EGSA had the obligation to report it
- 19 to the authorities.
- 20 PRESIDENT JÚDICE: Do you know whether it has been

21 reported or not?

22 THE WITNESS: I don't know. I don't have that
23 information. That needs to be clearly stated, please.

24 BY MR. BLACKABY:

25 Q. Mr. Paz did communicate--well, this is behind Tab 44,

922

16:23 1 it's Annex 25 to your statement. You can go to the second
2 page, Paragraph 5.

3 A. 13 November '08.

4 Q. This is when this was reported. Okay, this is when
5 the request for modification was reported?

6 A. 13 November '08. That is the information, and the
7 Resolution is 20 November 2010.

8 Q. The bond that was paid, you don't have any personal
9 information of the fact that there had been conversations
10 between the company and the Electricity Authority in the sense
11 that they weren't going to formally increase the budget? You
12 don't have personal information in that regard, do you?

13 A. I don't have personal information of that, no.

14 Q. Would it be correct to say that the purpose of this
15 performance bond was to ensure the completion of the project?

16 A. The purpose of the performance bond was to ensure the
17 completion of the project, no, that is incorrect.

18 Q. Well, generally, this performance bond creates a
19 financial incentive so that a company may complete a project.
20 Isn't this your understanding?

21 A. Excuse me, sir, I'm going to clarify my answer. We
22 are making reference to this document, the one right here.

23 Q. No, I'm asking a general question. I'm not making
24 specific reference to this document. I'm talking in general

25 terms about the performance bond.

923

16:25 1 A. So, my answer is correct. Your statement is not
2 correct because the performance bond guarantees something so
3 that the Electricity Authority can have a guarantee that the
4 company will make the investment. That is the purpose of the
5 performance bond that is given to the Electricity Authority,
6 according to current regulations. If you fail to provide a
7 performance bond, you cannot execute this--the project. That
8 is the law. These are the regulations.

9 Q. Now, the performance bond, was it given by Guaracachi?

10 A. Yes, for \$40 million, according to what we see in
11 these documents.

12 Q. would it be correct to say, though, on 20 October 2010
13 the AE concluded that the project had essentially been
14 completed?

15 A. No, sir, that is not correct. If we follow your
16 calculations, it would be an 83 percent completion, but if we
17 consider the increase in budget, we would be faced with a more
18 serious problem.

19 Q. Go to Tab 44, Annex 25 of your statement. Page 4.
20 I'm going to read Paragraph 3 here, the second part.

21 The project enjoys a significant progress in the
22 pre-commissioning stage. Some of the activities are in their
23 initial phase of the commissioning stage. There are other
24 activities that EGSA is carrying out simultaneously in order to
25 complete this project?

924

Day 4 English FINAL

16:27 1 A. I'm sorry, I didn't follow your reading of the text.
2 where is it?

3 Q. It's the third paragraph, second part.

4 A. Well, we would have to see when the inspection date
5 was. It's not the same date of the Resolution. One thing is
6 the inspection date, and a different thing is the Resolution
7 date. One is inspection date, and the other thing is the
8 Resolution date.

9 Q. Do you agree that according to the AE, the project was
10 significantly advanced in the pre-commissioning state, and some
11 activities were in the initial phase of the commissioning
12 stage?

13 A. Yes, that's what the authority says. Let us not doubt
14 what the authority says.

15 Q. Isn't it correct that the mechanical completion of the
16 project took place on 15 November 2011--right?--less than one
17 month after.

18 A. It is correct that on 15 November the mechanical
19 completion was signed. Yes, that's completely correct, sir.

20 Q. Meanwhile, the AE kept 20 percent of the performance
21 bond, according to this decision; correct?

22 A. Yes.

23 Q. Very well. Let me now move on to a different issue.

24 A. So, we're done with this matter?

25 Q. I think for everyone to have a break, we're going to

925

16:30 1 now hear our colleague--my colleague, rather--who is going to
2 ask you technical questions, and I then will come back to ask
3 you fact-related questions, so now this is the right time to do
4 the switch.

Day 4 English FINAL

5 A. Yes, thank you very much.

6 (Pause.)

7 BY MR. RUBINS:

8 Q. So, Mr. Paz, I will ask you to put on your earphones,
9 if that's all right.

10 I assure you, Mr. Paz, this is a great benefit to you
11 because I will not be inflicting my Spanish on you today. My
12 name is Noah Rubins and--can you hear the translation?

13 A. Yes.

14 Q. Good.

15 Mr. Paz, my name is Noah Rubins, as Mr. Blackaby
16 introduced me. I'm also part of the team representing Rurelec
17 and GAI, and mostly I will be focusing on the issues related to
18 the quantification of damages in this case.

19 Do you understand?

20 A. Yes.

21 Q. Good.

22 First, I would like just to understand a bit better
23 how you got where you are today. Your appointment to your
24 current post as General Manager, that was a choice of the Board
25 of Directors of EGSA; is that correct?

926

16:33 1 A. Yes. That's what the memorandum says.

2 Q. And the Board of Directors at the time was composed of
3 representatives from EGSA and the relevant Ministry; correct?

4 A. No, it is not correct. The Board was composed by five
5 officers, five ENDE representatives: Mr. Rico, who has his own
6 company, Tritec; Mr. Jorge Choque, who works with the Rural
7 Electrification Cooperativa, a private company; Mr. Becerra,
8 who is an independent attorney--and let me remember the other

9 two names--Wilfredo Salinas, who used to be an independent
10 consultant; and Mr. Fernando Diaz, who used to work as--he's
11 retired, and he's a consultant; and also the independent
12 person, Luján Alura, auditor.

13 Q. The members of the Board of Directors were selected by
14 the Shareholders of EGSA; correct?

15 A. Yes, that is correct.

16 Q. And the Shareholder is State's company ENDE; correct?

17 A. Correct.

18 Q. Which is owned by the relevant Ministry; correct?

19 A. No, it is the property of the State. ENDE has five
20 Ministries. It is not just--it doesn't belong just to one
21 Ministry.

22 Q. Very well.

23 Now, as you said to Mr. Blackaby, you are not
24 entirely--and you will correct me--I don't mean to in any way
25 mischaracterize what you said. I understood you to say that

927

16:35 1 you're not entirely clear of the legal distinctions between
2 appearing as a fact witness and appearing as an expert. Is
3 that a fair summary?

4 A. Yes. Legally I do not know that. That is correct.
5 If you want to explain it to me, I will be able to understand
6 it.

7 Q. Okay. And in your First Statement, if you can turn to
8 Paragraph 13, you say: "The purpose of this statement is to
9 clarify several facts asserted by the Claimants..."

10 Have you found Paragraph 13?

11 A. Yes.

12 Q. "The purpose of this statement is to clarify several
13 facts asserted by the Claimants of which I have personal and

14 direct knowledge."

15 And then you say, "In those case where is my knowledge
16 is not direct, I specify the source of such knowledge."

17 Do you see that?

18 A. Yes.

19 Q. And this is what you were referring to when you said
20 "where I wasn't talking from my personal knowledge, I said so."
21 Fair?

22 A. I am not a lawyer, please. I am not aware of this,
23 but based on my statement and also what I understand, the goal
24 of the statement is Paragraph 13 and 14. Fourteen says,
25 "Likewise, I have identified several mistakes in the report by

928

16:37 1 Mr. Abdala." That is what I understood. I might be mistaken.

2 I am not a lawyer. This is my first time in an arbitration.

3 PRESIDENT JÚDICE: Mr. Paz, we know your statement.

4 Mr. Rubins is asking whether you understood fully what you
5 wrote here. Can you understand the question?

6 THE WITNESS: If you're asking me if I wrote well what
7 I wrote in Paragraph 13 or if I understood properly what I
8 wrote in the rest of the statement? what is the question
9 about?

10 BY MR. RUBINS:

11 Q. The question is whether you understood properly what
12 you wrote in Paragraphs 13 and 14.

13 Let me explain: In Paragraph 13, you say that
14 generally the topics you addressed are within your personal
15 knowledge. You say, where those facts are not within your
16 personal knowledge, you will identify the source.

17 A. Correct.

18 Q. Okay. In Paragraph 14, you refer to what you call
19 numerous errors in Dr. Abdala's Report. This is not, as I read
20 it, connected to the statement I just read to you in
21 Paragraph 13 where you promise to distinguish between
22 information that is in your personal knowledge and information
23 that is not in your personal knowledge.

24 Do you understand what I'm saying so far?

25 A. Yes, I can understand you.

929

16:39 1 Q. So, when I read this, having heard what you say, I
2 want to try to help you and help the Tribunal and myself as
3 well to understand what capacity you are appearing before this
4 Tribunal, okay? It seems to me that what you are saying is for
5 the parts other than addressing Dr. Abdala's Report, you are
6 serving as a fact witness; and, where you are identifying
7 so-called "errors" in Dr. Abdala's Report, you are appearing as
8 an expert. Is that fair?

9 A. No, it's not because I was requested to draft the
10 projections for power and capacity for a financial model, and
11 to determine, based on that--the Expert is Mr. Flores, by the
12 way--I just identified mistakes in the report by Mercados
13 Energéticos, and I conclude by saying that that is the only
14 thing I did. That's why I said it at the beginning. I don't
15 know if that is an expert or that is not an expert. I don't
16 know. But that's what I did. As for the rest, I did not see
17 the rest of that information.

18 Q. Let's turn to Paragraph 105 of your First Statement.

19 A. Yes.

20 Q. Here you provide a table of the assumptions that you
21 adopted for your projection of Guaracachi's dispatch for 2010
22 to 2018; correct?

23 A. The assumptions that I used, as I indicated, are
24 included in the expansion program for the SIN, for the
25 interconnected system--

930

16:41 1 Q. I'm just asking you a slightly different question,
2 Mr. Paz, okay.

3 what I'm saying is, this is the basis that you chose
4 to use for your projections; correct?

5 A. Yes. This was the information available as of
6 May 1st, 2010, and I did use it in my projections as necessary.

7 Q. And projections are not within your personal
8 knowledge--correct?--by definition.

9 A. Projections are part of my personal knowledge because
10 I was an analyst, and I was responsible of doing that.

11 Q. Well, maybe it's part of what you see as your
12 experience as an expert in that particular activity, but it is
13 not something that you know because it is not something that
14 has happened yet; therefore, it cannot be, by definition, part
15 of your personal experience; isn't that fair?

16 A. I do not understand the question. He's taking me back
17 and forth, back and forth. I do not understand. So, if he can
18 clarify what he's trying to say, it's going to be easier.

19 Q. Very well. I will try one last time and then I'll
20 move to something else. I won't spend any more time on it.

21 You see this formulation that you use, if you turn
22 back to Paragraph 13 about your personal knowledge, this
23 language promising to tell the Tribunal when something in your
24 statement is from your personal knowledge and when it is not,
25 this is very standard in international arbitration witness

16:43 1 Statements, and it's there for a reason. It's there because
2 there is a difference between appearing as a fact witness--a
3 fact witness testifies only to material within his personal
4 knowledge--and an expert who testifies based on his opinion in
5 light of experience. The difference is that a fact witness
6 does not need to be independent and free from conflicts of
7 interest because often it is the people who are there and who
8 remain tied to the project in question who know the most.

9 By contrast, an expert must be independent of the
10 situation, and be expressing his opinion based upon on his
11 opinion not influenced by anything other than his professional
12 experience.

13 Do you understand?

14 A. Yes.

15 Q. Okay. So, what I'm saying is in the part where you
16 talk about projections, which is the entire part we are going
17 to be talking about now, that is not, by definition, within
18 your personal experience because it is not about the past.
19 Therefore, you are appearing as an expert, and I put it to you
20 that you are not an independent expert.

21 Do you agree or disagree?

22 A. I don't know what to answer. What should I answer?

23 PRESIDENT JÚDICE: The Tribunal is prepared to
24 understand this difference between fact witness and an expert
25 witness, but the only issue that, in my opinion, might be

16:46 1 interesting for Mr. Paz to answer is whether these projections

2 are based on factual knowledge or whether they are based on
3 interpretations and analysis based on a theoretical approach.

