

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

TECO Guatemala Holdings, LLC
(Claimant)

v.

Republic of Guatemala
(Applicant)

(ICSID Case No. ARB/10/23)
Third Annulment Proceeding

PROCEDURAL ORDER NO. 1

Members of the Committee

Ms. Deva Villanúa, President of the *ad hoc* Committee
Prof. Lawrence Boo, Member of the *ad hoc* Committee
Prof. Doug Jones AO, Member of the *ad hoc* Committee

Secretary of the ad hoc Committee

Ms. Mercedes Cordido-Freytes de Kurowski

Assistant to the ad hoc Committee

Mr. Felipe Aragón Barrero

May 17, 2021

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Introduction

The First Session of the *ad hoc* Committee (“**Committee**”) was held on May 12, 2021, at 7:00a.m. Guatemala City / 9:00a.m. EDT / 2:00p.m. London / 3:00p.m. Madrid / 9:00p.m. Singapore / 11:00p.m. Sydney, by video conference (ZOOM). The Session was adjourned at 8:00a.m. Guatemala City / 10:00a.m. EDT / 3:00p.m. London / 4:00p.m. Madrid / 10:00p.m. Singapore / 12:00a.m (May 13, 2021) Sydney.

An audio recording of the Session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Committee and the Parties.

Participating in the conference were:

Members of the *ad hoc* Committee

Ms. Deva Villanúa, President of the *ad hoc* Committee
Prof. Lawrence Boo, Member of the *ad hoc* Committee
Prof. Doug Jones AO, Member of the *ad hoc* Committee

ICSID Secretariat:

Ms. Mercedes Cordido-Freytes de Kurowski, Secretary of the *ad hoc* Committee

Assistant to the *ad hoc* Committee

Mr. Felipe Aragón Barrero

Participating on behalf of TECO Guatemala Holdings, LLC (“**Claimant**” or “**TECO**”):

Ms. Andrea J. Menaker, White & Case LLP
Ms. Kristen M. Young, White & Case LLP
Ms. Poorvi Satija, White & Case LLP

Mr. David Nicholson, TECO Energy, Inc., Vice President Legal, General Counsel and Chief Ethics and Compliance Officer

Mr. Javier Cuebas, TECO Energy, Inc., Senior Corporate Counsel

Participating on behalf of the Republic of Guatemala (“**Applicant**” or “**Guatemala**”):

Sr. Ignacio Torterola, GST LLP
Sr. Diego Gosis, GST LLP
Sr. Quinn Smith, GST LLP
Sr. Pablo Mori, GST LLP
Sr. José Angelo David, GST LLP

Licda. Alba Edith Flores Ponce de Molina, Vice Minister of Integration and Foreign Trade, Ministry of Economy, Republic of Guatemala

Lcdo. Alexander Cutz Calderón, Director of Foreign Trade, Ministry of Economy, Republic of Guatemala

Lcda. Karla Liquez, Legal Advisor, Ministry of Economy, Republic of Guatemala

Lcda. Lilian Nájera, Legal Advisor, Procuraduría General de la Nación, Republic of Guatemala

Lcdo. Julio Santiz, Legal Advisor, Procuraduría General de la Nación, Republic of Guatemala

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Lcdo. Mario Mérida, Legal Advisor, Procuraduría General de la Nación, Republic of Guatemala

The Committee and the Parties considered the following:

- The Draft Procedural Order circulated by the Secretary of the Committee on April 10, 2021; and
- The Parties' comments on the Draft Procedural Order received on April 27, 2021, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.
- The Draft Procedural Order circulated by the Secretary of the Committee on May 6, 2021.

Following the Session, the Committee now issues the present Order:

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Pursuant to ICSID Arbitration Rules 19, 20 and 53, this first Procedural Order sets out the Procedural Rules that the Parties have agreed and the Committee has determined that shall govern this annulment proceeding. The timetable is attached as Annex A.

