

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

IC Power Ltd and Kenon Holdings Ltd

v.

Republic of Peru

(ICSID Case No. ARB/19/19)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Luca G. Radicati di Brozolo, President of the Tribunal

Mr. David R. Haigh, Arbitrator

Mr. Eduardo Siqueiros T., Arbitrator

Secretary of the Tribunal

Mr. Marco Tulio Montañés-Rumayor

February 27, 2020

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Introduction

Having the parties agreed to extend the 60-day time frame of ICSID Arbitration Rule 13(1), the first session of the Tribunal was held on January 31, 2020, at 11:00 a.m., Washington D.C. time, by telephone conference. The session was adjourned at 1:54 p.m.

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. Luca Radicati di Brozolo, President of the Tribunal

Mr. David R. Haigh, Arbitrator

Mr. Eduardo Siqueiros T., Arbitrator

ICSID Secretariat:

Mr. Marco Tulio Montañés-Rumayor, Secretary of the Tribunal

Participating on behalf of the Claimants:

Mr. Nigel Blackaby, Freshfields Bruckhaus Deringer

Ms. Caroline Richard, Freshfields Bruckhaus Deringer

Ms. Maria Julia Milesi, Freshfields Bruckhaus Deringer

Ms. Maria Paz Lestido, Freshfields Bruckhaus Deringer

Ms. Carolina de Trazegnies, Philippi Prietocarrizosa Ferrero DU & Uría

Mr. Robert Rosen, Kenon Holdings Ltd

Participating on behalf of the Respondent:

Mr. Stanimir A. Alexandrov, Stanimir A. Alexandrov, PLLC

Ms. Marinn Carlson, Sidley Austin LLP

Ms. Jennifer Haworth McCandless, Sidley Austin LLP

Ms. Maria Carolina Duran, Sidley Austin LLP

Mr. Ricardo Puccio, Estudio Navarro & Pazos Abogados

Mr. Jorge Masson, Estudio Navarro & Pazos Abogados

Mr. Aresio Viveros, Estudio Navarro & Pazos Abogados

Mr. Ricardo Ampuero, Republic of Perú

Ms. Mónica del Pilar Guerrero Acevedo, Republic of Perú

The Tribunal and the parties considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on December 24, 2019;
- The Draft Procedural Order circulated by the Tribunal Secretary on December 24, 2019; and

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- The parties' comments on the Draft Procedural Order received on January 20 and February 13, 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:

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first 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 April 10, 2006.

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

- 2.1. The Tribunal was constituted on October 30, 2019, 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 October 30, 2019.
- 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:

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- 3.2.1. US\$3,000 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. Where hearing days are cancelled or postponed at the request of one Party and not the other, this may be taken into account when considering any subsequent allocation of costs.
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.
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 and consultation with the other Members of the Tribunal is not possible on a timely basis, 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. Except as otherwise provided in this order, 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 three months. If an award has not been issued within six months after the final submission, the Tribunal will provide the Parties with status updates every three months.
 - 5.4. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
 - 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.

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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 Mr. Marco Tulio Montañés-Rumayor, 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:

Marco Tulio Montañés-Rumayor
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 458-1932
Fax: + 1 (202) 522-2615
Email: mmontanes@worldbank.org
Paralegal email: galonsogheri@worldbank.org

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

Marco Tulio Montañés-Rumayor
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
USA
Tel. 202-458-1534

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8. Assistant to the President of the Tribunal

8.1. With the consent of the parties, the following Assistant to the President is appointed:

Fabio Giuseppe Santacroce
ARBLIT Radicati di Brozolo Sabatini Benedettelli Torsello
Via Alberto Da Giussano, n. 15
20145 Milan
Italy
Email: fabio.santacroce@arblit.com
Telephone: +39 02 8525 4810

8.2. The Assistant is a senior associate at ARBLIT Radicati di Brozolo Sabatini Benedettelli Torsello. The parties have received the Assistant's *curriculum vitae* and declaration of independence and impartiality on January 29, 2020. The Assistant's tasks will be performed upon the President's instructions. The President will not delegate to the Assistant any of the duties and obligations incumbent on the President of the Tribunal as an arbitrator.

8.3. The Assistant, under the instruction of the President of the Tribunal, may perform the following tasks:

- Marshaling of evidence;
- Research of specific issues of law; and
- Organization of case documents.

8.4. The Assistant is bound by the same duties of confidentiality, independence and impartiality as the Members of the Tribunal.

