

PCA CASE N° 2019-46

**IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE
TRADE PROMOTION AGREEMENT BETWEEN THE REPUBLIC OF PERU AND THE
UNITED STATES OF AMERICA**

- and -

THE UNCITRAL ARBITRATION RULES 2013

-between-

THE RENCO GROUP, INC.

-and-

THE REPUBLIC OF PERU

PROCEDURAL ORDER NO. 10

The Arbitral Tribunal

Judge Bruno Simma (Presiding Arbitrator)
Prof. Horacio Grigera Naón
Mr. J. Christopher Thomas KC

7 February 2024

1 Procedural History

- 1.1 Pursuant to the agreement of the Parties, this arbitration (the “**Treaty Case**”) is being coordinated with *The Renco Group, Inc. and Doe Run Resources Corp. v. Activos Mineros S.A.C.*, PCA Case No. 2019-47 (the “**Contract Case**”).
- 1.2 On 3 February 2020, the Tribunal issued Procedural Order No. 1, setting out certain procedural rules governing this arbitration, including the conduct of hearings. Paragraph 9.1 of Procedural Order No. 1 established that:

After consultation with the Parties, including based on a pre-hearing organization conference call, the Tribunal shall issue, for each hearing, a procedural order convening the meeting, establishing its place, time, agenda, and all other technical and ancillary aspects.
- 1.3 On 23 January 2024, the Parties submitted their respective lists of witnesses and experts called for cross-examination at the Hearing.
- 1.4 On 30 January 2024, the Tribunal circulated a draft in English of this order and invited the Parties’ comments thereon. The Parties submitted their comments on 2 February 2024.
- 1.5 On 5 February 2024, the Tribunal, the Parties and the PCA held a pre-hearing conference by videoconference.
- 1.6 On 2 February 2024, the Parties indicated the order in which their respective witnesses and experts shall appear for examination at the Hearing.
- 1.7 On 2 February 2024, the Parties submitted their respective proposed schedules for the Hearing.

2 Dates, Venue, and Format

- 2.1 The Hearing will take place from Tuesday, 5 March to Friday, 15 March 2024, excluding the intervening weekend.
- 2.2 The Hearing shall be held at the offices of ICSID, 1225 Connecticut Ave., N.W., Washington, D.C., USA.
- 2.3 The PCA shall arrange a Zoom videoconference connection for any Remote Participants (as defined in Annex 1). Further details on the applicable rules for those participants connecting by videoconference are attached as **Annex 1**.

3 Participants

- 3.1 Access to the hearing facility and live transcripts shall be restricted to the members of the Tribunal, the Assistant to the Tribunal, the Parties’ representatives and counsel, the non-disputing Party’s representatives and counsel (except when confidential or protected information is being addressed), witnesses (during their examination), experts, PCA staff, court reporters, interpreters, and any further technical support personnel retained by the PCA in connection with the Hearing (the “**Participants**”).
- 3.2 Non-Participants may follow the Hearing through a separate public webcast that will be accessible on the PCA’s webcast as foreseen in Section 15 below.

- 3.3 The Parties shall provide a final list of their respective participants (with an indication of affiliation, position, and whether they will attend in person or remotely) by **7 February 2024**.

4 Daily Schedule

- 4.1 The daily schedule will be as follows:

Time	Event
9:30 am – 11:00 am	Hearing
<i>11:00 am – 11:15 am</i>	<i>Break</i>
11:15 am – 12:45 pm	Hearing
<i>12:45 pm – 1:45 pm</i>	<i>Lunch</i>
1:45 pm – 3:15 pm	Hearing
<i>3:15 pm – 3:30 pm</i>	<i>Break</i>
3:30 pm – 5:00 pm	Hearing

- 4.2 The Parties shall prepare on the basis that 1 hour each day will be consumed by Tribunal questions, procedural matters, potential technical interruptions, or other contingencies. The Parties shall therefore plan on the basis of a maximum of 5 hours per day of oral argument and witness and expert examinations.

