

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**TECO Guatemala Holdings LLC**

**v.**

**Republic of Guatemala**

**(ICSID Case No. ARB/10/23) - Annulment Proceedings**

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**PROCEDURAL ORDER NO. 1**

Professor Bernard Hanotiau, *President of the Committee*  
Ms. Tinuade Oyekunle, *Member of the Committee*  
Professor Klaus Sachs, *Member of the Committee*

*Secretary of the Committee*  
Ms. Anneliese Fleckenstein

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Procedural Order No. 1

Whereas the Committee held its initial session by telephone conference on 10 July 2014;

Whereas the first Applicant on Annulment (Respondent in the second Application on Annulment), hereinafter “the Republic of Guatemala” or “Guatemala,” was represented by:

Sra. Noiana Marigo, Freshfields Bruckhaus Deringer  
Sr. Lluís Paradell, Freshfields Bruckhaus Deringer  
Sra. Olga Puigdemont Sola, Freshfields Bruckhaus Deringer

Sr. Alejandro Arenales, Arenales & Skinner-Klée  
Sr. Alfredo Skinner-Klée, Arenales & Skinner-Klée  
Sr. Rodolfo Salazar, Arenales & Skinner-Klée

Sr. Saúl Oliva, Procuraduría General de la Nación

Whereas the second Applicant on Annulment (Respondent in the first Application on Annulment), hereinafter “TECO”, was represented by:

Ms. Andrea J. Menaker, White & Case LLP  
Mr. Petr Polášek, White & Case LLP  
Ms. Kristen M. Young, White & Case LLP

Mr. Charles A. Attal, III, TECO Energy, Inc., Senior Vice President-General  
Counsel, Chief Legal Officer and Chief Ethics and Compliance Officer  
Mr. Javier Cuebas, TECO Energy, Inc., Corporate Counsel

Whereas the Parties had helpfully provided the Committee with a note of their agreement on many of the matters to be considered at the initial session;

Whereas the Committee heard the submissions of the Parties regarding the matters on which the Parties had not reached agreement;

The Committee therefore adopts the following Procedural Order:

**1. Applicable Arbitration Rules**

*(Convention Article 44; Arbitration Rule 53)*

- 1.1 With the agreement of the Parties and in accordance with Article 44 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, 1965 (hereinafter “the Convention”), the proceedings before the Committee will be governed by the ICSID Rules of Procedure for Arbitration Proceedings which entered into force on 10 April 2006 (hereinafter “the Arbitration Rules”), without prejudice to the possibility of the Parties reaching agreement on any specific issues.

**2. Constitution of the Committee and Committee Members’ Declarations**

*(Arbitration Rules 6 and 52(2))*

- 2.1 The Committee notes the Parties’ agreement that the *ad hoc* Committee has been properly constituted on 29 May 2014, and that its Members’ declarations have been transmitted pursuant to the Convention and the Arbitration Rules on 29 May 2014. The Committee notes the appointment of Ms. Anneliese Fleckenstein as Secretary to the Committee.

**3. Fees and Expenses of the Committee Members**

*(Convention Article 60; Administrative and Financial Regulation 14; ICSID Memorandum on Fees and Expenses)*

- 3.1 As agreed by the Parties, the fees and expenses of the Members of the Committee shall be governed by Article 60 of the Convention, Regulation 14 of the Administrative and Financial Regulations and the ICSID Memorandum on Fees and Expenses dated 1 January 2013.

**4. Apportionment of Costs and Advance Payments to the Centre**

*(Convention Article 61; Administrative and Financial Regulation 14; Arbitration Rule 28)*

- 4.1 In accordance with Regulation 14 of the Administrative and Financial Regulations, TECO and the Republic of Guatemala, as applicants, shall be responsible for making the advance payments requested by the Secretary-General to cover expenses of the Committee and of the International Centre for the Settlement of Investment Disputes (hereinafter “the Centre”).
- 4.2 The above provisions are without prejudice to the power of the Committee in its decision upon the applications for annulment, or consequential thereon, to determine, pursuant to Article 61 of the Convention and Arbitration Rule 28, how and by whom the expenses incurred in connection with the annulment proceedings shall finally be borne.

**5. Presence and Quorum**

*(Arbitration Rules 14(2) and 20(1)(a))*

- 5.1 Except to the extent that the Parties shall otherwise agree, the physical presence of the three Committee Members shall be required at each hearing. Deliberations between the Committee Members may take place by any such means of communication as they may deem fit.