8.5. The Assistant will receive (a) \$250 per hour for each hour of work performed in connection with the case or pro rata; (b) a flat rate of \$1,600 per day of hearing; and (c) reimbursement of reasonable expenses related to the hearing, in accordance with Administrative and Financial Regulation 14 and the ICSID Memorandum on the Fees and Expenses.

9. Representation of the Parties

Arbitration Rule 18

9.1. 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 the Claimants

Mr. Nigel Blackaby
Ms. Caroline Richard
Ms. Maria Julia Milesi
Ms. Maria Paz Lestido
Freshfields Bruckhaus Deringer US LLP
700 13th Street, NW
10th Floor
Washington, D.C. 20005-3960
Tel: +1 202 777 4500
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Email: nigel.blackaby@freshfields.com
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Ms. Carolina de Trazegnies
Philippi Prietocarrizosa Ferrero DU& Uría
Av. Santa Cruz No. 888 Floor 4, Miraflores
Lima, Peru
Email: carolina.detragegnies@ppulegal.com

For the Respondent

Republic of Perú
Ministerio de Economía y Finanzas
Mr. Ricardo Manuel Ampuero Llerena
Presidente de la Comisión Especial
Sistema de Coordinación y Respuesta del
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de Inversión
Jirón Junín 319
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Tel: +51 1 311 5930 Ext. 2765
c/o
Ms. Marinn Carlson
Ms. Jennifer Haworth McCandless
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and
Mr. Stanimir A. Alexandrov
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and
Mr. Ricardo Puccio
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10. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28
- 10.1. 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.
- 10.2. By letter of November 7, 2019, ICSID requested that each party pay US\$200,000 to cover the initial costs of the proceeding. ICSID received the Claimants' payment on December 1, 2019, and the Respondent's payment on December 19, 2019.
- 10.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
11. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)
- 11.1. Washington, D.C. shall be the place of the proceeding, and the hearing on the merits and jurisdiction (if applicable) shall be held in Washington, D.C.
- 11.2. The Tribunal may hold hearings other than the final hearing at any other place that it considers appropriate if the parties so agree. The Tribunal may hold meetings or hearings other than the final hearing by telephone or video conference.
- 11.3. The Tribunal may deliberate at any place it considers convenient, including by video or telephone conference.
12. Procedural Language(s), Translation and Interpretation
Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22
- 12.1. English and Spanish are the procedural languages of the arbitration.
- [For Correspondence]
- 12.2. Correspondence may be submitted in either language. If submitted in Spanish, an English translation shall be provided within three days.
- [For Parties' Pleadings]
- 12.3. Pleadings, expert opinions, witness statements may be submitted in either procedural language. If submitted in Spanish, an English translation shall be provided within 3 weeks of the date of the Electronic Platform Filing, as set out in §14.1.3. below.

- 12.4. English translations of non-English language exhibits shall be submitted within three weeks of the date of the Electronic Platform Filing, as set out in §14.1.3. below. The party submitting a non-English language exhibit shall translate those portions of the exhibit that it relies upon, on the understanding that an English translation shall not be required insofar as a party does not rely on the contents of a document but rather on its existence, or insofar as the nature of the document (e.g. maps, numerical documents such as spreadsheets) is such that a translation is not required in order to comprehend its contents. Should the other party rely on portions of a non-English language exhibit that have not been translated, it shall translate them. The Tribunal may, at any time, *sua sponte* or at the request of a party, request a translation or a fuller translation of any document submitted on the record.
- 12.5. Translations need not be certified. If a party disagrees with a translation, in whole or in part, it will attempt to reach agreement on a revised translation with the other party. If no agreement can be reached, either for practical or substantive reasons, the party shall file its own translation, clearly indicating the changes. Prior to the hearing, the parties shall seek to agree on consolidated translations of non-English language exhibits for inclusion in the electronic hearing record to be submitted in accordance with §14.9 below. Insofar as any disagreements persist with respect to translations at that stage, the parties shall submit them to the Tribunal for its consideration, without prejudice to a party's ability to submit disagreements with respect to translations to the Tribunal at an earlier stage, insofar as it considers that to be necessary.

[*For Hearing*]

- 12.6. Simultaneous interpretation from English to Spanish and from Spanish to English shall be available throughout all in-person hearings.
- 12.7. 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.
- 12.8. The parties will notify the Tribunal of the language in which each witness or expert will give evidence. The notification will be provided no later than the date of the pre-hearing organizational meeting.
- 12.9. The parties will notify the Tribunal as soon as possible, and no later than at the pre-hearing organizational meeting, in which language each witness or expert will give evidence.
- 12.10. 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 ultimately bear those costs.

[For Tribunal's Documents Except the Award]

12.11. The Tribunal shall make any order or decision in English or Spanish. Both language versions shall be equally authentic.

