

September 9, 2016

Dr. Michael J. Moser  
Mr. Toby L. Landau QC  
Hon. L. Yves Fortier, CC, QC  
c/o Ms. Natali Sequeira  
ICSID – The World Bank Group  
MSN J2-200, 1818 H Street, N.W.  
Washington, D.C. 20433

**Re: *The Renco Group, Inc. v. The Republic of Peru (UNCT/13/1)***

Dear Members of the Tribunal:

As the Tribunal directed on September 2, 2016, Renco hereby submits a focused and limited submission regarding Peru's Cost Submission.

Peru argues that it timely notified Renco and the Tribunal of Peru's waiver objection regarding the Reservation of Rights language, but that is not accurate. In its Cost Submission, Peru confuses time frames to create an inaccurate impression that Peru raised its Reservation of Rights objection prior to Renco's Merits filing, but that is not true. As this Tribunal already found in its Partial Award, it was not until well after Renco incurred the substantial cost of filing its Merits Memorial that Peru finally raised its objection to the Reservation of Rights language that Renco included in its written waiver.<sup>1</sup>

Also, in its Cost Submission, Peru states that *Detroit International Bridge Company (DIBC) v. Canada* is "Of particular note."<sup>2</sup> According to Peru, that "tribunal awarded respondent costs after dismissing the case for lack of jurisdiction because of the claimant's submission of a defective waiver [and even though the case: a) took five years, b) did not reach a merits phase, and c) included a dissent]

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<sup>1</sup> Partial Award on Jurisdiction, July 15, 2016, ¶ 22 ("Peru did not raise any clear and specific objection in relation to Renco's reservation of rights until Peru filed its Comments on the submission of the United States of America on September 10, 2014...[and] [t]his submission was not developed in any depth until Peru filed its Memorial on Waiver in July 2015, where Renco's compliance with the formal requirements of Article 10.18(2)(6), by reason of the reservation of rights, was placed squarely in issue.").

<sup>2</sup> Peru's Submission on Costs, Aug. 15, 2016, ¶ 5.

[t]he *DIBC* tribunal unanimously awarded the respondent its costs of the arbitration, including legal fees.”<sup>3</sup>

Peru’s rendition of *DIBC* ignores much. First, in contrast to Peru’s conduct, the *DIBC* Tribunal did not find that any of Canada’s procedural conduct was troubling. In fact, Canada articulated its concerns regarding the claimant’s conduct vis-à-vis the waiver requirement three days after the tribunal was constituted and several weeks before the First Session.<sup>4</sup> Canada also did not insist that Claimant prepare a Memorial on the Merits before it raised its jurisdictional objections. Instead, as Renco had offered, the claimant and Canada in *DIBC* agreed to a preliminary jurisdictional phase before the merits phase and thus the claimant in that proceeding never prepared a Memorial on the Merits.<sup>5</sup>

Second, after holding that it would apply the “Costs Follow the Event” principle, the *DIBC* Tribunal stated that the claimant had only been “partially unsuccessful” because the tribunal had not ruled on the “time limitations” objection or the merits.<sup>6</sup> The tribunal therefore held that it would only award Canada two-thirds of its costs.<sup>7</sup> In the present arbitration, Renco prevailed on the scope of the 10.20.4 procedure and this Tribunal did not rule on numerous other jurisdictional objections or the merits. And yet throughout its Cost Submission, Peru asks this Tribunal to rely upon facts and allegations that are still disputed and which this Tribunal never ruled upon.<sup>8</sup> Further, by asking this Tribunal to award Peru all of the costs that it (allegedly) incurred during this arbitration, Peru, in effect, is asking this Tribunal to assume that Peru would have prevailed on every issue it spend time working on. Indeed, Peru’s Annex A divides costs by three temporal phases in the arbitration, but does not isolate the expenses that Peru incurred working on the sole issue on which it prevailed (namely, the Reservation of Rights issue).

Third, after holding that it would only award Canada two-thirds of its legal costs based on the “Costs Follow the Event” principle, the *DIBC* Tribunal reduced Canada’s costs award by an additional third holding that Canada’s cost submission was unreasonable.<sup>9</sup>

Finally, Renco observes that, unlike Renco, Peru did not represent in its Cost Submission that all of the fees and costs requested were invoiced to Peru and paid by Peru.<sup>10</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> **RLA-100**, *Detroit International Bridge Company v. Canada*, PCA Case No. 2012-25, Award on Jurisdiction, Apr. 2, 2015, ¶ 73.

<sup>5</sup> *Id.* ¶ 77.

<sup>6</sup> **RLA-100**, *Detroit International Bridge Company v. Canada*, PCA Case No. 2012-25, Award on Costs, Aug. 17, 2015, ¶ 51.

<sup>7</sup> *Id.*

<sup>8</sup> *See, e.g.*, Peru’s Submission on Costs, Aug. 15, 2016, ¶¶ 20-21, 27-29.

<sup>9</sup> **RLA-100**, *Detroit International Bridge Company v. Canada*, PCA Case No. 2012-25, Award on Costs, Aug. 17, 2015, ¶ 53.

<sup>10</sup> Renco’s Submission on Costs, Aug. 15, 2016, ¶ 36.

Members of the Tribunal  
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Very truly yours,

A handwritten signature in black ink, appearing to read "Ed Kehoe". The signature is fluid and cursive, with the first name "Ed" being more prominent and the last name "Kehoe" following in a similar style.

Edward G. Kehoe

cc: Mr. Jonathan C. Hamilton  
Ms. Andrea J. Menaker