

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
WASHINGTON, D.C.

ELECTRABEL S.A.

(Claimant)

v.

REPUBLIC OF HUNGARY

(Respondent)

(ICSID Case No. ARB/07/19)

Procedural Order No. 5

Dated: 18 August 2009

1. The Tribunal has considered the Schedule submitted by the Claimant with its letter dated 31 July 2009; and the Tribunal has also considered the Schedule submitted by the Respondent with its letter dated 31 July 2009, together with its second letter also dated 31 July 2009 enclosing earlier letters to the Claimant dated 1 July and 29 July 2009 – both Schedules being submitted in accordance with the Tribunal’s Procedural Order No. 3 dated 27 March 2009 regarding document production in these arbitration proceedings.

2. The Tribunal has based its decisions in regard to the Parties’ disputed requests for document production on several factors: the relevant burden of proof for the Parties’ respective cases in these arbitration proceedings, the measure of proportionality between the likely relevance of requested documentation on the one hand and, on the other, the likely time, effort and cost in identifying and producing the same; the current stage of these arbitration proceedings (given the Tribunal’s order for bifurcation); and, in particular, the Parties’ own written submissions based upon the IBA Rules of the Taking of Evidence in International Commercial Arbitration (1999), as follows (with the particular grounds for such decisions identified by cross-reference to the attached table):¹

(A) The Claimant’s Schedule

Item 39: The Tribunal declines this request, on the basis of Grounds R, M & U;

Item 45: The Tribunal declines this request, on the basis of Grounds R, M, U & C;

Item 51: The Tribunal declines this request, on the basis of Grounds R, M, U & C;

Item 60: The Tribunal declines this request, on the basis of Grounds R, M & C;

Item 65: The Tribunal declines this request, on the basis of Grounds R, M, P & U;

Item 68: The Tribunal declines this request, on the basis of Ground U;

Item 73: The Tribunal declines this request, on the basis of Grounds R, M & U;

Item 86: The Tribunal declines this request, on the basis of Grounds R, M, U & C;

¹ The Tribunal here refers to the IBA Rules with the agreement of the Parties as additional guidelines in the exercise of its discretionary powers under the ICSID Arbitration Rules.

- Item 91: The Tribunal declines this request, on the basis of Grounds R, M & C;
- Item 96: The Tribunal declines this request, on the basis of Grounds R, M & U;
- Item 97: The Tribunal declines this request, on the basis of Grounds R, M & P;
- Item 101: The Tribunal declines this request, on the basis of Grounds R, M & C;
- Item 102: The Tribunal declines this request, on the basis of Grounds R, M, U & C;
- Item 105: The Tribunal declines this request, on the basis of Grounds R, M, U & C;
- Item 109: The Tribunal declines this request, on the basis of Grounds R, M & P;
- Item 110: The Tribunal declines this request, on the basis of Grounds R & M;
- Item 111: The Tribunal declines this request, on the basis of Grounds R, M & C;
- Item 118: The Tribunal orders the requested documentation to be produced;
- Item 119: The Tribunal orders the requested documentation to be produced;
- Item 121: The Tribunal declines this request, on the basis of Grounds R, M & C;
- Item 123: The Tribunal declines this request, on the basis of Grounds R, M & U;
- Item 124: The Tribunal declines this request, on the basis of Grounds R, M, P & C.

(B) The Respondent's Schedule

- Item 21: The Tribunal declines this request, on the basis of Grounds B, E & U;
- Item 22: The Tribunal declines this request, on the basis of Grounds B, E, U & P.

3. The Tribunal requires true copies of the documentation to be produced by the requested party to the requesting party as soon as practicable but, in any event, not later than 31 August 2009.

[Signed]

V.V.Veeder
President of the Tribunal

Table to the Tribunal's Order No. 5 of – August 2009
Explanation to the Codes designating the Tribunal's Grounds

Code	Articles of the IBA Rules	Ground for the decision made by the Arbitration Tribunal
V	3(3)(a)(i)	The description given is insufficient to identify the requested documentation. The request is too vague .
B	3(3)(a)(ii)	The category of documentation requested is insufficiently narrow and specific. The request is excessively broad .
E		The requested documentation does not exist .
M	3(3)(b); 9(2)(a)	The requested documentation is not material to the outcome of the case.
R	3(3)(b); 9(2)(a)	The requested documentation is not sufficiently relevant to the outcome of the case.
PCC	3(3)(c)	The requested documentation is in the possession, custody or control of the objecting party.
P	9(2)(b)	The requested documentation is protected from disclosure by legal impediment or privilege .
U	9(2)(c)	It would be an unreasonable burden for the respondent to the application to produce the requested documentation or it would otherwise be disproportionate to do so.
L	9(2)(d)	The requested documentation is lost or destroyed.
C	9(2)(e)	There are compelling grounds of commercial or technical confidentiality against the disclosure of the requested documentation.
S	9(2)(f)	The requested documentation is protected from disclosure by reason of special political or institutional sensitivity .
F	9(2)(g)	The requested documentation is protected from disclosure by reason of compelling considerations of fairness or equality .