

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)

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In the Matter of Arbitration :

Between: :

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GUARACACHI AMERICA, INC. (U.S.A.) and :

RURELEC PLC (UNITED KINGDOM), :

:

 Claimants, : PCA Case No. 2011-17

:

 and :

:

PLURINATIONAL STATE OF BOLIVIA, :

:

 Respondent. :

:

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HEARING ON THE MERITS

Tuesday, April 9, 2013

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

The hearing in the above-entitled matter came on, pursuant to notice, at 2:08 P.m. before:

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- MR. MANUEL CONTHE, Arbitrator
- PROF. RAÚL EMILIO VINUESA, Arbitrator

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1 P R O C E E D I N G S

2 PRESIDENT JÚDICE: Good afternoon.

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

5 CLOSING ARGUMENT BY COUNSEL FOR CLAIMANTS

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

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

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

14:12 1 process to be realized by an independent company contracted by
2 ENDE, and then at the end of the quote he says, "Remember that
3 the valuation must be undertaken by an independent company."

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

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

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

14:14 1 this case. But the Profin report is the only contemporaneous
2 support for a zero value. It is a subjective report intended
3 as a strategic element for Bolivia and has now been abandoned
4 by Bolivia, knowing that it will be subject to a detailed
5 scrutiny in the Oral Hearing.

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

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

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

14:16 1 need only look at the 2011 results to realize that. Exhibit
2 C-224 as you can see from the slide. On the back of Claimants'
3 investments, remember, there have been no new projections since
4 nationalization. Up to the end of 2011, profits were
5 \$12.6 million in 2011.

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

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

14 You heard from Mr. Earl, the CEO of Rurelec;
15 Mr. Aliaga, the General Manager of Guaracachi from 2004 to
16 2010, someone who knew the business intimately both before
17 capitalization--sorry, knew the business intimately and had
18 been with the company for many years; Mr. Blanco, the Financial
19 Director; Mr. Andrade, the Business Manager; and Mr. Lanza, the
20 Project Manager responsible for the combined cycle. Each of
21 these witnesses told you in detail about the facts as they
22 lived them covering all relevant times and all relevant
23 details.

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

14:17 1 Guaracachi who were lucky enough to survive the
2 nationalization: Ms. Bejarano, the internal auditor of
3 Guaracachi; and Mr. Paz, the former analyst of Guaracachi, who
4 is now its General Manager. Both are presumably grateful to
5 Bolivia for saving their positions.

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

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

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

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

14:19 1 review of the record of historic documents in this arbitration
2 undertaken since his meteoric, but apparently unwanted, series
3 of promotions to become the fourth--yes, the fourth--General
4 Manager of Guaracachi since nationalization.

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

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

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

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

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

25 PRESIDENT JÚDICE: You said Mr. Lanza?

14:20 1 MR. BLACKABY: Sorry, Mr. Paz. I apologize. This is
2 Mr. Paz's evidence, yes.

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

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

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

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

19 He replied, "Yes."

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

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

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

14:22 1 an expert to respond to the report of Dr. Abdala. The problem,
2 as he readily accepts, is that he's not independent of the
3 Party that seeks to rely on his expert evidence. On the
4 contrary, he was appointed to his present post by the Bolivian
5 Government through the vote of ENDE, whose Directors are
6 nominated by various Ministers. And you can find that in the
7 Spanish transcript, not on the slides because the extract was
8 rather long, but the Spanish transcript Page 1190, Line 8, to
9 Page 1191, Line 19.

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

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

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

14:23 1 the Supreme Court, his evidence is no more independent than if
2 the Attorney General himself submitted a statement to this
3 Tribunal and expected it to be given more weight than mere
4 Party advocacy.

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

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

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

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

25 Enough said. There is neither fact witness nor

14:25 1 independent Expert, his statement is not evidence at all, but
2 simply Party submission.

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

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

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

20 Mr. Flores compounds the problem by seeking to build a
21 discount rate out of all proportion with reality. The
22 27 percent cost of equity notwithstanding an agreed 7.88
23 percent cost of debt. He did that by adding every adder and
24 every multiplier that the academic community has ever theorized
25 about, even though nobody uses them in the real world. And he

14:26 1 didn't check. He didn't perform a single benchmark analysis
2 either on the discount rate or on the resulting value, because
3 he knew what the result would be. Any comparison would prove
4 him wrong.

5 So much for the witnesses. So, let's turn to the
6 issues in the case and see where they stand for weeks since the
7 hearing started.

8 Chronologically, let's quickly start with
9 pre-capitalization. This is not relevant for your decision,
10 and so little time was expended at the hearing on the topic,
11 but one thing is clear: Capitalization took place because the
12 Government and ENDE did not have access to the Funds to expand
13 the system on their own.

14 Bolivia focuses on the condition of existing plants
15 and equipment. That's not relevant. The question was not what
16 ENDE had, but rather what it would be capable of doing when
17 faced with the new demand. Capitalization was looking for new
18 investment, and that is what it achieved.

19 This was achieved through aggressive marketing of the
20 new legal framework internationally, and in particular the
21 Electricity Law. And we saw examples in the opening of the
22 Florida roadshow that was identified to achieve that purpose
23 and the 32 international electricity companies that attended.

24 The system was designed to ensure that it would be
25 self-financing, unlike the previous system. One of its central

14:27 1 tenets was drawn from the successful privatization programs in
2 Chile and Argentina. A wholesale electricity market based on
3 each supplier receiving an equal payment depending upon the
4 marginal cost of electricity, the cost of the last unit
5 dispatched.

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

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

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

14:29 1 was aware of the creation of Guaracachi America from the very
2 moment it was constituted because it had required that it be
3 constituted.

4 Based on this new Regulatory Framework, which was
5 designed to encourage new investment and result in the
6 decommissioning of old investment that would no longer be
7 called upon to dispatch, Guaracachi began its significant
8 investment program unequaled by the other capitalized
9 electricity companies.

10 Now, it's unquestioned that with the inclusion of the
11 combined cycle, Guaracachi added over 320 megawatts of high
12 efficiency installed capacity to the national grid. It is
13 unquestioned that during that same period it decommissioned
14 approximately 50 megawatts of inefficient installed capacity.
15 The net gain is around 270 megawatts of high efficiency
16 installed capacity, and you will recall our Slide 17 which
17 shows the impact of that was as investments were made and
18 investments were decommissioned.

19 Bolivia seeks or sought to dis-insinuate that the
20 decommissioning of inefficient units or what it calls
21 disinvestment was somehow improper. This could not be further
22 from the truth. A generation company has a license to operate
23 certain units, and it cannot add new capacity or decommission
24 old capacity without seeking and obtaining approval of the
25 regulator.

14:30 1 The first point is thus a simple one: Guaracachi did
2 not decommission any units without the approval of the
3 regulator. The regulator receives the opinion of all affected
4 participants in the system and makes a decision.

5 On certain occasions, the regulator denied
6 Guaracachi's request and units remained. For instance, in
7 2006, Guaracachi requested that it be permitted to withdraw the
8 two inefficient Worthington engines, ARJ-5 and ARJ-6, and
9 replace them with three more efficient Jenbacher engines. The
10 regulator approved the request in 2007, and the Jenbachers were
11 installed. Then the regulator asked Guaracachi to keep the
12 Worthingtons in service for line stability purposes until 30
13 April 2010, the day before the nationalization.