4 Now, the Tribunal, if necessary, will decide whether
5 you are a witness or an expert. Otherwise, we're not going to
6 make any progress. These projections--and these projections
7 that referred to Mr. Abdala or MEC did, these projections are
8 they based on your fact information or are these a result of
9 your analysis, theoretical analysis based on information that
10 was available to you?

11 THE WITNESS: I based this on factual information;
12 and, as I mentioned it before, the information that is used to
13 structure the data and also to input into the software is the
14 plan for the interconnected system and the medium-term
15 planning. I explained this in my introduction.

16 PRESIDENT JÚDICE: Those are the facts, I understand,
17 and then you worked on those facts?

18 THE WITNESS: Yes, of course, because you need to work
19 to feed the information into the software.

20 BY MR. RUBINS:

21 Q. Okay. Let's talk about the projection of Spot Price
22 revenues after nationalization in May 2010. And these
23 protections, to give context--and I don't know whether you know
24 this or not because I don't know the extent to which you had
25 seen other parts of the case. I know you had read the Compass

933

16:48 1 Lexecon Report, so I presume that you know that the Spot Price
2 revenue forecast for May 2010 to December 2018 is used for two
3 different purposes in the experts' damages calculations. One
4 is for the Fair Market Value of Guaracachi as of May 2010, and
5 one is for the claim about modification of the Spot Price
6 regime.

Day 4 English FINAL

7 Do you understand that so far?

8 A. Yes, so far we're good.

9 Q. If you turn to in your first statement to
10 Paragraph 95, my understanding from your statement and in
11 particular this part, is that when one is projecting spot sales
12 revenues as of 1st of May 2010, in your opinion, one should use
13 the most up-to-date information. Is that fair?

14 A. If we were projecting or forecasting--rather--

15 Q. Mr. Paz, I asked a very simple question, and it's
16 actually related to a specific sentence in Paragraph 95. You
17 say--you say that the information used by MEC was not the
18 latest available, and that that is bad; is that fair?

19 A. It was not the latest one as of May 1st, 2010, and--

20 Q. I'm asking about in general--

21 A. And I also say that in my statement. It says
22 May 2010. May 2010, please.

23 Q. I understand from Paragraph 95 that it is your view,
24 generally--not just in this particular instance, but
25 generally--the most up-to-date information should be used as of

934

16:51 1 1 May 2010; is that fair?

2 A. The most recent and available prior to May 1st, 2010,
3 that is what I was requested to do.

4 Q. Now, you can turn to Paragraph 48 now in your First
5 Statement--sorry. It's your Third Statement I want to look at
6 now.

7 Now, in Paragraph 48, you're explaining, as I
8 understand it, your basis for using CNDC documents for your
9 projections, and you say the following--and I'm sorry to be
10 reading from the English. I can switch to the Spanish, but

11 maybe it will take too much time.

12 "The information provided by the CNDC is the official
13 information prevailing in Bolivia. No hypothetical diligent
14 buyer in Bolivia would rely on information other than the
15 CNDC's in making electric power projection."

16 Do you see that? I want to make sure you see where I
17 am.

18 Forty-eight, the last two sentences.

19 A. Paragrafo?

20 Q. Forty-eight.

21 You say, and I will repeat, (in Spanish) "No
22 hypothetical diligent buyer in Bolivia, when projecting
23 electricity in Bolivia would use and rely on information other
24 than the CNDC's."

25 So, first, is that based on your personal knowledge,

935

16:53 1 that statement? Yes or no, please.

2 A. I continued to be confused between what knowledge and
3 experience is. I do not understand.

4 PRESIDENT JÚDICE: Please try to answer.

5 THE WITNESS: In my experience, it would be yes, and
6 also based on my knowledge, yes.

7 PRESIDENT JÚDICE: Okay, that is the answer. That is
8 the answer.

9 Mr. Paz, your answers are based on your opinion, on
10 your conviction. Whether it is true or not, that is something
11 the Tribunal will determine later on, but we would like to hear
12 your opinion and your conviction. If your conviction is that
13 this is based on your fact data and also your experience, just
14 say so.

15 THE WITNESS: May I ask you something?

Day 4 English FINAL

16 When you say "knowledge," I am a university professor,
17 so how do I manage that knowledge? Is that experience? That
18 is experience, too, so I have a terrible confusion here.

19 PRESIDENT JÚDICE: But please say what you think, and
20 what you just said, "I am a university professor," whatever you
21 want to say. Here, you can say whatever you want to say as
22 fast as you can if possible, but also based on your best
23 conviction, your opinion, or your certainty. Just answer the
24 questions.

25 So, don't get concerned. Just answer whatever is fine

936

16:55 1 with you. You're not defending anyone. You're just saying
2 your truth here.

3 THE WITNESS: Thank you.

4 BY MR. RUBINS:

5 Q. So, is it your view based on--this is based on my
6 understanding of what you say in 48--is it your view that a
7 hypothetical, as you say, diligent buyer would ignore all other
8 publicly available information about the project being valued,
9 other than information coming from the CNDC? Is that your
10 view?

11 A. I would only add one additional element, and that is
12 the due diligence on the company that that buyer is going to
13 buy. Just that. That's what I would do. CNDC and due
14 diligence.

15 Q. So, publicly available information not in the CNDC and
16 not in the files of the company being acquired, this should be
17 ignored; is that fair?

18 A. No, that's what I just told you. A hypothetical buyer
19 would use CNDC information, and clearly they also have to do

20 the due diligence of the company, and that's where you're going
21 to find information.

22 So, the combined cycle--in the case of the combined
23 cycle, for example, I can be--I was told--think November 1st,
24 2010. That's what I was told. That's why I have--I'm a little
25 bit confused here.

937

16:57 1 Q. I think I'm understanding better what you meant in 48,
2 and we will come back to whether you want to correct that,
3 but--so, what you're saying is, when there is a real purchase
4 in the market, the buyer and the seller, I suppose, because
5 they need to arrive at a single price--the buyer and the seller
6 will search for more information other than information in the
7 CNDC reports, and that may be--well, going to the site and
8 looking, it may be reading analyst reports, there are many
9 things that it must do in order to be sure that the information
10 they have is correct; is that fair?

11 A. No, I do not agree with you. You know why? Because
12 definitely, to consider beyond or other than the CNDC
13 information--and this is objective information, someone who
14 doesn't have any interest in this--any external analysis would
15 give you the bias of the buyer or the bias of the seller. So,
16 that's the reason why the CNDC information is neutral.

17 And I thought that it was basic, and that's the reason
18 why I asserted this, based on that criterion, and that is the
19 analysis that I was able to conduct because of my experience as
20 a professor.

21 Q. Yes. And, Mr. Paz, try to think about the question
22 that I'm actually asking you rather than things you think I'm
23 asking about because it seems to me you're getting too
24 concerned.

25 Really, just relax. I really want to know what you

938

16:59 1 really think, okay? So, don't--I'm not getting at, you know,
2 why you--my question was really quite simple, and now I'm a
3 little bit more confused than I was before.

4 You said that a willing buyer--hypothetical willing
5 buyer, contrary to what you say in Paragraph 48, a willing
6 buyer will take into account information from the CNDC and
7 information collected in due diligence; right?

8 That's what you said. Is that fair?

9 A. Yes.

10 Q. Fine.

11 And--okay. So, in fact, there is--there exists
12 information about an electricity company and about the
13 electricity market in Bolivia other than the CNDC information;
14 correct?

15 A. What paragraph, please?

16 Q. Well, you can look, if you want, at--well, no, I mean,
17 this is really an abstract question. It really doesn't relate
18 to any specific part of your Statement. It's really a general
19 statement continuing on what we were just saying.

20 You said, Mr. Paz--Mr. Paz?--you said that a willing
21 buyer would look at CNDC information about the market and due
22 diligence information, okay? That means--that means that there
23 is information about the markets that is not included in the
24 CNDC information; correct? This is pure logic.

25 A. Sir, we're talking about--exclusively about the

939

17:01 1 projections. We're not talking about anything else, absolutely
2 nothing else; correct?

3 Q. Yes.

4 A. Very well. I will repeat what I said before.

5 The CNDC is an agency which is neutral within the
6 wholesale market of electricity in Bolivia. I agree with the
7 fact that the due diligence needs to be conducted. I also
8 agree that we are going to have available to us all the
9 information in the market to make the projection.

10 But, by using this information, we can also include
11 this prejudice, if you will, or bias, of the buyer and the
12 seller. That is what I think and that is what I have said.

13 Q. That's really useful, so let me explore this with you
14 because I think now I understand.

15 If we want to know the bias of the buyer and the
16 seller what their sort of--their own views are, we will look at
17 all the other information in the market. But if we don't want
18 to know that, we should look only at the CNDC; is that what
19 you're trying to say?

20 A. No. What I was trying to tell you is that that
21 information has to be available to it, and that the use of that
22 information--the use of that information--not the availability
23 of it; the use of that information--is going to introduce that
24 bias. That is what I have said.

25 Q. Okay. I just want to make sure that counsel for

940

17:03 1 Bolivia told you what the work of the Tribunal is as agreed
2 between the Parties with respect to the calculation of damages,
3 okay? And it's to understand what a willing buyer and a

4 willing seller in the market would agree upon at the proper
5 price, you see?

6 So, what we are really interested in precisely is the
7 bias of the buyer and the seller. Do you understand?

8 A. I understand the role that the Tribunal plays; that is
9 clear in my mind. The role of the Tribunal is to issue an
10 award. That is what was explained to me.

11 Q. Did counsel for Bolivia--

12 MR. GARCÍA REPRESA: I'm sorry to interrupt, but
13 apparently there has been mentioning of an agreement between
14 the Parties for the Tribunal to apparently calculate damages,
15 but as you know, the Tribunal's jurisdiction is not accepted by
16 Bolivia.

17 PRESIDENT JÚDICE: The Tribunal knows the position was
18 the Parties very well, and the Tribunal understands what Mr.
19 Rubins has meant to say. It wasn't that there is agreement as
20 to whether things have to be paid or not. It had to do with
21 the willing buyer in the conditions. There is no doubt in our
22 mind, please be sure.

23 MR. GARCÍA REPRESA: Yeah, remember that the
24 transcript only takes up what is said and not what is meant to
25 be said.

941

17:05 1 BY MR. RUBINS:

2 Q. Mr. Paz, did counsel for Bolivia instruct you to
3 restrict the assumptions for your model to the CNDC reports
4 that were available on 1 May 2010?

5 A. No, no. In no wise did they do that. What I was
6 instructed was the things related to the CCGT
7 1st November 2010. That is what I was told.

8 Q. Okay. So, this was your decision to include only that
Page 153

Day 4 English FINAL

9 information. It was not an instruction from counsel; correct?

10 A. It was not instruction that came from Bolivia's
11 counsel, and this came from either my experience or my
12 knowledge. I don't know.

13 PRESIDENT JÚDICE: Or maybe from both.

14 BY MR. RUBINS:

15 Q. I understand, Mr. Paz. This is why I asked. It was
16 your decision. I did not force you to make a choice. Was it
17 your decision?

18 A. Yes, yes, that is correct.

19 Q. What about starting of projections in your model from
20 July 2010? Was that an instruction from counsel?

21 A. July 2010?

22 Q. Yes.

23 If you can open up your Third Statement to
24 Paragraph 43.

25 A. No.

942

17:07 1 The thing is--well, let's see, I'm a bit confused
2 here. At the request of the lawyers for the Counter-Memorial,
3 it says here July 2010. This is wrong. This is a mistake.
4 The softwares are set up like this. It is as of May. Thank
5 you for pointing this out to me, sir.

6 Q. Okay. So, it's a correction that you would like to
7 make--by the way, I do understand from Compass Lexecon that
8 your models do run from July and not from May, so I just want
9 to know why. And I understand from your answer that you don't
10 know why. If they do, you don't know why; is that fair?