1. Applicable Arbitration Rules

Convention Article 44 and Arbitration Rule 53; DR-CAFTA Article 10.16.5

1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006, except to the extent modified and/or supplemented by the Dominican Republic-Central America Free Trade Agreement (“**DR-CAFTA**” or the “**Treaty**”), in force for the United States since March 1, 2006, and for Guatemala since July 1, 2006. In accordance with Arbitration Rule 53, the Arbitration Rules apply, *mutatis mutandis*, to annulment proceedings.

2. Constitution of the Committee and the Committee Members' Declarations

Convention Article 52(3); Arbitration Rules 6 and 52

2.1. The Committee was constituted on March 31, 2021 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Committee was properly constituted and that no Party has any objection to the appointment of any Member of the Committee.

2.2. The Members of the Committee 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 March 31, 2021.

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2.3. The Members of the Committee confirmed that they have sufficient availability during the next 24 months to dedicate to this case.

2.4. The contact details for the Members of the Committee are:

Ms. Deva Villanúa
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Spain
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Prof. Lawrence Boo
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lawboo@arbitrator.com.sg

Prof. Doug Jones AO
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dougjones@dougjones.info

3. Fees and Expenses of the Committee Members

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

3.1. The fees and expenses of each Member of the Committee 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 Member of the Committee receives:

- (i) 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
- (ii) subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.

3.3. Each Member of the Committee shall submit his/her claims for fees and expenses to the ICSID Secretariat on a quarterly basis.

3.4. Non-refundable expenses incurred by the Members of the Committee in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

4. Presence and Quorum

Arbitration Rules 14(2) and 20(1)(a)

4.1. The presence of all Members of the Committee constitutes a quorum for its sittings, including by any appropriate means of communication.

5. Rulings of the Committee

Convention Article 48(1); Arbitration Rules 16, 19 and 20

5.1. Decisions of the Committee shall be taken by a majority of the Members of the Committee.

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- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent, the President may decide procedural matters without consulting the other Members, subject to possible reconsideration of such decision by the full Committee.
 - 5.3. The Committee will draft all rulings, including its final decision, within a reasonable time period. If a ruling has not been issued within six months after the final submission on a particular matter, the Committee will provide the Parties with status updates, as may be required.
 - 5.4. The President is authorized to issue Procedural Orders on behalf of the Committee.
 - 5.5. Procedural rulings shall be made after the Parties have been afforded an adequate opportunity to present their views in relation thereto.
 - 5.6. The Committee's rulings on procedural matters may be communicated electronically to the Parties by the Secretary of the Committee in the form of a letter or email.
 - 5.7. Any ruling of the Committee, including the certified copy of the decision on annulment, will be dispatched electronically to the Parties.
6. Power to Fix Time Limits
Arbitration Rule 26
- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding, on its own initiative or upon a request by any of the Parties.
 - 6.2. In exercising this power, the President shall consult with the other Members of the Committee. 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 Committee.
7. Secretary of the Committee
Administrative and Financial Regulation 25
- 7.1. The Secretary of the Committee is Ms. Mercedes Cordido-Freytes de Kurowski, Legal Counsel, ICSID, or such other person as ICSID may notify the Committee 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:
Ms. Mercedes Cordido-F. de Kurowski
ICSID
MSN C3-300
1818 H Street, N.W.
Washington, D.C. 20433

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USA
Tel.: + 1 (202) 473-3171
Fax: + 1 (202) 522-2615
Email: mkurowski@worldbank.org
Paralegal email: ifernandez1@worldbank.org

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

Ms. Mercedes Cordido-F. de Kurowski
ICSID
1225 Connecticut Ave. N.W.
(World Bank C Building)
3rd Floor
Washington, D.C. 20036
USA
Tel. 202-458-1534