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

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

14:32 1 And how does Mr. Earl describe this? Well, what was
2 the business? He was permanently looking to have efficient
3 machines, but in the context of transmission line constraints
4 and CNDC dispatching machines meant that some of the old
5 machines remained available to deal with those issues, but the
6 strategy, the company strategy, which was amply shown by the
7 desire to try and get rid of the request to try and get rid of
8 some of the older machines was to replace those old machines
9 and to have the highest efficiency thermal units in the
10 country.

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

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

14:34 1 thermal units, and you can see on Slide 22 in the projections
2 of the CNDC with regard to the effective cost that the combined
3 cycle units, GCH-9 and GCH-10, have the lowest costs which are
4 in the column highlighted on the right-hand side and the
5 consequences on the top of the dispatch order for thermal
6 units.

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

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

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

14:35 1 Mr. Lanza, as you can see from these reports, reported
2 to the Board on this issue very regularly. It was of great
3 importance to the Board. No concerns were raised by the Board.
4 No concerns were raised by the internal auditor, Martha
5 Bejarano, on the process of the combined cycle.

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

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

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

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

14:37 1 highlighted portions. If you turn to Slide 27, as Mr. Lanza
2 noted at the hearing, the progress was around 95 percent, had
3 been concluded with an advance in the budget of approximately
4 68 million, and vis-à-vis against that was about 97 to
5 98 percent that had been used, and that was in May of 2010;
6 i.e., the date of nationalization.

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

19 When the budget for the project was increased to
20 \$68 million and approved by the Board, Guaracachi informed the
21 regulator. That's at Paz Annex 24. However, the authority
22 failed to adjust the formal budget and simply retain the
23 2 million-dollar bond that would have normally remained in
24 place until the project was complete.

25 In light of the near completion of the project and the

14:39 1 cash constraints of the company at the time, Guaracachi opened
2 a discussion with the regulator to seek to have part of the
3 bond discharged. A gentlemen's agreement was reached, as
4 described by Mr. Lanza, whereby the regulator agreed to release
5 one half of the bond, \$1 million to Guaracachi, but it had to
6 issue a document to justify the release, and so it did so using
7 the convenient figure of just over 50 percent with regard to
8 completion, of course, based on a budget that the regulator
9 knew was no longer applicable. The budget was \$68 million,
10 95 percent of which--over 95 percent of which had been spent,
11 and that was confirmed by Ms. Bejarano. So, this had nothing
12 to do with reality and everything to do with releasing a
13 million dollars to help with the cash issue, and also
14 permitting the regulator to retain \$1 million as a security
15 vis-à-vis the completion of the project.

16 PRESIDENT JÚDICE: Sorry, may I put a question?

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

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

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

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

14:40 1 PRESIDENT JÚDICE: Thank you.

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

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

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

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

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

14:42 1 assistance. As I said once again, the then General Manager
2 Mr. Mercado believed Guaracachi could commission the combined
3 cycle alone. And again, you can see the answers of Mr. Lanza
4 to the President's questions on Slide 30.

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

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

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

14:43 1 mitigated, and you can see that in Mr. Lanza's
2 cross-examination responses at Slide 32.

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

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

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

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

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

14:45 1 You can see at Slide 35 the latest pre-May 1 status of the
2 budget showing that nearly all of the budget had been expended;
3 and, if you look at the individual elements with regard to the
4 different contractors, you will see the percentage completion
5 of each of those elements, and that is nearly all in the
6 90 percent range.

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

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

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

14:46 1 happen to have pictures taken with the British Ambassador
2 opening new generation capacity. But it still questions
3 whether a purchase price of \$35 million was paid.

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

13 In order to eliminate any possible doubt over this
14 question, let's go over this evidence yet again. Slide 39, you
15 have the extract from the Share Purchase Agreement, R-61. It
16 provides for the acquisition of Bolivian Integrated Energy,
17 which, in turn, held a 50.001 interest in Guaracachi through
18 Guaracachi America. The acquisition would be made by Rurelec's
19 wholly owned subsidiary Birdsong Overseas for the consideration
20 of \$35 million. Clause 3 of the Share Purchase Agreement on
21 the screen provides that the payment will be made in different
22 installments: 20 million upon completion, \$10,000,000 within a
23 week of completion, and two additional payments totaling
24 \$5 million in accordance with Clause 10.

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

14:48 1 Statements. It says quite clearly at Note 26: "The purchase
2 consideration for the Shares was \$35 million of which
3 30 million was paid in cash on completion and \$3 million was
4 paid in cash in April 2006. The final payment installments of
5 \$2 million was due to be paid by 31 December 2007. This was
6 the bit that was retained with regard to hidden liabilities.

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

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

14:50 1 the statutory auditors that they've reviewed the account and
2 audited the account in accordance with their obligations for a
3 public company in the U.K. and in accordance with European
4 Union and international financial standards.

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

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

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

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

14:51 1 loss is the Market Value of the participation in Guaracachi at
2 the date of valuation and the related losses arising out of the
3 Spot Price and effective-means claims. Once you calculate that
4 amount, then that will be your damages award, and you don't
5 need to consider any question concerning Rurelec since
6 Rurelec's loss would be entirely satisfied by payment of the
7 full damages award to Guaracachi America.

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

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

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

14:53 1 concerning Guaracachi America, since its loss would be entirely
2 satisfied by payment of a full damages award to Rurelec. In
3 the unlikely event you were to reject jurisdiction over
4 Rurelec, then you would turn to Guaracachi America. The
5 valuation of its participation is one and the same as that of
6 Rurelec, and so the damages exercise is one and the same. With
7 regard to the Spot Price and effective-means claims, the losses
8 are also the same, unless you have rejected the access to
9 effective means through the MFN test under the U.K. Treaty. In
10 that context you would need to review the test separately under
11 the U.S. Treaty for Guaracachi America.

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

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

14:54 1 it.

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

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

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

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

25 So, the question before this Tribunal has nothing to

14:55 1 do with consent. Bolivia cannot point to a single condition of
2 consent that has not been fulfilled. Rather, what Bolivia is
3 complaining about is the commencement of a single proceeding on
4 the basis of two treaties, but there is nothing that limits or
5 conditions that right of the Claimants in the treaties.

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

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

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

14:57 1 bringing a claim which is based on the same investment, the
2 same measures, and on rights which are wholly compatible with
3 each other.

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

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

22 Notice.

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

14:58 1 nationalization, and you recall that the vast majority of case
2 law that has considered the question has held that formal
3 notices are a procedural obligation and not a jurisdictional
4 requirement. The purpose of a notice is to give the Parties an
5 opportunity to settle before a claim is brought against the
6 sovereign State. In any event, whatever you think about the
7 notice or whether it was incorporated, well over six months has
8 now passed without any suggestion of a settlement of those
9 claims.

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

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

14:59 1 General of Bolivia stated to you emphatically that the
2 Government program proposed by the Government of Evo Morales
3 from 2006 included as one of the main concepts that were
4 claiming by the State of the power generators. So Bolivia had
5 a six-year plan that culminated in the expropriation of the
6 Claimants' investment. Prior to the nationalization, Bolivia
7 took these measures in a manner that diminished the Claimants'
8 investment as part of a program that they admit was underway to
9 recover power generation company to the State. The consequence
10 of these measures was a depression of the income of Guaracachi
11 and, thus, the value prior to final seizure. They cannot be
12 divorced from the underlying nationalization program. If you
13 can avoid the click, that would be helpful.

