

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Latam Hydro LLC and CH Mamacocha S.R.L.

v.

Republic of Peru

(ICSID Case No. ARB/19/28)

PROCEDURAL ORDER No. 2

Members of the Tribunal

Prof. Albert Jan van den Berg, President of the Tribunal

Prof. Dr. Guido Santiago Tawil, Arbitrator

Prof. Raúl E. Vinuesa, Arbitrator

Secretary of the Tribunal

Ms. Ana Constanza Conover Blancas

13 May 2020

Procedural Order No. 2

Contents

1. Applicable Arbitration Rules	2
2. Constitution of the Tribunal and Tribunal Members' Declarations.....	2
3. Fees and Expenses of Tribunal Members	2
4. Presence and Quorum	3
5. Rulings of the Tribunal	3
6. Power to Fix Time Limits	4
7. Secretary of the Tribunal	4
8. Representation of the Parties	5
9. Apportionment of Costs and Advance Payments to ICSID.....	6
10. Place of Proceeding.....	6
11. Procedural Languages, Translation and Interpretation	7
12. Routing of Communications	8
13. Number of Copies and Method of Filing of Parties' Pleadings.....	8
14. Number and Sequence of Pleadings	10
15. Production of Documents	11
16. Submission of Documents	12
17. Witness Statements and Expert Reports	14
18. Examination of Witnesses and Experts.....	14
19. Pre-Hearing Organizational Meetings	17
20. Hearings	17
21. Records of Hearings and Sessions	18
22. Post-Hearing Memorials and Statements of Costs.....	19
23. Public Access to Documents.....	19
24. Data Protection.....	19
25. Submissions by Non-Disputing Parties	20
ANNEX A	21
ANNEX B	24

Procedural Order No. 2

Introduction

The first session of the Tribunal was held on 29 April 2020, at 10 a.m. EDT, by telephone conference. The session was adjourned at 12 noon EDT.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the parties.

Participating in the conference were:

Members of the Tribunal:

Prof. Albert Jan van den Berg, President of the Tribunal

Prof. Dr. Guido Santiago Tawil, Arbitrator

Prof. Raúl E. Vinuesa, Arbitrator

ICSID Secretariat:

Ms. Ana Constanza Conover Blancas, Secretary of the Tribunal

On behalf of the Claimants:

Mr. Jeffrey M. Lepon, President of Latam Hydro LLC

Mrs. Licy Benzaquen Gonzalo, Representative of CH Mamacocha S.R.L.

Mr. Kenneth B. Reisenfeld, Baker & Hostetler LLP

Mr. Marco Molina, Baker & Hostetler LLP

Ms. Analia Gonzalez, Baker & Hostetler LLP

Mr. James J. East, Baker & Hostetler LLP

Mr. Wataru Kamihigashi, Baker & Hostetler LLP

On behalf of the Respondent:

Mr. Ricardo Ampuero Llerena, Comisión Especial del Ministerio de Economía y Finanzas, República de Perú

Ms. Mónica Guerrero Acevedo, Comisión Especial del Ministerio de Economía y Finanzas, República de Perú

Mr. Paolo Di Rosa, Arnold & Porter

Mr. Patricio Grané Labat, Arnold & Porter

Ms. Cristina Arizmendi, Arnold & Porter

The Tribunal and the parties considered the following:

- The draft agenda and the draft procedural order circulated by the Tribunal Secretary on 25 March 2020; and
- The parties' comments on the draft agenda and the draft procedural order received on 23 April 2020, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

Following the session, the Tribunal now issues the present Order:

Procedural Order No. 2

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this Procedural Order sets out the procedural rules that govern this arbitration. The timetable is attached as Annex A.

1. Applicable Arbitration Rules
Convention Article 44

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of 10 April 2006, except to the extent modified by Section B of Chapter Ten (Investment) of the United States - Peru Trade Promotion Agreement signed on 12 April 2006 and which entered into force on 1 February 2009 (the “Treaty” or the “TPA”), and supplemented by any decision adopted by the Commission pursuant to Articles 10.22(3) and 10.23 of the TPA.

2. Constitution of the Tribunal and Tribunal Members’ Declarations
Arbitration Rule 6

2.1. The Tribunal was constituted on 9 March 2020 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.

2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the parties by the ICSID Secretariat on 9 March 2020.