8. Assistant to the *ad hoc* Committee

- 8.1. On April 10, 2021, the Committee proposed to the Parties that Mr. Felipe Aragón Barrero be appointed as Assistant to the *ad hoc* Committee. Mr. Aragón's *curriculum vitae* was distributed to the Parties on that day. He is an associate at Armesto & Asociados, the President's law firm. The Committee explained to the Parties that it considered that the appointment of an Assistant to the *ad hoc* Committee would assist the overall cost and time efficiency of the proceedings.
- 8.2. As stated in the Committee's communication of April 10, 2021, the Assistant to the *ad hoc* Committee shall work at all times under the specific instructions and continuous control and supervision of the Committee, and the Members of the Committee will not delegate to the Assistant any of the duties and obligations incumbent on them.
- 8.3. The Assistant to the *ad hoc* Committee shall undertake only such specific tasks as are assigned to him by the Committee, including:
 - attending meetings, hearings and deliberations, taking notes;
 - summarizing submissions, reviewing authorities, conducting legal research, writing notes or memoranda on factual and legal issues, under the specific instruction and continuous control and supervision of the President.
- 8.4. The Committee shall ensure that the Assistant does not duplicate the tasks of the ICSID Secretariat.
- 8.5. The Assistant to the *ad hoc* Committee shall be bound by the same duties of confidentiality, independence and impartiality as the Committee, and shall sign a declaration to that effect.

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- 8.6. The Parties received the Assistant’s declaration of independence and impartiality on April 10, 2021 and an additional declaration on April 19, 2021. With the express agreement of the Parties, the Committee hereby appoints Mr. Felipe Aragón Barrero as Assistant to the *ad hoc* Committee.
- 8.7. Mr. Aragón’s contact details are the following:
- Mr. Felipe Aragón Barrero
Armesto & Asociados
General Pardiñas, 102
28006 Madrid
Spain
Tel.: +34 915 621 625
Email: fab@jfarmesto.com
- 8.8. The Assistant to the *ad hoc* Committee will be remunerated directly by the President of the Committee, without causing any additional cost to the Parties, save that the Assistant to the *ad hoc* Committee will be entitled to reimbursement of reasonable expenses related to meetings, in accordance with Administrative and Financial Regulation 14 and the ICSID Memorandum on the Fees and Expenses.
- 8.9. The Committee may remove the Assistant to the *ad hoc* Committee at its discretion. The Committee will remove the Assistant if the Assistant ceases to work for Armesto & Asociados. The Committee may appoint a substitute, by submitting to the Parties the substitute’s *curriculum vitae* and declaration of independence and impartiality.

9. Representation of the Parties
Arbitration Rule 18

- 9.1. Each Party shall be represented by its respective counsel (below) and may designate additional agents, counsel, or advocates by notifying the Secretary of the Committee promptly of such designation.

For TECO Guatemala Holdings, LLC

Ms. Andrea J. Menaker
White & Case LLP
5 Old Broad Street
London EC2N 1 DW
United Kingdom

and

Mr. Petr Polášek
Ms. Kristen M. Young

For the Republic of Guatemala

Sr. Ignacio Torterola
Sr. Diego Gosis
Sr. Quinn Smith
Sr. Pablo Mori
Sr. Carmine Pascuzzo
Sr. José Angelo David
Sr. Farhod Sharipov
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Procurador General de la Nación
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and

c/o. Ing. Roberto Antonio Malouf Morales
Minister of Economy
Licda. Alba Edith Flores Ponce de Molina

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Vice Minister of Integration and Foreign
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Lcdo. Alexander Cutz Calderón

Director of Foreign Trade

Lcda. Karla Liquez

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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; DR-CAFTA Article 10.26.1 last sentence

- 10.1. In accordance with Administrative and Financial Regulation 14(3)(e), the Applicant, in this case the Republic of Guatemala, shall be solely responsible for making the advance payments requested by the ICSID Secretariat to cover the costs of the proceeding. This is without prejudice to the Committee's final decision as to the allocation of costs.
- 10.2. By letter of April 2, 2021, the Centre requested the Applicant to make an advance payment of US\$280,000, to cover the initial costs of the proceeding. On April 4, 2021, the Applicant authorized the Centre to transfer any outstanding funds in the name and for the account of the Republic of Guatemala from the underlying proceedings to the current Annulment Proceeding so as to cover the advance payment requested on April 4, 2021. On April 13, 2021, the Secretary of the Committee confirmed that pursuant to the Applicant's instructions US\$280,155.90 had been credited to the present proceeding, which she acknowledged as the Applicant's payment of the requested advance.
- 10.3. ICSID shall request that the Applicant make further advances as needed. Such requests shall be accompanied by a detailed interim statement of account. The final financial statement will include a breakdown of each member of the Committee's fees and expenses.