11 A. No, no, no, sir, not at all.

12 When I said that this is wrong here, I didn't really

13 realize--I have to read on so many things all the time. Don't
14 forget, I'm the Manager of the company. I'm not only working
15 with this. So I didn't read this--again, I'm very honest with
16 you. I have a lot to do. I'm sorry, I made a mistake.

17 Q. Just to be clear--it's totally fine--do you remember
18 starting your models from July 2010? Do you remember that?

19 A. No, you cannot do that. You have to start as of May.
20 That is how the SDDP database is set up, May and October.

21 May 2010, October--rather, May 2010 to October 2014, and then
22 May 2014 to April 2018. That's the way things are done, sir.

23 Q. Okay. Let's talk about Karachipampa.

24 Now, you assume in your model that Karachipampa would
25 be removed from the system on 1 August 2010; correct?

943

17:09 1 A. Yes, that is correct. That is the information that
2 was submitted by EGSA to the CNDC, and this is part of the PMP.

3 Q. And I understand--you will say this is not relevant,
4 but to me it is relevant--can you confirm that Karachipampa
5 remains connected today? Can you confirm that, please.

6 A. Yes, by a decision of the Board of EGSA.

7 Q. Okay. Let's look at Annex 8 to your witness
8 Statement, which you will find at Tab 22. Do you recognize
9 this document?

10 Sorry. It's Tab 22, which will be in the second
11 volume--

12 A. This is a contract with IPOL? This is the Contract
13 with IPOL; right?

14 Q. Annex 8 of your witness Statement.

15 A. Okay, okay. I found it. This is Tab 22.

16 Q. You recognize this document?

17 A. Of course, yes.

Day 4 English FINAL

18 Q. So, this is the node price study of CNDC for May to
19 October 2010; correct?

20 A. Yes, that is correct.

21 Q. This is a document published by the CNDC; correct?

22 A. This is a document published by the CNDC under the
23 approval of the AE.

24 Q. The date on this date on the document, do you see at
25 the bottom, April 30, 2010? Do you see that?

944

17:12 1 A. Yes, correct, sir.

2 Q. This was the day before the nationalization; correct?

3 A. Yes, one day before.

4 Q. And if you could please turn to Page 10 of this
5 document, you will find there a table entitled, "potencia
6 disponible a fines de abril de 2010," "Available Capacity as of
7 the end of April 2010."

8 A. Yes, that's correct, sir.

9 Q. Now, do you see down at the bottom of this table, the
10 second from the bottom, you see Karachipampa there?

11 A. Yes, that's correct.

12 Q. So, this means that CNDC announced to the market on
13 the day before nationalization that Karachipampa would remain
14 on-line; correct?

15 A. No, that is not correct. That is not correct.

16 what it's saying here is for the period of
17 May-October, possibly the Karachipampa unit may be available.
18 That is not a correct interpretation of this, sir.

19 Q. Well, I suppose that would be for the willing buyer
20 and the willing seller to decide, but it certainly says it is
21 available, just like Santa Cruz, Bulo Bulo, and Entre Ríos and

22 et cetera, et cetera, don't you think?

23 A. I think you are mistaken, sir, in connection with the
24 terminology. There are two reports, and this I included in my
25 Statement.

945

17:14 1 If you go back to the tables that you showed me, you
2 will see this.

3 One thing is the six-month node price report, and a
4 different thing is the PMP that includes a timeline of four
5 months. The price node report is approved by the AE. There is
6 a six-month Resolution every time; and, on the basis of this,
7 stabilization factors are calculated, on the basis of this
8 information. The AE regulates the market, and the study, the
9 mid-term programming is related to a four-year timeline. This
10 is a difference for the preparation of the node price report.
11 A node has to be used that is reported by the AE.

12 And what was the problem? There was no Resolution in
13 connection with Karachipampa at the time of the preparation of
14 this study.

15 That's it.

16 Q. Mr. Paz--don't get excited, Mr. Paz. I'm just trying
17 to understand.

18 A. No, no, no. I just wanted to bring everyone on board
19 and give everyone context.

20 Q. Sure. And the PMP you're referring to, that was dated
21 March 15, 2010, wasn't it?

22 A. Yes.

23 I wanted to clarify that generally the CNDC issues two
24 reports. These reports are generally reports that come out
25 together. Now, this report has to go to the CNDC where

17:16 1 distributors and nonregulated--

2 Q. Mr. Paz, it's a very simple question. I asked you to
3 confirm the dates.

4 MR. GARCÍA REPRESA: Don't interrupt the witness.
5 He's answering very fast, much faster than your witnesses. So,
6 please let him complete his answer.

7 PRESIDENT JÚDICE: I agree. Please let the witness
8 finish.

9 THE WITNESS: well, this report has to be approved by
10 the CNDC because this is binding. It has to do with tariffs,
11 and then it goes to the AE, that's why it bears this date.
12 This is the date on which the AE has issued the decision, the
13 Resolution.

14 PRESIDENT JÚDICE: But if I understand, what is being
15 asked is different. The PMP was 15 to 20; right?

16 THE WITNESS: Sir, what happens is that he says this
17 is 15 and this is 30. No, both reports were issued on the
18 15th. But one of them has to be approved. That's why there is
19 a different date on here. That is the difference between the
20 two. That's it.

21 BY MR. RUBINS:

22 Q. Okay, Mr. Paz. The information available to the
23 market that was the most up to date as of 30 April 2010 was
24 this document that I showed you, the node price; correct?

25 A. Yes, it is correct the way you're saying. But that's

17:17 1 not the way things are. Excuse me, but that's not the way
Page 158

Day 4 English FINAL

2 things are. Excuse me, I'm being honest with you. That is not
3 how things work. I explained this--

4 Q. I understand the qualification, and I also understand
5 from what you've said that the node price report has to be
6 approved by a superior organ; correct? That's why it takes
7 longer.

8 A. The node price report must be approved by the CNDC and
9 by the AE. On this date, a Resolution has to come out from the
10 AE approving this, with a detail of all of this information.

11 I don't know if I'm speaking from knowledge or from
12 experience, but I'm trying to explain to you how this works in
13 Bolivia. That's it, sir. That is just it.

14 Q. I understand completely.

15 So, the node price report is approved with a
16 resolution by the AE?

17 A. That's correct.

18 Q. And the PMP is not; correct?

19 A. That is correct.

20 Q. I'm glad we got that clear. If you could take up the
21 other bundle--yeah, the white ones, not the blue ones--do you
22 still have them there?

23 And it's going to be in and volume 3, actually, where
24 I'm going to take you to.

25 If you could turn to Tab 40.

948

17:19 1 A. You said what number?

2 Q. Forty.

3 A. This is R-154; correct?

4 Q. That is correct.

5 A. Okay, very well. Thank you.

6 Q. Do you recognize this document? This is the Profin
7 valuation. Had you seen this document before?

8 A. Yes, I have seen this document before, yes.

9 Q. So, this is document that was prepared for the
10 Government in relation to the nationalization; correct?

11 A. Yes, that is correct, sir.

12 Q. Okay. Now, because, unfortunately, the pages are not
13 numbered in the document, I have put some little blue flags to
14 help you find where we are going.

15 And I would like you to turn to the second one, the
16 second of those two blue flags, which is--at the top of it, at
17 the top of that page it says "quadro 29."

18 Do you see that?

19 You may have to flip over the page.

20 Do you see this?

21 A. Yes, I do. Table 29. Okay.

22 Q. Okay. This is the projection of energy prices
23 prepared by Profin looking forward, I presume, from the
24 nationalization date, and they project prices from 2010 to
25 2020.

949

17:21 1 Do you see this?

2 A. Yes, I do, that is correct.

3 Q. And the four items--the fourth of these items for
4 which the energy price is measured or projected is
5 Karachipampa.

6 Do you see this?

7 A. Yes, that is correct.

8 Q. Therefore, Profin, for all of its defects, believed
9 that Karachipampa would remain on line until 2020; correct?

10 A. Why don't you go to 28, and you look at Karachipampa
Page 160

Day 4 English FINAL

11 there.

12 Q. No problem. We could turn over to 28.

13 A. It's a zero here.

14 Q. This is a Spot Price indicator, isn't it? It's a Spot
15 Price. It's "energía," not capacity; correct? And,
16 therefore--

17 A. Yes, sir.

18 Q. And therefore, what Profin was projecting--what Profin
19 was projecting was that in 2010 and 2011, Karachipampa would be
20 still selling electricity in the Spot market, but from 2012 on,
21 for the most part, it would be Capacity Payments, because
22 otherwise they would not have included it in the chart;
23 correct?

24 And you can see--by the way, you can look at 2019 and
25 2020--Mr. Paz?

950

17:23 1 A. No, no, that's not what it means, sir.

2 what Table 29 shows--or, rather, means is that in the
3 projection here for generation, there was 1 kilowatt. And you
4 can take this out of the SDDP in connection with the prices in
5 each one of the withdrawal bars. I can take prices out of
6 nodes in these bars when there is a withdrawal of energy. I
7 can take prices out, node prices out from any point.

8 Q. Could you, Mr. Paz, look at 2019 on Table 28.

9 Profin projected 1.1--wait, Mr. Paz.

10 THE INTERPRETER: You are going to have to repeat that
11 because I wasn't able to translate that. There was an overlap.

12 BY MR. RUBINS:

13 Q. If you could look at 2019. For Karachipampa, there is
14 a projection of 1.1--I'm not sure what the units are here--1.1.

15 There are actually sales of energy by Karachipampa. And in
16 2020, again, 1.1 Karachipampa.

17 This would be impossible if Karachipampa were not
18 connected to the system; correct?

19 A. Yes, sir, yes.

20 Q. So, Profin clearly did not follow the same material
21 that you included in your study, the CNDC 2010 study; correct?

22 A. I don't know. I don't know. I would have to review
23 that again.

24 Q. Let's got back to your models. You can put that away.

25 A. If you give me five minutes, I can look at it. If you

951

17:25 1 give me five minutes--can you give me five minutes?

2 PRESIDENT JÚDICE: No problem, sir, it's the same.
3 It's okay. Don't worry about it.

4 BY MR. RUBINS:

5 Q. Mr. Paz, your exclusion of Karachipampa from your
6 model was at the instruction of counsel; is that correct?

7 A. No.

8 Q. So, this was your decision to exclude the Karachipampa
9 from the model; correct?

10 A. No, it was in the PMP.

11 Q. You say, in fact, in Paragraph 45 of your Third
12 Statement, you say, "I ratify"--"I confirm"--oh, forget it.

13 Okay. You say, (in Spanish) I ratify that my
14 projections were done without any modification in connection
15 with the information of the CNDC, POES 2010-2020, except for
16 the beginning of operations of the CCGT and the withdrawal of
17 Karachipampa.

18 A. Excuse me, sir. Again, this is not correct. It was
19 included in the PMP. It's a mistake here, think.

Day 4 English FINAL

20 PRESIDENT JÚDICE: I'm sorry, I didn't understand.
21 What's true is the final portion of this, or--I was
22 trying to understand. What is it that's not correct? The end
23 of Number 45? Or what you have stated?
24 THE WITNESS: Well, Karachipampa, its withdrawal was
25 used in the context of the PMP. It's very complicated to do

952

17:28 1 this.

2 BY MR. RUBINS:

3 Q. Let me try to do it simply, then.

4 You say the following words in your testimony--you can
5 look at them in Paragraph 45 of your Third Statement. You say
6 the following: "My projections were done without any
7 modification of the information of the CNDC, except for the
8 beginning of operations of the CCGT"--we're not talking about
9 that--"and the withdrawal of Karachipampa."

10 Let me understand; is that true, or is that not true?

11 A. Sir, I already told you, there is a mistake in my
12 Statement. I already told you this. I explained this to you.

13 I don't dedicate 100 percent of my time to this, so to
14 do this in such precise manner is very, very complicated.
15 Excuse me.