2.3. The Members of the Tribunal confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

3. Fees and Expenses of Tribunal Members
Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.

3.2. Under the current Schedule of Fees, each Tribunal Member receives:

Procedural Order No. 2

- 3.2.1. US\$3,000 (three thousand United States dollars) for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
 - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
 - 3.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
 - 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
4. Presence and Quorum
Arbitration Rules 14(2) and 20(1)(a)
- 4.1. The presence of all Members of the Tribunal constitutes a quorum for its sittings, including by any appropriate means of communication. The Tribunal should, if at all possible, participate in the merits hearings in person. At a procedural status conference to be held on the date mentioned in the relevant item of the timetable, the parties and the Tribunal will discuss whether the circumstances at that time make it difficult, burdensome or dangerous to have an in-person hearing and whether a virtual hearing may be a preferable option considering the circumstances.
5. Rulings of the Tribunal
Convention Article 48(1); Arbitration Rules 16, 19 and 20
- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
 - 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence, except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
 - 5.3. The Tribunal will draft all rulings, including the award, within a reasonable time period. If a ruling has not been issued within three months after the final submission on a particular matter, the Tribunal will provide the parties with status updates every month.
 - 5.4. The President is authorized to issue procedural orders on behalf of the Tribunal.

Procedural Order No. 2

5.5. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.

6. Power to Fix Time Limits
Arbitration Rule 26(1)

6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.

6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal
Administrative and Financial Regulation 25

7.1. The Tribunal Secretary is Ms. Ana Constanza Conover Blancas, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.

7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Ana Constanza Conover Blancas
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473 9042
Fax: + 1 (202) 522-2615
Email: aconover@worldbank.org
Paralegal email: fsalonkajganich@worldbank.org

7.3. For local messenger deliveries, the contact details are:

Ms. Ana Constanza Conover Blancas
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036

Procedural Order No. 2

USA
Tel. 202-458-1534

8. Representation of the Parties
Arbitration Rule 18

8.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For Claimants

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Procedural Order No. 2

9. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28
- 9.1. The parties shall cover the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of 10 March 2020, ICSID requested that each party pay US\$150,000.00 (one hundred fifty thousand United States dollars) to cover the initial costs of the proceeding. ICSID received the Claimants' payment on 6 April 2020 and the Respondent's payment on 16 March 2020.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
- 9.4. A party shall file a written notice disclosing the name and address of any non-party from which the party, directly or indirectly, has received funds for the pursuit or defense of the proceeding through a donation or grant, or in return for remuneration dependent on the outcome of the proceeding ("third-party funding").
- 9.5. A non-party referred to in paragraph 9.4 does not include a representative of a party.
- 9.6. Each party shall have a continuing obligation to disclose any changes to the information referred to in paragraph 9.4, occurring after the initial disclosure, including termination of the third-party funding arrangement.
- 9.7. A party shall file the notice referred to in paragraph 9.4 with the Tribunal within 30 calendar days after the signing of this Procedural Order or immediately upon concluding a third-party funding arrangement. The party shall immediately notify the Tribunal of any changes to the information in the notice.
10. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)
- 10.1. Washington, D.C. shall be the place of the proceeding.
- 10.2. The Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.
- 10.3. The Tribunal may deliberate at any place it considers convenient.

Procedural Order No. 2

11. Procedural Languages, Translation and Interpretation
Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

- 11.1. English and Spanish are the procedural languages of the arbitration.
- 11.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat may be in either procedural language.

For Parties' Pleadings

- 11.3. Any written requests and applications may be submitted in either procedural language.
- 11.4. Pleadings, expert opinions, witness statements, and any other accompanying documentation may be submitted in either procedural language.
- 11.5. Accompanying documentation (e.g., exhibits, legal authorities, annexes to expert opinions, etc.) in any language other than English or Spanish shall be translated into one of the procedural languages. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.
- 11.6. Translations need not be certified unless there is a dispute as to the translation provided and the Tribunal orders a certified version.
- 11.7. Documents exchanged between the parties under §15 below (Production of Documents) may be produced in the original language and need not be translated.