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11. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3); DR-CAFTA Article 10.20.1
 - 11.1. Washington, D.C. shall be the place of the proceeding.
 - 11.2. The Committee may hold hearings at any other place that it considers appropriate if the Parties so agree.
 - 11.3. The Committee Members may deliberate at any place and by any appropriate means they consider convenient.

12. Procedural Languages, 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 annulment proceeding.
 - 12.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat may be in either procedural language, provided that a courtesy translation to English shall be provided where such correspondence is in Spanish and the correspondence requires or invites a response from Claimant. As for correspondence drafted in Spanish, which requires a response from the Committee, a courtesy translation to English shall be provided. As for correspondence relating to financial provisions and requests for payment, such correspondence addressed to or sent by the ICSID Secretariat should be made in Spanish, so that Respondent can react promptly thereon.

[For Parties' Pleadings]
 - 12.3. Any written requests, applications, pleadings, expert reports, witness statements, or accompanying documentation shall be submitted in one procedural language, provided that a translation of such document to the other procedural language is filed within 5 business days thereafter. With regard to urgent matters requiring immediate reaction from the Committee, the Committee would appreciate receiving a translation, simultaneously, with any request or application made in Spanish.
 - 12.4. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Committee may require a fuller or a complete translation at the request of any Party or on its own initiative.
 - 12.5. Translations need not be certified unless there is a dispute as to the translation provided and the Party disputing the translation specifically requests a certified version.

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[For Hearing]

- 12.6. Either procedural language may be used at the hearings by the Parties' counsel and simultaneous interpretation will be available at all times. Transcripts shall be prepared in both procedural languages.
- 12.7. The testimony of a witness or an expert, if any, called for examination during the hearing, who prefers to give evidence in either English or Spanish shall be interpreted simultaneously into the other language.
- 12.8. The Parties will notify the Committee, as soon as possible, and no later than at the pre-hearing organizational meeting (see § 19 below), which (if any) witnesses or experts require interpretation.
- 12.9. The costs of the interpreter(s) will be paid from the advance payments made by the Applicant, without prejudice to the decision of the Committee as to which Party shall ultimately bear those costs.

[For Committee's Documents Except the Decision on Annulment]

- 12.10. The Committee may make any order or decision in either English or Spanish. Such order or decision shall be translated by the Committee into the other procedural language as soon as possible.

[For Committee's Decision on Annulment]

- 12.11. The Committee shall render the Decision on Annulment in English and simultaneously issue the Decision on Annulment in Spanish. 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 Committee.
- 13.2. Each Party's written communications shall be transmitted by email or other electronic means to the opposing Party and to the Committee Secretary, who shall send them to the Committee and the Assistant.
- 13.3. Electronic versions of communications ordered by the Committee to be filed simultaneously shall be transmitted to the Committee Secretary only, who shall send them to the opposing Party, the Committee and the Assistant once both Parties' communications are received.

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13.4. The Committee Secretary shall not be copied on direct communications between the Parties when such communications are not intended to be transmitted to the Committee.

14. Number of Copies and Method of Filing of Parties' Pleadings

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d), 23 and 53; DR-CAFTA Article 10.21

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

- (i) submit by email to the Committee Secretary and the opposing Party an electronic version of the pleading with witness statements (if any), expert reports (if any) and an updated index of all the supporting documentation attached to the pleading (including exhibits and legal authorities),¹ and
- (ii) Three business days following the filing date, the Parties shall upload the pleading with all the supporting documentation and the corresponding updated index to the file sharing platform that will be created by ICSID for purposes of this case.

14.2. For the avoidance of doubt, the electronic filing processes indicated under 14.1 above are applicable both to the original language submission and to any subsequent translations agreed by the Parties. The translations shall be submitted within the time limits agreed to for the submission of translations under § 12.3 above.