16 Q. Actually, Mr. Paz, it's very simple.

17 If you look at the next phrase, you say why you did
18 it--

19 MR. GARCÍA REPRESA: Objection. We have gone through
20 this three times already.

21 MR. RUBINS: Actually, I'm really confused, Mr. García
22 Represa. I'm really--I'm honestly confused, and I want to
23 clarify this.

24 PRESIDENT JUDICE: Continue, Mr. Rubins.
25 BY MR. RUBINS:

953

17:30 1 Q. You say in Paragraph 45 that you removed Karachipampa
2 from the CNDC material, and I quote in Spanish, "under the
3 instructions of the Bolivian lawyers."

4 A. I repeat, sir, this is not the only thing that I do.
5 I'm also a Manager of a company.

6 That was a mistake. I have said this to the Tribunal
7 and to everyone else. If you don't want to believe me, there
8 is nothing I can do about it.

9 PRESIDENT JUDICE: Isn't it clear? I thought you were
10 putting another question out of this one because this is clear.
11 You may--you may work on it or not later on, but not at this
12 stage.

13 MR. RUBINS: Okay, fine.

14 BY MR. RUBINS:

15 Q. Let's talk about your assumption with respect to the
16 combined-cycle plant, okay?

17 In your First Statement--and you can turn to
18 Paragraph 71--you say in Paragraph 71 that the combined cycle
19 would come on--would--looking from May, that the combined cycle
20 would come on line in 2011 at the earliest; correct?

21 A. Yes.

22 Q. And you say here that a technical analysis of the
23 progress of the combined-cycle project in May 2010 would have
24 concluded that commercial operation would not be possible until
25 2011 at the earliest; correct?

17:32 1 I'm quoting from your Statement.
2 A. That is correct. Completely correct.
3 Q. Okay. Now, a technical study like the one you
4 describe or mention here, if it were prepared, would be very
5 interesting for the market to see if someone in the market were
6 trying to find out what capacity will be available in the
7 future for Guaracachi; correct?
8 A. Yes.
9 Q. Now, the 2010 POES--the 2010 to 2020 POES indicated
10 that the combined-cycle plant would come on line in May 2010;
11 correct?
12 A. Yes, correct. More than correct. Super-correct.
13 Q. And that's the 2010 to 2020 POES which, according to
14 you, is--other than due diligence, I suppose--the only
15 information that should be considered in doing projections;
16 correct?
17 A. Yes, sir.
18 Q. Now, in fact, you assume that the combined cycle will
19 come on line in 2010, in your model; correct?
20 A. November 1st, 2010, correct, at the request, yes, of
21 the lawyers. That's the way I did it, yes.
22 Q. I think for the interpreter and the transcript you
23 will want to speak up just a little bit more because I think
24 it's a little bit soft.
25 A. No problem.

17:35 1 PRESIDENT JÚDICE: It may be that you're talking a
2 little bit more to your left, so it might be a good idea to
3 turn on the second mike.

Day 4 English FINAL

4 BY MR. RUBINS:

5 Q. Okay. Let's talk about a slightly different topic.
6 You understand--you're aware that Mercados Energéticos used the
7 November 2009 to October 2013 medium-term scheduling, or MTS,
8 for price projections; correct?

9 A. Yes, that is correct.

10 Q. And you criticized them, as we saw before, for using
11 this information because the data was out of date; is that
12 correct?

13 By May 2010, it was out of date, in your opinion;
14 correct?

15 A. Yes, that is correct, because there was a new edition
16 already of the PMP. There was a new version. That's the
17 reason why I criticized them.

18 Q. As we discussed before, you used the 2010-2020 POES
19 for most of your assumptions; correct?

20 A. With the exception of the combined-cycle one.

21 THE WITNESS: I explained something about the
22 projections, Members of the Tribunal, so that we can understand
23 what we are taking from where to put this together. I
24 explained it. In my opinion it was clear.

25 If he has further questions, I will answer them with

956

17:37 1 pleasure.

2 BY MR. BLACKABY:

3 Q. The 2010 to 2020 POES was published in November 2009;
4 correct?

5 A. Yes, I had written down October, but yeah, it was in
6 between November and October. Yes, it is correct.

7 Q. Okay. So, about six months before the expropriation;

8 correct?

9 Sorry. Nationalization.

10 A. Yes, correct.

11 Q. Okay. Let's open to it, it's at Tab 30, which is in I
12 think the second volume, or it's--

13 A. Blue or white?

14 Q. It's Annex 40, if you want to look at the one in your
15 blue bundle. It doesn't matter.

16 A. Yes.

17 Q. So, if you turn to Page 4, I would like you to focus
18 on third and fourth lines of the expansion plan referring to
19 Entre Ríos 1 and Entre Ríos 4.

20 Do you see that the prediction contained in 2010 POES,
21 which was published in the fall of--in the autumn of 2009--was
22 that the Entre Ríos 1 will come on line in December 2009;
23 correct?

24 A. So, the forecast, so that Entre Ríos 1, 2, 3, and 4
25 would come on line on that date, that's correct, and also the

957

17:39 1 combined cycle in May 2010.

2 Q. We're not looking now at combined cycle. We're
3 looking at Entre Ríos.

4 So, Entre Ríos 1 was to come on line, according to
5 this document, in December 2009, and Entre Ríos 4 in
6 March 2010; correct?

7 A. Yes, that is correct.

8 Q. Now, a potential buyer in the market of Guaracachi on
9 1st of May 2010 would have known that Entre Ríos 1 did not come
10 on line in December 2009; correct?

11 A. Yes, that information was already available.

12 Q. And a willing buyer in the market of Guaracachi, on
Page 167

Day 4 English FINAL

13 1st of May 2010, would have known that that Entre Ríos 4 did
14 not come on line in March 2010; correct?

15 A. Yes, sir.

16 Q. So, in your view, that willing buyer--

17 A. In my opinion?

18 Q. Sure.

19 A. That is very important.

20 Q. In your opinion, a willing buyer would have ignored
21 the fact that Entre Ríos 1 and Entre Ríos 4 were not on line on
22 those dates, and would accept the CNDC outdated information
23 saying that they were if he was making his projections about
24 capacity in the market; correct?

25 A. You asked me for my opinion, okay. I'm going to give

958

17:41 1 you my opinion, my complete opinion.

2 If the diligent--if the buyer had been diligent, he
3 would have found out that, in June 2010, those units were in
4 service. But two months later--two months--two additional
5 months or less is not the same as years when you're having a
6 long-term analysis.

7 So, in my opinion, I don't know if this is Expert or
8 knowledge, in that sense I can tell you that what you're saying
9 is very, very--is not relevant at all. These are 90-megawatt
10 units, and this is my opinion. You asked me for my opinion.
11 It was officially opened in July 2010, with all the noises and
12 fanfare, so...

13 Q. But you include this incorrect information in your
14 model exactly as it is provided here; correct?

15 A. Yes, sir.

16 Q. Okay. I do want to return just for a moment to

17 Karachipampa before we go on to Rositas, because I just need to
18 understand what the correction is. And I understand you're a
19 busy man, you have other things; I'm not blaming you at
20 all--please believe me--I just want to understand.

21 Can you open to Tab 31, which is 41 in your blue
22 binder. It's Annex 41 of your--to your Witness Statement.

23 A. Yes.

24 Q. So, I understand from--this is your model, yah? This
25 is you--

959

17:44 1 A. No, it's not. This is not my model. This is--let me
2 look at it.

3 Q. It says at very top your name.

4 A. This is the projected power.

5 This is not my model. This is just a projection of
6 energy.

7 Q. Mr. Paz, it says your name at the top.

8 A. Yes, I ran the energy projection. It is not my model.
9 I just ran it. This is the projection that I did.

10 Q. Very good. You're very humble, and I appreciate that.

11 So, let me just understand, you assumed that
12 Karachipampa, which is at the bottom of the list of units at
13 the top of the table on the first page, the last unit says
14 Karachipampa.

15 Do you see that?

16 A. That's correct.

17 Q. You assumed that Karachipampa remains on line in 2010,
18 and then goes off-line; correct?

19 A. Correct.

20 Q. Okay. Now I understand.

21 So, this assumption is different from the assumption

22 in the 2010 POES; correct?

23 A. It is an assumption on the mid-term planning. I
24 already mentioned it at the beginning when I had the
25 presentation. This is the information to put together this.

960

17:46 1 We used the PMP and the POES, and based on that we use
2 information and we run the information and we get to the
3 result. That's the way you do it. I'm sorry.

4 Q. I understand. But I just want to clarify: As humble
5 as you are, these are your--

6 MR. GARCÍA REPRESA: Objection. This is the second
7 time that he is trying to qualify the personality of the
8 witness, and this is out of place.

9 PRESIDENT JÚDICE: I think humble does not correspond
10 to the facts.

11 MR. RUBINS: Maybe not. I was being, perhaps, too
12 magnanimous.

13 PRESIDENT JÚDICE: I would ask you, if possible, to
14 restrain from these comments. Otherwise, the other side will
15 do the same, and it's normal, and we are going to end with a
16 lot of noise that is not necessary. And up to now it was--it
17 is being very, very agreeable.

18 MR. RUBINS: Absolutely. Apologies, Mr. Chairman.

19 BY MR. RUBINS:

20 Q. These are--what we were just looking at, this document
21 Annex 41 to your Statement, are your projections; correct?

22 A. Yes.

23 Q. Rositas. The Rositas--

24 PRESIDENT JÚDICE: You are going into Rositas? I
25 think it's a good moment. The name is wonderful. A good

17:47 1 moment for stopping.

2 MR. RUBINS: Very good.

3 PRESIDENT JÚDICE: Fifteen minutes.

4 You can go outside, but you cannot talk to anyone.

5 (Brief recess.)

6 PRESIDENT JÚDICE: Obviously, we need to have all the
7 time you need for cross, redirect, but if it's possible to have
8 Mr. Paz in the end of today free to be with everybody and not
9 alone, I think it would be a good move, and I hope you
10 understand me. And also we have our wonderful friends that are
11 doing enormous effort on a Friday evening--well, okay, let's
12 proceed, then.

13 Dr. Rubins?

14 MR. RUBINS: Sorry, Mr. Chairman. Did you have a
15 question?

16 PRESIDENT JÚDICE: No, please proceed.

17 BY MR. RUBINS:

18 Q. So, we are nearing the end of my questions, Mr. Paz.
19 I thank you for your patience.

20 Let's talk about Rositas, okay?

21 The 2010 to 2020 POES projected the Rositas
22 Hydroelectric Plant to come on-line in 2018; correct?

23 A. Yes, that is correct.

24 Q. And Dr. Abdala?

25 A. Yes, that is correct.

18:09 1 Q. And Dr. Abdala assumed for his report that Rositas
2 would come on-line sometime after 2018 and, therefore, it
3 doesn't show up in his projections for 2010 to 2018; correct?
4 A. Are you asking whether this is correct or are you
5 asserting this, sir?
6 Q. No, I'm asking whether that's your understanding.
7 A. Yes, that is my understanding, exactly. Excuse me.
8 Q. Now, the 2011 to 2021 POES projected that Rositas
9 would come on-line in 2019; correct?
10 A. That is correct, yes.
11 Q. And the 2012 to 2022 POES projected Rositas to come
12 on-line in 2020; correct?
13 A. Yes, sir. Well, I don't know. I haven't reviewed
14 this, but I haven't--I'm sorry, I haven't reviewed it. I would
15 have to look at it.
16 Q. I will show it to you.
17 A. Please.
18 Q. It's in Tab 10, volume 1 of your white bundle.
19 A. But if you say so, I believe. I respect what you're
20 saying. If you have seen it, I believe you.
21 Q. I don't want to force you to--
22 PRESIDENT JÚDICE: Never trust a lawyer.
23 (Laughter.)
24 BY MR. RUBINS:
25 Q. If you have Tab 10 open, volume 1 in the white, the

963

18:11 1 first.
2 A. What number?
3 Q. Ten.
4 A. Yes, you're right. It's right here. You're right.
5 Q. So, this is C-273 for the record, is the 2012 CNDC
Page 172

Day 4 English FINAL

6 POES.

7 If you turn to Page 63, there are other ways I can
8 show you this, but this is it the quickest way. If you turn to
9 Page 63--tell me when you are there.