[For Tribunal's Award]

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

13. Routing of Communications
Administrative and Financial Regulation 24

13.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.

13.2. Each party's written communications shall be transmitted by email or other electronic means to the Tribunal Secretary, who shall send them to the opposing party and the Tribunal. Exceptionally, in urgent situations, a Party may also send copies directly to the Tribunal.

13.3. The Tribunal Secretary shall not be copied on direct communications between the parties which are not intended to be transmitted to the Tribunal.

14. Number of Copies and Method of Filing of Parties' Pleadings
Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

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

14.1.1. submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and an index of all the supporting documentation attached to the pleading;¹ (the "Electronic Email Filing");

14.1.2. within three (3) business days after the Electronic Email Filing, upload the pleading, with all the supporting documentation (*i.e.*, all witness statements, expert reports, exhibits, legal authorities) to the file sharing platform that will be created by ICSID for purposes of this case ("Electronic Platform Filing"); and

14.1.3. Within three (3) weeks of the Electronic Platform Filing, any translations required by §12.3 and 12.4 shall be uploaded to the file sharing platform for the case.

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

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14.2. Within four (4) business days of the filing of the translations, as per §14.1.3 above the parties shall courier to the Tribunal Secretary:

14.2.1. one unbound hard copy in A4/Letter format² of the entire submission³ both in the original language and translations, including signed originals of the pleading, witness statements, and expert reports, together with any exhibits (but not including legal authorities); and

14.2.2. two USB drives 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 in that submission.

14.3. On the same day set forth in §14.2 supra, the parties shall courier:

14.3.1. To each Member of the Tribunal at the addresses indicated at §14.4 below: one (1) hard copy in letter-size format of the entire submission including the pleading, the witness statements, expert reports (but not including exhibits or legal authorities), both in their original language and translated; and

14.3.2. To each Member of the Tribunal at the addresses indicated in §14.4 below and to opposing counsel at the addresses indicated in §9.1 above: one (1) USB drive with a full copy of the entire submission, 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 in that submission, both in their original language and translated.

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

Prof. Luca Radicati di Brozolo	Mr. David R. Haigh	Mr. Eduardo Siqueiros T.
15 Via Alberto da Giussano	2400, 525 - 8th Avenue	Paseo de los Tamarindos
20145 Milano	S.W., Calgary, Alberta	No. 150-PB
Italy	T2P 1G1	Bosques de las Lomas
	Canada	05120, Mexico City
		Mexico

² The A4/Letter format is required for ICSID's archiving.

³ The Secretariat's copy will be kept in the official repository of ICSID, and is not intended to be used at hearings.

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- 14.5. Exhibits may be submitted in an extension other than .pdf when technically required (ie, .xls (Excel) or .rar (WinRAR) files). Exhibits that cannot be printed in a usable size may be submitted only in digital format.
 - 14.6. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.
 - 14.7. Electronic versions of pleadings, witness statements, expert reports, and legal authorities shall be text searchable (i.e., OCR PDF or Word).
 - 14.8. All pleadings shall be accompanied by a consolidated index of all of the exhibits and legal authorities that the party has submitted up to the date of the pleading. The index shall indicate the exhibit number, a short description of the document, its date, the pleading with which it was submitted and the language of the document. (Please follow the naming conventions contained in **Annex B**). The hyperlinked index will be submitted in the USB drive mentioned in §14.3.2.
 - 14.9. 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 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.
 - 14.10. 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.
 - 14.11. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.
15. Number and Sequence of Pleadings
Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31
- 15.1. The proceeding shall include the following pleadings and deadlines:
 - 15.1.1. Claimant files its Memorial on the Merits.
 - 15.1.2. Respondent files its Memorial on Objections to Jurisdiction (if applicable) and Counter-Memorial on the Merits.
 - 15.1.3. Claimant files its Counter-Memorial on Jurisdiction (if applicable) and Reply on the Merits.
 - 15.1.4. Respondent files its Reply on Jurisdiction (if applicable) and Rejoinder on the Merits.

15.1.5. Claimant files its Rejoinder on Jurisdiction (if applicable).

15.1.6. Hearing on the merits (and jurisdiction, if applicable).

16. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-36

16.1 The parties agree that there is no need for document production.

17. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

17.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities. Further documentary evidence relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder. These additional documents, including witness statements and expert reports, may be submitted only insofar as the relevance of such additional evidence has arisen as a result of the adverse party's preceding submission, or if the documents were procured during the document production phase after the Memorial and Counter-Memorial, in case a document production phase is held.

