

International Centre for Settlement of Investment Disputes

**DUKE ENERGY ELECTROQUIL PARTNERS
&
ELECTROQUIL S.A.**

CLAIMANTS

v.

REPUBLIC OF ECUADOR

RESPONDENT

ICSID Case No. ARB/04/19

PROCEDURAL ORDER No. 2

Organization of the hearing on jurisdiction and merits

Issued by the Arbitral Tribunal composed of:

Prof. Gabrielle Kaufmann-Kohler, President

Mr. Enrique Gómez Pinzón, Arbitrator

Prof. Albert Jan van den Berg, Arbitrator

Date: March 23, 2006

In accordance with Section 12 of the Minutes of the First Session and with the parties' agreement to reschedule the conference call, a pre-hearing telephone conference was held on 17 March 2006, at 2 p.m. Washington D.C. time. As agreed during the First Session, the Tribunal decided that the pre-hearing conference would be conducted by the President alone as it related only to administrative matters.

Following the President's consultation with the parties and the deliberation of the Members of the Arbitral Tribunal, the latter issues this procedural order dealing with outstanding organizational matters with respect to the forthcoming hearing on jurisdiction and the merits.

I. PARTICIPANTS

1. The following persons attended the telephone conference:

- For the Arbitral Tribunal

Gabrielle Kaufmann-Kohler, President

Gonzalo Flores, Secretary to the Arbitral Tribunal

- For the Claimants

Arif H. Ali, Fulbright & Jaworski L.L.P., Washington, D.C.

Baiju S. Vasani, Fulbright & Jaworski L.L.P., Houston

Anibal Sabater, Fulbright & Jaworski L.L.P., Houston

In the course of the telephone conference, Mr. César Coronel Jones, local counsel to Claimants, joined.

- For the Respondent

Alberto Wray, Espinosa, Estudio Jurídico Cabezas y Wray

Alejandro Escobar, Latham & Watkins, London, UK

II. AGENDA

2. The agenda for the telephone conference was set out in ICSID's letter of 14 March 2006. At the beginning of the telephone conference, the parties jointly requested that the following additional items be discussed:

- Demonstrative exhibits;
- New documents;
- Closing submissions and post-hearing briefs.

In addition, the President mentioned that opening statements should also be addressed.

3. With the consent of all the participants, the conference was recorded.

III. DURATION OF HEARING AND DAILY SCHEDULE

4. The hearing will take place from 24 to 28 April 2006.

5. As a rule, the hearing will start every day at 9:00 a.m. and last until approx. 6:30 p.m., with a lunch-break of about an hour and a break of about 20 minutes during each half day. This schedule is indicative only and will have to be adjusted to the needs of the witness examinations. On Monday, 24 April 2006, the hearing will start at 9:30am.

IV. IDENTIFICATION OF THE WITNESS TO BE CALLED AND SEQUENCE OF THEIR EXAMINATIONS

6. The parties agreed that they would exchange lists of witnesses whom they wish to appear at the hearing (both their own witnesses for purposes of brief direct examination and their opponent's witnesses for purposes of cross-examination) by **31 March 2006**. By **7 April 2006**, the parties will submit to the Arbitral Tribunal a complete list of all the witnesses who will appear in the order in which they will appear, being specified that fact witnesses will be heard first (first the Claimants' witnesses and then the Respondent's witnesses) and expert witnesses second (first the Respondent's witnesses and then the Claimants' witnesses). On the same date, the Claimants will state whether Mr. Juan Larrea Holguín will testify by

videoconference, it being understood that Respondent has given its consent to such means of examination.

7. The method of examination of the witnesses shall be the one set out in Section 18.4 of the Minutes of the First Session, being specified that the re-direct examination shall be limited to matters raised during the cross-examination.
8. To the extent feasible, the parties may draw up a schedule for the hearing with anticipated times for the start of each witness examination. This being so, witnesses shall have sufficient flexibility in the event that the hearing progresses more or less speedily than scheduled.

V. TESTIMONY OF DR. VLADIMIRO ÁLVAREZ

9. Having considered (i) correspondence exchanged until today (i.e., Respondent's letter dated 16 February 2006 seeking Claimants' acceptance to request Dr. Álvarez to give testimony within the arbitration; Claimants' letter dated 21 February 2006 declining Respondent's invitation; Respondent's letter dated 27 February 2006 advising that notwithstanding Claimants' refusal, Ecuador would provide Dr. Álvarez's written statement on its behalf and invite the latter to send such statement to ICSID no later than 3 March 2006; Respondent's letter dated 1 March 2006 inviting Dr. Álvarez to provide his written statement), (ii) the fact that Dr. Vladimiro Álvarez has filed his written statement with ICSID on 3 March 2006; and (iii) the arguments submitted by the parties during the telephone pre-hearing conference, the Arbitral Tribunal issues the following directions:
 - a) If Respondent wishes to rely on the evidence of Dr. Vladimiro Álvarez, it shall call the latter to appear at the hearing;
 - b) At the hearing, Dr. Álvarez will be subject to direct examination by the Respondent and to cross-examination by the Claimants;
 - c) The Arbitral Tribunal will assess the weight of Dr. Álvarez's evidence taking into account all relevant circumstances, including in particular the fact that Dr. Álvarez has acted as arbitrator in proceedings between the parties to this arbitration.

VI. OPENING STATEMENTS AND TIME ALLOCATION

10. The parties jointly wish to present opening statements, but disagree on the sequence of these statements. Having heard the parties arguments at the pre-hearing telephone conference, the Tribunal determines that the opening submissions will proceed as follows:

- Claimants' opening on the merits: 50 minutes
- Respondent's opening on the merits and on jurisdiction: 70 minutes
- Claimants' opening on jurisdiction: 20 minutes

11. The parties agreed that there would be no oral closing submissions at the hearing and that there would be one simultaneous submission of post-hearing memorials. Subject to further consultation and directions at the close of the hearing, it is anticipated that such memorials should be filed one month from the date on which the transcripts are made available in both languages.

12. With respect to time allocations, it was agreed that each party would have a global time allocation to be used over the entire duration of the hearing amounting to 10 hours and 30 minutes, being specified that the Arbitral Tribunal may briefly extend such time if due process and efficient dispute resolution considerations so require, including if the number of witness to be examined by Claimants significantly exceeds Respondent's cross-examinations.

VII. ATTENDANCE OF WITNESSES AND EXPERTS DURING THE HEARING

13. The parties agreed that no witness, whether fact or expert witness, should attend the hearing before and after his or her examination.

VIII. HEARING DEMONSTRATIVES

14. The parties agreed that hearing demonstratives should be allowed, but should be based on the record and contain no new documents or information. They further agreed that they would exchange between themselves and produce to the Tribunal copies of their PowerPoint presentations and of their hearing bundles at the outset of the first hearing day.

IX. NEW DOCUMENTS

15. The parties agreed that no new documents should be produced, subject to leave of the Tribunal.

X. TRANSCRIPTS

16. It was further agreed that the English transcripts would be established by court reporters attending the hearing and that the Spanish version would be established thereafter on the basis of the audio recording.

XI. OTHER

17. One week before the hearing, the parties shall submit to the Secretary a list of the hearing participants.

For the Arbitral Tribunal:

[Signature]
Prof. Gabrielle Kaufmann-Kohler