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

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

15:01 1 designated agent in the state of Delaware. It's held annual
2 shareholding meetings in the United States. It's held Board of
3 Directors meetings and submitted annual tax returns, among
4 other activities.

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

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

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

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

15:02 1 Plama Tribunal at Slide 48.

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

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

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

15 Let's take these in turn.

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

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

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

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

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

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

15:05 1 Guaracachi America's acquired rights, but it's too late. The
2 benefits have already accrued.

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

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

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

15:07 1 of which I've already started an arbitration, they're my
2 acquired rights. I have the right to continue to seek
3 enforcement through arbitration. And that's exactly the
4 analysis of the Yukos Tribunal, which I highly recommend to you
5 and you have on Slide 50.

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

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

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

15:08 1 exercising my right. Now, there was some suggestion in
2 Claimants' opening--in Respondent's opening speech that there
3 would have to be an analysis. You're being sued as a State by
4 someone. You believe that your denial of benefits has
5 retroactive effect? You're going to exercise it every single
6 time. Why do you want to be sued? Nobody wants to be sued.
7 We simply exercise the denial of benefits and all of the past
8 breaches that had occurred when the Treaty was in effect prior
9 to that denial would be wiped off, wiped away. It makes no
10 sense whatsoever. It would be exactly the same as if there had
11 been excluded from the protection in the first place. The
12 denial of benefits can only logically and in accordance with
13 basic principles of Treaty interpretation and justice have
14 prospective effect, and that is why the decision in Yukos is
15 right. This is a very, very important point of law.

16 PRESIDENT JÚDICE: May I put a question.

17 MR. BLACKABY: Yes.

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

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

25 PRESIDENT JÚDICE: That's not my question. The

15:10 1 question is the following. If you were Bolivia and you
2 wanted to deny it, what would be in your point of view the last
3 day to do that?

4 MR. BLACKABY: Before the Measures.

5 PRESIDENT JÚDICE: Before the Measures.

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

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

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

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

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

20 PRESIDENT JÚDICE: Thank you.

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

15:11 1 relied on. What it does not tell you in that case is that
2 Bolivia made similar challenges against the Claimant in the
3 Quiborax Case concerning Quiborax's investment. They were
4 dismissed by the Arbitral Tribunal. And why? Because unless
5 the Respondent can show fraud or overcome plentiful evidence in
6 support of the Claimant's case, then the Tribunal should accept
7 jurisdiction. Here you have the audited financial accounts
8 Bolivia's objection must, therefore, be dismissed.

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

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

22 Now I will move swiftly on.

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

15:12 1 exercise has to be.

2 Just very quickly on the alleged issue of the Corani
3 settlement, we wished to clarify some the conditions of the
4 Corani settlement as set out in Slide 53. What were the
5 conditions of that settlement? GDF Suez bought a U.S. company
6 called Econergy in October 2008 for \$62 million. Econergy had
7 a portfolio of businesses in various energy assets in six
8 different countries. One of them was Bolivia. The Bolivian
9 investment was in Corani. Econergy had purchased Corani in
10 2007 from Duke Energy for \$20 million. Corani has a single
11 150-megawatt plant. Compare that to the 500 megawatts for
12 Guaracachi.

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

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

25 PRESIDENT JÚDICE: Mr. Blackaby, in this comment of

15:13 1 yours, you are giving meaning to the price that has been paid
2 by the entity. Remember you were in different opinion, it
3 seems to me, 10 minutes ago.

4 MR. BLACKABY: The difference is, in this particular
5 case, between the Year 2007 and 2010 there was no investment
6 made--no new investments made in Corani. There were no
7 investments made between the purchase of Corani by Econergy in
8 2007. It then disposed--Econergy was sold as a whole to GDF
9 Suez in 2008. There were no new investments there either.

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

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

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

15:15 1 So I'm not making any damages--just to be clear for
2 the record, I'm not making any damages points. I just want all
3 of the facts to be clear on the record since it was raised by
4 Bolivia as to what that is.

5 PRESIDENT JÚDICE: Sorry for that.

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

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

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

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

15:16 1 it's not the demand of the market that's requiring its service.
2 The price-fixing rules affect supply and demand and are market
3 driven, and so it's natural that forced supply not set prices
4 nor does it allow other units to earn any profit margin. So,
5 its presence in some of Guaracachi's plants is related to
6 technical complaints such as voltage maintenance.

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

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

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

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

15:18 1 reliance on peaking units dropped dramatically, which is why
2 the claim is largely a historic claim if you look at the
3 figures.

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

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

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

15:19 1 submitted to the Bolivian courts for Resolution has not been
2 provided with an effective means for it to be enforced.

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

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

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

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

15:21 1 had followed the route he described in his Statement.

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

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

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

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

15:22 1 Slide 63 of your slides, making it quite clear that it is not
2 possible to own obtain the suspension of an administrative Act.

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

6 PRESIDENT JÚDICE: Thank you, Mr. Blackaby.

7 Mr. Rubins.

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

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

17 PRESIDENT JÚDICE: They are all fresh anyway.

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

20 PRESIDENT JÚDICE: Please proceed.

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

15:23 1 2005-2010 period, Guaracachi grew with it, and it doubled its
2 capacity, and on nationalization it still had a very, very
3 substantial--in fact, a slightly greater--market share for
4 larger market.

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

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

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

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

15:25 1 project you're talking normally about a single asset. Has--a
2 utility company like Guaracachi has an established revenue
3 stream; whereas, a greenfield project has revenues that are of
4 uncertain timing because, by definition, there is not a spade
5 in the ground. There is no--there is significant additional
6 project-completion risk.

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

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

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

15:27 1 And, finally, existing operations for an established
2 utility company support any future construction activities;
3 whereas, for a greenfield project, you just don't know whether
4 the construction risk will crystallize.

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

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

22 That's precisely the point.

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

15:28 1 there. He applies particularly, as you've seen, two key
2 adjustments to the CAPM model for determining the cost of
3 equity: The Size Premium and the Country Risk Premium with a
4 multiplier to account for additional volatility of stocks
5 vis-à-vis bonds. And he bases these adders on academic
6 theories and not on real-life valuations.

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

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

15:30 1 different regions, they said, clearly, there is no Size
2 Premium. C-272.

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

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

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

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

15:32 1 Ibbotson/Morningstar were able to find, they are absolutely
2 unrelated to a valuation of the sort that we are trying to
3 engage in here.

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

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

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

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

15:34 1 comparable methodology, but he uses it to place it in
2 Morningstar/Ibbotson's set of Deciles to show it's in the
3 smallest decile when compared to U.S. New York Stock
4 Exchange-traded companies.

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

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

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

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

15:36 1 consider what a willing buyer and willing seller would have
2 done in forming their agreed price for Guaracachi. He was
3 absolute and sweeping in his adoption of the Size Premium.

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

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

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

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

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

15:37 1 event, you don't need a subscription. The entire package of
2 investment bank reports contained in C-300 cost less than
3 \$1,000. But Dr. Flores didn't ask because he knew what he
4 would find from Santander or from any other investment bank.

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

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

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

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

15:39 1 And it ensured that the company's operations would be
2 transparent to the market. Rurelec, the Shareholder, the
3 ultimate Shareholder, was publicly traded. As my colleague,
4 Mr. Blackaby, observed, you can see a lot of the audited and
5 public documents related to listing on the Stock Exchange,
6 which contained a huge amount of information about Guaracachi.

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

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

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

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

15:41 1 whatsoever? From a legal and contractual point of view? The
2 dividends.