14.3. If any member of the Committee needs to obtain hard copies of submissions, he or she may request so at any time. Such request should specify the format in which the hard copy is required to be submitted.

14.4. Electronic versions of submissions shall be text searchable (i.e., OCR PDF or Word). Any spreadsheet or excel table shall be editable and all formulae visible; data used in the creation of spreadsheets and tables should indicate its source.

14.5. The pleadings, witness statements (if any) and expert reports (if any) shall include its title (e.g. Memorial of Annulment, First Witness Statement, Reply Expert Report, etc.) in the heading of each and all of its pages.

14.6. Pleadings shall be accompanied by an updated index hyperlinked to the supporting documentation. The index shall indicate the document number, the pleading with which it was submitted and the language of the document.

14.7. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Committee.

14.8. At the conclusion of the written phase of the proceeding, on a date to be determined by

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

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the Committee, or at any other time the Committee or the Secretariat so requests, the Parties shall courier to the ICSID Secretariat, the Committee Secretary, and each Member of the Committee at the addresses indicated at § 2.4 above, a USB drive containing an electronic copy of the entire case file (including pleadings, witness statements, expert reports, exhibits, legal authorities and Committee decisions and orders to date) with a consolidated hyperlinked index of all documents.

- 14.9. The official date of receipt of a pleading or communication shall be the day on which the electronic file is sent to the Secretary of the Committee by email.
- 14.10. A filing shall be deemed timely if sent by a Party by midnight, Washington, D.C. time, on the relevant date.
- 14.11. The Parties shall submit a redacted version of any submissions containing protected information pursuant to DR-CAFTA Article 10.21.4, within 12 days of filing. The provisions of DR-CAFTA Article 10.21.4 otherwise apply to protected information.
- 14.12. The Parties may submit to the Committee's consideration a proposed joint confidentiality agreement to apply to this proceeding. If no agreement is reached, the Parties may request the Committee to issue a confidentiality order on submissions containing protected information pursuant to DR-CAFTA Article 10.21.4. The Committee shall issue said order after hearing both Parties.

15. Number and Sequence of Pleadings
Arbitration Rules 20(1)(c), 29, 31 and 53; DR-CAFTA Article 10.20

- 15.1. The proceedings shall consist of a written phase followed by an oral phase.
- 15.2. The number and sequence of pleadings, and the dates on which they are to be filed, shall be as set out in Annex A. Any amendment to the Procedural Timetable shall only be made after due consultation with the Parties and shall be reflected in an updated Annex A.
- 15.3. The Parties' first submissions shall set forth the facts, the legal argumentation and the relief sought. The Parties should endeavor to discharge their burden of proof in their first submissions and should not rely on later submissions to provide evidence for unsupported allegations made in the first submissions. The Parties' subsequent submissions shall be limited to replying to the arguments that the counterparty has raised in its immediately preceding submission.
- 15.4. All written submissions must contain consecutively numbered pages and paragraphs, and shall include a table of contents.
- 15.5. Neither Party shall be permitted to submit additional pleadings outside of the Procedural Timetable, unless the Committee determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other Party.

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16. Evidence: Supporting Documentation