5 Time allocation

- 5.1 In accordance with paragraph 9.1(c) of Procedural Order No. 1, hearing time shall be divided equally between the Parties, subject to the Tribunal's directions. The PCA will administer a chess clock under the Tribunal's supervision and advise the Parties of the time used after each day of the Hearing or whenever so requested.
- 5.2 In accordance with the daily schedule, each Party may use a maximum of 22.5 hours during the Hearing for opening statements, witness and expert examination, and closing statements. The Tribunal reserves the remaining time for housekeeping matters and Tribunal questions.
- 5.3 Time used by each Party for opening and closing statements, the direct examination and re-direct examination of the witnesses and experts put forward by such Party, and for the cross-examination of the witnesses and experts put forward by the other Party, shall be deducted from each Party's allocated time.
- 5.4 Time spent on discussions related to a procedural objection put forward by a Party shall be deducted from the time allocated to the Party against whom the objection is decided.
- 5.5 Time spent on administrative or technical matters, and time used by the Parties or by any witness responding to questions put forward by the Tribunal, shall not be deducted from the Parties' allocated time.
- 5.6 The members of the Tribunal may intervene or put forward questions to the Parties or the witnesses at any time they consider appropriate.
- 5.7 Unused time by the Tribunal shall not be allocated to any of the Parties.

6 Sequence

- 6.1 In accordance with paragraph 9.1(b) of Procedural Order No. 1, the sequence of the Hearing will be as follows:
- (a) Claimant's opening statement with respect to the Treaty Case and the Contract Case;
 - (b) Respondent's opening statement with respect to the Treaty Case and the Contract Case;
 - (c) Direct examination, cross-examination, and redirect examination of Claimant's witnesses, followed by direct examination, cross-examination, and redirect examination of Respondent's witnesses, followed by direct examination, cross-examination, and redirect examination of Claimant's experts, followed by direct examination, cross-examination, and redirect examination of Respondent's experts. The examination of the Parties' experts shall be arranged by topic.
 - (d) Claimant's closing statement with respect to the Treaty Case and the Contract Case; and
 - (e) Respondent's closing statement with respect to the Treaty Case and the Contract Case.
- 6.2 The Parties shall make their best efforts to ensure that the examination of any given witness or expert is completed within a single day. The Parties shall also organize the availability of their witnesses and experts at the Hearing to ensure to the best of their ability that there is no downtime in the event that the examination of an earlier witness or expert is completed more rapidly than anticipated. At the end of each day the Tribunal shall discuss with the Parties which examinations of witnesses or experts are expected to start and end on the following day so that the Parties may adequately prepare.
- 6.3 The full indicative schedule for the Hearing is included in **Annex 2** to this order and is subject to any changes that the Tribunal may deem necessary or appropriate to make during the Hearing. In particular, the Tribunal may adjust the schedule of the Hearing as it deems necessary in order to ensure the fair and efficient conduct of the Hearing and that each Party has a reasonable opportunity to present its case.

7 Opening Statements

- 7.1 The Parties' opening statements will take place on the first day of the Hearing.
- 7.2 Each Party's opening statement with respect to the Treaty Case and the Contract Case shall not exceed 2.5 hours. The entirety of Day 1 shall be reserved for the Parties' opening statements. If the Parties do not use the entirety of Day 1 for their opening statements, the day shall end early, and witness examination shall commence the following day.
- 7.3 The Claimant shall make its opening statement first, followed by the Respondent's opening statement.

8 Closing Statements

- 8.1 The Parties' closing statements for the Treaty Case and the Contract Case will take place on the last day of the Hearing.

- 8.2 Each Party's closing statement shall not exceed 2.5 hours and shall be limited to the amount of time each Party has remaining from its total allocated time of 22.5 hours.
- 8.3 The Claimant shall make its closing statement first, followed by the Respondent's closing statement.

