

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Finley Resources Inc., MWS Management Inc., and Prize Permanent Holdings, LLC

v.

United Mexican States

(ICSID Case No. ARB/21/25)

PROCEDURAL ORDER NO. 15

Members of the Tribunal

Mr. Manuel Conthe Gutiérrez, President of the Tribunal

Dr. Franz X. Stirnimann Fuentes, Arbitrator

Prof. Alain Pellet, Arbitrator

Secretary of the Tribunal

Ms. Anneliese Fleckenstein

January 23, 2026

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I. BACKGROUND

1. On February 3, 2023, through Procedural Order No.4, the Tribunal decided the disputed production requests made by the Parties, including request number 15 by the Claimants, which read *in fine*: “In addition, the Acta Circunstanciada references communications regarding a pricing determination of US\$42,167/day for when Pemex did not issue work orders under the Contract No. 424043809. Claimants there requested the following documents related to this pricing determination from Pemex: 1. PEP-DG-SSE-GSIAP-CSIAPZN-168-2018 dated March 22, 2018; 2. DCAP-DOPA-CDRPC-GIC-SPR-421-2018 dated April 3, 2018; and 3. DCAS-DOPA-CDRPC-GIC-SPR-422-2018 dated April 3, 2018.
2. In its decision on such request, the Tribunal ordered the Respondent “to produce any documents under its control which are responsive to the request. However, as foreseen in Article 9.5 of the IBA Rules, the Tribunal authorizes Respondent to produce the documents in redacted form, to the extent strictly necessary to preserve the commercial interests of the two Mexican companies involved, while at the same time allowing Claimants to compare relevant aspects of the processes applied by Pemex to Contracts 809 and 821”.
3. Pursuant to this order, the Respondent produced, *inter alia*, documents 15.12 (on the memorandum PEP-DG-SSE-GSIAP-CSIAPZN-168-2018 dated March 22, 2018) and 15.13 (on the memorandum DCAS-DOPA-CDRPC-GIC-SPR-422-2018 dated April 3, 2018). The

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documents, as produced by the Respondent, contained just one page each, without any attachments.

4. On June 9, 2025, in their Statement of Claim for Damages, the Claimants noted that “as a result of Mexico’s failures [to comply fully with the Tribunal’s decision contained in PO4], Claimants had to make a transparency request to obtain some of these documents”, which they got and filed in this arbitration as Exhibits C-0182, C-0183 and C-0184.
5. During the pre-hearing conference held by the Tribunal with the Parties on January 8, 2026, the Claimants compared the documents 15.12 and 15.13 produced by Mexico with the corresponding documents C-0182 and C-0184 obtained by the Claimants through their transparency request. The comparison made clear that the documents obtained by the Claimants through their transparency request contained attachments that were missing in the documents 15.12 and 15.13 produced by the Respondent. However, as stressed by the Claimants, Pemex had partially redacted several pages of the documents obtained through their transparency request and contained in C-0182, thereby preventing the reader to understand how Pemex had arrived at the daily rate of US\$ 42,167.54 which it agreed to pay to the Mexican companies for work not requested.
6. During the pre-hearing conference, with a view to understand how Pemex had calculated the US\$ 42,167.54 daily rate, the Claimants requested the Tribunal to invite as fact witnesses to the Hearing three officials from Pemex, Mr. Leonardo Marfil, Mr. César Ruiz and Mr. Epitacio Solís (currently retired) who had direct knowledge of the negotiations between Pemex and the Mexican companies Integradora and Zapata and could presumably explain how the daily rate had been calculated.
7. On January 20, 2026, the Claimants sought leave from the Tribunal to file the unredacted and complete versions that they had recently got of documents C-0182 and C-0184. According to the Claimants, the first one contains the unredacted version of the March 22, 2018, internal Pemex memo, including an unredacted version of the table entitled “Time Waiting Due to Lack of Work Order Assignment”, which reveals Pemex’s internal

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calculation for a rig day rate. The Claimants further explained that they had learned that the April 3, 2018, internal Pemex memo (i.e. C-0184) that they had previously received was missing a page, which they recently have got, and which contains a detailed breakdown of the USD 42,167.14 unit price signed by Pemex and the 809 Contractor. Thus, the Claimants asked the Tribunal to be authorised to file immediately the unredacted version of the March 22, 2018 memo (i.e. C-0182) and the complete version of document C-0184, including the missing page showing Pemex's detailed breakdown of the USD 42,167.14 unit price for not requesting work.