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

- 16.1. 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.
- 16.2. The Parties shall make in their pleadings specific reference to evidence which supports their allegations. If an exhibit consists of more than one page, the Parties shall refer to the specific page and paragraph number upon which they rely and highlight the relevant section of the corresponding exhibit.
- 16.3. The Parties should refrain from marshalling evidence without a specific reference in the submission with which the evidence is tendered.
- 16.4. Given the nature of an annulment proceeding, the Committee expects that the Parties will primarily refer to the evidentiary record of the arbitration proceeding and it does not expect to receive new witness statements or expert reports.
- 16.5. In principle, no new evidence shall be admitted in this proceeding. Should either Party wish to introduce new documents or other evidence (other than legal authorities) – including factual evidence, witness statements, or expert reports - that Party shall file a request to the Committee to that effect. A Party may not annex the evidence it seeks to file to its request. The Committee will promptly decide on the admissibility of these new documents and/or evidence, after hearing from the other Party.
- 16.6. New legal authorities shall be admissible and shall be annexed to the submissions presented by the Parties.
- 16.7. Any documents introduced as exhibits in this annulment proceeding shall be numbered consecutively, and shall be organized in a clear order:
 - (i) Exhibits and legal authorities already included in the evidentiary record of the arbitration proceeding shall be labelled and referred to using the same numbering as in the arbitration proceeding. The Parties shall include with their submissions in this proceeding any material from the underlying arbitration proceeding that they wish to rely on.
 - (ii) Any documents introduced as exhibits in this annulment proceeding shall be submitted in PDF format and shall be numbered using the following prefixes: “**REA-**” for Guatemala’s factual exhibits, “**RLAA-**” for Guatemala’s legal authorities, “**CEA-**” for TECO’s factual exhibits, and “**CLAA-**” for TECO’s legal authorities. The numbering shall also indicate the language of the document e.g. REA-0001(ENG) for a document submitted only in English, C-0001(SPA) for a document submitted only in Spanish and REA-0001(ENG/SPA) for a document submitted simultaneously in English and Spanish. Any document and its translation

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shall be designated with the same exhibit number.

- (iii) The naming protocol for exhibits is set out in greater detail as Annex-B and for legal authorities is set out in detail in Annex-C.
 - (iv) For electronic copies, the exhibit number shall both be in the name of the file and appear on the first page of the PDF copy of the exhibit. Whenever possible, electronic files shall be submitted in a searchable format.
 - (v) Each exhibit shall have a divider with the exhibit identification number on the tab.
 - (vi) Each Party shall number paragraphs of each of its written pleadings.
 - (vii) Duly certified copies of documents are not required unless the authenticity of the copy is contested by a Party and the Committee deems the certification necessary.
- 16.8. Neither Party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, unless the Committee determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other Party. 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.
- 16.9. If the Committee grants such an application for submission of an additional or responsive document, the Committee shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such a document.
- 16.10. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) 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 Committee Members, the Secretary, the Assistant, the court reporter(s) and interpreter(s) at the hearing at a time to be decided at the pre-hearing organizational meeting.
17. Examination of Witnesses and Experts
Arbitration Rules 35, 36
- 17.1. Examination of witnesses and experts (if any) will be decided in consultation with the Committee.
18. Non Disputing Party Submissions and Amicus Curiae Submissions
DR-CAFTA Article 10.20.2 and 10.20.3
- 18.1. The Committee shall decide on the admissibility of applications by non-disputing State Parties to make submissions pursuant to DR-CAFTA Article 10.20.2; and applications by *amici curiae* to make submissions pursuant to DR-CAFTA Article 10.20.3.

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18.2. In the event of submissions by non-disputing State Parties or *amicus curiae* submissions, the Parties shall be given the opportunity to submit simultaneous comments on such submissions, subject to appropriate page limits to be established by the Committee.

19. Pre-Hearing Organizational Meetings
Arbitration Rule 13

19.1. A pre-hearing organizational meeting shall be held on a date determined by the Committee after consultation with the Parties, by any appropriate means between the Committee, or its President, and the Parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing on annulment.

19.2. Following the pre-hearing organizational meeting, a Procedural Order will be issued by the Committee reflecting the decisions made in preparation for the hearing on annulment.

20. Hearings
Arbitration Rules 20(1)(e), 32 and 53; DR-CAFTA Article 10.21.2

20.1. The oral procedure shall consist of oral arguments.

20.2. The hearing may be held in-person or by any other means of communication as determined by the Committee after consultation with the Parties. An in-person hearing shall be held at a place to be determined in accordance with § 11 above.

20.3. The hearing shall take place not less than 3 weeks after the filing of the translation of the last written submission filed by Claimant.

20.4. The Members of the Committee shall endeavor to reserve at least one day after the hearing to determine the next steps and to hold deliberations.

20.5. The allocation of time for the hearing shall be discussed at the pre-hearing organizational meeting referred to in § 19 above.