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

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

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

10 Mr. Chairman--

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

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

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

21 Is that more or less clear?

22 PRESIDENT JÚDICE: Yes. Yes, it is.

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

15:43 1 the underlying fundamentals. And Damodaran calls that sloppy
2 error in his Opinion at C-370, Page 2.

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

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

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

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

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

15:44 1 Spanish, Page 1585.

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

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

12 So, for example, for Bolivia, which is at 550 basis
13 points--it's highlighted in yellow--if you were to click "no"
14 in that box, then Country Risk Premium would flip to
15 5.50 percent.

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

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

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

15:46 1 would be Total Risk Premium, not Country Risk Premium, or maybe
2 both of them would change, actually. Yeah, both of
3 them--excuse me, both of them would change to take out the 1.5.

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

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

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

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

15:48 1 a completely different method in order to boost the 1.5
2 multiplied risk premium to--from 8.25 percent to
3 10.-something percent--10.5, roughly.

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

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

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

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

21 Dr. Flores criticized Dr. Abdala for adopting that
22 5 percent Market Risk Premium saying that Damodaran never
23 suggested saying that was the proper level. But Dr. Flores was
24 referring to a 2009 assessment--and that's Exhibit C-177 at
25 Page 67--and the updated paper that we looked at yesterday,

15:50 1 EO-29, Page 68, shows clearly that Professor Damodaran was
2 revising downwards his Market Risk Premium for Year 2010. And
3 he said 4.5 to 5 percent. That's what I'm going to
4 use for my 2010 valuations.

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

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

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

17 The first benchmark is the median WACC for the Latin
18 American electricity generators that are referred to in the
19 Santander reports, at C-300. And we can flip that up. On
20 Slide 68, you see that here. The median of all of the reports
21 9.19 percent; Compass Lexecon 10.63 percent; and Econ One at
22 almost 20. None of the companies examined, even the ones in
23 Argentina which are surely subject to higher country risk, came
24 close to that level.

25 And we can also point here to the ratio between the

15:52 1 cost of debt, which is agreed, and the cost of equity, which
2 isn't agreed. And that's on the next slide. Dr. Abdala took
3 you through this slide. And again, looking at the sample, the
4 median company from the sample has a relationship between cost
5 of debt and cost of equity of 1.53 percent.

6 In Compass Lexecon's model, that ratio is 1.83, not
7 that far off. But Econ One posits in its model a ratio of
8 3.51; that is to say, the cost of equity is three-and-a-half
9 times the cost of debt. That is very, very strange. That
10 suggests that lenders simply are not perceiving--they're not
11 perceiving a huge portion of the risk that Equityholders are
12 perceiving. And that's just not realistic.

13 Now, we also have as a benchmark 10.1 percent. What's
14 10.1 percent? That's the discount rate set for electricity
15 distributors for the calculation of tariffs by the Bolivian
16 Government, which was set at that level in November 2007 up to
17 October 2011, covering the May 2010 period.

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

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

15:54 1 Now, if you look at all those benchmarks together--if
2 you could turn to Slide 74.

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

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

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

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

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

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

15:56 1 Now, in 2000, it was 6.66 percent; and by April 2010,
2 it had dropped down by almost 3 percent to 3.85.

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

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

7 Right. So, it had dropped almost 3 percent,
8 2.81 percent, from the 2000 rate. And that goes both into cost
9 of debt and cost of equity.

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

18 So, what I put on the slide is just the impact of the
19 change in the risk-free rate, which would bring the
20 14.5 percent down to 11.69.

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

25 Then we have the purple column, which says

15:58 1 12.5 percent--it's a document we're going to come to in a
2 moment, which is actually--it's labeled Guaracachi 2008. It is
3 actually Guaracachi's discount rate for the combined-cycle
4 project before it was undertaken. And we will come to that in
5 a minute.

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

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

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

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

16:00 1 it would never have gone forward. We are dealing with projects
2 that have gone forward. So, they're going to be somewhere in
3 the green triangle.

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

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

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

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

16:02 1 right side, the Net Present Values, VAN, Net Present Values
2 which, as you would expect, is smaller in pessimistic and
3 highest in the optimistic. All discounted at the same rate,
4 12.5 percent.

5 And so, for Guaracachi, it was perfectly normal to
6 consider that in the normal scenario we will have a cost of
7 capital of 12.5--that's the discount rate--and an IRR of
8 29 percent for this particular project.

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

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

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

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

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

16:03 1 You need specific experience to make the necessary judgment
2 calls.

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

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

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

23 "Yes, that's exact."

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

16:05 1 Mr. Paz was mechanical or Expert.

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

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

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

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

16:07 1 about information for valuation assumptions. The transacting
2 Parties collect all of the information they can before setting
3 their price, and. Dr. Flores agreed with that, Day 5, English,
4 Page 1277.

5 It's not about a choice between the 2009 POES and the
6 2011 POES. As Dr. Abdala explained in redirect, Day 5,
7 English, Page 1077, it's a question of what information was
8 available to the market as at the valuation date. And that's
9 obviously going to include some CNDC information, but it won't
10 end there. It will include Mr. Paz's due diligence, technical
11 studies, and just going down and looking at the plant.

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

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

22 We heard for the first time yesterday that Dr. Flores
23 does, in fact, have a benchmark, and he referred in his
24 redirect examination to this value of the sale of Guaracachi in
25 2003, for example. But I think Dr. Flores has not hit the

16:09 1 point on alternative valuation methodologies. He did not
2 provide any alternative number based on an alternative means of
3 calculating the value of Guaracachi equity.

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

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

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

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

16:10 1 But that's not true. If you look at the document, if
2 you look, in fact, at the publicly available information from
3 Professor Damodaran, you will find Professor Damodaran, on the
4 Internet, has already done most of the work. He's created the
5 ratios that can be used directly to calculate a comparables
6 analysis.

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

13 Now, remember, the assets that Rurelec acquired for
14 \$35 million were recognized almost immediately thereafter to
15 have been worth substantially more; and, according to an
16 independent valuator, Rurelec's stake in Guaracachi's assets
17 was, in fact, worth about \$61 million already in 2006. And you
18 can find that in Rurelec's--in C-113. That's the audited
19 financials for 2006, Pages 59 and 69.

20 Now, if you take that as the base, Rurelec's
21 investment grew in value from its value in 2005 to its value in
22 2010 by only \$15.62 million, about 25 percent over four years,
23 which is rather modest, given the additional investments that
24 Guaracachi made over that period. And this is all set out in
25 our Reply on the Merits at Paragraph 194.

16:12 1 Now, second, as we heard from Peter Earl, the
2 capitalization was very successful and the investments
3 committed and made by the capitalized companies in the early
4 2000s brought on line lots of new capacity that was not
5 immediately needed. And this resulted in the rapid growth of
6 the capacity reserve from less than 5 percent on capitalization
7 to over 30 percent by 2002, and you can see this on Slide 80.

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

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

25 The consequence of intense investment from 2006 to

16:14 1 2010 was a highly successful company which, today, has the
2 rewards of the Claimants' investment, with profits in 2011, as
3 I said, of \$12.6 million. So, it's a radically different
4 company in May 2010 than the one on January 6, 2006, when it
5 was acquired by Rurelec.

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

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

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

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

23 PRESIDENT JÚDICE: Yes, of course.

24 Thank you.

25 Go ahead. You have your two or three minutes.

16:16 1 Flexibility.

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

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

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

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

16:18 1 They don't measure the right thing.