10 A. Yes, I found it.

11 Q. You can see just above the Line 9.2 a sentence that
12 reads, "Starting with the coming into line of Rositas 2020,
13 this standard will be fully satisfied."

14 So, you can see here that the CNDC as of 2012 is
15 saying entry of Rositas in 2020; correct?

16 A. One moment, please. Just one moment. I think so, but
17 one has to look at the expansion plan for generation. I
18 believe you, sir. I believe you. I do believe you. That's
19 fine.

20 Q. You could look at Page 93 if you want to see the plan.
21 It does say the same thing.

22 A. I believe you. Don't worry about it.
23 Ninety-three, transmission expansion.

24 Q. 115.

25 A. Yes, sir, you're completely right.

964

18:13 1 Q. Okay. Good.

2 So, that makes three years' running 2010, 2011, 2012,
3 without any material progress towards completion; correct?

4 A. Just one moment, please.

5 Q. You don't need to look at the bundle.

6 A. You were saying 2010, 2011, 2012--

7 Q. Let me repeat.

8 what we've just confirmed means that the Rositas plant
9 made no progress towards completion in 2010, 2011, or 2012;

10 correct?

11 A. 2010, 2011, 2012; right, sir?

12 Q. Yes.

13 A. Look, the day before I came to France in the offices
14 of Guaracachi and held a meeting with Hydro-China because
15 Hydro-China was providing to it the Feasibility Study for
16 Rositas. I'm not involved in this project. I don't have this
17 information. ENDE has the information. This happened last
18 Saturday before I came here in my office.

19 Q. Okay. So, from 2010 to 2012, by these three documents
20 we're talking about, the POES, the project was no closer to
21 completion; correct? Yes or no.

22 A. Well, the completion date was 2018. You're talking
23 about the completion of the project. This is related to the
24 Feasibility Study, sir.

25 Q. You aware that the Rositas project has been

965

18:15 1 contemplated since 1973?

2 A. I have seen documents. The first documents were
3 prepared by the Corporación de Fomento de Santa Cruz before,
4 yes, and there were multiple studies. I agree with you. Yes,
5 I'm a hundred percent in agreement with you. It is a big wish
6 of the people from Santa Cruz to get this, to have this.

7 Q. Since 1973; correct?

8 A. Even before that, sir.

9 Q. Okay. And a feasibility study, for example, was done
10 back in 1997. Are you aware of that?

11 A. Ninety-seven, no. The one that I know of is the one
12 that you talked about, 1970-something. I have seen it maybe
13 one time, and we have spoken about this with other people.
14 Like I told you, I'm not involved with the Rositas project. I

Day 4 English FINAL

15 wished I would become involved with it.

16 Q. Now, in the 2010-2020 POES that you relied on for the
17 assumption that Rositas would come on line in 2018, it assumes,
18 does it not, that \$32 million will be required to be spent in
19 2010 for the project to come on-line in 2018?

20 A. Yes.

21 well, I don't know. I haven't seen it. I haven't
22 seen that part. I'm sure that you've looked at it in detail,
23 sir. I believe you, sir. I believe you, sir. It's okay.

24 Q. I can't do that to you, Mr. Paz. If you say you
25 haven't seen a document, I will have to show it to you.

966

18:17 1 PRESIDENT JÚDICE: You totally appreciate it?

2 THE WITNESS: I appreciate it. I don't know that. I
3 didn't know that that's the way things worked.

4 BY MR. RUBINS:

5 Q. I can't talk about stuff if I haven't shown you the
6 document.

7 A. What binder?

8 Q. Tab 30. That's that from volume 2. Two. If you
9 could turn to Page 9, please?

10 A. I got it, yes.

11 Q. So, look near the bottom and you see Central Rositas
12 and Santa Cruz.

13 Do you see this?

14 A. Just one moment.

15 Yes, I do see that.

16 Q. Operation, so start of operations in 2018; do you see
17 that?

18 A. Yes.

19 Q. And to achieve that, a budgeting of \$32 million in
20 2010; correct?

21 A. I don't know, sir. That is the responsibility of
22 ENDE, not mine. ENDE is the one responsible for this. I don't
23 know if this has been budgeted or not. There is a document
24 from ENDE that says it is doing things as at that time, but
25 apart from that, sir, I don't know.

967

18:18 1 Hugo Royal told me something about this, about a
2 budget, but I don't know.

3 Q. I will get to whether it was budgeted or not. Now I'm
4 saying, just to read this, if you are looking at this to
5 understand what needs to be done to achieve a 2018 start date,
6 the first thing that has to be done is \$32 million of
7 investment in 2010; correct?

8 A. Yes.

9 Q. And that--so, right. So, a budgeting of \$32 million
10 has to be done; correct? The money has to come from somewhere.

11 A. Yes, sir.

12 well, not necessarily, not necessarily, because I
13 understand that the Hydro-China Feasibility Study is included
14 in the collaboration that Hydro-China is conducting with
15 Bolivia.

16 Not necessarily. I'm sure ENDE has some kind of
17 budget, but I don't know if these amounts are budgeted. That
18 is my knowledge.

19 Q. In 2011--in 2011--\$0 had been spent on Rositas;
20 correct? There was no investment in 2010; correct?

21 A. I don't know, sir. This is the responsibility of
22 ENDE.

23 Q. If you would look at Tab 29 in that same bundle--this
Page 176

24 is the 2011 report--if you turn to 107 of the report--107?

25 A. 107, yes.

968

18:20 1 Q. You can see in the middle of the page--this is on the
2 construction of Rositas--in the middle of the page it says, "a
3 construction time of nine years under the following
4 disbursement of cogeneration is provided for."

5 And immediately below I see the nine year construction
6 plan which begins in 2011 with the very small \$6.1 million
7 investment. Therefore, do you agree with me that nothing was
8 spent on the construction in 2010?

9 A. Sir, nothing was spent in 2010. This is the
10 Feasibility Study. When I came--before I came to Paris, there
11 was a feasibility study meeting with Hydro-China. And I'm not
12 involved with the Rositas project. ENDE is the one that's
13 involved. I'm sorry, it's not Guaracachi or EGSA. It's ENDE
14 and Corani.

15 Q. So, therefore, if nothing was spent in 2010, then
16 nothing was budgeted for 2010; correct?

17 A. Sir, I repeat. I don't know. This is the
18 responsibility of a different company. I worked for Empresa
19 Eléctrica Guaracachi. This is Empresa Eléctrica Luciel, was a
20 holding company, so I don't know about this.

21 Q. Okay. Last topic for me with you. About the claim
22 related to the alteration of the Spot Price mechanism, and I
23 would like to talk to you about--

24 A. You talked about Spot Prices? We're talking about
25 Spot Prices?

18:23 1 Q. I would like to talk to you about the study, the
2 historical study, that you asked the CNDC to carry out from
3 mid-2008 to May 2010. Do you remember that?
4 A. Yes, of course. I signed it.
5 Q. So, if you turn to in your First Report to
6 Paragraph 110?
7 A. Yes, right.
8 Q. You say, you describe what you did. You say--
9 A. Where again? What paragraph again?
10 Q. Paragraph 110.
11 A. Got it, yes.
12 Q. You say, "to verify this information," meaning the
13 historical data collected by MEC, you say, "To verify this
14 information I requested the CNDC carry out a historical study
15 of the period June 2008, April 2010, of EGSA's results with and
16 without applying the modification of Operating Standard 3."
17 Do you see that?
18 A. Yes, that is correct, sir. Yes.
19 Q. Let's look at the assignment that you gave CNDC, which
20 is it's Annex 42 to your statement or Tab 32. It's the next
21 tab in the white binder, the one that we were looking at
22 before.
23 So, here--
24 A. 32; right?
25 Q. Yeah, 32.

18:25 1 Just one moment, sir, please.
2 A. Go right ahead.

3 Q. So, here, you are asking for information to use to
4 verify MEC's historical data about Spot Prices in the 2008-2010
5 period, and you say to CNDC that you would like--and I'm going
6 to read it in Spanish because that's what I have--you would
7 like--"that you would like two studies, two impact studies on
8 the marginal costs, node prices, and income for power expected
9 for EGSA."

10 So, you asked them for expected prices for a period in
11 the past; correct?

12 A. Yes, that is correct.

13 Q. Okay. Let's look now at their answer?

14 A. It says node prices and energy income expected for
15 EGSA. This is what the letter says.

16 Q. Turn to the next tab, it's Tab 33--this is Annex 43 to
17 Mr. Paz's statement?

18 A. That's correct.

19 Q. This is the answer that CNDC sent back about three
20 weeks later.

21 A. That's correct, yes.

22 Q. And on the second page we can see that they
23 write--they have this table, giving what they see as the
24 impact, the cost--the table is, "costo de energía,
25 considerando," "considering the node price estimate."

971

18:27 1 Do you see that?

2 A. Yes, I do see that.

3 Q. So, when the CNDC responded to your request, they,
4 indeed, provided information that was estimated and not
5 historical; correct?

6 A. Yes, that is correct. It is an estimation.

7 Q. And it is an estimation based upon expectations at the
Page 179

Day 4 English FINAL

8 beginning of that period of time; is that right?

9 A. Let's see, the CNDC is here in Paris. The Chairman of
10 the CNDC is here in Paris, and the person that prepared this
11 study is here, and I would prefer for that person to--well, I
12 understand from the documents I reviewed that they worked on
13 the economic and historical transactions, yes. But I would
14 rather have the person responsible for this to answer this
15 question. He is here in Paris because--at the request of the
16 Tribunal. I understand that, yes.

17 Q. Mr. Paz, you took this information, and you put it
18 into your projections; correct?

19 A. No, sir, not at all.

20 Q. Why did you ask the CNDC to prepare this study,
21 Mr. Paz?

22 PRESIDENT JÚDICE: Can you explain why it's not
23 correct?

24 THE WITNESS: So, the claim was read, and the Attorney
25 General's Office asked me, how is this working? The spot

972

18:29 1 Price, the application of this Decree, the application of this
2 operating rule, so I said, okay, I will send a letter to the
3 CNDC President and he would tell me what would happen with the
4 application or lack of application of this Decree.

5 MR. RUBINS: I mis-asked the question.

6 BY MR. RUBINS:

7 Q. Mr. Paz, it's my fault. I mis-asked the question.

8 Let's go to Paragraph 111 of your Third Statement, and
9 it says what you did with this information. Much safer to do
10 it this way.

11 A. Can I close this now?

12 Q. Yes.

13 A. Paragrafo?

14 Q. 111.

15 A. 111, okay.

16 Q. You say, "The results of the study done by the CNDC
17 show that the real impact on EGSA of the change in the Spot
18 Price regime was approximately half that estimated by MEC, just
19 over \$4 million, excluding VAT."

20 Do you see that?

21 A. Yes, of course.

22 Q. So, if I understand what the CNDC did, in fact, this
23 should read the opposite; that is to say, the MEC did not
24 estimate anything. The MEC used historical prices, historical
25 information. The CNDC made projections based upon estimations;

973

18:30 1 and, therefore, the results of the study show that the real
2 impact was approximately twice that estimated by the CNDC in
3 its report. Isn't that correct?

4 A. No, it's not correct what you're saying, I'm sorry.
5 But if you're saying that MEC did not do an estimate, that's
6 what you're saying first, that MEC did not estimate it, it's
7 not possible to estimate what you're asking without an
8 estimate. It is impossible. If you want, we can call the CNDC
9 President to explain to you how that calculation would have
10 been done. I didn't do it. I reviewed the information
11 provided by MEC; and based what happened to history, that is
12 going to remain unchanged.