For Hearings

- 11.8. The Hearing shall be conducted in Spanish and English with simultaneous interpretation into the other procedural language. Transcripts shall be taken in both languages.
- 11.9. The testimony of a witness called for examination during the hearing who prefers to give evidence in a language other than English or Spanish shall be interpreted simultaneously.
- 11.10. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.
- 11.11. The costs of the interpreters will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall

Procedural Order No. 2

ultimately bear those costs. ICSID will hire the interpreters for the hearing, but the parties will be consulted about the interpreters whose hiring is proposed.

For Tribunal's Documents Except the Award

11.12. The Tribunal may initially make any procedural order or decision in one procedural language, and subsequently issue that order or decision in the other procedural language. Both language versions shall be equally authentic.

For Tribunal's Award

11.13. The Tribunal shall render the Award in English and Spanish simultaneously. Both language versions shall be equally authentic.

12. Routing of Communications

Administrative and Financial Regulation 24

12.1. Written communications in the case shall be transmitted by email or other electronic means to the parties, the Tribunal Secretary, and the Tribunal.

12.2. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal.

12.3. The Tribunal Secretary shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.

12.4. The email addresses of the Members of the Tribunal are:

Prof. Albert Jan van den Berg
ajvandenbergh@hvdb.com

Prof. Dr. Guido Santiago Tawil
arb-gtawil@arb-chambers.com

Prof. Raúl E. Vinuesa
raul.vinuesa43@gmail.com

13. Number of Copies and Method of Filing of Parties' Pleadings

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

13.1. By the relevant filing date, the parties shall:

13.1.1. submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports

Procedural Order No. 2

and an index of all the supporting documentation attached to the pleading;¹
and

13.1.2. upload the pleading, with all the supporting documentation (including exhibits and legal authorities) and updated index to the file sharing platform that will be created by ICSID for purposes of this case.

For the avoidance of doubt, the electronic filing process indicated in this subparagraph is applicable both to the original language submission and to any subsequent translations agreed by the parties.

13.2. Within four business days of the filing date, the parties shall courier to the opposing party at the address(es) indicated at §8.1 above at least one USB drive with a full copy of the entire submission, both in the original language and translations, including the pleading, the witness statements, expert reports, exhibits, legal authorities and a cumulative index hyperlinked to all supporting documentation submitted by the relevant party to date.

13.3. Also within four business days of the filing date, the relevant party shall courier to Professor Vinuesa one (1) bound hard copy in A4/letter format of the pleading, the witness statements and the expert reports (excluding exhibits and legal authorities) at the address indicated at §13.4 below.

13.4. The addresses of the Tribunal Members are as follows:

Professor Albert Jan van den Berg Hanotiau & van den Berg IT Tower, 9th Floor Avenue Louise 480 B.9 Brussels 1050 Belgium	Prof. Dr. Guido Santiago Tawil Ed. Aguas Azules II Ap 003 Rbla. Lorenzo Batlle Pacheco Pda. 32 Punta del Este, Maldonado 20167-01236 Uruguay	Prof. Raúl E. Vinuesa Alsina 2360 San Isidro Buenos Aires 1642 Argentina
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13.5. Subject to §§ 13.1-13.3 above, the pleadings, the witness statements, the expert reports, the exhibits, and the legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.

13.6. Electronic versions of pleadings, witness statements, expert reports, and legal authorities shall be text searchable (i.e., OCR PDF or Word).

13.7. All pleadings shall be accompanied by a cumulative index hyperlinked to all the supporting documentation that the party has submitted up to the date of the

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

Procedural Order No. 2

pleading. The index shall indicate the document number, the pleading with which it was submitted and the language of the document. Please follow the naming conventions contained in Annex B.

- 13.8. At the conclusion of the written phase of the proceeding, on a date to be determined by the Tribunal, or at any other time the Tribunal or the Secretariat so requests, the parties shall courier to the ICSID Secretariat and each Member of the Tribunal a USB or hard drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Tribunal decisions and orders to date) with a consolidated hyperlinked index of all documents.
 - 13.9. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary by email.
 - 13.10. A filing shall be deemed timely if sent by a party by 11:59 PM, Washington, D.C. time, on the relevant date.
14. Number and Sequence of Pleadings
Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31
- 14.1. The number and sequence of the pleadings shall be as provided in the Procedural Calendar attached as Annex A.
 - 14.2. In the event that Respondent files a Statement of Cross-Claim together with its Counter-Memorial, Claimants may file a Counter-Memorial on the Cross-Claim together with their Reply, Respondent may file a Reply on the Cross-Claim with the Rejoinder, and Claimants may file a Rejoinder on the Cross-Claim thereafter. In this scenario, the scheduled hearing dates shall be maintained.
 - 14.3. The parties will submit the pleadings by the deadlines established in the Procedural Calendar.
 - 14.4. In the first exchange of submissions (Memorial and Counter-Memorial), the parties shall set forth the facts and legal arguments on which they intend to rely. Allegations of fact and legal arguments shall be presented in a detailed, specified, and comprehensive manner.
 - 14.5. In their second exchange of submissions (Reply and Rejoinder), the parties shall limit themselves to responding to allegations of fact and legal arguments made by the other party in the first exchange of submissions, discussing matters arising from evidence obtained during the document production phase, and any new facts or legal arguments that have arisen after the first exchange of submissions.