8. The Claimants further requested to file an additional exhibit in response to Mexico's argument about "open contracts" first made in its Rejoinder. The Claimants explained that in paragraph 53 of their Reply, they had argued that Pemex appeared to have borrowed the concept of an "open contract" from Mexico's Acquisitions Law when designing the 821 Contract for Pemex to have a primary obligation of spending a budgeted amount and not a quantity of wells. But in paragraphs 19 and 20 of its Rejoinder, Mexico denies that Pemex applied this concept (e.g., "The Acquisition Law does not apply and in any case does not require payment of the minimum budget."). In the Claimants' view, Mexico's argument in its Rejoinder is in direct conflict with Pemex's response to the questions posed by bidders during the bidding of Package 5, in which Pemex clearly explained its position about an "open contract" and how it obligates Pemex. Thus, in their January 20, 2006 communication Claimants requested leave to file a new exhibit with the relevant portions of these rounds of questions and answers to allow Claimants the opportunity to present them at the hearing and as part of any post-hearing briefing. In the Claimants' view, Pemex's admissions are relevant and contradict Mexico's arguments in this arbitration, and Claimants believe the Tribunal should have the benefit of this evidence, particularly when Mexico has not tendered any relevant Pemex employee for examination.
9. On January 21, 2026, at the invitation of the Tribunal, the Respondent submitted its comments on the Claimants' requests and objected to them, as the documents mentioned by the Claimants constitute "new evidence", the admission of which would be contrary to

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paragraph 16.3 of Procedural Order No.1. In the Respondent's view, the admission of such new evidence would affect the equality of arms and impose undue burdens on the Respondent, given that the hearing is imminent and forthcoming. The Respondent recalled that the Claimants did not agree to document production phase in the *quantum* phase of this arbitration.

10. Concerning specifically the new versions of documents C-0182 and C-0184, Mexico argues that it has no knowledge of where and how the Claimants obtained the documents and accordingly, "it is unable to comment on their authenticity". It emphasizes that Mexico did not withhold any part of the documents that Claimants now seek to introduce, as it fully complied with Document Production Request No.15, as formulated, by producing documents 15.4, 15.12 and 15.13.
11. Concerning the questionnaires (questions and answers) from bidder meetings related to the tender for Contract 821, the Respondent states that the Claimants could have submitted them in their pleadings, at the appropriate stage, not just weeks before the hearing; and they do not even attempt to establish exceptional circumstances to justify their request. Thus, the admission of the documents would be inadmissible and contrary to the principle of preclusion.

II. THE TRIBUNAL'S ANALYSIS

A. PRELIMINARY CONSIDERATIONS

12. The Tribunal recalls that in paragraph 30 of Procedural Order No.3, dated October 5, 2022, the Tribunal established that "supporting documents" -like attachments- "are an integral part of the documents or memorials to which they are attached and can occasionally be helpful, or even necessary, for the full understanding of the Parties' pleadings". While this principle was formulated in a Procedural Order dealing with the confidentiality of the Parties' pleadings, it obviously applies as well to the attachments of any documents filed by the Parties: attachments are an integral part of the documents they are attached to, particularly so when they are necessary to understand the meaning of those documents.

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13. In its January 8, 2025 Decision on Jurisdiction and Liability, the Tribunal concluded that “based on the facts of the case it is clear for the Tribunal that Mexican companies [i.e. Integradora and Zapata] which were in ‘like circumstances’ were treated by PEP more favorably than Claimants”¹ and declared that Mexico had breached Article 1102 on National Treatment of the NAFTA.
14. Consequently, all information about how the companies Integradora and Zapata were treated and how much they were paid by Respondent is now, in this phase on *quantum*, even more relevant that it was when in February 2023 the Tribunal issued Procedural Order No.4.

B. THE REQUEST FOR NEW WITNESSES

15. The Tribunal is not persuaded, however, that inviting to the Hearing as fact witnesses three Mexican nationals who are currently working for Pemex, as is the case of Messrs. Marfil and García, or worked for the company and are now retired, as is the case of Mr. Solís, would shed much light on the negotiations of the settlement between Pemex and Integradora and Zapata back in 2018. There are several reasons for this:
- First, from a procedural point of view, Claimants could have requested the testimony of those witnesses in either their Statement of Claim for Damages on June 9, 2025, or at the latest in their Reply in Support of their Claim for Damages, on November 7, 2025, without waiting until the last minute, shortly before the pre-hearing conference, to ask the Tribunal to do so.
 - Second, the fact that two of the requested witnesses are currently Pemex employees, and the third one is already retired, might complicate their appearance as witnesses in this arbitration, particularly because the first two would likely need internal clearance from Pemex. And such clearance, even if forthcoming, might take too much time to make their appearance as witnesses practical.