9 Witness and Expert Examination

- 9.1 The examination of witnesses and experts shall take place in accordance with Sections 7 and 8 of Procedural Order No. 1. The order in which the Parties' respective witnesses and experts shall appear is reflected in Annex 2.
- 9.2 Immediately before commencing the examination of any witness or expert, the Parties shall upload a digital copy of that witness or expert's examination bundle to a dedicated subfolder in the Box folder created for this case and shall send a link to the subfolder in question to all Participants by e-mail. To the extent a translation of a document that forms part of an examination bundle has not been previously submitted, the Party uploading the document shall include a translation to the corresponding language. Any dispute between the Parties as to the accuracy of a translation will be resolved in accordance with paragraph 3.8 of Procedural Order No. 1. Examination bundles need not be provided in hard copy.
- 9.3 In accordance with paragraph 7.5(d)(ii) of Procedural Order No. 1, the examination shall be limited to matters raised in the pleadings, witness statements, expert reports, documents that have been produced (including those by order of the Tribunal), and oral evidence of the other Party's witnesses and experts, to the extent the witness or expert is competent to testify on these statements and materials.
- 9.4 In accordance with paragraph 7.5(d)(iii) of Procedural Order No. 1, the Party presenting the witness may conduct a brief direct examination for a maximum of 15 minutes, which shall be limited to the scope of prior testimony. In the case of experts, consistent with paragraph 8.7 of Procedural Order No. 1, direct examination shall not exceed 45 minutes, may include a presentation by the expert, and shall be limited to the scope of prior testimony.
- 9.5 In accordance with paragraph 7.5(d)(i) of Procedural Order No. 1, the witness statement of each witness and the expert report of each expert shall stand in lieu of the examination by the Party producing the witness and expert. Accordingly, witnesses and experts may not produce or rely on argument or evidence not previously discussed or submitted in the written submissions, provided that to the extent any evidence or argument has been submitted after an expert's last report, then that expert may address such evidence if that expert previously did not have an opportunity to do so.
- 9.6 Witnesses shall not have access during their examination to any document other than unmarked copies of their witness statements, with annexes and exhibits. During their direct examination or presentation, experts may have access to their speaking notes, PowerPoint presentations, and other materials on the record they need to deliver their testimony or presentations. During their cross-examination, experts shall not have access to any document other than unmarked copies of their expert reports, with annexes and exhibits. The Parties shall provide hard copies of these documents to each of their witnesses and experts as may be necessary.
- 9.7 The witnesses and experts may request to see a full version of any exhibit or authority on which they are examined. Each document shall be clearly identified by reference to its number in the

record. Any evidence to which a witness or expert refers shall be verbally identified and referenced, through exhibit numbers, for the Tribunal and the transcription.

- 9.8 In accordance with paragraph 7.5(f) of Procedural Order No. 1, prior to giving their oral evidence, a witness shall not be present in the hearing room, watch the webcast, read any transcript, or have access to any video or audio recording of the hearing – except for opening statements, which all witnesses are entitled to attend. In the event that a witness is also a Party representative, that witness may designate another individual to serve as Party representative until that witness has testified. Experts shall be allowed in the hearing room at any time, including during the examination of other experts.
- 9.9 Pursuant to paragraphs 7.4 and 8.4 of Procedural Order No. 1, after the Hearing commences, it shall not be improper for counsel to meet with witnesses and experts to prepare for their examinations, provided that counsel and the witness comply with this Section.

10 Interpretation

- 10.1 In accordance with paragraphs 3.5, 9.1(d), and 9.2 of Procedural Order No. 1, oral testimony and argument before the Tribunal may be provided in either English or Spanish, with simultaneous interpretation provided from one language into the other.
- 10.2 Simultaneous interpretation to and from English and Spanish will be organized by the PCA and made available on site as well as through the videoconference platform and the public webcast.
- 10.3 In order to facilitate simultaneous interpretation and the accurate transcription of the Hearing, Participants are encouraged to speak slowly and with pauses between phrases.

11 Transcription

- 11.1 In accordance with paragraph 9.2(c) of Procedural Order No. 1, the PCA will make arrangements for English and Spanish live transcripts to be made available on site and remotely to the Remote Participants. Daily transcripts shall be circulated by e-mail at the end of each day.
- 11.2 The Parties shall attempt to agree on any corrections to the transcripts within 20 business days after the closing of the hearing. Each Party shall review its own opening statement, examinations, and closing statement, proposing edits to the other Party for review and agreement. Edits to original text should be done in-line. Edits or comments to the translated text should be done via footnote. There should be no changes to transcript line numbers. In case of disagreement between the Parties, the Tribunal shall decide upon such disagreement.

12 Recording

- 12.1 The PCA will arrange to record the Hearing in both audio and video.
- 12.2 No other participants, other than the court reporters, shall record any part of the Hearing, unless the Tribunal grants express permission to this effect.

13 Evidence, PowerPoint Slides, and Demonstrative Exhibits

- 13.1 In accordance with paragraph 9.1(e) of Procedural Order No. 1, the Parties may make use of demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) during the Hearing, including opening and closing arguments and expert direct testimony, provided that those

materials reflect and reference (with exhibit numbers) evidence on the record and do not introduce new evidence, directly or indirectly, without leave of the Tribunal. Subject to leave of the Tribunal, demonstrative exhibits may be used during witness direct testimony.