**6. Decisions of the Committee by Correspondence**

*(Arbitration Rule 16(2))*

6.1 As agreed by the Parties, Arbitration Rule 16(2) shall govern the power of the Committee to take decisions by correspondence. Where the matter is urgent, the President may take the decision on his own, provided that he has made all reasonable efforts to communicate with the other Committee Members, whether by e-mail or telephone, so as to consult them and seek their views. In any case, the full Committee shall have the power to reconsider, and if it sees fit, to vary any decision taken by the President.

**7. Delegation of Power to Fix Time Limits**

*(Arbitration Rule 26(1))*

7.1 As agreed by the Parties, Arbitration Rule 26(1) shall govern the power of the Committee to fix time limits. The Committee may delegate to the President the power to fix and extend the time limits for the completion of the various steps in the proceeding. Prior to fixing or extending time limits, the President shall, insofar as possible, consult all Committee Members. In any case, the full Committee shall have the power to reconsider, and if it sees fit, to vary any decision taken by the President.

**8. Representation of the Parties**

*(Arbitration Rule 18)*

Representing TECO

Andrea J. Menaker,  
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**9. Place of Proceedings**

*(Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3))*

9.1 As agreed by the Parties the place of the proceedings shall be Washington, D.C., and hearings shall be held at the ICSID Headquarters in Washington, D.C. The Committee shall be free to hold any meeting which it decides is necessary for the purpose of its deliberations at any location it shall consider convenient.

**10. Procedural Languages**

*(Arbitration Rules 20(1)(b) and 22; Administrative and Financial Regulations 30(3) and (4))*

10.1 Proceedings shall be in Spanish and English. The Parties may file submissions in either language and shall provide a translation into the other language within 12 days of the date of their submissions. Oral arguments before the Committee shall be made in English or Spanish, with simultaneous interpretation and transcripts in both languages. Notwithstanding the above, as a matter of courtesy and efficiency, the Republic of Guatemala will make its filings in English first, provided the parties exchange Spanish translations within 12 days following their submissions.

10.2 Communications addressed by the Centre to the Parties shall be sent in English. Decisions of the Committee, procedural orders and other substantive communications shall be translated into Spanish by the Centre as soon as possible after the communication has been sent. Routine administrative communications shall be in English.

10.3 Translations need not be certified, unless required by the Committee. If a dispute arises regarding a translation, the matter shall be decided by the Committee, which may adopt all such measures as it may consider necessary in that connection.

10.4 Legal authorities in Spanish, English, or French may be, in principle, presented without translation. However, if the Committee deems it necessary, it may request a full or partial translation of the relevant parts of such legal authorities. Any legal authorities in other languages shall be translated into English.

**11. Means of Communication and Copies of Instruments**

*(Arbitration Rules 20(1)(d) and 23; Administrative and Financial Regulations 24 and 30)*

**(a) Written communications:**

11.1 The Centre shall be the channel of written communications between the Parties and the Committee.

- 11.2 Each party's written communications shall be transmitted by email to the opposing Party and to the ICSID Secretariat, which shall send them to the Committee Members.
- 11.3 Where the matter is urgent, the Parties may transmit procedural communications directly by email to Committee Members, the ICSID Secretariat and the opposing Party.
- 11.4 Submissions that are to be filed simultaneously shall be transmitted to the Secretary of the Committee only, who shall send them to the Parties and to the Committee Members after both Parties' submissions have been received.

**(b) Pleadings (Memorial, Counter-Memorial, Reply, Rejoinder, and any such other substantive pleading as may be authorized by the Committee, e.g., post-hearing brief):**

11.5 The Parties shall:

- 11.5.1. *on the relevant filing date* (specified in paragraph 13, below, or in any other relevant decision of the Committee), send by email to the ICSID Secretariat an electronic version of the relevant pleading, witness statements (if any), expert reports (if any), and lists of exhibits and legal authorities;
- 11.5.2. *within two working days of the relevant filing date*, upload an electronic version of the relevant pleading, witness statements (if any), expert reports (if any), exhibits, and legal authorities, together with hyperlinked lists of the exhibits and legal authorities, to the FTP site provided for by the ICSID Secretariat.
- 11.5.3. *within three working days of the relevant filing date*, send by express mail or international courier to the ICSID Secretariat:
  - 11.5.3.1. For the ICSID Secretariat, one unbound original and one hard copy in A4 or Letter format of the entire submission, including signed originals of the relevant pleading, witness statements, expert reports, and exhibits; hard copies of the legal authorities sent by email are not necessary;
  - 11.5.3.2. For the Committee Members, through the ICSID Secretariat, three hard copies of the submissions; hard copies of witness statements, expert reports, exhibits and legal authorities are not necessary;
  - 11.5.3.3. For the ICSID Secretariat and Committee Members, five sets of CD-ROMs, DVDs, or USB drives containing electronic

copies of the entire submission, including the relevant pleading, witness statements, expert reports, exhibits, and legal authorities, together with hyperlinked lists of the witness statements, expert reports, exhibits, and legal authorities suitable for use in a PC or a Mac;