Procedural Order No. 2

- 14.6. For each factual allegation, the parties shall, whenever possible, identify the evidence adduced or to be adduced in support of such allegation. Following each legal argument, the parties shall, whenever possible, identify the legal authority adduced or to be adduced in support of that argument.
- 14.7. All written submissions shall be divided into consecutively numbered paragraphs.
15. Production of Documents
Convention Article 43(a); Arbitration Rules 24 and 33-36
- 15.1. Following the first exchange of submissions (Memorial, Counter-Memorial, and if any, Statement of Cross-Claim), either party may promptly apply to revisit the issue of whether a document production phase will be necessary. The Tribunal will decide upon such application after hearing the other party. In the event that no such application is made, or such application is decided in favour of maintaining a document production phase, document production will take place in accordance with the remaining provisions of this Section 15 and the relevant time limits in Annex A. Pending any application under this paragraph, the deadlines for the production of documents phase as scheduled in Annex A shall remain in place.
- 15.2. Within the time limit set in Annex A, a party may request another party to produce documents or categories of documents within the other party's possession, custody or control. Such a request for production shall identify each document or category of documents sought with reasonable precision, using a Redfern Schedule, in both Word and pdf format, specifying why the documents sought are relevant to the case and material to its outcome. Such a request shall not be copied to the Tribunal or the Secretary of the Tribunal.
- 15.3. Within the time limit set in Annex A, using the Redfern Schedule provided by the first party, the other party shall either produce the requested documents or set forth its objections to the production sought, limited to any specific objections regarding (i) sufficient relevance to the case; (ii) materiality to its outcome; (iii) compelling legal impediment, privilege, confidentiality or political sensitivity; and/or (iv) compelling considerations of procedural economy, proportionality, fairness or equality of the parties.
- 15.4. Within the time limit set in Annex A, the requesting party shall reply to the other party's objections in that same Redfern Schedule.
- 15.5. On or around the date set in Annex A, the Tribunal will, in its discretion, rule upon the production of the documents or categories of documents sought having regard to the legitimate interests of the other party, applicable rules of law, and all of the surrounding circumstances.

Procedural Order No. 2

- 15.6. Documents shall be produced directly to the requesting party without copying the Tribunal. Documents so produced shall not be deemed on record unless and until the requesting party subsequently files them as exhibits in accordance with §16 below.
- 15.7. In addition, the Tribunal may at any time order a party to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2). In that case, the documents shall be submitted to the other party and to the Tribunal in accordance with §16 below and shall be deemed on record.
16. Submission of Documents
Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24
- 16.1. The Memorial and Counter-Memorial shall be accompanied by the supporting documentation relied upon by the parties, including exhibits and legal authorities. Further supporting documentation relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 16.2. The documents shall be submitted in the manner and form set forth in §13 above.
- 16.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.
- 16.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request, nor disclose the detailed contents of any such documents, except for a general description and brief reasons for why the document is sought to be introduced, without quoting from the document.
- 16.3.2. To the greatest extent possible, the parties shall abstain from presenting new documents in the period immediately preceding the hearing. As the hearing approaches, the Tribunal shall apply the requirement of the existence of exceptional circumstances with rigor.
- 16.3.3. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.
- 16.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