17.2. The documents shall be submitted in the manner and form set forth in §14 above.

17.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written pre-hearing submission in accordance with the timetable set forth in Annex A, unless the Tribunal determines that exceptional circumstances exist, based on a timely reasoned written request followed by observations from the other party.

17.4. 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 contents of any such documents beyond providing a general description of them.

17.5. 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.

17.6. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

17.7. The documents shall be submitted in the following form:

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- 17.7.1. Exhibits shall be numbered consecutively throughout these proceedings.
- 17.7.2. The number of each Exhibit containing a document produced by 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 Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities, etc.
- 17.7.3. Each Exhibit filed in hard copy shall have a divider with the Exhibit identification number on the tab.
- 17.7.4. A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 17.7.5. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively. The numbering of the pdf files shall also indicate the language of the document *e.g.* C-0001-ENG for a document submitted only in English, C-0001-SPA for a document submitted only in Spanish and C-0001-ENG/SPA for a document submitted simultaneously in English and Spanish.
- 17.7.6. Electronic filings and the accompanying indexes shall follow the naming conventions contained in **Annex B**.
- 17.8. 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.
- 17.9. The parties shall file all documents only once by attaching them to their pleadings. Documents need not be resubmitted with witness statements even if referred to in such statements. If a document has been submitted by one party, it must not be submitted by the other party, unless there is a material difference between the documents.
- 17.10. Demonstrative exhibits (meaning representations such as diagrams, charts, graphs, models and computer simulations that depict and explain evidence otherwise submitted) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the number of the document(s) 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 reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.

18. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 24

- 18.1. Witness statements and expert reports shall be filed together with the parties' pleadings.
- 18.2. 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 §17.3).
- 18.3. Each witness statement and expert report shall be signed and dated by the witness or expert presenting it.
- 18.4. Any person may present evidence as witness, including a party or its officials, officers, employees or other representatives. For each witness, a sworn or affirmed witness statement shall be submitted to the Tribunal together with the relevant submission of the party presenting the witness.
- 18.5. Witness statements shall include:
 - 18.5.1. the full name of the witness, a statement regarding his or her present and past relationship (if any) with any of the Parties, and a description of his or her background, qualifications, training and experience, if such a description may be relevant to the dispute or to the contents of the statement; and
 - 18.5.2. an affirmation of the truth of the Witness Statement.
- 18.6. Expert reports shall include:
 - 18.6.1. the full name of the expert, a statement regarding his or her present and past relationship (if any) with any of the Parties, and a description of his or her background, qualifications, training and experience;
 - 18.6.2. a description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;
 - 18.6.3. a statement of his or her independence from the Parties, their legal advisors and the Arbitral Tribunal;
 - 18.6.4. his or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions. Documents on which the expert relies that have not already been submitted shall be provided; and

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18.6.5. an affirmation of his or her genuine belief in the opinions expressed in the Expert Report.

18.7. Witness statements and expert reports shall be filed in PDF format, with consecutive title, paragraph and page numbers, and shall be word searchable.

19. Examination of Witnesses and Experts
Arbitration Rules 35 and 36

19.1. In advance of any hearing, by the deadline provided in **Annex A**, each party will identify the factual witnesses and expert witnesses of the opposing party (having filed written statements and expert reports) whom it intends to cross-examine. Within three days of the opposing party's notification, each party may submit to the Tribunal a reasoned application to call its own factual and expert witnesses, not called by the opposing party. If their examination is allowed by the Tribunal, such witnesses will be examined pursuant to Article 19.6. One week after the parties' notifications or reasoned applications, if any, the Tribunal will indicate the witnesses and experts not called by the parties that it wishes to question, if any. The fact that a party does not call a witness or expert whose statement has been submitted with the other party's written submissions does not mean that it accepts the substance or content of the statement or expert opinion.

19.2. Exceptionally, if a witness is unable to appear physically at the hearing on the merits for reasons of health or force majeure, the Tribunal may permit alternative arrangements (such as videoconference facilities), upon consultation with the parties.

19.3. If a witness whose appearance has been requested pursuant to §19.1 fails without a valid reason to appear for testimony at a hearing, the Tribunal shall disregard any witness statement related to that hearing by that witness unless, in exceptional circumstances, the Tribunal decides otherwise.

19.4. Witnesses and experts shall be examined by each party under the control of the President of the Tribunal. Questions may also be put to them by any member of the Tribunal.

19.5. Before giving evidence, witnesses shall make the declaration set out in ICSID Arbitration Rule 35(2), and experts shall make the declaration set out in ICSID Arbitration Rule 35(3). Witnesses shall also be asked to confirm their statement or report.