- 11.6 Deliveries by email, mail or courier to the ICSID Secretariat should be addressed to:

(by mail)

Ms. Anneliese Fleckenstein  
ICSID  
1818 H Street, N.W.  
MSN J2-200  
Washington, D.C. 20433  
United States of America

(by in-city courier)

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United States of America

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Fax: +1 (202) 522-2615

Email: [afleckenstein@worldbank.org](mailto:afleckenstein@worldbank.org)

- 11.7 Deliveries by email, mail or courier to the Parties should be addressed to:

TECO:

(by courier or mail)

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alfredoskee@gmail.com  
rsalazar@arenales.com.gt  
vaguilar@pgn.gob.gt

- 11.8 Deliveries by email, mail or courier to the Committee Members should be addressed to:

(By e-mail)

bernard.hanotiau@hvdb.com  
Klaus.Sachs@cms-hs.com  
toyekunle@gmail.com

(By courier or mail)

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**Professor Klaus Sachs**

CMS Hasche Sigle  
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Germany

- 11.9 Electronic versions of pleadings, exhibits and legal authorities shall be printable and, insofar as possible, searchable. Each and every document shall be in a separate file.
- 11.10 The official date of receipt of a pleading or communication shall be the day on which the electronic version is received by the Centre.
- 11.11 Filings of written pleadings and communications to be sent by email shall be deemed timely if sent by email by 11:59 p.m., Eastern Standard Time (Washington, D.C.), on the relevant filing date. Filings of written pleadings to be sent by courier or express mail (if any) shall be deemed timely if delivered to the relevant courier company or mail service during the business hours of that company or service on the date required for filing.
- 11.12 ICSID Administrative and Financial Regulation 29 shall apply, except as otherwise agreed.
- 11.13 The Committee's decisions on procedural matters may be communicated to the Parties through the ICSID Secretariat.

**12. Written and Oral Procedures**

*(Arbitration Rules 20(1)(e) and 29)*

- 12.1 As agreed by the Parties, the proceedings shall consist of a written phase followed by an oral phase. The Parties shall number the paragraphs of their written pleadings.

**13. Schedule of Written Pleadings**

*(Arbitration Rules 20(1)(c) and 31; CAFTA-DR Article 10.20)*

- 13.1 As agreed by the Parties, the written procedure shall be organized as follows:

- 13.1.1 The Parties shall simultaneously submit their Memorial on Annulment with respect to their own Application on Annulment on 17 October 2014;
- 13.1.2 The Parties shall simultaneously submit their Counter-Memorial on Annulment, responding to the opposing Party's Memorial on Annulment, on 2 February 2015;
- 13.1.3 The Parties shall simultaneously submit their Reply on Annulment, responding to the opposing Party's Counter-Memorial on Annulment, on 4 May 2015;
- 13.1.4 The Parties shall simultaneously submit their Rejoinder on Annulment, responding to the opposing Party's Reply on Annulment, on 14 August 2015.
- 13.1.5 Submissions by non-disputing State Parties pursuant to DR-CAFTA Article 10.20.2, if any, shall be filed no later than 16 March 2015.

#### **14. Document Production**

*(Convention Article 43(a); Arbitration Rule 34)*

- 14.1 The Parties agree that the documents and evidence admitted in the original arbitration are admissible in these annulment proceedings. The Parties should not, however, include with their submissions documents and evidence admitted in the original arbitration which are not relevant to the issues arising in the annulment proceedings. In principle, no new documents or evidence shall be admitted, except insofar as the exclusion of documents proposed but not admitted in the original arbitration is advanced as grounds for annulment, in which case the documents proposed but not admitted may be submitted before the Committee to the extent that they may be relevant in the context of the annulment proceeding. Should a party wish to introduce new documents or evidence, other than legal authorities, such party shall request leave from the Committee as soon as possible, and, in any case, prior to submitting the evidence. In accordance with Arbitration Rule 34, the Committee shall promptly determine the admissibility of the new documents and/or evidence after hearing both Parties.
- 14.2 Supporting Documentation:
  - 14.2.1. The Parties shall file exhibits together with such pleadings (Memorial, Counter-Memorial, Reply, Rejoinder) as may make express reference thereto.
  - 14.2.2. In exceptional circumstances, a Party may request leave from the Committee in order to file additional exhibits on a later date.