¹ Paragraph 863.

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- Third, their oral testimony, even assuming they were to accept the Tribunal’s invitation and testify in full candour, would be subject to limitations. This would be so because when 8 years ago the negotiations between Pemex and the Mexican companies Integradora and Zapata took place the three Pemex officials were likely attending many other issues at the time and so, the negotiations with Integradora and Zapata were probably less the focus of their attention than they are now for the Parties and the Tribunal in this arbitration. Hence, the potential recollection of these witnesses regarding those negotiations and how the daily rate of US\$ 42, 167.14 was determined might not be particularly accurate.
 - Finally, as indicated below, the Tribunal considers that the Claimant’s goal of getting additional information on how the daily rate or US\$ 42,167.14 was set may be better advanced through the production of more comprehensive contemporaneous written evidence.
16. Thus, as also reflected in Procedural Order No.16 on the organization of the Hearing, the Tribunal has decided not to call as witnesses any of the three Mexican nationals suggested by the Claimants.

C. THE COMPLETE, UNREDACTED VERSIONS OF DOCUMENTS C-182 AND C-184

17. The Tribunal sees, however, merit in the Claimants’ interest in ascertaining how the terms of the settlement between Pemex and Integradora and Zapata reflected in the Acta Circunstanciada were determined and, particularly, how the US \$ 42, 167.14 daily rate was arrived at.
18. The Tribunal further observes that, in its opinion, and contrary to the Respondent’s assertion, the Respondent failed to fully comply with the Tribunal’s document production order back in February 2023, to the extent that Mexico produced only the cover letters of the memos contained in documents C-0182 and C-0184, but withheld their attachments. In so doing, the Respondent frustrated the goal of the production order, which was to “[allow] Claimants to compare relevant aspects of the processes applied by Pemex to Contracts 809 and 821”. Thus,

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the admission now of the attachments to those memos can be seen as the late enforcement by the Tribunal of its 2023 production order.

19. Additionally, the Tribunal recalls that paragraph 1.5 of Procedural Order No.2 established that the IBA Guidelines on the Taking of Evidence in International Arbitration, to the extent they are consistent with ICSID Arbitration Rules, will guide de Tribunal and the parties regarding document disclosure.
20. Furthermore, Article 3.10 of these IBA Guidelines reads:

“At any time before the arbitration is concluded, the Arbitral Tribunal may (i) request any Party to produce Documents, (ii) request any Party to use its best efforts to take or (iii) itself take, any step that it considers appropriate to obtain Documents from any person or organisation. Any Party may object to the request for any of the reasons set forth in Articles 9.2 or 9.3 applies”.
21. The Tribunal also reminds the Parties, and specifically the Respondent, that under Article 9.6 of the IBA Guidelines, “if a Party fails without satisfactory explanation to produce any Document (...) ordered to be produced by the Arbitral Tribunal, the Arbitral Tribunal may infer that such document would be adverse to the interests of that Party”.
22. Nothing in the ICSID Rules runs counter to Article 3.10 if the IBA Guidelines. On the contrary, according to Rule 34 (2) of the 2006 Arbitration Rules, “The Tribunal may, if it deems it necessary at any stage of the proceeding: (a) call upon the parties to produce documents, witnesses and experts”.
23. Therefore, in order to understand how the terms of the settlement between Pemex and Integradora and Zapata were arrived at and, specifically, how the US\$ 42,167.14 daily rate was calculated, the Tribunal considers it necessary at this stage that the Respondent produce the following documents:

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- a. An unredacted, comprehensive (i.e. with all its attachments and no missing pages) and fully legible copy of the documents contained in documents C-0182 and C-0184 filed by the Claimants.

The Tribunal notes that these documents, which, before the Claimant's January 20, 2026 request, the Tribunal already intended *sua sponte* to order the Respondent to produce seem to be the same documents that the Claimants have now in their possession and want to file. The Respondent has raised nonetheless doubts as to their authenticity. Hence, the Tribunal has decided to maintain its order for the Respondent to produce its own copies of the documents, on the understanding that the Respondent will not need to do so if it confirms the authenticity and comprehensiveness of the new version of documents C-0182 and C-0184 that this Procedural Order will authorize the Claimants to file.