- 13.2 Each Party shall number its demonstrative exhibits consecutively, indicating on each demonstrative exhibit the number of the document(s) from which it is derived.
- 13.3 The Parties shall provide hard and electronic copies of any demonstrative exhibits to be displayed during the Hearing to all other Participants at least 30 minutes prior to their use during the Hearing. Electronic copies shall be provided by e-mail and through the Box folder created for this case.
- 13.4 The Parties shall provide electronic copies of any demonstrative exhibits to be displayed during the Hearing by e-mail and through the Box folder created for this case to all other Participants.
- 13.5 Pursuant to paragraphs 6.4, 6.5, and 9.1(e) of Procedural Order No. 1, no new evidence may be presented at the Hearing except with prior leave of the Tribunal. Should the Tribunal grant leave to a Party to present new evidence in the course of the Hearing, it shall ensure that the other Party is afforded sufficient opportunity to address that evidence orally or in a written submission and to introduce new evidence to rebut it.

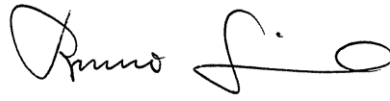
14 Post-Hearing Matters

- 14.1 In accordance with paragraph 9.3(a) of Procedural Order No. 1, following consultation with the Parties at the conclusion of the Hearing, the Tribunal shall decide whether the submission of post-hearing briefs is necessary and, if so, shall establish their scope, maximum length, and submission dates.
- 14.2 In accordance with paragraph 9.3(b), the Tribunal shall also determine, after consultation with the Parties, the format and filing date of submissions on costs.
- 14.3 Corrections to the transcripts shall take place in accordance with paragraph 9.2(d) of Procedural Order No. 1 and paragraph 11.2 of this order.

15 Transparency

- 15.1 Pursuant to paragraph 10.3 of Procedural Order No. 1, the PCA shall arrange a public webcast of the Hearing on the PCA's website.
- 15.2 Any Participant who intends to refer to confidential or protected information, or to information that could otherwise affect the integrity of the arbitral process during the Hearing, shall so inform the Tribunal prior to making any such reference. The Tribunal shall then direct the PCA to pause the webcast and invite the non-disputing Party to exit the hearing room for the period of time that such confidential or protected information is being addressed.
- 15.3 The transcripts of the Hearing shall be made available to the public following the conclusion of the Hearing in accordance with paragraph 10.2 of Procedural Order No. 1.

So ordered by the Tribunal.

A handwritten signature in black ink, appearing to read 'Bruno Simma', written in a cursive style.

Judge Bruno Simma
(Presiding Arbitrator)

Annex 1: Protocol for Hearings Held by Videoconference

Annex 1 provides the applicable rules to any participants attending the Hearing by videoconference (the “**Remote Participants**”).

1 Videoconference Platform

- 1.1 The Hearing shall be held via videoconference using the *Zoom* videoconference platform, as well as in person.
- 1.2 Following consultation with the Parties, the PCA may retain an external service provider to provide additional technical support through the Hearing and, upon request, to assist with document management.
- 1.3 The log-in details for the videoconference will be circulated by the PCA on the day prior to the start of the Hearing.
- 1.4 Each Party will make its own separate arrangements for private communication with their respective teams during the Hearing, by instant messenger or other appropriate means.
- 1.5 The Parties will make use of the breakout room functions within the *Zoom* videoconference platform to avoid delays associated with admitting participants to the videoconference and to enable the Tribunal to promptly reconvene all participants following breaks.

2 Pre-Hearing Preparation

- 2.1 In addition to the pre-hearing videoconference, the Parties are invited to undertake further test calls with the PCA, consisting of different groups of participants, both prior to and following the pre-hearing videoconference, in order to facilitate the readiness of all participants for the Hearing.
- 2.2 The Tribunal may direct further videoconference testing sessions to take place with all Hearing participants, as it considers necessary.