13 And Aranjuez 1, 2, and 3 could be creating marginal
14 cost, but CNDC would have dispatched differently on that date
15 if that was the case, but that's the reason why. This is like
16 this, then you apply this, and you have this result. It's not

Day 4 English FINAL

17 like that because electricity dispatch in Bolivia should be
18 done at the minimum cost, by rule. That's the reason, so CNDC,
19 if that was the case, would have to simulate the dispatch
20 again, the load dispatch for that day and how the demand was
21 dispatched at the minimum cost. This is a different type of
22 work. It's a different issue, that's why it's not correct.

23 Q. Let me give you one simple example. If I want to know
24 how much rain fell on my terrace over the last two weeks, okay?
25 That's the assignment, okay? And two weeks ago I put a cup, a

974

18:32 1 bowl on my terrace. Two weeks later, I take the bowl in, and I
2 measure how much water is in the bowl. Now, the weather
3 service predicted that there would be half as much rain as
4 actually happened, okay? I would have thought if I wanted to
5 know the impact on the bowl of the water, I'd look in the bowl;
6 don't you agree? The weather service opinion before the bowl
7 went out on the terrace isn't terribly relevant, is it?

8 A. Once again, you continue to be wrong. The
9 hydroelectric plants have great reservoirs. Not all of them
10 are pass-through situations. Corani has a seasonal reservoir
11 that has--that has the ability to be--to have the supply that
12 it needs for six months and then the other one for two weeks,
13 three weeks in La Paz.

14 Q. So, if--with respect to the post-nationalization
15 period--the post-nationalization period, so the projection of
16 the impact--the projection of the impact--on EGSA that would
17 have happened after nationalization from the alteration of the
18 spot price mechanism, here you did not ask the CNDC to make any
19 projection; correct?

20 A. Two letters were sent. This one is--it's two letters.

21 I already mentioned that in my statement. I don't remember. I
22 would have to review my documents, but I asked for two things.

23 Q. Did you ask the CNDC to estimate the impact of the
24 change in the Spot Price regime on revenues of EGSA after
25 nationalization?

975

18:35 1 A. I don't think I did. No, you're right, I did not
2 request that.

3 Q. That's what I thought.

4 why not?

5 A. Because it didn't cross my mind. I did not see the
6 need to do it. I'm sorry.

7 Q. So, for historical report, the projections of the CNDC
8 are highly relevant for you, but they weren't relevant where
9 projections are actually necessary for the future; is that
10 fair?

11 A. No, honestly, that was not the intention. I was
12 interested in explain that part, that is to say the historical
13 portion; that's the reason I requested it to CNDC. And in the
14 future, what we saw with MEC curves is that that issue was
15 almost irrelevant, and that's the reason why I did not request
16 it. That's what I saw. That was my conclusion from MEC's
17 documents. And if you see there were some curves showing the
18 nodal prices in the future, they were irrelevant. They were no
19 changes.

20 Q. Mr. Paz, thank you so much for your patience. You
21 have been very helpful, and I will pass the floor back to
22 Mr. Blackaby to finish up.

23 BY MR. BLACKABY:

24 Q. Mr. Paz, what a purgatory for Friday afternoon, but we
25 are coming to the end, luckily.

18:37 1 I only have one more topic, and in your first and
2 Third Statements, you made a couple of comments on the sale of
3 GCH-3 and 5. GCH-3 and 5.

4 A. I need to write down the terms.

5 You said you made a comment, but I remember that I
6 reviewed the information; and, if you tell me the paragraphs,
7 I'll be happy to look at them.

8 Yes, please, go ahead. Yes, I did write something
9 about it.

10 Q. Yes, in your Third Statement, Paragraphs 3
11 to--Paragraph 7s, Lines 1 to 3 and--sorry, Paragraphs 7 to 13.
12 We are going to ask you some specific questions.

13 What was your position in Guaracachi in connection
14 with the sale of units GCH-3 and 5?

15 A. Well, that depended on Mr. Andrade. I was an analyst
16 and I reported to Mr. Andrade.

17 Q. And you're saying that there were some criminal claims
18 against EGSA back then; is that the case?

19 A. No, I did not say. I said that I remember that
20 Mr. Mauricio Pero had to face a criminal claim back then, and
21 he had home detention. So, when I came back from Barcelona, I
22 went to Santa Cruz and I visited him at home.

23 Q. I'm just trying to see that you agreed that at
24 Paragraph 13, in your statement, your Third Statement, you
25 indicated that there were complaints, criminal complaints, so

Day 4 English FINAL

18:40 1 it seems that you're trying to suggest that there was something
2 fishy.

3 A. Of course not. Once again, I am not passing any
4 judgments on anyone. As far as I know, there is nothing there,
5 but even though I am not 100 percent certain, there's nothing
6 there. I am not saying that. Please.

7 Q. But it seems a little bit strange. You mentioned a
8 legal or a criminal complaint and also home detention, but you
9 did not say anything that that complaint was rejected, and you
10 know that that was rejected; correct?

11 A. No, I don't. The case came to an end, and Mauricio
12 actually filed a complaint against this case against the
13 District Attorney, but that was a very complicated period.

14 Q. But you did not think it was necessary to mention that
15 that complaint was rejected, dismissed?

16 I would like to look at one document because we would
17 like to look at documents if we can look at document 37?

18 A. Where?

19 Q. In the white binder.

20 A. One, two, or three?

21 Q. Thirty-seven.

22 These are the Financial Statements for Empresa
23 Eléctrica Guaracachi, and in particular I would like to look at
24 the accounts for 2013, Financial Statements for 2013.

25 PRESIDENT JÚDICE: 2003?

978

18:42 1 MR. BLACKABY: I think it is Page 50--

2 THE WITNESS: Just a second.

3 MR. BLACKABY: We're just checking the page. Just a
4 second.

5 (Pause.)

6 BY MR. BLACKABY:

7 Q. I'm going to ask you a question, and then we are going
8 to come back to this document.

9 A. Please go ahead. What can we do.

10 Q. In your First Statement, Paragraph 40...

11 A. First Statement, Paragraph 40. Please go ahead.

12 Q. You're saying in connection with this, and I think
13 that here you're referring to the sale of GCH-3 and 5. You're
14 saying, I should clarify that contrary to the impression
15 created by the Claimants, EGSA's Board was not defending the
16 interests of the State, and it was not acting with the
17 authorization of the State.

18 Do you see that?

19 A. Yes, of course.

20 Q. So, these are quite serious statements, aren't they?

21 A. Yes, sir.

22 May I speak, please? May I, Mr. President?

23 If the lawyer--if the counsel had finished reading, I
24 was referring to the AFPS that represented 49.73 percent of
25 EGSA's shares, and they were the property of the Bolivians, and

979

18:45 1 now they're ENDE's property. And, in 2009, they were
2 transferred to ENDE, and I was referring to that. It depends
3 on the vision that you have for the company. That's what I was
4 referring to.

5 Q. Yes, I do understand. I understand that this was not
6 to the best interest of the pension funds and to the people of
7 Bolivia. If that was contrary to the people of Bolivia,
8 they--please let me finish the sentence. Please wait for the
9 transcription.

Day 4 English FINAL

10 And you knew that that sale was approved by
11 Guaracachi's Board, didn't you?

12 A. Yes, of course.

13 Q. And Guaracachi's Board had representatives of the
14 minority Shareholders for the pension funds; right?

15 A. Yes, that's what I was referring to.

16 Q. So, you are saying what? what are you saying? That
17 the Directors for the pension funds were not acting in the best
18 interests of Bolivia?

19 Please, let me finish.

20 You're saying that Guaracachi was not acting in the
21 best interests of Bolivia? Is that what you're saying, or that
22 the Directors that were appointed by the pension funds were not
23 acting in the best interests of Bolivia?

24 A. The latter.

25 Q. So, would you like to correct Paragraph 40 of your

980

18:46 1 statement?

2 A. Of course, if it is going to be clearer like that,
3 yes, yes, with pleasure.

4 Q. So, instead of the EGSA's Board, it should say the
5 pension funds did not act--okay.

6 A. The pension funds in this case.

7 Q. Okay. We leave it like that. If you remember, there
8 was a pause. We were trying to look for a document at
9 Page--Tab 37, and there we were referring to the legal
10 proceeding that Mr. Perrodo had to face. So, this is the legal
11 proceeding for Mr. Perrodo, and we are going to move to 2002
12 Financial Statements. There is a green page, very pretty page
13 with a bird, and then it says Annual Report 2002, and then

14 there is another page that says 2003, and I would like for you
15 to look at note Number 3.

16 A. What page?

17 Q. Forty-two.

18 A. Sale of GCH-3 and GCH-5 turbines.

19 Q. Second paragraph, last sentence.

20 "As of December 31, 2003, the corporation has an
21 outstanding balance to collect that equals 16 million"--

22 A. Once again, the investigation proceeding mentioned
23 above concluded with the dismissal and ratification favoring
24 EGSA on August 27, 7th, and September 17, 2003, respectively.

25 Q. And is it the first time that you hear about this?

981

18:49 1 A. No, I totally agree with you. I totally agree with
2 you. I already told you.

3 Q. But you wanted to--

4 A. But you wanted to tell me, that I wanted to say
5 something else. No, I did not want to say anything.

6 As I told you before, I totally agree. Of course that
7 I am aware of this information.

8 Q. But you did not mention that in your statement?

9 A. But I mention that in my next statement.

10 Q. Your Third Statement, Paragraph 13, you did not
11 mention resolution and the dismissal of that legal complaint,
12 criminal complaint?

13 A. I was aware of that.

14 Q. That was not my question. I told you--just let me
15 finish, please.

16 You mentioned the criminal investigation against
17 Mr. Perrodo; correct?

18 A. Yes. And I mentioned that in my statement.

19 Q. Second, you pointed out that he was subject to home
20 detention, house arrest.

21 A. Correct.

22 Q. But you did not mention that that criminal
23 investigation was dismissed as we saw in this document?

24 A. No, I did not, and I apologize for that.

25 Q. We were talking about the sale of GCH-3 and 5. You

982

18:50 1 said that the Directors that were appointed by the pension
2 funds were not acting in the best interests of the State. Do
3 you remember that?

4 A. Yes, I do remember that, and we corrected it.

5 Q. So, I understand that you're saying in the first
6 sentence that EGSA's directory was not defending the interests
7 of the State, and the second section they were not acting
8 either with the authorization of the State; correct? Do you
9 maintain that statement?

10 A. I am referring to the AFP's Directors. That's what we
11 are referring to. We're not referring to the authorization by
12 the regulatory entity. We are referring to the sale
13 authorization process within EGSA's Board of Directors. We are
14 not referring to--

15 Q. We're not referring to EGSA's requests of the removal
16 of these units so you agree then that there were authorizations
17 by the State for the sale of GCH-3 and 5?

18 A. Yes, sir. That was legal, and I'm not saying that
19 that was illegal.

20 Q. Well, because that could lead to misunderstandings.

21 So, you were telling me that the Board of Directors
22 did not act in the--did not defend the interests of the State,

23 and they were not authorized by the State.

24 who was not authorized by the State? Were you talking
25 about the AFP's Directors?

983

18:52 1 A. Yes, AFP's Directors were--never consulted anyone
2 about these decisions.

3 Q. And those Directors needed to have the authorization
4 by the State, then, to be able to agree within EGSA the sale of
5 GCH-3 and 5; correct?

6 A. Well, I understand that there was some oversight
7 function. I'm not very sure. Honestly, I'm not very sure. I
8 understand there was some oversight entity.

9 It was kind of a complicated situation, but I may have
10 been wrong. I'm not a lawyer, and I may have made a mistake
11 here--I may have made a mistake here about the authorization,
12 but I was saying about the AFPs--in my opinion, if the AFP had
13 done something, they could have avoided this; right. That's
14 what I was trying to say.

