

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Eco Oro Minerals Corp.

Claimant

v.

Republic of Colombia

Respondent

(ICSID Case No. ARB/16/41)

PROCEDURAL ORDER No. 8

Members of the Tribunal

Mrs. Juliet Blanch, President of the Tribunal
Professor Horacio A. Grigera Naón, Arbitrator
Professor Philippe Sands, Arbitrator

Secretary of the Tribunal

Mrs. Ana Constanza Conover Blancas

Assistant to the President of the Tribunal

Mr. João Vilhena Valério

04 October 2019

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I. PROCEDURAL BACKGROUND

1. On 26 September 2019, the Respondent filed an application to the Tribunal (together with Attachments A to D) (i) requesting an urgent order that the Claimant produce 7 (seven) specific metallurgical test work reports and their associated laboratory certificates¹ and (ii) seeking a 14-day extension to the deadline for the filing of its Rejoinder on the Merits and Reply on Jurisdiction.²
2. On 29 September 2019, the Claimant replied to the Respondent's application (enclosing Exhibits 1 to 6), requesting that the Tribunal reject the latter application in full. The Claimant further requested that, were the Tribunal inclined to order the production of documents, the Tribunal ruled that: (i) the Claimant was obliged to produce only the pictures of the core samples referenced in its letter of 25 September 2019,³ subject to conditions 2⁴ and 3.2.⁵; or (ii) in the alternative, the Claimant was obliged to produce only those metallurgical reports that were based on test work

¹ 1. McClelland – “Extensive column & bottle roll leach testing and flotation testwork”; 2. G&T – “Extensive flotation testwork”; 3. Metcom – “Extensive column & bottle roll leach testing and flotation testwork”; 4. SGS (Chile & South Africa) – “Extensive flotation testwork (pilot plant run) and mineralogical analysis”; 5. Barrick Goldstrike – “POX preliminary testwork”; 6. Hazen Research – “Preliminary roasting & leach testing”; and 7. Goldfields – “Extensive BIOX testwork on flotation concentrate”.

² Currently due on 9 October 2019 as per Annex A to Procedural Order no. 5 dated 21 December 2018, as amended by the Tribunal's directions of 4 June 2019.

³ Attachment D to the Respondent's e-mail of 26 September 2019; and Exhibit 6 enclosed with the Claimant's letter dated 29 September 2019.

⁴ Condition 2: “The Respondent would not seek an extension to the current filing deadline for its Rejoinder.”

⁵ Condition 3.2.: “Insofar as the documents produced in response to the Request were submitted on the record, or are otherwise addressed expressly or impliedly by the Respondent, its witnesses or its experts in Colombia's forthcoming submission, the Claimant would be granted the option, to be exercised in its sole discretion, of: [...] 3.2. instructing its experts to address and/or provide an analysis of the documents, or a response to observations made by Colombia, its witnesses and/or its experts in relation to the documents, as part of its presentation to the Tribunal at the hearing (without being subject to any objection from the Respondent on the basis that the testimony or analysis is new and was not included in the experts' prior reports.”

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performed on one or more of the samples specifically listed in the Respondent's email of 16 September,⁶ subject to conditions 2,⁷ 3.1⁸ and 3.2.⁹

3. On 2 October 2019, the Respondent responded to the Claimant's letter, reiterating its requests in its application of 26 September 2019.

II. ORDER

4. Having deliberated, the Tribunal hereby orders the Claimant to produce the metallurgical reports that were based on test work performed on one or more of the samples specifically listed in the Respondent's e-mail of 16 September, subject to conditions 2, 3.1 and 3.2. (see footnotes 4 and 5 above and footnote 8 below).

⁶ Attachment A to the Respondent's e-mail of 26 September 2019.

⁷ See footnote 4 above.

⁸ Condition 3.1.: "Insofar as the documents produced in response to the Request were submitted on the record, or are otherwise addressed expressly or impliedly by the Respondent, its witnesses or its experts in Colombia's forthcoming submission, the Claimant would be granted the option, to be exercised in its sole discretion, of: 3.1. addressing the documents to be produced in response to the Request, and any observations made by Colombia, its witnesses and/or its experts in relation to the documents in the Rejoinder and accompanying statements and reports, by submitting a written submission, which may include a further expert report, on the same date as the Claimant is scheduled to file its Rejoinder on Jurisdiction".

⁹ See footnote 5 above.

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On behalf of the Tribunal,

[Signed]

Mrs. Juliet Blanch
President of the Tribunal
Date: 04 October 2019