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

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

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

17 And this is the principle that was set down in a very
18 widely publicized recent arbitration award, ConocoPhillips
19 versus PdVSA, which is Exhibit CL-154. It's an ICC
20 arbitration, where interest was awarded at a rate of
21 10.55 percent, which is equivalent to the cost of equity.

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

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

16:20 1 the WACC, and that's what we asked for in this case, the
2 weighted average. We don't ask for the 14-and-a-half percent
3 cost of equity.

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

10 And with that, I will conclude.

11 PRESIDENT JÚDICE: Thank you very much.

12 Now, we have given to Bolivia--we will give Bolivia 30
13 minutes with a little bit of flexibility, and we can start at
14 5:00 p.m. Is 5:00 p.m. too late for you?

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

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

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

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

25 The information on the footnote is a reference to a

16:21 1 Web page, so I understand from my colleagues that the whole Web
2 is included in our file. If that is the case, I invite the
3 Tribunal to consider other aspects that Bolivia has put forth.

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

6 It is a Web page; that's true?

7 MR. RUBINS: That's correct, yes.

8 PRESIDENT JÚDICE: Thank you.

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

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

13 (Brief recess.)

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

16 CLOSING ARGUMENT BY COUNSEL FOR RESPONDENT

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

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

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

17:05 1 going to say next.

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

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

16 (Pause.)

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

20 (Pause.)

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

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

17:08 1 The first observation is something that we have said
2 before. It has to do with the strategy the Claimants have used
3 over the last stages of this procedure, this defamation
4 strategy that should be rejected by the Tribunal, and let me
5 show you some examples of that strategy because this is just
6 not rhetoric.

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

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

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

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

17:10 1 intimidating MEC. There was a reply. We have shown that there
2 are no grounds for this acquisition, and nothing goes on.

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

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

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

17:12 1 not told Mrs. Bejarano that questions were going to be made or
2 just to insinuate that Mrs. Bejarano was not willing to answer
3 questions. I think that at this point we are getting to levels
4 of rhetoric that are uncalled for.

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

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

17:14 1 case.

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

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

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

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

17:16 1 affected by external impacts, and this was an answer to
2 Mr. Conthe's question. This is a country that is growing, and
3 in response to your question, the economy of Bolivia, due to
4 macroeconomic measures implemented by President Evo Morales,
5 has had stable growth economy. We have had no shocks, and we
6 have not been affected by international crises.

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

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

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

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

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

17:18 1 Mr. Flores when he answered a question by co-Arbitrator Conthe;
2 and, as you can see at Slide Number 8, he said or he suggested
3 that what happened here is that Rurelec arrived in Bolivia
4 knowing that there could be a nationalization. They did not
5 even invest a single penny in the company. They borrowed
6 money. They nationalized the company, and now they're asking
7 you to dismiss Rurelec, as I mentioned in the Opening
8 Statement, with a check for over \$100 million. This has to be
9 linked to the question by our co-Arbitrator Conthe. If
10 \$35 million were paid at the beginning, if you leave with a
11 \$100 million check, that would be the business of the century,
12 especially knowing that nationalization was a possibility
13 starting in 2005.

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

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

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

17:20 1 that's what it is.

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

10 And let's start with jurisdiction.

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

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

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

17:22 1 just under just one proceeding. Mr. Vinuesa last Tuesday asked
2 about this question. Is there one claim? Are there several
3 claims? How do you structure them? Are there two claims for
4 Rurelec and Guaracachi/Guaracachi America? How should we solve
5 this?

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

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

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

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

17:24 1 not exist.

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

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

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

17:26 1 is the first time that this has to be decided. As I mentioned
2 before, the other cases that have been mentioned by the
3 Claimants, the respondents agreed to the accumulation of
4 treaties by not objecting to that accumulation in their
5 pleadings in terms of jurisdictions or their Counter-Memorial.

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

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

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

17:28 1 well as in the Quiborax case.

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

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

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

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

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

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

17:30 1 dialogue that I had with Mr. Andrade during his
2 cross-examination; and, as you can see at Slide Number 15, it
3 is very clear that whenever he said, "Rurelec bought GCH-11,"
4 that was just a lie because the purchaser was not Rurelec;
5 rather, EGSA.

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

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

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

17:32 1 of investing.

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

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

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

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

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

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

17:34 1 MR. SILVA ROMERO: That is correct. Proof of a
2 contribution needs to exist. We have no evidence of Rurelec's
3 contribution in our file.

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

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

10 PRESIDENT JÚDICE: Very well. Thank you.

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

17:36 1 And Mr. Aliaga said that Rurelec didn't even put in
2 the 3 million that, according to him, was necessary to solve
3 everything. It was said three millions were missing, and
4 Rurelec did not put them in, and a suggestion was made for the
5 capitalization of EGSA for new shares to be issued, but what is
6 clear is that they did not want to put in a single cent.

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

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

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

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

17:38 1 question posed by the Member of the Tribunal when it said what
2 would happen if EGSA had become capitalized and Rurelec via
3 Guaracachi America would have had 80 percent--

4 PRESIDENT JÚDICE: Yes, it would have put in
5 3 million.

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

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

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

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

17:39 1 rejected by the Tribunal. What was accepted by the Tribunal is
2 that Allen Fosk, the owner of Quiborax, continues to be a party
3 to this case. Allen Fosk was the holder of a certain number of
4 shares, but nowhere in the file was it demonstrated that Allen
5 Fosk had paid for those shares, that a transfer was made for
6 those shares to be acquired.

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

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

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

17:41 1 we all agree that Guaracachi America, Inc., was not.

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

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

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

17:44 1 at 24, a specific purpose entity--this what Guaracachi America
2 chose--or other kind of consortia. And there is an open
3 possibility here.

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

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

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

17:46 1 March 2012. Where? In the Memorial. You've seen the
2 desperation of Claimants to join nationalization with new
3 claims, so sometimes they talk about direct expropriation,
4 sometimes they talk about indirect expropriation, a series of
5 steps that would lead to expropriation. I think that the
6 strategy is to give you something to reject so that Claimants
7 can get something because of nationalization. The position of
8 Bolivia is that there is no compensation, zero compensation,
9 due Claimants because of nationalization.

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

19 When we see the claim related to the Spot Prices at
20 27, we see that in the Opening Statement this was presented as
21 a violation of the Electricity Law, and the principles of that
22 law.

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

17:48 1 The conclusion for this claim has to be in line with
2 the conclusion reached by the Tribunal in the Iberdrola v.
3 Guatemala case.

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

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

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

17:50 1 beginning, and this must have consequences as I've mentioned
2 and as Mr. García Represa will mention later on.

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

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

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

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

17:52 1 representative for Bolivia, I have to say this, Bolivia is
2 subject to a number of oversights, and I'm going to reserve all
3 rights that Bolivia has in this regard. Mr. Attorney General
4 will say something in this regard later on.

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

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

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

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

17:54 1 that's a different thing. To conclude out of this clause that
2 Profin was not independent is a non sequitur. Here, we're only
3 deeming with how this document is going to be used, but I don't
4 know how one can conclude that Profin was not independent.
5 That should have been evidenced differently on the basis of
6 reports or on the basis of the fact that Profin failed to take
7 into account certain elements, the evidence would be different,
8 and that evidence, Members of the Tribunal, has not been
9 offered by Claimants, Claimants that put forth the
10 relative--the relevant allegations in this regard.

