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December 17, 2019

VIA EMAIL

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**Re: PCA Case No. 2019-46 - *The Renco Group, Inc. v. The Republic of Peru*
(Treaty Case)**

Dear Members of the Tribunal:

Claimant responds briefly to Respondent's letter to the Tribunal of December 16, 2019.

Respondent misdirects the Tribunal by focusing on the term "request" in Article 10.20.5 of the Treaty and alleging that the term "request" is the basis for Claimant's contention that Respondent should have submitted and fully briefed its objections within the 45-day time limit. Claimant indicated in its letter of December 10, 2019 that "Article 10.20.5 requires the respondent to request expedited review of an ***objection*** within 45 days of the constitution of the tribunal." This means that Respondent actually has to make and brief its objections within that time limit, which it failed to do. Respondent's purposefully vague notice that it intends to make certain objections did not meet the threshold set by Article 10.20.5. As the United States argued in *Feldman v. Mexico*, and the tribunal in that case agreed, the delivery of a notice of intent to submit a claim to arbitration does not satisfy the requirement of having to "make a claim."¹

¹ **Exhibit G**, *Feldman v. Mexico*, ICSID Case No. ARB(AF)/99/1, Submission of the United States of America on Preliminary Issues, Oct. 6, 2000, ¶ 14; and Interim Decision on Preliminary Jurisdictional Issues, Dec. 6, 2000, ¶ 44.

Respondent alleges that *RDC v. Guatemala* contradicts Claimant's position. This is false. As the Decision in that case make clear, the respondent filed objections within the 45-day deadline that were sufficiently well articulated as to allow the claimant to respond.² This is not the case here. Claimant cannot respond to Respondent's communication of December 3, 2019, which is vague, unclear, and devoid of any factual bases or legal analysis. Respondent concedes as much, given that it wishes to file a full Memorial on its objections.

Respondent acknowledges in its letter the efficiency and cost-effectiveness considerations that underlie Article 10.20.5 of the Treaty, yet complains that one round of briefing would be a breach of due process. The bottom line is this: Respondent has had more than a year, since October 23, 2018 when Claimant submitted its Notice of Arbitration and Statement of Claim, to articulate and fully brief its 10.20.5 objections. Yet, Respondent filed only a vague notice on December 3, 2019, despite the fact that it now concedes that it "remains prepared to file a pleading promptly" and has proposed to submit its Memorial on December 20, 2019, in three days.

The Tribunal should see this for what it really is. Respondent is not interested in efficiency or cost-effectiveness. Otherwise it would have briefed its objections in full within the 45-day timeline under Article 10.20.5. Rather, Respondent is engaged in procedural gamesmanship in an effort to deprive Claimant of as much time as possible to defend itself. The Tribunal need look no further than Respondent's proposed schedule. The nine weeks that Respondent suggests Claimant will have to file its Counter-Memorial are actually 7 weeks, as the weeks of Christmas and New Year's should not be counted. Thus, if the Tribunal accepts Respondent's schedule, Respondent will have had one year and two months to prepare its 10.20.5 objections. Claimant will have seven weeks to respond. Rarely has a breach of the equality of arms principle been so clear.

Respondent's ill-advised tactics should have consequences. As such, Claimant respectfully reiterates its request that the Tribunal find that Peru has failed to—and can no longer—invoke the expedited review mechanism under Article 10.20.5 of the Treaty. Alternatively, in the event that the Tribunal allows Respondent to rely on Article 10.20.5 (which Claimant submits it should not), Claimant requests only one round of briefing, followed by a hearing, as set out in the procedural schedule that Claimant proposed in its letter of December 10, 2019.

Sincerely,



Edward G. Kehoe

cc: Jonathan C. Hamilton, White & Case LLP

² **Exhibit B**, *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Decision on Objection to Jurisdiction CAFTA Article 10.20.5, Nov. 17, 2008, ¶¶ 3-5.