Procedural Order No. 2

- 16.5. The documents shall be submitted in the following form:
- 16.5.1. Exhibits shall be numbered consecutively throughout these proceedings.
 - 16.5.2. The number of each exhibit containing a document produced by the Claimants shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each exhibit containing a document produced by the Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.
 - 16.5.3. Each exhibit shall have a divider with the exhibit identification number on the tab.
 - 16.5.4. Lengthy exhibits shall include a means of identifying pages, by internal page numbering or otherwise.
 - 16.5.5. Exhibits shall be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively. If the exhibit is submitted in only one language, it shall have the suffix “ENG” or “SPA” depending upon whether that language is English or Spanish, respectively. If the exhibit is submitted in both English and Spanish, it shall have the suffix of its original language first followed by the suffix of the translated language (*e.g.*, C-0002 SPA/ENG).
 - 16.5.6. Electronic filings and the accompanying indexes shall follow the naming conventions contained in Annex B.
- 16.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.7. The parties shall file all documents only once by attaching them to their pleadings. Documents need not be resubmitted with subsequent pleadings, witness statements, or expert reports, even if referred to in such statements.
- 16.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence nor new calculations. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the document(s) on the record (*e.g.*, exhibit, legal authority, expert report, etc.) from which it is derived. The party submitting such exhibits shall provide them in electronic and hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporters and interpreters at the hearing at a time to be decided at the pre-hearing organizational meeting.

Procedural Order No. 2

- 16.9. In all other matters regarding the receipt of evidence that are not covered by this Procedural Order or others issued by the Tribunal, this procedure may be guided by the IBA Rules on the Taking of Evidence in International Arbitration, approved on 29 May 2010 by Resolution of the IBA Council.
17. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 24
- 17.1. Witness statements and expert reports shall be filed together with the parties' pleadings.
- 17.2. Neither party shall be permitted to submit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party (following the procedure outlined in §16.3).
- 17.3. Each witness statement and expert report shall contain numbered paragraphs and be signed and dated by the witness.
18. Examination of Witnesses and Experts
Arbitration Rules 35 and 36
- 18.1. Any person may present evidence as a witness, including a party or a party's officer, employee, or other representative.
- 18.2. For each witness, a written, signed, and dated witness statement shall be submitted to the Arbitral Tribunal.
- 18.3. Each witness statement shall state the witness's name, date of birth, and involvement in the case.
- 18.4. Witness statements shall be submitted in either procedural language.
- 18.5. In accordance with §17.1 above, each party will submit its witness statements together with its written submission. The witness statements shall be numbered independently from other documents and properly identified (including the language of the statement). If a party submits more than one witness statement by the same witness, the subsequent witness statement shall be identified as "Second Statement," "Third Statement," and so on. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts, identify relevant documents, or prepare the witness statements and the examinations.

Procedural Order No. 2

- 18.6. Each party shall be responsible for summoning its own witnesses to the hearing, except when the other party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance. If a witness or expert who was presented by a party has not been called by the other party or by the Tribunal for examination at the hearing, the presenting party may not call such witness or expert to testify at the hearing except in exceptional circumstances.
- 18.7. Each party shall notify the other party of the witnesses or experts it intends to cross-examine by the date to be established by the Tribunal. The Tribunal shall then identify the remaining witnesses or experts (if any) that it wishes to call for examination.
- 18.8. The facts contained in the written statement of a witness or expert whose cross-examination has been waived by the other party, or not called by the Tribunal, shall not be deemed to have been accepted or established by the sole fact that no cross-examination has been requested. The Tribunal will assess the weight of the written statement or expert report taking into account the entire record and all the relevant circumstances.
- 18.9. Each party shall be responsible for the practical arrangements, cost, and availability of any witness it offers. The Tribunal will decide upon the appropriate allocation of any related costs in the final Award.
- 18.10. The Tribunal may allow a witness to appear and be examined by videoconference, provided that there exist valid and exceptional reasons that prevents the witness from appearing in person. In such an event, the Tribunal will issue appropriate directions for the witness's examination by videoconference.
- 18.11. As a general rule and subject to other arrangements during the pre-hearing telephone conference (§19 below), fact witnesses shall be examined prior to expert witnesses, with the Claimant's fact (and expert) witnesses being examined prior to the Respondent's fact (and expert) witnesses. The order in which the witnesses and experts shall be heard shall be discussed at the pre-hearing telephone conference.
- 18.12. At the hearing, the examination of each witness shall proceed as follows:
 - 18.12.1. The witness shall make the declaration provided in Rule 35(2) of the Arbitration Rules.
 - 18.12.2. Witnesses giving oral testimony may first be examined in direct examination for no longer than 15 minutes, subject to a reasoned application for further time which may be granted by the Tribunal. Direct examination of witnesses shall be conducted only if and as necessary to introduce the witness, confirm the accuracy of and completeness of the witness's written statement(s), offer any corrections or clarifications that