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

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

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

23 PRESIDENT JÚDICE: Thank you, Mr. Silva Romero.

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

17:56 1 the next few minutes, I'm going to try and summarize what we've
2 learned this week and last week, in connection with the reasons
3 why this Tribunal should not order any kind of compensation for
4 Claimants for the nationalization.

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

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

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

19 Mention was made by Claimants of the Corani and Valle
20 Hermoso case. They were trying to distinguish Corani from
21 EGSA. I agree. The position of Bolivia is that these are
22 different cases. Why are they different cases? I'm going to
23 ask you to go to 106 of my Opening Statement, where you're
24 going to see that Corani, in 2010, had profits for
25 \$7.8 million, and we're going to see what happened in EGSA in

17:58 1 2010. Valle Hermoso had earnings for \$4.3 million, and none of
2 them was up to its ears in debt like EGSA.

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

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

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

18:00 1 Mr. Abdala, among others, during his examination.

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

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

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

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

18:02 1 and there is one credit-rating agency as opposed to two, and
2 that also has an impact on the Size Premium as we will see
3 shortly.

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

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

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

18:04 1 In January 2010, Mr. Blanco--and these are internal
2 pieces of correspondence that have not been made public by the
3 Claimants. He referred to the impossibility of obtaining more
4 financing, and Abdala, to respond to my questions whether he
5 had seen the communications by EGSA's Financial Director, he
6 said no. He said that he knows they exist, but he did not
7 review them.

8 March of 2010, the General Manager, the then-General
9 Manager Mr. Aliaga, recognizes that EGSA cannot continue to
10 respect the dignity tariff, and that represented a cost between
11 750 and 900,000--\$890,000 a year, and the reason is that the
12 borrowing capability was to the limit, and it was no
13 longer--they were no longer able to borrow more.

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

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

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

18:06 1 just give out the money without any sort of requirements.

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

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

15 My colleagues mentioned during the hearing that the
16 best indication of EGSA's financial health was that the
17 minority pension funds had bought the bonds issued by EGSA in
18 early 2009. And if you look at the timeline, we are referring
19 to early 2009, and everything that I mentioned so far is late
20 2009, January-March 2010. Clearly the situation took a turn
21 for the worse, but you were never told that because of the
22 Bolivian regulation, pension funds had to invest in Bolivia.
23 They cannot finance or fund companies or look for debt outside
24 Bolivia, and the Bolivian debt is not so broad as they might
25 lead you to think.

18:07 1 And, second, if the situation was so good, why is it
2 that the same pension funds that in 2007 took part of that bond
3 issuance by EGSA, they needed to go down, why is it that they
4 requested 8 or 9 percent as interest rate and later on they're
5 requesting 9.70? That is to say, a 13 percent increase. They
6 did not explain that, and that is due to the deterioration of
7 the company.

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

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

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

18:09 1 not approve the drilling of two wells necessary to pump up the
2 water for the steam turbine, and also that the State delayed
3 the relocation of two units that needed to be moved away for
4 the construction of the combined-cycle project.

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

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

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

25 In May 2010, a willing buyer has a precedent condition

18:11 1 that has not--a condition precedent that has not been reported,
2 and the State has nothing to do with the delay in the payment
3 of the carbon credits.

4 Now, in connection with the delays for the drilling of
5 the wells and also the authorization to move Guaracachi 8 and
6 7, you will see at Slide Number 53 the Exchange I had with
7 Mr. Lanza.

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

15 Now, regarding the displacement of these Units 7 and
16 8, Mr. Lanza said that in connection with my question that
17 between the initial request and the approval there was another
18 Exchange of documents because EGSA had presented an incomplete
19 record. They needed to complete that. And what was the delay
20 between the complete application and the authorization? Seven
21 months as opposed to the 13 months that we were told in the
22 pleadings written by clearly an English person, but not
23 Mr. Lanza.

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

18:12 1 Slide Number 54. This was a conversation, a discussion within
2 EGSA's Board, and there it is said that given the liquidity
3 situation of the company, payments to suppliers have been
4 suspended and no new purchase orders are being placed. This
5 situation will have a negative impact on the conclusion date
6 for the project, and that was what actually happened.

7 And given the situation as of the date of
8 nationalization we have on the one hand that EGSA owes
9 \$35 million to suppliers, and if we just look at the last
10 account, December 2009, \$21 million.

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

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

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

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

18:14 1 But what would any reader understand? That Guaracachi
2 was making payments. That is at the nationalization date. But
3 if you look at the previous lines that were quoted here, what
4 does Ms. Bejarano say to respond to this question?

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

7 And the answer is: "No."

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

12 PRESIDENT JÚDICE: Are you going to change?

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

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

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

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

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

18:16 1 colleague ignored completely, and that is the bailout plan by
2 the State. The State had to pay at least \$20 million,
3 including 5 million from Corani and Valle Hermoso.

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

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

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

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

14 Slide Number 6 would show you the text where it says
15 that Guaracachi is a highly profitable company, and it shows us
16 the accounts for 2011. There is--their profits for 80 million
17 Bolivian pesos, and then it says that the profits are
18 87 million Bolivians. So, this is for 2011, so I understand
19 there is a mistake in the date.

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

18:17 1 the accounting year, EGSA had 20 million Bolivians as losses
2 almost 17 million Bolivian pesos, almost \$2.3 million, and
3 compare this to Corani and Valle Hermoso. And as I mentioned
4 before and has already been recognized by Mr. Lanza, EGSA
5 received a payment for almost \$12 million for a problem they
6 had with a combined-cycle project in 2011, but this improved
7 their financial situation, but this says nothing clearly about
8 the whole situation.

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

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

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

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

18:20 1 least three months in the record, and I showed you already
2 Mr. Abdala's table that shows no impact.

3 Now, the basic Capacity Price has a higher impact, but
4 there is no estimation of what they would have obtained had
5 there been no change in the basic capacity price. So, what you
6 need to take into account there, even though this is not part
7 of the claim, is what the grounds was for that change. That
8 was based on a Bates & White report.

9 PRESIDENT JÚDICE: I know that.

10 MR. GARCÍA REPRESA: Well, but this is relevant
11 because this price allowed the companies to recover the cost,
12 the cost of purchasing equipment. Bates & White proved that
13 the cost of that 20 percent was not such. There was no cost to
14 compensate. Therefore, that 20 percent was a windfall profit.
15 That is what Bates & White said.

16 PRESIDENT JÚDICE: Well, that's the reason I asked you
17 the question. I clearly remember that.

18 MR. GARCÍA REPRESA: So, I wouldn't like to estimate
19 this right now. I'm not sure that that would have allowed for
20 an improvement of the liquidity. They could have made some
21 earlier payments to the suppliers, but if you compare the
22 historical claim given the basic Capacity Price and the
23 \$20 million debt, it's clearly not sufficient.

24 So, Members of the Tribunal, now I would like to refer
25 to the valuation as to the date of nationalization; and, as I

18:22 1 mentioned before, I am going to refer to the first two points
2 of disagreement, and they are the revenue projections, revenue
3 forecasts in the discount rate, and it is quite striking that
4 our colleagues see revenue projections very quickly. And what
5 is the reason? Well, this is something that we saw at
6 Slide 65. When one tries to look at the--55, sorry. When one
7 looks at the impact of revenue given the discount rate, I
8 analyzed--I used the DCF method, and we see that the impact of
9 the streams on the total is 42 percent. It is not what you
10 were shown in the opening statement, in the Opening Arguments
11 by the Claimant.

