

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the Matter of the Arbitration between

RAILROAD DEVELOPMENT CORPORATION
Claimant

and

REPUBLIC OF GUATEMALA
Respondent

ICSID CASE No. ARB/07/23

—————
PROCEDURAL ORDER No. 5
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MEMBERS OF THE TRIBUNAL

Dr. Andrés Rigo Sureda, President
Honorable Stuart E. Eizenstat, Arbitrator
Professor James Crawford, Arbitrator

SECRETARY OF THE TRIBUNAL

Ms. Natalí Sequeira

DATE: December 1, 2009

RDC v. Guatemala
Procedural Order No. 5

Considering that:

1. The Tribunal decided in Procedural Order No. 4 to consult the parties to fix a date to hear the parties on the objections to its jurisdiction raised by Respondent
2. Claimant proposed in its communication of November 18, 2009 a bifurcated hearing whereby the Tribunal would hear first oral argument whether any of Respondent's jurisdictional objections are "maintainable or proper as a matter of law without any need to resolve any disputed questions of fact." Only if the Tribunal would determine that one or more of Respondent's objections are properly maintainable as a matter of law would the Tribunal hold a subsequent evidentiary hearing.
3. In a communication dated November 24, 2009, Respondent objected to Claimant's proposal, *inter alia*, because "its jurisdictional objections are inextricably intertwined with certain facts and thus the legal issues involved can only be evaluated with reference to those facts."
4. The parties exchanged further comments through communications dated November 25 and November 30, 2009.
5. Under Procedural Order No. 3, the Tribunal decided to "To consider under the same schedule all objections raised or to be raised or expanded by Respondent."

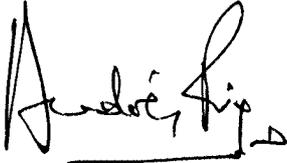
Therefore,

The Tribunal has decided:

1. To hold a single three-day hearing on the objections to its jurisdiction raised by Respondent.

2. To propose as the date for the hearing March 1 to March 3, 2010. The earliest date the Tribunal is available for three days.
3. To conduct the hearing on an equal time basis and as set forth in the Annex to this Order.

On behalf of the Arbitral Tribunal

A handwritten signature in black ink, appearing to read 'Andrés Rigo Sureda', with a stylized flourish at the end.

Andrés Rigo Sureda
President

**Annex to Procedural Order No. 5
Hearing on Objections to Jurisdiction**

A. Venue and Schedule of the Hearing:

The hearing will be held from March [] to March [], 2010 in Conference Room [] of the “MC” Building (Main Complex) of the World Bank, located at 1818 H Street N.W., Washington D.C. 20433. The visitors’ entrance to the “MC” Building is located at 700 18th Street (on the corner of 18th Street and H Street). Entry passes will be issued for those attending the hearing.

The schedule of the hearing will be from 9:00 am to 5:00 pm every day. There will be two 20-minute coffee breaks, one in the morning and one in the afternoon. The lunch break will be of one hour and a half.

B. Opening and Closing Statements:

a. *Opening Statements:*

Each party will have one and a half hours to present its opening statement.

b. *Closing Statements:*

The last day of the hearing, each party will have one hour to present its closing statement.

c. *Rebuttal:*

After the parties deliver their closing statements, each party will be allowed half an hour for a rebuttal.

C. Witnesses:

On [*date three weeks before the hearing*], the parties will exchange and send to the Secretary of the Tribunal the list of fact and expert witnesses that each party plans to call during the hearing.

The examination of fact and expert witnesses shall start in the afternoon of the first day of the hearing, [*date to be provided*].

a. *Sequence:*

- The Tribunal invites the parties to reach agreement on the sequence in which witnesses and experts will be examined by [date three weeks before the hearing]. Should the parties fail to agree on this matter, the Tribunal will decide such sequence.
- If a witness or an expert cannot appear in the sequence anticipated, his or her examination could be rescheduled as the Tribunal deems appropriate, provided that such examination is conducted during the hearing.
- The direct examination by the parties of their own witness or expert will not exceed 15 minutes.
- Cross-examination of witnesses and experts will not exceed one hour.
- Redirect examination will be limited to the issues addressed during the cross-examination of the witness or expert and will not exceed 15 minutes.

b. *Questions by the Tribunal:*

The Tribunal reserves its right to ask questions as it deems appropriate at any time during the examination of the witnesses or experts by the parties, or after such examination has concluded. One hour is reserved for questions by the Tribunal after the parties have concluded their respective Closing Statements.

c. *Presence of the witnesses or experts:*

The witnesses and experts cannot be present in the hearing room before or after having been examined, unless both parties agree otherwise.

D. Changes to the schedule or to the sequence of the Hearing:

The Tribunal, in accordance with the Arbitration Rules and whenever it deems appropriate, in order to guarantee that the parties receive equal and fair treatment, and have the opportunity to be heard and fully present their case, may extend or modify the sequence of the hearing or the time frames here scheduled.

E. Documents to be used during the Hearing:

- a. On [date three weeks before hearing], the parties will send to the Secretary of the Tribunal a consolidated Index of Annexes and Legal Authorities filed during the proceedings.
- b. The parties will prepare a core-bundle for the arbitrators, using as principal criterion for the organization of the documents the date in which a document was issued and, if the date of the issuance cannot be established, they will be included at the end of the core-bundle. If the parties cannot reach an agreement on the documents to be included and/or on its order, each party will submit its own core-bundle with the documents that each one deems relevant.
- c. In addition to the copies for the members of the Tribunal, each of the parties shall prepare three additional copies of the core-bundle: one for the counterpart, one for the Secretariat, and the third one for the interpreters.
- d. Prior to starting the examination of a witness, a party shall provide a copy of the cross-examination documents, if any, to each of the members of the Tribunal, the Secretariat, the other party, the court reporters and the interpreters.
- e. The Tribunal invites the parties to produce a consolidated CD-ROM containing both parties' written pleadings, Annexes and Legal Authorities as well as the consolidated Index.

F. Post-hearing briefs

The Tribunal reserves the right to request the parties to file post-hearing briefs simultaneously

G. Other Administrative Matters:

- a. On [date three weeks before hearing], the parties shall send to the Secretary of the Tribunal the list of persons who will be attending the hearing on behalf of each of them.
- b. The Secretariat, as agreed by the parties, shall make the necessary arrangements for:
 - sound recordings of the hearing,
 - simultaneous interpretation during the hearing from and into Spanish and English.

- daily transcripts of the hearing, both in English and in Spanish, and for the delivery of electronic copies of these transcripts to the parties by e-mail on the same day.