19.6. The procedure for examining witnesses and experts at the hearing shall be the following:

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- 19.6.1. The witness statement of each witness and expert shall stand in lieu of the examination by the party producing the witness and expert (“direct examination”), subject to the provisions below.
- 19.6.2. Fact witnesses giving oral testimony may first be examined in direct examination.
- 19.6.3. Expert witnesses giving oral evidence may first give a presentation of the key points of their report either directly and/or through direct examination.
- 19.6.4. The direct examination of fact and expert witnesses shall be confined to the facts included in the witness statement, but the Tribunal may allow each witness to respond to any new contentions or evidence on the record unavailable to the witness before making his/her last written testimony submitted to the file.
- 19.6.5 Direct examination is followed by cross-examination by the other party, which may be followed by re-direct examination. The members of the Tribunal shall have the right to pose questions during or after the examination of any witnesses.
- 19.7. The scope of the cross-examination shall be limited to (i) the issues addressed by the witness or expert in his or her direct testimony or report unless for good cause shown the Tribunal agrees to a broader cross- examination, (ii) impeachment of the witness and/or (iii) documents or facts about which the witness or expert has personal knowledge, provided that they are relevant to the dispute. Re-direct examination shall be limited to the subject of the cross-examination.
- 19.8 Unless the parties and the Tribunal agree otherwise, factual witnesses shall not be allowed in the hearing room before giving their oral evidence. The Tribunal may, at its discretion and considering the circumstances of the case, allow one party representative for each party who is also a factual witness to be present in the hearing room during opening statements. Such witnesses, however, shall not otherwise be allowed to be present in the hearing room until after they have testified. Expert witnesses shall be allowed in the hearing room at any time.
- 19.8. Counsel may meet witnesses and potential witnesses to establish the facts, and assist with the preparation of witness statements and oral examinations.
- 19.9. Other matters regarding hearings shall be addressed at the pre-hearing organizational meeting.

20. Pre-Hearing Organizational Meetings
Arbitration Rule 13

20.1. A pre-hearing organizational meeting shall be held on the date provided in **Annex A** at a time to be determined by the Tribunal after consultation with the parties 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.

21. Hearings
Arbitration Rules 20(1)(e) and 32

21.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.

21.2. The hearing shall be held at a place to be determined in accordance with §11 above.

21.3. The hearing shall take place on the dates identified in **Annex A**.

21.4. At the hearing, each party will be afforded equal time for the presentation of its case. Within that timing, opening and closing statements by each party should be allotted equal time, but otherwise the Tribunal will permit the parties to use their remaining allotted time in their discretion. The Tribunal will review these directions with the parties at the pre-hearing conference call and will, in any event, remain free to make any adjustments it may deem appropriate.

21.5. All other issues related to the hearing shall be resolved during or prior to the pre-hearing conference call.

21.3. 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.

22. Records of Hearings and Sessions
Arbitration Rules 13 and 20(1)(g)

22.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.

22.2. 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.

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22.3. The parties shall seek to agree on a procedure for correcting transcripts in advance of the pre-hearing organizational meeting.

23. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)

23.1. The Tribunal, in consultation with the parties, shall decide whether to order post-hearing briefs at an organizational meeting prior to the oral hearing or during the course of the oral hearing.

23.2. In accordance with Arbitration Rule 28(2), promptly after the closure of the proceeding, each party shall submit to the Secretary of the Tribunal a statement of costs reasonably incurred or borne by it in the proceeding.

24. Publication
Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)

24.1. The parties consent to the publication of the award and any order or decision in the present case. Prior to the publication, the parties may indicate which parts of the document(s) need to be redacted on the basis that it contains confidential or sensitive information. The parties reserve their right to request that the Tribunal decide if certain information is, in fact, confidential or sensitive.

[signed]

Prof. Luca G. Radicati di Brozolo
President of the Tribunal

ANNEX A – Procedural Calendar (TBC)

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.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). 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-FR</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Quantum-ENG</i>
SUPPORTING DOCUMENTATION Exhibits	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-FR</i>
	<i>R-0002-SPA</i>
Legal Authorities	CL-####–LANGUAGE
	RL-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S LEGAL AUTHORITIES
	<i>CL-0001-ENG</i>
	<i>CL-0002-FR</i>
	RESPONDENT’S LEGAL AUTHORITIES
	<i>RL-0001-SPA</i>
<i>RL-0002-ENG</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-FR</i>

IC Power Ltd and Kenon Holdings Ltd v. Republic of Peru
(ICSID Case No. ARB/19/19)

Procedural Order No. 1 – Annex B

	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</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-FR</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>	