Procedural Order No. 2

may be necessary to prevent a misunderstanding of that witness's written direct testimony, to highlight briefly the key points of his or her witness statement, and to address any relevant development that occurred after the witness signed the witness statement. Direct examination of experts shall either follow the same format as for witnesses, or the expert may provide a brief presentation of the key points of his or her report of no longer than 30 minutes, except for experts on quantum who may take up to 45 minutes.

- 18.12.3. Cross-examination shall not go beyond the subject matter of the witness statements and matters affecting the witness's credibility. Upon request and only for a substantial reason, the Tribunal in its discretion may allow limited inquiry into additional matters.
 - 18.12.4. The party who has presented the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination ("redirect examination").
 - 18.12.5. The Tribunal may examine the witness at any time, either before, during, or after examination by one of the parties.
 - 18.12.6. Subject to a different agreement by the parties or decision of the Tribunal, a fact witness other than a party representative shall not prior to his or her examination be present in the hearing room during oral testimony and arguments, read the transcript of oral testimony or argument, or be informed of its contents. Party representatives who are also fact witnesses may be present during opening submissions, but not during the testimony of fact witnesses testifying before him or her. Such party representatives should testify first, to the extent possible.
- 18.13. The Tribunal shall, at all times, have complete control over the procedure for the examination of witnesses. In particular, but without limiting the foregoing, the Tribunal may in its discretion:
- 18.13.1. Limit or refuse the right of a party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or
 - 18.13.2. Direct that a witness be recalled for further examination at any time.
- 18.14. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted as exhibits with the parties' submissions, in which case reference to such exhibits shall be sufficient. Such documents or information shall be subject to the rules on language set forth in §11 above.

Procedural Order No. 2

- 18.15. The rules set forth above with respect to the examination of witnesses shall apply *mutatis mutandis* to the examination of party-appointed experts, except that a direct examination may last for 30 minutes or for a quantum expert, for 45 minutes. Instead of conducting a direct examination, the party presenting an expert may request him or her to summarize his or her methodology and conclusions subject to these same time limits.
19. Pre-Hearing Organizational Meetings
Arbitration Rule 13
- 19.1. A procedural status conference shall be held on the date mentioned in Annex A by telephone between the Tribunal, or its President, and the parties in order to consider the appropriate venue of the hearing in light of the considerations mentioned at §20.2 below.
- 19.2. A pre-hearing organizational meeting shall be held on the date mentioned in Annex A by telephone between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing, including the order of examination of witnesses and experts and the allocation of time between the parties.
20. Hearings
Arbitration Rules 20(1)(e) and 32
- 20.1. A hearing will take place in accordance with the terms of this section and the Procedural Calendar (Annex A). The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.
- 20.2. The hearing shall be held at a place to be determined in accordance with §10 above. The hearing should, if at all possible, be held in person. The Tribunal and the Parties shall discuss at a procedural status conference call mentioned in §19.1 above whether the circumstances at that time make it difficult, burdensome or dangerous to have an in-person hearing and whether a virtual hearing may be a preferable option considering the circumstances.
- 20.3. The hearing shall take place not before 6 weeks after the filing of the last written submission (i.e., filing of Claimants' and Respondent's comments on non-disputing party (*amicus*) submissions, if any).
- 20.4. The Members of the Tribunal shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.

Procedural Order No. 2

- 20.5. To facilitate references to the main documents on which the parties intend to rely at the hearing, the parties shall use their best efforts to agree on and prepare a joint physical hearing bundle containing only a set of essential factual/legal documents on which the parties are most likely to rely, together with a table of contents for such bundle. In the event that the parties are unable to agree on a joint hearing bundle, each party shall incorporate the documents that it considers appropriate to the joint bundle. The documents in the bundle referenced in this paragraph shall be identified by using the exhibit or legal authority numbers recorded over the course of the arbitration. Such binder shall be produced in A5 format, spiral-bound.
- 20.6. In principle, each party shall have equal time to be used during the hearing, subject to a discussion in the pre-organizational hearing conference, taking into account the number of witnesses and experts and the time available for the hearing.
- 20.7. In accordance with Article 10.21(2) of the TPA, hearings shall be open to the public. The Tribunal shall determine, in consultation with the parties, the appropriate logistical arrangements. Any party that intends to use information designated as protected information in a hearing shall so advise the Tribunal. The Tribunal shall make appropriate arrangements to protect the information from disclosure.
21. Records of Hearings and Sessions
Arbitration Rules 13 and 20(1)(g)
- 21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 21.2. Verbatim transcripts in the procedural languages shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.
- 21.3. The parties shall agree on any corrections to the transcripts within 30 calendar days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