15 Q. But I don't see any authorization?

16 A. No, no, there wasn't any authorization, and I'm not
17 going to lie.

18 Q. But at the beginning of this exchange you said--or you
19 accepted with me that that was quite a serious statement.

20 would you like to change Paragraph 40, 1st sentence?

21 A. No, we already discussed that three times.

22 Q. And the idea was to change EGSA's Board of Directors
23 for the Directors that were appointed by the AFP?

24 A. Yes.

25 Q. Thank you very much. With this, Mr. Paz, I think that

18:54 1 we have concluded our exchanges. Thank you very much for your
2 patience. Now I think it's the turn of my friends on the other
3 side of the aisle.

4 PRESIDENT JÚDICE: Thank you very much.

5 Mr. García Represa.

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

7 REDIRECT EXAMINATION

8 BY MR. GARCÍA REPRESA:

9 Q. Good afternoon, Mr. Paz. I imagine that you are eager
10 to do something else, and you might not be the only one in the
11 room, but I have a few questions to avoid certain
12 misunderstandings. And I would like to start where we left it
13 with our colleagues.

14 In your First Statement, you were asked to look at the
15 paragraph that we are looking at right now, which says--or it
16 refers to the sale of Guaracachi 3 and 5. And you were told
17 that it was not clear in your statement whether that sale had
18 been authorized by the regulatory authority.

19 Do you remember whether somewhere else in your First
20 Statement you referred to the authorization by the regulatory
21 entity for the removal or the decommissioning of Guaracachi 3
22 and 5?

23 A. Yes. I included the authorization by the regulatory
24 authority where I say that the decommissioning of Guaracachi 3
25 and -5 was approved by the Electricity Authority, AE.

18:56 1 Q. And where did you mention that?

2 A. Where? This one? Is that the first one?

Day 4 English FINAL

3 Q. Yes, it is the first one.

4 A. I did not include that. It's not in the first one.

5 Q. Well, it's in the record, so we could look at it at
6 some other time.

7 PRESIDENT JÚDICE: Yes.

8 THE WITNESS: We have a table, Paragraph 33 and
9 Paragraph 56.

10 PRESIDENT JÚDICE: Thank you.

11 THE WITNESS: Yes. This is the resolution number.

12 BY MR. GARCÍA REPRESA:

13 Q. And in connection with the sale of Guaracachi 3 and
14 -5, you were asked to look at Paragraph 13 of your Third
15 Statement, and you were told that you did not mention in your
16 Statement or in any other document the completion of the legal
17 investigation--the criminal investigation, and you were
18 referred to the Year 2002.

19 Could you please look at Annex 53 to your Statement,
20 please, in the blue binder. These are the Financial
21 Statements. These are the Financial Statements of 2004. And I
22 would like for you to look at the note referring to the sale of
23 GCH-3 and -5 turbines.

24 Could you please read Note 4, if you want to read it.

25 A. On February 21, 2003, the Public Ministry of the

986

18:58 1 Republic initiated an investigation proceeding given an
2 irregular--an alleged irregular sale of GCH-3 and -5.

3 On March 21, 2003, the Special Meeting of Shareholders
4 decided to maintain a reservation on the income that was not
5 assigned, and that was equal to 18.3 million, and this was
6 deducted--from this, 5 percent was deducted based on the

7 Agreement in the legal provisions.

8 This investigation proceeding that I just mentioned
9 concluded with the dismissal and its ratification by EGSA on
10 August 27 and 17.

11 As of December 31, 2003, the corporation still has an
12 outstanding balance to collect--an outstanding balance for
13 16.5 million Bolivians.

14 On January 13, 2004, the power development
15 company--international company paid off the pending balance.

16 And on February 9, 2004, the corporation distributed
17 the income that had accumulated and that been reserved based on
18 the decision by the Special Meeting of Shareholders held on
19 March 21, 2003.

20 Q. So, do you know if there was any reference to this
21 criminal investigation in this document?

22 A. Well, I have to correct myself, Doctor, if I was
23 there.

24 Q. Well, Paragraph 40, you were asked several questions
25 about that paragraph in connection to whether there should be a

987

19:00 1 correction of the third line or not, and here it says that the
2 Board was not defending the interests of the State, that it was
3 not acting with the authorization of the State.

4 Could you please explain the context of this
5 statement.

6 A. Yes.

7 Pension funds represented or were in charge of the
8 representation of the shares of all the Bolivians in the
9 capitalized companies. Therefore, the authorization of the
10 distribution--or the distribution of the dividends for
11 Guaracachi 5 and 3 rather than the investment in new units is a

Day 4 English FINAL

12 problem that has to do with the people that it represented.
13 That's the issue.

14 Clearly, it's here. None of the money from the sale
15 from Guaracachi 3 and 5 was distributed as dividends.

16 Q. Let's change subjects, sir. You talked to
17 Mr. Blackaby at the beginning of this session, you discussed
18 the role of IPOL in the CCGT process. Before you were
19 interrupted, you mentioned that before the nationalization, the
20 IPOL was not there either.

21 Could you please explain what the role of IPOL was
22 before nationalization.

23 A. I understand that the role of IPOL--and this is
24 according to what I read and what I understand; right?--was to
25 buy or, rather, to find the units to buy them, EGSA buys the

988

19:02 1 units, and has--they had to provide help in connection with
2 some matters. It was involved in the oversight of some issues.
3 I don't think the commissioning was included there, and they
4 had to prepare operating--operations and maintenance manuals
5 for Unit 12.

6 So, I saw a contract with IPOL a little while ago. I
7 don't know where it is.

8 Q. I think it's not going to be necessary for us to look
9 at it, unless you see fit to do it.

10 A. No, no, it's okay.

11 Q. Why did you say that IPOL wasn't there, this in
12 connection with the CCGT project?

13 A. Because the only specialized engineer for IPOL was
14 Jerry Blake, and Jerry Blake was not in Santa Cruz. He did not
15 live in Santa Cruz. He always lived in London.

16 Q. Changing the subject again, you talked with
17 Mr. Blackaby about Fitch and PCR's credit ratings.
18 Do you remember this?

19 A. Yes.

20 Q. Mr. Blackaby showed you a PCR report of December 2010,
21 and you discussed the relationship that you did or did not have
22 with the credit rating agencies.

23 Could you please explain the context of the
24 relationship you had with EGSA's credit rating agencies in 2009
25 before the nationalization and why you didn't have the same

989

19:03 1 kind of contracts later on?

2 A. You said January 2009 and later.

3 Well, first, the responsibility in connection with the
4 relationship with the credit rating agencies was with the
5 financial and administrative management office. So, I had to
6 attend to the credit rating agencies and to see how the credit
7 rating was going to be maintained.

8 So, information was prepared, this was all sent to
9 Fitch. And in a telephone conversation, I was told what I
10 included in this paragraph. I was told that they were going to
11 downgrade us in spite of all the information, data, and other
12 defenses that we produced at the time.

13 Then PCR came in line, and we provided all the
14 necessary information. My participation was just in my
15 capacity as an analyst. I did not have any other kind of
16 responsibility.

17 After nationalization, the administrative and
18 financial management office was also responsible for this.
19 Then I became the General Manager. I had access to all the
20 information and all the data officially speaking, and now I

Day 4 English FINAL

21 have this information, and it is known by me.

22 Q. Thank you.

23 I would like to talk about energy--power and
24 fixed-capacity projections.

25 You were shown Annex 8 to your statement, which is the

990

19:05 1 node price report, and you were discussing this issue and
2 looking at this document in connection with Karachipampa.
3 You're not going to have to look at the document necessarily,
4 but--well, you can do as you see fit.

5 In answers to questions posed by Claimant, you
6 mentioned the approval by the regulatory authority of the node
7 price report, and you said that there is no approval for the
8 PMP.

9 A. Yes, correct.

10 Q. Is this related to the presence of Karachipampa in the
11 node price report and with the fact that Karachipampa is not
12 included in the PMP?

13 A. Yes. It is related. For the entry or the withdrawal
14 of a unit or of a line or whatever to be included in the node
15 price report, this needs to be authorized by the regulatory
16 authority. And, in this case, it was the AE.

17 Q. Could you please explain what information is used to
18 build the PMP?

19 A. Would be the information from all the market agents.

20 Q. In those two documents that you were shown, one from
21 March and the other one from April 2010, well, I understand
22 that both documents include projections of power and capacity.

23 A. Yes, correct.

24 Q. Starting at what date are those projections made in

25 those documents?

991

19:07 1 A. Starting May 1st in both cases.

2 Q. And why do we have two documents that are making
3 projections starting on the same date? How can you explain
4 this?

5 A. Because the node price report is binding in nature,
6 and I said--and I said this before, on the basis of the node
7 price report, the Resolution approving the node prices is
8 issued, and the stabilization factors for the relevant period.

9 So, this is related to the setting of node prices for
10 the distributors.

11 Q. When you talk about the period, what is the period of
12 the node price report and what is the period for the PMP?

13 A. For node price report, it's May-October. And for the
14 PMP--is May-October 2010. And the PMP is May 2010 through
15 April 2014.

16 Q. Could you please explain why you used the PMP and not
17 the node price report for your projections?

18 A. Because I am conducting a study that is using an
19 eight-year timeline. I cannot use six months. I have to use
20 four months, and then I have to use the POES to complete the
21 projection.

22 Q. You were mentioned Karachipampa, and you were asked to
23 confirm if it was still operational. What happened to
24 Karachipampa between the nationalization date and today for it
25 to continue being operational?

992

Day 4 English FINAL

19:09 1 A. For it to continue to be operational, what happened is
2 that there was a Board meeting that repealed the prior Board
3 authorization that approved the withdrawal, an overhaul was
4 authorized. This was communicated to the CNDC, and the unit is
5 still operational today.

6 Q. Let's move on from Karachipampa to Rositas. You were
7 shown the document that is behind Tab 30 in your white binder.
8 This is Volume 2. Tab 30.

9 You were shown in this POES 2010-2020, the reference
10 made to Rositas on Page 9, if I remember correctly. I
11 understand that the description of the different projects in
12 those POES--well, in this specifically, it starts on Page 14.

13 A. Yes.

14 Q. If you go to Page 17, you're going to find the
15 description of the Rositas project. Could you please read what
16 it says about Rositas.

17 A. Yes. January 2018, Rositas hydrological plant. It is
18 a plant that improves the energy matrix for electricity
19 generation. Because of its large capacity, it is recommended
20 that in feasibility studies an analysis be conducted for the
21 possibility of installing smaller generation units 80, instead
22 of 100 megawatts, and to--driving closer in time, the date for
23 commissioning.

24 Q. And you mentioned also the Feasibility Study that was
25 delivered. Could you tell me what is the relationship between

993

19:11 1 the Feasibility Study and the studies that are conducted for
2 the final design of a project of this kind?

3 A. Well, after the Feasibility Study, we would have to
4 have the engineering study for final design. I think

5 Hydro-China should start doing that. Hydro-China is pushing
6 forth in this regard. There is an agreement and everything.

7 Q. Then you were referred to the POES that MEC and Abdala
8 used. This is Number 29 here, and you were referred to
9 Page 108 of the document.

10 Just go to Page 106. And you're going to find a
11 description of Rositas one page before that. It's on Page 104,
12 actually. I'm not going to ask you to read the whole thing
13 because of time constraints, but on Page 106, you see a
14 schedule for the coming into line of Rositas.

15 According to the POES used by Claimants in this case,
16 when was Rositas going to become operational?

17 A. Well, considering this schedule--well, according to
18 the POES, January 2019, March 2019, May 2019, and August 2019,
19 and October 2019.

20 Q. And according to the projections of Mr. Abdala, do you
21 know when he considers the entry in line of Rositas, if he
22 considers it?

23 A. He does not consider it at all. Why? Because he
24 projects everything until 2018. And he says, well, from here
25 on--onwards, everything is going to be the same. He does not

994

19:14 1 include the impact of this large hydroelectrical plant that
2 throws to the ground all of the generation because this is an
3 enormous generation plant.