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

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

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

18:24 1 something that Mr. Flores mentioned, and that is--there is not
2 a single mistake. There is not a single piece of criticism in
3 connection with the calculations by Mr. Paz. Today, we heard
4 that Mr. Paz is not independent; therefore, he could not have
5 done any estimates. But if you go back in time and you think
6 of what the Claimants told us, based on their opinion, MEC's
7 estimations equal the typing of a letter by a secretary. She's
8 given some words, and she types the--she's given the
9 assumptions, and she writes the letter. And MEC's experts are
10 given the assumption, and they just write up the assumptions.
11 But then when Mr. Paz has to do the same, independence is key.

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

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

18:25 1 a footnote he says I am not an expert on this issue, and so
2 this is a level playing field on the same criticism that you
3 had for our Expert applies to you, too.

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

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

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

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

18:27 1 have not had any doubts in resorting to hindsight, and what
2 Abdala says in Slide 57 shows that, but you will see something
3 very surprising. Mr. Abdala says that whenever I have
4 projections, I give instructions, and I think it is important
5 for the Tribunal to know what happens next. But whenever he
6 has to apply an inflation factor to the PPI turbines and the
7 fact that it reaches almost 12 percent in 2009, and it is lower
8 in 2010, and then it is negative 2012, well, then the future is
9 not relevant. And when he thinks that the carbon credits \$14
10 per ton, and now they're over 50 per ton, well, that is not
11 relevant for the Tribunal. And at 58, you are going to see
12 MEC's comment that shows that they have used information
13 post-nationalization.

14 Something that was very interesting in this hearing
15 was to see why MEC stops projections in 2018, and as an
16 introduction, let me tell you that if Mr. Paz has done so up to
17 2018, it's for to you to have a benchmark.

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

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

18:29 1 had been done for 12 years. So, why should they just choose
2 eight or nine years? Because, by coincidence, we are also
3 excluding Rositas. That is the largest project that was being
4 prepared in Bolivia.

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

9 In Abdala's model, Rositas--it's not that it delayed
10 one, two, three, four, five years. No. Rositas, up until
11 2038, it never even appeared, and this is at 60.

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

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

25 PRESIDENT JÚDICE: With the new Spot regulations, is

18:31 1 that still true?

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

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

7 THE WITNESS: Yes.

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

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

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

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

18:33 1 What did Mr. Parodi say? This is what the
2 problem--the program gives you. What program? The program
3 that MEC gave him, a program that he didn't even understand nor
4 did he operate.

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

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

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

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

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

18:34 1 They're saying that CNDC maintains Karachipampa because in the
2 Node Price Report that is published in April, Karachipampa
3 appears in the next six months. But in the PMP, Karachipampa
4 is not included. This is published in March that contains
5 forecasts for the same period and three semesters beyond.

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

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

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

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

25 Claimants feel that all units operating in 2012 of

18:36 1 EGSA's will continue operations at the term until 2021--rather,
2 2038. I have no information. I asked MEC, and they said the
3 model works like that.

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

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

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

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

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

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

18:38 1 of time that would avoid such a harsh impact on the exceptional
2 and unexpected increase in the latest years of his forecast?
3 Abdala said it was a judgment call, and then some other person
4 said it was pretty obvious, but it wasn't pretty obvious.

5 Now, I would like to refer to the exchange that
6 Mr. Conthe and Mr. Abdala had in connection with why to use the
7 PPI turbines instead of a general price index. And what
8 Mr. Abdala confessed in that case is that, at the long run,
9 that is not sustainable. We are conducting a simulation here,
10 it's a 28-year simulation, and to say that the PPI price--PPI
11 turbine price is going to be over the inflation prices in
12 general for 28 years, that is absurd. And we have looked at in
13 2010 or 2011, and the turbine price is minus 05, and the
14 general price index is positive.

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

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

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

18:40 1 of capacity and power that it sells to the market, it's going
2 to be competitive investment-wise. I'm not saying to invest
3 more to earn more; I'm talking about investing in order to at
4 least maintain production.

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

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

14 Well, that model does have zero investment.

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

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

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

18:42 1 deals with the existence or not of a Size Premium, and they say
2 that Professor Banz says that the Size Premium is an anomaly.
3 I would like for you to ask my colleagues to re-read this.

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

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

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

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

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

18:44 1 Another thing--and I'm going to address something that
2 was mentioned this afternoon, this Size Premium or this
3 empirical thing would only happen in January, it would be the
4 January impact. There is a Fama and French article of 2012;
5 this means the Size Premium should no longer be applied.

6 First, we are in 2010. Where were Fama and French in
7 2010? They were saying that the Size Premium should be
8 applied.

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

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

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

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

18:45 1 literature that smaller companies typically enjoy higher
2 returns than larger companies." There is no debate about that.
3 (In English) "The CAPM methodology does not fully account by
4 itself for the greater risk and, hence, greater return that
5 small stocks show in the long run."

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

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

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

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

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

18:47 1 should be applied--and should we apply to it a Size Premium?

2 Yes or no.

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

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

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

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

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

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

18:49 1 payments up until '08, and I said why don't you go until 2010
2 to see what happened? So, that category can be removed as
3 well. It does not apply. They couldn't do it because the
4 liquidity issues, paid dividends during the last two Fiscal
5 Years.

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

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

18 Another mention, that in '09, Guaracachi placed
19 \$24 million in bonds. Yes, March '09. It did place them, but
20 under what conditions? And what happened after March '09? So,
21 Claimant forgets what happened in '09 and in 2010.

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

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

18:51 1 Mr. Blanco submitted in full, the same EGSA unit is used for
2 bridge loans. So, this is going to be pledged, I pay you, and
3 then the same unit is going to be pledge to a different bank
4 and so on and so forth, and that's the way I'm obtaining
5 financing.

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

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

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

18:53 1 transmission. The Size Premium should not be applied if the
2 company is internationally exposed. But none of those things
3 happened in this case. And if Claimants failed to mention
4 this, there must be a reason for that.

5 Let us look at the Country Risk Premium now.

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

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

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

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

25 And the reason why they say that a multiplier should

18:54 1 not be applied is that there should be a matching--a long-term
2 matching between the risk of investing in debt, and in equity.
3 In more than 100 years in the United States of history, that
4 correlation never existed, according to Mr. Flores. And how
5 can you explain that that could happen in Bolivia in 2010?
6 That is a fantasy, and Mr. Flores's explanation appears at 86.

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

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

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

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

18:56 1 comparison is erroneous because 10 includes the multiplier.

2 That should be variation between seven and three. That would
3 be a more appropriate variation.

4 What are Claimants saying when they show us this very
5 beautiful benchmark? And they say there is an equity risk
6 differential, and Econ One has calculated, but it's quite high,
7 and it should be lower. And I'm making reference now to the
8 27 percent cost and 7.88, and there is really big difference.

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

20 Now the discount rate.

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

18:59 1 Now, we have to make an extension, they say, with a
2 greenfield project. Well, perhaps. But when EGSA goes to the
3 United Nations to say, look, I need this in order to be able to
4 finance a project in EGSA, they say the cost of equity is 25 to
5 30 percent.

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

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

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

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

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

19:01 1 Claimants here have not said anything about the hydroelectric
2 projects in Rio Takesi. Rio Takesi is a project of July 2009
3 that was submitted to the United Nations where they refer to
4 the threshold after tax. They have never even mentioned this
5 in this hearing, and we think that this can be compared to the
6 combined-cycle project. And this is even less risky than the
7 other project, hydroelectric project--power is always going to
8 be dispatched prior to the hydroelectric one.