- b. Annex DT-2 of the 809 Contract, an annex mentioned by "Integradora de Perforaciones y Servicios, S.A. de C.V." on page 2 of the letter it sent to Pemex claiming compensation *inter alia* for work not assigned by Pemex.²
 - c. The document described as "FORMATO 'DE-2' ADICIONAL 2 CATALOGO PRECIOS UNITARIOS" on the first page of the memorandum contained in document C-0184 and attached to it.³
24. As indicated above, with this production order the Tribunal is just applying the principle enshrined in Procedural Order No.3 that attachments are an integral part of the documents or memorials to which they are attached, particularly so when they are necessary to understand the meaning of those documents.

² See third page, starting from the end, of Document **C-0182**. Note that Annex DT-9 of the 809 Contract was already filed by the Respondent with its Memorial de Dúplica as document **R-0196**, which makes clear that Pemex has also Annex DT-2.

³ Note that the original Annex DE-2 of the 809 Contract was already filed by the Respondent with its Memorial de Contestación as document **R-0190**.

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25. In the Tribunal's view, none of the circumstances spelled out in Article 9.2 of the IBA Guidelines justifies the exclusion as evidence of the above documents. The documents are very specific and Respondent has already filed on its own similar ones, which suggests that they are under Pemex' control. Concerning specifically commercial or technical confidentiality of the documents (i.e. letter e of said Article), particularly of the documents contained in documents C-0182 and C-0184, the Tribunal notes that:
- a. Procedural Order No. 2, on confidentiality, allows for any party to designate as "confidential", and request that it be protected from public disclosure, several categories of information, including "confidential business information". Furthermore, paragraph 22 of said Order strictly limits the capacity of the parties to disclose to third persons any information and materials containing confidential information that may have been disclosed by the other party in the course of this arbitration. Thus, any alleged confidentiality of documents whose production is ordered by the Tribunal cannot justify their non-disclosure, but only just a request by the disclosing party that they are not made public.
 - b. Procedural Order No.3, even if dealing with the public disclosure of documents, established clearly the rule that supporting documents or attachments should be subject to the same disclosure rules that the main documents they are attached to.
 - c. Turning now to the substance of the documents, the Tribunal could hardly understand that the details of how Integradora and Zapata and Pemex made the calculations to arrive at their settlement, almost 8 years ago, of the 809 Contract could now be considered confidential or a commercial secret and not be produced in this arbitration, as this could potentially prevent the Tribunal from having all the relevant information to decide a case in which, as it declared in its Decision on Jurisdiction and Liability, involved a breach of Article 1102 of the NAFTA on National Treatment.

D. PEMEX' RESPONSES TO THE BIDDERS OF CONTRACT 821

26. In the Tribunal's view, it is true that, as stated by the Respondent, the Claimants could have anticipated the convenience of filing earlier these documents, together with their Statement of Claim for Damages or their Reply.
27. But in the Tribunal's opinion there are several circumstances than, taken together, can be considered exceptional circumstances that justify that the Claimants are authorised to file now the documents.
28. First, the fact that during the hearing the Tribunal will not be able to benefit from the oral testimony of any Pemex official, who could provide information on the facts of the case, gives particular value to any documentary evidence on the potential commitments entered by Pemex during the negotiation of Contract 821.
29. Second, the Respondent will have three weeks before the Hearing to study the document in detail and the opportunity to argue about it both during its Opening Statement and in its Post-Hearing Brief.
30. Third, the Claimants' allegation that Pemex's responses to questions during the bidding phase contradict the characterization of Contract 821 not as an "open contract" by the Respondent in their Rejoinder enhances the potential interest of the Tribunal in the document, which may provide relevant documentary evidence related to potential questions that might come up during the forthcoming Hearing.
31. Finally, by allowing the Claimants to file the document themselves right away, the Tribunal will not need to exercise any prerogative to order the Respondent to produce a document which may be of potential interest for the Tribunal.

III. DECISION

In light of the above, the Tribunal decides:

1. To reject Claimants' request that the Tribunal invites as fact witnesses to the Hearing the three individuals identified by Claimants during the pre-hearing conference held on January 8, 2026.
2. To order Respondent to produce the documents referred to above in paragraph 23 of this Procedural Order. In the case of the documents mentioned in letter a) of that paragraph, the Respondent will not need to produce them if it confirms the authenticity and comprehensiveness of the new version of documents C-0182 and C-0184 that paragraph 3 of this decision authorizes the Claimants to file.

Respondent is invited to indicate to the Tribunal the earliest date when it will be able to comply with this order, on the understanding that the production should take place as far ahead of the Hearing as possible.

3. To authorise the Claimants to file immediately the documents they mentioned in their January 20, 2026 request.

For and on behalf of the Tribunal,

[Signed]

Mr. Manuel Conthe Gutiérrez
President of the Tribunal