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Cc:	Gonzalo Flores
Subject:	The Renco Group, Inc. v. Republic of Peru (UNCT/13/1) - Communication from the Tribunal
Date:	Wednesday, September 16, 2015 7:20:58 PM

Dear Counsel,

The Presiding arbitrator has asked me to convey the following message to the Parties:

> "The Tribunal has commenced deliberations on the issues before it in connection with the Waiver Requirement under Article 10.18 of the Treaty. The Tribunal would be assisted by further brief submissions from the Parties on the following matters arising from the hearing on 2 September 2015 (the "Hearing"):
>
> **Questions**
>
> 1. A key issue in dispute between the Parties concerns the effect of the additional language contained in the waiver presented by Renco, namely: "*To the extent that the Tribunal may decline to hear any claims asserted herein on jurisdictional or admissibility grounds, Claimant reserves the right to bring such claims in another forum for resolution on the merits*."
>
> At the Hearing, counsel for Peru introduced a number of examples which, it contends, demonstrate that the effect of this additional language could be to defeat the object and purpose of the waiver requirement. [T49/18-22 and T50-T56/20] Renco has complained that this was "*a new argument…which Peru had not placed into the record of the case before the oral* hearing (requiring Renco to address spontaneously.)" [Renco email dated 15 September 2015]
>
> The Tribunal wishes to afford Renco the opportunity to address it on this argument.
>
> 2. What is the *real effect*, in the circumstances of this case, of the additional language contained in Renco's waiver?
>
> 3. At the Hearing, counsel for Renco maintained that the additional language contained in Renco's waiver was "*superfluous*" [T123/13] and "*doesn't do anything more than the Treaty allows*" [T123/18]. Counsel for Renco went on to state:
>
> "…[I]*f Peru were* [sic] *commit that no harm/foul, no statute of limitations issue, we would—we would quite gladly strike it, because, as I say, it is superfluous and it does*

nothing more than what the Treaty allows us to do in the first instance…and we would, of course, subject to statute of limitations, we would raise issues. But, you know, that's the reason we're not striking it and have not already stricken it." [T123/19-22 through T124/1-6]

The Tribunal invites Renco to clarify the above. In particular, what was intended by the references to the "*no harm/foul, no statute of limitations issue*"?

4. At the Hearing, counsel for Renco stated that "*even if there is a formal defect in the written waiver…Renco should be given a fair opportunity to cure it*." [T124/8-11]

The Tribunal invites Renco to clarify precisely how they would propose to "cure" their written waiver?

Replies

The Tribunal invites the Parties to submit their responses to the above questions within seven (7) days from the date hereof. Submissions in reply, if any, shall be filed within seven (7) days thereafter. The Tribunal invites the Parties to keep their submissions brief (not to exceed ten (10) pages each round) and to the point, and should address only the questions asked.

Thank you for your good cooperation.

Yours sincerely

Michael Moser
For the Tribunal"

Best regards,

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