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

11 THE INTERPRETER: The interpreter gets corrected.

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

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

19 And it was striking today to see that the Claimants
20 also corrected, once they analyzed the impact, the famous
21 12 percent discount rate that they see in 2000 to estimate the
22 basic Capacity Price and that Mr. Flores explained. He told us
23 before that that rate would be 14.5 in 2010, but now they go
24 back and they say it's below 12 percent. And you see this at
25 74.

19:02 1 Regardless of all this, even if it was 12 percent for
2 EGSA, why once again they are presenting this to the United
3 States and invalidates 25 to 30 percent of the cost of equity?

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

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

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

16 Mr. Earl has said in his written statements that he
17 was the Director of the seller; that IPC, his company, advised
18 the seller in this transaction; that Rurelec was a buyer. So,
19 we need to--Rurelec, the buyer, was this company. So we need
20 to think that here, the purchaser tells the seller that
21 35 million is a good price, and the same day the sale in the
22 Financial Statements of Rurelec show up as goodwill, and this
23 difference is used to distribute dividends. And out of magic,
24 I'm going to have a great profit, and I am going to do this at
25 a better rate.

19:05 1 And let's think of the framework. When they bought
2 this, they said they paid \$35 million, and they mentioned the
3 risk of nationalization. They also mentioned the BIT with the
4 United Kingdom.

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

11 So, what is the benchmark that Mr. Flores mentioned
12 since they are saying that there is no benchmark? The only two
13 transactions for 50.01 percent of EGSA's capital have only been
14 done at a loss. 2003, December, First Energy reports in their
15 10-K that they have 30 million less as equity, but what they
16 paid for the capitalization was 57 million. And in the same
17 communication to the ICC, they say that they have 2 million
18 losses. In January 2006--December 2005/January 2006, according
19 to the Claimants, \$35 million. So, the price continues to go
20 down, but now it's time for arbitration, and I ask you to look
21 at Slide 100.

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

19:06 1 no investment by the Claimants. This is EGSA's investment.

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

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

10 PRESIDENT JÚDICE: Of course, of course.

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

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

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

19:08 1 going to be very brief, and I am just going to give the floor
2 to the Attorney General for his conclusions. And if you decide
3 to hear that claim for imprecibo (ph.), I am going to ask you
4 to look at 104.

5 104 is the impact, Mr. President, in response to your
6 question min connection with the Spot Price claim. This is--is
7 this a red herring? Of course it is. Because we have heard
8 that future projections were not done and something has
9 happened. And as I mentioned at the very beginning, if we look
10 at MEC's projections, future damages, \$0.3 million. If we look
11 at Econ One, \$0.3 million.

12 And I confirm, and I was given the information the
13 historical damage claim by the Claimants for the basic power
14 Capacity Price, 7.3 million; if you compare that to the
15 \$92 million debt they had at the nationalization date.

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

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

19:10 1 the actual capacity and on the vertical axis the cost, the
2 variable cost, the marginal cost for power for each of these
3 units, clearly you see what we are talking about when we are
4 saying that dual power units are excluded.

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

11 Now, that problem with the reserve did not exist
12 between 2002 and 2009, and it is true that we recognize that it
13 came up again in 2009. But why didn't they tell it sell it in
14 between? Why didn't they use the profits from Guaracachi 3 and
15 5 to have more efficient units?

16 Well, we all know why.

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

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

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

19:12 1 competence to address the claims by the Claimant. And if there
2 was any, the high level of debt by EGSA, the nationalization
3 date would take the value of that company to zero.

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

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

25 But here I need to make some comments.

19:14 1 First, this was a peaceful and orderly
2 nationalization, and we already referred to the use of
3 photographs by the Claimants, which is parts of an interested
4 and exaggerated stigma against the Bolivian State.

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

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

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

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

25 With examination of the witnesses that the Tribunal

19:16 1 called to appear here, such as MEC, EdI, we have also shown
2 that power projections and the capacity projections used by
3 Mr. Abdala have serious technical mistakes that have a great
4 impact on the results clearly to favor the Claimants.

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

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

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

19:19 1 the raw material, it is coherent--it is fair to have a higher
2 percentage of profits.

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

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

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

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

19:22 1 the interests of our country.

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

5 PRESIDENT JÚDICE: Thank you very much.

6 There is no redirect.

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

16 PRESIDENT JÚDICE: Dr. Blackaby.

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

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

19:24 1 a procedural objection. Is that right? For instance, if the
2 Respondent can see that some comment is--has criminal
3 implications--I'm not saying it is the case--it is not related
4 with the procedural, with the procedure, and that is my
5 interpretation, probably I'm not correct. But for the sake
6 of--for everything to be clear, I would like for you to
7 determine if, in the conclusions by Silva Romero and the
8 Attorney General, if there are any procedural objections. We
9 know what an procedural objection is in an arbitration, and if
10 that is the case, I will give the floor to Mr. Blackaby two
11 minutes to address them.

12 (Counsel for Respondent conferring.)

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

21 PRESIDENT JÚDICE: Thank you, Mr. Silva Romero.

22 (Tribunal conferring.)

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

19:26 1 quite often Parties clarify things that way; they do not have
2 an obligation to do that, but that simplifies the work of the
3 Tribunal.

4 I am not criticizing anyone.

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

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

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

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

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

19:28 1 particular question allegedly--referenced to the Profin Report
2 allegedly in favor of the Claimants, Mr. Silva Romero himself
3 relies on a comment from Dr. Conthe in support of the
4 Respondent's position.

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

11 That is precisely what Arbitrators do: They test
12 propositions.

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

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

19:29 1 as it needs to do.

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

5 Thank you.

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

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

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

12 PRESIDENT JÚDICE: That's another time.

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

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

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

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

22 Do you have something more to comment?

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

19:30 1 to the to the way in which this arbitration has been handled.

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

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

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

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

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

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

18 PRESIDENT JÚDICE: Thank you very much.

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

19:32 1 during these conclusions.

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

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

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

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

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

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

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

19:34 1 clarify the exercise. We have, obviously, the slide set. My
2 understanding of your request, Mr. President, Members of the
3 Tribunal, is that we will, in essence, provide an accompanying
4 text to the slide set. We won't be presenting new slides
5 or--is that a correct interpretation?

6 PRESIDENT JÚDICE: Yes.

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

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

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

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

22 PRESIDENT JÚDICE: Yes, that's correct.

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

25 I guess the only question to respond to my friend

19:36 1 Dr. Silva Romero's question, is on a limitation of pages, I
2 think--I mean, I'm just--

3 ARBITRATOR VINUESA: And deadline.

4 MR. BLACKABY: And the deadline, exactly.

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

7 MR. SILVA ROMERO: I was thinking 50.

8 MR. BLACKABY: How about 60?

9 MR. SILVA ROMERO: Sixty.

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

12 (Comments off microphone.)

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

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

19 I would say June 10. Two months.

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

25 PRESIDENT JÚDICE: We think that two-months perhaps

19:38 1 too long.

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

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

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

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

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

25 ARBITRATOR VINUESA: We have preset codes, and we

19:39 1 spoke about this beforehand.

2 MR. SILVA ROMERO: We take due note, Mr. President.

3 That is all.

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

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

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

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

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

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

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

19:41 1 Sometimes they are faced with issues that perhaps can be
2 interpreted as things that are different from what they were
3 intended to be.

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

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

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

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

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

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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