Procedural Order No. 2

22. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rule 28(2)

- 22.1. In consultation with the parties, the Tribunal will determine at the end of the hearing whether there shall be post-hearing submissions. If so, the Tribunal will address the filing date, length, format, and content of the post-hearing submissions.
- 22.2. The Tribunal will issue directions on the parties' statements of costs at the end of the hearing.

23. Public Access to Documents

Convention Article 48(5); Administrative and Financial Regulation 22; Arbitration Rule 48(4); Treaty Article 10.21

- 23.1. In accordance with Article 10.21 of the TPA, the following documents shall be publicly available, subject to the deletion of protected information:² (a) the notice of intent; (b) the notice of arbitration; (c) pleadings, memorials, and briefs submitted to the Tribunal by either party and any written submissions submitted pursuant to Article 10.20.2 (submissions by the United States of America as a non-disputing party regarding the interpretation of the Treaty) and 10.20.3 (*amicus curiae* submissions from a person or entity that is not a disputing party) and Article 10.25 (Consolidation); (d) minutes or transcripts of hearings of the Tribunal, where available; and (e) orders, awards, and decisions of the Tribunal.
- 23.2. Any protected information that is submitted to the Tribunal shall be protected from disclosure in accordance with the procedures set out in Article 10.21(4) of the TPA.
- 23.3. In accordance with Article 10.21(3) and 10.21(5) of the TPA, nothing in this section requires the Republic of Peru to disclose protected information or to furnish or allow access to information that it may withhold in accordance with Article 22.2 (Essential Security) or Article 22.4 (Disclosure of Information) of the TPA, or to withhold from the public information required to be disclosed by its laws.

24. Data Protection

- 24.1. The Members of the Tribunal, the parties, and their representatives acknowledge that the processing of their personal data is necessary for the purposes of these arbitration proceedings.

² Pursuant to Article 10.28 of the Treaty, the term "protected information" means "confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law".

Procedural Order No. 2

- 24.2. The Members of the Tribunal, the parties and their representatives agree to comply with all applicable data protection and privacy regulations, including providing appropriate notice to data subjects whose personal data will be processed in the arbitration proceedings, where necessary.
- 24.3. Each of the parties and their representatives shall indemnify and hold harmless the Tribunal with respect to any breach of applicable data protection and privacy regulations by the party or its representatives in relation to the arbitration proceedings.
25. Submissions by Non-Disputing Parties
Arbitration Rule 37(2); Treaty Article 10.20
- 25.1. Pursuant to Article 10.20(2) of the Treaty, the United States of America may make oral and written submissions to the Tribunal as non-disputing party regarding the interpretation of the TPA.
- 25.2. In accordance with ICSID Arbitration Rule 37(2) and Article 10.20(3) of the Treaty, the Tribunal shall have the authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party, subject to the admissibility standard set forth in ICSID Arbitration Rule 37(2). Each submission shall identify the author and any person or entity that has provided, or will provide, any financial or other assistance in preparing the submission.

[Signed]