14.2.3. The Parties shall identify exhibits and legal authorities with the name and number used in the original arbitration. New legal authorities, and exhibits introduced by a Party in accordance with paragraph 14.1, shall be numbered consecutively following the last number used by the relevant Party in the original arbitration and shall clearly indicate that they were not before the Tribunal.

14.2.4. Every submission shall be accompanied by a list of the exhibits and legal authorities attached thereto.

14.2.5. The Parties shall submit exhibits and legal authorities in separate files.

**15. Evidence: Witnesses and Experts; Written Statements and Reports, Supporting Documentation**

*(Arbitration Rules 35 and 36)*

15.1 As agreed by the Parties, Arbitration Rules 35 and 36 shall apply to these proceedings. In principle, no new witness statements or expert reports shall be admitted. Should a party wish to introduce new witness statements or expert reports, such Party shall request leave from the Committee as soon as possible. In accordance with Arbitration Rule 34, the Committee shall promptly determine the admissibility of the new witness statements and/or expert reports after hearing both Parties.

**16. Hearings**

*(Arbitration Rule 13(2); CAFTA-DR Article 10.21)*

16.1 The hearing on the annulment applications shall take place from October 13 to October 15 at the ICSID Headquarters in Washington, D.C.

16.2 Pursuant to CAFTA-DR Article 10.21.2 the Committee shall conduct hearings open to the public. The hearing shall be broadcasted in a dedicated room at the ICSID Headquarters in Washington, D.C.

16.3 The Committee reserves its decision on the oral submission of the non-disputing State Parties to DR-CAFTA, for a later stage of the proceeding.

**17. Pre-Hearing Conference**

*(Arbitration Rule 21(1))*

17.1 At the request of either Party, or at the discretion of the President of the Committee, the President of the Committee may schedule a pre-hearing conference call, pursuant to Arbitration Rule 21(1).

**18. Records of Hearings**

*(Arbitration Rule 20(1)(g))*

- 18.1 The ICSID Secretariat shall arrange for transcripts to be prepared through a court reporting service.
- 18.2 Real-time transcripts or “Live Notes” shall be used during hearings.
- 18.3 The parties shall have an opportunity to suggest corrections to the transcripts submitted for the first time. If a disagreement arises on the corrections, the Committee shall determine whether such corrections are to be adopted.
- 18.4 Complete sound recordings shall be made of all sessions, conferences and hearings (including the first session) and copies thereof shall be sent to the Parties and the Committee Members.

**19. Publication of Decision**

*(Arbitration Rule 48(4); Administrative and Financial Regulation 22; CAFTA-DR Article 10.21)*

- 19.1 The Committee notes that the parties agree that in accordance with CAFTA-DR Article 10.21, pleadings, memorials, and briefs submitted to the Committee, minutes or transcripts of hearings, orders and decisions of the Committee shall be made public.

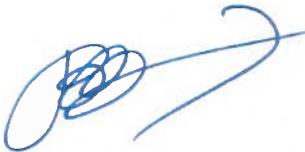
**20. Other matters**

20.1 Assistant to the President of the *ad hoc* Committee

20.1.1 In preparation for the first session, the President proposed, with the approval of the other members of the *ad hoc* Committee, that Ms. Iuliana Iancu, a lawyer of Hanotiau & van den Berg, be appointed as assistant to the President of the *ad hoc* Committee. A proposal on the terms of appointment was sent to the Parties together with Ms. Iancu's *curriculum vitae*.

20.1.2 The Parties confirmed their approval to the appointment of Ms. Iancu as assistant to the President of the *ad hoc* Committee, under the following terms of appointment:

- i. The assistant will undertake only such specific tasks as are assigned to her by the President of the *ad hoc* Committee.
- ii. The assistant will be subject to the same confidentiality obligations as the Members of the *ad hoc* Committee and will sign a declaration to that effect.
- iii. The assistant will receive an hourly fee of US\$125 (one hundred and twenty five United States dollars) for her participation in the *ad hoc* Committee's sessions or for other work performed in connection with the proceedings. The assistant will also receive subsistence allowances and be reimbursed for her travel and other expenses within the limits prescribed by Administrative and Financial Regulation 14.



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Professor Bernard Hanotiau  
on behalf of the *ad hoc* Committee  
Date: 1 August 2014