4 Q. I'm going to change the subject, and--but we're going
5 to go back to the projections. I'm sorry things are so
6 complicated, but you were referred to the Profin report.

7 A. Yes.

8 Q. Do you remember if this report was prepared before or

9 after nationalization?

10 A. That report, if memory serves, was published in
11 October; after nationalization, evidently.

12 Q. Very well. This is behind Tab 40 of volume 3. You
13 were asked about the information that Profin had used for its
14 projections on our incapacity, and you asked for time to review
15 the document, you were not given time, so we are going to give
16 you some time.

17 when you find this document, please let me know. It's
18 Tab 40, Line 3.

19 A. Yes.

20 Q. You see two blue markers.

21 Do you see them?

22 A. Yes.

23 Q. And you were shown the second, but I would like for
24 you to look at the first.

25 And to go one page ahead--and if you go to the next

995

19:15 1 page, you are going to see a section called "Valuation."

2 Do you see that?

3 It says Roman numeral VI, "Guaracachi Valuation."

4 If you look at the first thing that appears in this
5 document after this heading, "Guaracachi," you will see a
6 heading called "Basis for Guaracachi's Projection."

7 Could you please look at these four bullet points that
8 you have at the beginning and then the two subsections, and
9 could you explain to us how Profin's information compares to
10 what you have used as information.

11 A. The only--the only difference is in the report during
12 that time length and the node price report uses the PMP and the
13 expansion plan for the SIN of 2014 that was submitted in

Day 4 English FINAL

14 November 09; right?

15 Q. Yes, but after that you have information that agrees
16 with the information that you've used in your projections?

17 A. Yes. Karachipampa will not be withdrawn, it says
18 here. So, this was prepared for ENDE, and the due diligence
19 was conducted in ENDE.

20 Q. Going back to project again, you were mentioned the
21 Entre Ríos plant has four units.

22 A. Yes, I do remember.

23 Q. And you were told that this is an example why the POES
24 2010-2020 as of 1st May 2010, it would be out of date, if you
25 will. You mentioned that Entre Ríos 1 and 4 became operational

996

19:18 1 in June 2010.

2 Do you remember--well, let's see. Could you explain
3 what it means that it became operational in June 2010.

4 If it starts operations in June 2010, what was the
5 condition of these units as of 1st May 2010?

6 A. Well, in the final testing period--if final testing is
7 conducted, then they're ready to become operational.

8 Q. And you remember the model that Mr. Abdala uses as the
9 date for the entry into operations for Entre Ríos 1 and 4?

10 A. I understand that it is May 1st.

11 Q. Changing subjects, mention was made of the CNDC and
12 what it did and what it didn't do, and I would like for you to
13 clarify.

14 My colleague--I don't see him--but he's very good,
15 creating confusion.

16 Could you tell us what you did and what the CNDC did
17 in connection first with power and fixed-capacity dispatch

18 projections as of 1st May 2010, and what you did and/or what
19 the CNDC did in connection with the estimates for historical
20 damage because of the exclusion of dual engines as marginal
21 units between '08 and 2010.

22 A. Very well. The projections of fixed capacity and
23 power as of 1st May 2010, I did them. We explained this on
24 what basis. The CNDC conducted calculations of the historical
25 damage '08-2010. I understand that the CNDC, as I say in my

997

19:21 1 Statement, did this in accordance with the economic
2 transactions. This is what I was told. That is why I went to
3 the CNDC to prevent doing some estimates that would lead me to
4 errors. It was very complicated for me to do that, and that is
5 why I resorted to the CNDC.

6 Q. Thank you very much, sir. I have no further
7 questions. Thank you for your patience.

8 MR. BLACKABY: Just a couple of small points arising
9 directly out of those questions.

10 RECROSS-EXAMINATION

11 BY MR. BLACKABY:

12 Q. Mr. Paz, you said in the transcript--and I have a copy
13 of it right here--at 709, you said that there was a Board
14 meeting that repealed the decision made by the prior Board of
15 Directors that approved the withdrawal of Karachipampa and the
16 overhaul was authorized.

17 Do you have personal knowledge--well, you said this
18 was communicated to the CNDC?

19 A. Yes, yes, I prepared the letter.

20 Q. Do you know where in the file or the annexes, where
21 the letter is, where, after nationalization--well, where the
22 CNDC was communicated by Guaracachi, after nationalization, the
Page 202

23 withdrawal or the request for withdrawal?

24 A. I would have to look at this. Just a moment.

25 Q. Yes, of course, with pleasure.

998

19:23 1 A. I do say this in my statement. Do you see that?

2 Now, maybe this is in the other one. Annex 57, if I'm
3 not mistaken--I'm going to have to confirm this.

4 Q. I was also thinking that you were making reference
5 also to Annex 57.

6 A. Please, let me look at it.

7 Q. I don't know if we have this in our bundle.

8 It's on the screen. I don't know if we can read this,
9 but according to you, in this letter, you withdrew the request
10 for withdrawal.

11 Well, what happened is that there was a Board of
12 Directors that repealed the prior Board decision that approved
13 the withdrawal was authorized. This was communicated to the
14 CNDC.

15 And I'm trying to see whether they are making
16 reference to Annex 57. I don't know if you could identify in
17 that communication where the decision by the Board is
18 communicated--well, the decision has to do with withdrawing the
19 withdrawal request because I don't see that.

20 A. No, sir, we did not communicate the Board of
21 Directors' decision to the CNDC. What we are saying here, that
22 is going to go back to being operational. We give the date
23 here.

24 No, no, I'm sorry. We say that the turbine, the gas
25 turbine, was rented for EGSA, KAR-1 for the Guaracachi Plant,

19:25 1 and it arrived at the airport of the City of La Paz.

2 If you allow me to clarify this: The decision is
3 made, the unit was sent, and as I stated in my statement and
4 elsewhere, the overhaul of Karachipampa takes about six months,
5 and this has to do--overseas. This is done in Scotland. Alba
6 Power was hired to do this. And in that interim period, six
7 months, there was a lot of pressure because the CCGT was not
8 becoming operational because there was no power in the
9 system--no capacity in the system, and they asked us to please
10 look for a turbine to replace that unit that was being
11 repaired.

12 we rented it out--or, rather, we rented it, and it
13 became operational again. And understanding this was enough.

14 Q. Just to clarify that the Board of Directors decision
15 was not communicated?

16 A. Yes, the return of the unit.

17 Q. Just a quick question. In answering the questions by
18 Respondent in connection with the conditions for the withdrawal
19 of GCH-3 and -5, you said that one of the problems for the
20 Directors of the AFPs was the withdrawal of those units and the
21 non-replacement thereof.

22 Please go to Paragraph 12 of your Third Statement.

23 A. Did I say without the replacement?

24 Q. That's what I understood.

25 A. What I said is that the money from the sales of GCH-3

19:27 1 and -5 were distributed as dividends. This is what the

2 Financial Statements of '04 say.

3 Q. You said, "As I said in my First Statement, GCH-3 and
4 -5, if they had continued operating, they would have been
5 replaced by similar units and probably the outages would have
6 been avoided that happened in the country in 2011."

7 why didn't you make reference to the replacement of
8 GCH-3 and -5 that were replaced by GCH-11 in 2011?

9 Rather--2011, yes.

10 A. I don't know what to answer. I don't know, for God's
11 sakes.

12 Q. Mr. Paz, you were saying that the outages would have
13 been avoided in 2011. This is a consequence of not having used
14 GCH-3 and -5 with a total capacity of 40 megawatts.

15 Is it true or not that in 2007 GCH-11 was established
16 with 63.9 megawatts?

17 MR. GARCÍA REPRESA: Objection. We're going away--we
18 are driving away from our questions.

19 MR. BLACKABY: This was replaced or not?

20 MR. GARCÍA REPRESA: The objection is pending, and the
21 Tribunal has to make a decision in this regard.

22 PRESIDENT JÚDICE: What was the objection again?

23 MR. BLACKABY: Yeah, it's the enthusiasm of the end of
24 the day on a Friday. So, I think I'm not only one who's
25 enthusiastic.

1001

19:29 1 PRESIDENT JÚDICE: I think that's it.

2 MR. BLACKABY: Yes, I accept the objection. That's
3 fine.

4 BY MR. BLACKABY:

5 Q. Thank you very much, Mr. Paz. No more questions. I
6 promise.

Day 4 English FINAL

7 PRESIDENT JÚDICE: Thank you very much, Mr. Blackaby.
8 Mr. Conthe, you have the floor.

9 QUESTIONS FROM THE TRIBUNAL

10 ARBITRATOR CONTHE: I only have one question. I don't
11 think it's going to be difficult. This has to do with an issue
12 that we haven't discussed so far. It is connected with one of
13 the three claims by Claimants, and it has to do with basic
14 Capacity Price. And you were in EGSA from '95 to today, so you
15 have this broad view of the company.

16 In Paragraph 122 of your First Statement, there is a
17 phrase that raises a little doubt in my mind, and I thought I
18 understood it, but I wanted to see if I understood what you
19 said, this in connection with the historic evolution of the
20 regulations in connection with the basic Capacity Price. Maybe
21 you can clarify this for us.

22 The Electricity Law provided that the capacity was to
23 be paid for, and the regulations for prices and tariffs
24 indicated that power--that that capacity had to be calculated
25 in connection with--calculating the investment price plus

1002

19:31 1 additional transportation expense, et cetera. And it could not
2 be over 50 percent of the investment cost. This was 1995.

3 And then you have Renato Augurto, who was a consultant
4 who prepared the report, and he said that the catalog cost for
5 the turbines, well, that cost had to be added 17 percent
6 because the supplementary equipment before you applied the
7 maximum charge of 50 percent because of transportation costs
8 and customs costs, et cetera.

9 If I understand this correctly, until July '96,
10 nothing happened, but in August 2001, Operating standard 19 was

11 approved, and EGSA--well, in August 2001, the Superintendency
12 approved this charge of 20 percent on supplementary equipment.

13 So, Augurto had proposed 17.5 percent, and the
14 Superintendency was more generous and it applied a 20 percent
15 surcharge, so a little bit over the percentage that the
16 consultant had suggested.

17 I'm trying to understand this. You're going to tell
18 me if I'm wrong or not.

19 You talk about July 2002 where there was a report by
20 another consultant, which was Quantum, we had mentioned it
21 before. And what Quantum suggested--and herein lies the
22 ambiguity--what I understand is that the surcharge of
23 200 percent went down to 11.97. So you had to add 11.97 on the
24 catalog price. So, from 20 percent we should go down to 11.97
25 percent. This was back in July '02.

1003

19:33 1 I understand that the authorities did not heed this
2 suggestion, and they kept the surcharge at 20 percent in spite
3 of the fact that in July 2002, Quantum, the consulting company,
4 said that it should be lowered to 11.97 percent.

5 Then, in January 2007, there was the first report by
6 consulting company named Bates & White, and Bates & White said
7 that the surcharge should be lowered to zero. And the
8 Superintendency--I think it was a little later--I think
9 February, 2007--heeded the report by Bates & White and set the
10 surcharge percentage at zero.

11 So, there was a First Report proposal by Augurto,
12 17.5, a 20 percent surcharge decided on by the Superintendency;
13 then there was another suggestion by a consulting company of
14 19 percent; and the last proposal was zero percent, and that
15 was the one that was accepted.

Day 4 English FINAL

16 That is the one that was challenged by EGSA before the
17 courts and before the administrative authorities.

18 PRESIDENT JÚDICE: Mr. Paz, you can be with people
19 during the weekend. It would be sad for you to be alone this
20 weekend. I would like to thank our friends here for the
21 additional effort made.

22 (Discussion off the record.)

23 (Whereupon, at 7:36 p.m., the hearing was adjourned
24 until 8:30 a.m., Monday, April 8, 2014.)

25

1004

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

DAVID A. KASDAN

Day 4 English FINAL