20.6. Pursuant to DR-CAFTA Article 10.21.2, the Committee shall conduct hearings open to the public, and shall determine, in consultation with the Parties, the appropriate logistical arrangements. If any of the Parties intends to use information designated as protected information in a hearing, it shall so advise the Committee prior to referencing the protected information at the hearing. To the extent that protected information is referenced at the hearing, the Committee shall suspend any public transmission and shall make appropriate arrangements to protect the information from disclosure.

20.7. The Committee shall decide at a later stage in the proceeding whether it is necessary to accommodate oral submissions (if any) by Non-Disputing DR-CAFTA Parties or *amici curiae*.

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21. Records of Hearings and Sessions

Arbitration Rules 13 20(1)(g) and 53

21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Committee Members.

21.2. Verbatim transcript(s) in both procedural languages shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed to by the Parties or ordered by the Committee, 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 Committee on a same-day basis.

21.3. The Parties shall agree on any corrections to the transcripts within 15 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the Parties in the transcripts (“revised transcripts”). The Committee shall decide upon any disagreement between the Parties and any correction adopted by the Committee shall be entered by the court reporter in the revised transcripts.

22. Post-Hearing Memorials and Statements of Costs

Convention Article 44; Arbitration Rule 28(2)

22.1. The Committee will consult with the Parties at the appropriate stage, and issue directions in relation to whether, and if so by which dates, the Parties shall submit post-hearing memorials and a statement of costs.

23. Publication

Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4) and 53; DR-CAFTA Article 10.21

23.1. In accordance with DR-CAFTA Article 10.21, pleadings, and any written submissions, minutes or transcripts of hearings, orders, and the decision on annulment of the Committee shall be made public by the Republic of Guatemala, subject to redaction of designated protected information.

23.2. The ICSID Secretariat may publish the decision on annulment and any order or decision in the present case on its website, subject to redaction of designated protected information.

24. Application of soft law

24.1. Without prejudice to applicable provisions of the ICSID Arbitration Rules, the Committee may take into consideration the International Bar Association Rules for the Taking of Evidence in International Arbitration (2010) and the International Bar Association Guidelines on Party Representation in International Arbitration.

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25. Stay of Enforcement

- 25.1. At the request of the Republic, the Committee will issue an order confirming the continuation of the stay of the enforcement of the Resubmission Award until the Committee has rendered its Decision on Annulment.

[signed]

Deva Villanúa
President of the Committee
Date: May 17, 2021

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Annex A – Procedural Calendar

Procedural Step	By	Date
First Session	All	May 12, 2021
Memorial on Annulment	Guatemala	August 25, 2021
Counter-Memorial on Annulment	TECO	December 8, 2021
Non-Disputing Party (NDP) and/or <i>amicus curiae</i> (AC) submissions (if applicable)	NDP and/or AC	January 14, 2022
Reply on Annulment	Guatemala	February 28, 2022
Rejoinder on Annulment	TECO	May 21, 2022
Pre-Hearing Organizational Meeting	All	TBD
Hearing on Annulment	All	July 27 and 28, 2022 (with July 29, 2022 held in reserve)
Joint Corrections on the Transcripts	Both Parties	August 15, 2022
Post-Hearing Submissions	Both Parties	TBD
Costs Submissions	Both Parties	TBD

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Annex B – List of Exhibits

List of Exhibits Description	Exhibit Number Annulment Proceeding	
Exhibit ABC	CEA-001 (ENG)	
Exhibit XYZ	REA-001 (ENG/SPA)	
Exhibit DEF	C-034 [For exhibits filed in the original proceeding]	
Exhibit GHI	R-101 [For exhibits filed in the original proceeding]	

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Annex C – List of Legal Authorities

List of Legal Authorities Description	Legal Authorities Number Annulment Proceeding	
Legal Authority ABC	CLAA-001	
Legal Authority XYZ	RLAA-002	
Legal Authority DEF	CL-034 [For legal authorities in the original proceeding]	
Legal Authority GHI	R-101 CL-034 [For legal authorities in the original proceeding]	