Prof. Albert Jan van den Berg
President of the Tribunal
Date: 13 May 2020

Procedural Order No. 2 – Annex A

ANNEX A

PROCEDURAL CALENDAR

Description	By	Days	Date	PO2 §
First Session	All	0	Wed-29-Apr-2020	
Memorial	Claimants	128	Fri-04-Sep-2020	§§ 14.4, 16.1
Counter-Memorial / Statement of Cross- Claim (if applicable)	Respondent	129	Mon-11-Jan-2021	§§ 14.2, 14.4, 16.1
Production of Documents Phase				
Requests for Production of Documents	Claimants and Respondent	30	Wed-10-Feb-2021	§§ 11.7, 15.1, 15.2
Answer to Objections	Claimants and Respondent	12	Mon-22-Feb-2021	§§ 11.7, 15.3
Responses to Objections - Sent to Tribunal	Claimants and Respondent	10	Thu-04-Mar-2021	§§ 11.7, 15.4
Decision on Requests	Tribunal	11	Mon-15-Mar-2021	§ 15.5
Production of Non- Objected Documents and Documents as Ordered	Claimants and Respondent	10	Thu-25-Mar-2021	§§ 11.7, 15.6
Reply/Counter- Memorial on Cross- Claim (if applicable)	Claimants	90	Wed-23-Jun-2021	§§ 14.2, 14.5, 16.1
Rejoinder/Reply on Cross-Claim (if applicable)	Respondent	90	Tue-21-Sep-2021	§§ 14.2, 14.5, 16.1
Rejoinder on Cross- Claim (if applicable)	Claimants	45	Fri-05-Nov-2021	§ 14.2

Procedural Order No. 2 – Annex A

Description	By	Days	Date	PO2 §
Submission under Article 10.20(2) TPA and applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	TBD	14	Fri-19-Nov-2021	§§ 25.1, 25.2
Comments on TPA Article 10.20(2) submission and applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	Claimants and Respondent	14	Fri-03-Dec-2021	§§ 25.1, 25.2
Procedural Status Conference re Hearing - Whether In Person or Virtual	All	3	Mon-06-Dec-2021	§§ 4.1, 19.1
Decision on applications for leave to file non-disputing party (<i>amicus</i>) submissions, if any	Tribunal	11	Fri-17-Dec-2021	§ 25.2
Claimants' and Respondent's comments on non-disputing party (<i>amicus</i>) submissions, if any	Claimants and Respondent/TBD	24	Mon-10-Jan-2022	§ 25.2
Notification of Witnesses and Experts	Claimants and Respondent	4	Fri-14-Jan-2022	§ 18.7
Pre-Hearing Organizational Meeting	All	7	Fri-21-Jan-2022	§ 19.2
Hearing Commencement	All	45	Mon-07-Mar-2022	§ 20
Hearing Ends	All	11	Fri-18-Mar-2022	§ 20

Procedural Order No. 2 – Annex A

Description	By	Days	Date	PO2 §
Simultaneous Post-Hearing Submissions	Claimants and Respondent	TBD at the end of hearing	TBD	§ 22.1
Simultaneous Reply Post-Hearing Submissions	Claimants and Respondent	TBD at the end of hearing	TBD	§ 22.1
Simultaneous Costs Submissions	Claimants and Respondent	TBD at the end of hearing	TBD	§ 22.2
Award	Tribunal		TBD	§§ 5.3, 11.13, 18.9, 23.1

Procedural Order No. 2 – Annex B

ANNEX B

ELECTRONIC FILE NAMING GUIDELINES

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

Subject to §16.5, pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; ENG= English). Consistent with § 16.5.5, if the exhibit is submitted in both English and Spanish, it shall have the suffix of its original language first followed by the suffix of the translated language (e.g., C-0002 SPA/ENG). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
SUPPORTING DOCUMENTATION Exhibits	C-####–LANGUAGE [if applicable]
	R-####–LANGUAGE [if applicable]
	To be produced sequentially throughout the case.
	CLAIMANTS’ FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA/ENG</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-ENG</i>
	<i>R-0002-SPA/ENG</i>
Legal Authorities	CL-####
	RL-####
	To be produced sequentially throughout the case.
	CLAIMANTS’ LEGAL AUTHORITIES
	<i>CL-0001</i>
	<i>CL-0002</i>
RESPONDENT’S LEGAL AUTHORITIES	

Procedural Order No. 2 – Annex B

	<i>RL-0001</i>
	<i>RL-0002</i>
Witness Statements	Witness Statement-Name of Witness-Name of Submission-LANGUAGE
	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	Legal Opinion-Name of Expert-Name of Submission-LANGUAGE
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-ENG</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-ENG</i>
Exhibits to Witness Statements, Expert Reports, Legal Opinions	WITNESS/EXPERT INITIALS-###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<i>MJ-0001</i>
	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
<i>LS-0002</i>	
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-##### to C-#####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-ENG</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
<i>Observations to Request for [XX]-[Claimant]-SPA</i>	