

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. 3

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: 4 May 2006

At the end of the hearing held from 24 to 27 April 2006, the Arbitral Tribunal discussed the further procedural steps with the parties and, as a consequence, issues this procedural order.

A. POST-HEARING BRIEFS: TIME LIMITS

1. The Parties shall simultaneously file post-hearing briefs on **30 June 2006**.
2. The Parties shall simultaneously file post-hearing rebuttal briefs on **17 July 2006**. Such rebuttal briefs shall only address matters arising out of the first post-hearing briefs.

B. POST-HEARING BRIEFS - CONTENTS

3. In the post-hearing briefs, the Parties may address any aspect, which they deem appropriate at this stage of the proceedings. The briefs shall be reasonably concise.
4. Without limiting the Parties' freedom to put forward any aspect which they deem appropriate, the Tribunal invites the Parties to address the following matters:
 - The Parties shall provide a time line of the facts giving rise to the present dispute, which may be modeled on the time line submitted by the Claimant on the first day of the hearing, with references to exhibit numbers. The Parties shall preferably submit a common time line. If they are unable to agree on a common time line, they may submit separate time lines;
 - The Parties shall submit a table setting forth all the fines, with columns for the amount, the date of assessment, the reason for the assessment, as well as the procedure followed (date of the objection and any further step in accordance with the contract procedure), and the method of collection of the fine (payment, deduction from current invoices, or deduction at the time of the Liquidation Agreements).
 - The Parties shall set out the history of the fuel arrangements (preferably in form of a time line) and, doing so, shall refer both to the supply and to the payment of the fuel, and the party responsible for the fuel supply.

- The Parties shall address (or refer to existing submissions) the issue of interest, specifically:
 - a) the legal position with respect to the applicable rate (whether statutory or not) and the admissibility of compound interest;
 - b) the question whether the US dollar interest rate of the Central Bank of Ecuador also applies to amounts owing to Duke.
 - The Parties shall address in more detail the legal significance of the agreement of 31 March 1999 between INECEL and ELECTROQUIL, of the Subrogation Agreements of 25 May and 1st June 1999 between the State of Ecuador through the Ministry of Energy and Mines and ELECTROQUIL, and of the Liquidation Agreements of 27 November 2001 (PPA 95) and 28 August 2002 (PPA 96) between the Ministry of Energy and Mines and ELECTROQUIL, as well as the interaction between these different agreements.
 - The Parties shall address (or refer to existing submissions) the proceedings pending before the Ecuador Supreme Court in connection with the customs duties, as well as on the legal significance of such pending dispute for the resolution of the case before this Tribunal. As an exception to the rule set out in paragraph 5 below, documents, e.g. excerpts from the docket of the Supreme Court, appellate briefs, or lower court decisions, may be produced together with the first post-hearing briefs.
 - The Parties shall file a copy of the Civil Code of Ecuador for each Arbitrator and for the Secretary.
5. Subject to the foregoing exception, no new documents shall be produced together with the post-hearing briefs.

For the Arbitral Tribunal:

Prof. Gabrielle Kaufmann-Kohler