3 Remote Participants

- 3.1 Access to the videoconference shall be restricted to members of the Tribunal, the Parties’ counsel and representatives, witnesses once they have testified, experts, PCA staff, court reporters, interpreters, and any further technical support personnel retained by the PCA in connection with the Hearing. All Remote Participants in the Hearing bear an ongoing duty to warn of the presence of any other person on the videoconference.
- 3.2 The Parties are each requested to provide a final list of the participants who will attend the Hearing by videoconference on their behalf by no later than **7 February 2024**. The Parties’ lists of representatives must also include the Zoom user names used by any participants who will join the videoconference, to the extent that they do not coincide with their actual names (e.g. certain participants may join from a conference room, in which case the Zoom user name of the conference room should be indicated). Any person not included in the lists of representatives provided by the Parties or who cannot be identified will not be admitted to the videoconference, unless otherwise decided by the Tribunal upon request by any of the Parties.
- 3.3 Participants will join the videoconference through a “waiting room” to be managed by the PCA. Each Party shall identify all of its representatives at the opening of the Hearing. In order to facilitate the identification of all attendees, Participants must join the videoconference showing a

username that enables them to be readily identified (i.e., [“(C)” for Claimant or “(R)” for Respondent] [First Name][Last Name]).

- 3.4 After having been identified by the PCA, Participants will be assigned to their appropriate breakout room until the Hearing commences.

4 Recording

- 4.1 The PCA will arrange to record both the audio and video of the in-person Hearing. The videoconference connection will be recorded by the *Zoom* platform.

5 Internet Connection and Devices

- 5.1 The Parties are responsible for ensuring that each of their representatives connects to the videoconference through a stable internet connection offering sufficient bandwidth and use of a camera, microphone, and speaker of adequate quality.
- 5.2 Participants should consider using a wired Ethernet connection instead of WiFi. Participants are also encouraged to keep a smartphone or tablet, having at the minimum a 4G data connection and mobile hotspot functionality, available as a backup internet connection at all times during the Hearing.
- 5.3 A dial-in telephone audio option shall be offered as a backup option for participants experiencing difficulties with computer audio. Certain key participants may wish to dial-in by phone in addition to connecting through their computer, in order to be able to switch seamlessly to telephone audio in case they should happen to be disconnected at any point.
- 5.4 Each participant is encouraged to have at least two devices or screens available for use during the Hearing, one to connect to the videoconference and another for the transcription. Where possible, using a third device or screen to display evidence and demonstrative exhibits is recommended.

6 Videoconference Etiquette

- 6.1 All participants without an active role at any given moment should mute their own audio and turn off their video in order to preserve internet bandwidth for the active participants.
- 6.2 Participants should join the Hearing from a location without background noise and with adequate lighting. Participants may also consider using a complete headset (headphones with integrated microphone) of good quality.
- 6.3 Active Participants appearing through videoconference must turn on their video and refrain from using video filters. Prior to witness or expert participation, the President of the Tribunal shall ask the witness or expert to swear that the expert or witness is unaccompanied in a private room and to explain the documents the witness or expert can see and/or has access to.
- 6.4 The above provisions on etiquette may be adjusted or supplemented by the Tribunal in consultation with the Parties, in the course of the Hearing.

7 Technical Problems

- 7.1 Each Party shall designate one of its representatives to act as video-conferencing contact person (“**VC Emergency Contact Person**”) for purposes of addressing any technical incidents that may

arise during the videoconference. The VC Emergency Contact Person shall be responsible for advising the Tribunal and the PCA on the videoconference if an essential participant from their side is disconnected or otherwise cannot participate, such that the Tribunal is requested to pause the Hearing. Otherwise, the VC Emergency Contact Person shall notify and address technical issues with Javier Comparini-Cuetto, PCA Assistant Legal Counsel (tel.: +502 5534 8888; e-mail: jcomparinicuetto@pca-cpa.org), without interrupting the Hearing.

- 7.2 The Tribunal may temporarily or permanently suspend the Hearing if it determines the functioning of the videoconference system to be inadequate or likely to prejudice the due process rights of either Party or the integrity of the proceeding. The Parties are asked to bear in mind that full recordings and transcripts will be available, mitigating any prejudice that may arise from the failure of any given participant to be able to follow the entire Hearing on the videoconference platform.

Annex 2: Hearing Schedule

Between 6 March 2024 and 14 March 2024, witnesses and experts will testify in the following order:

1. Bruce Neil
2. Kenneth Buckley
3. Juan Felipe Guillermo Isasi Cayo
4. Guillermo Shinno Huamani
5. José Antonio Payet Puccio
6. Enrique Varsi Rospigliosi
7. Daniel Schmerler
8. Oswaldo Hundskopf Exebio
9. Ada Carmen Alegre Chang
10. Rosalind A. Schoof
11. John A. Connor
12. Deborah M. Proctor
13. Wim Dobbelaere
14. Isabel Kunsman Santos