

PCA CASE N° 2019-46

**IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE
TRADE PROMOTION AGREEMENT BETWEEN THE REPUBLIC OF PERÚ AND THE
UNITED STATES OF AMERICA**

- and -

THE UNCITRAL ARBITRATION RULES 2013

-between-

THE RENCO GROUP, INC.

-and-

THE REPUBLIC OF PERU

PROCEDURAL ORDER NO. 8

The Arbitral Tribunal

Judge Bruno Simma (Presiding Arbitrator)
Prof. Horacio Grigera Naón
Mr. J. Christopher Thomas KC

16 November 2022

1 Introduction

- 1.1 Pursuant to the agreement of the Parties, this arbitration (the “**Treaty Case**”) is being coordinated with *The Renco Group, Inc. and Doe Run Resources Corp. v. Republic of Peru and Activos Mineros S.A.C.*, PCA Case No. 2019-47 (the “**Contract Case**”).
- 1.2 On 22 June 2022, the Tribunal informed the Parties that it would be unable to meet the deadline set forth in the procedural calendar for its decisions on document production requests. It would therefore consult with the Parties regarding any adjustment to the procedural calendars.
- 1.3 By letter dated 27 June 2022, the Claimant informed the Tribunal that it was in the process of retaining new external counsel and would, consequently, request a revision of the procedural calendars for both cases.
- 1.4 By letter dated 30 June 2022, the Tribunal noted that it envisaged consulting with the Parties regarding potential adjustments to the procedural calendars once it had rendered its decision on document production. Nevertheless, it invited the Claimant to submit its proposals on adjustments and the Respondent to submit any comments on these proposals.
- 1.5 By letter dated 30 June 2022, the Respondent stated that it would collaborate in good faith with the Claimant and was amenable to reasonable adjustments to the procedural calendars. It also proposed that the Tribunal direct the Claimant to advise of the anticipated time frame for it to retain new counsel.
- 1.6 By letter dated 6 July 2022, the Claimant informed the Tribunal that it expected to have new counsel in place by the end of July or early August.
- 1.7 By letter dated 2 August 2022, the Respondent requested an update from the Claimant regarding its new external counsel.
- 1.8 By e-mail of 4 August 2022, the Claimant advised that it expected to have new counsel engaged by the end of the week of 8 August 2022.
- 1.9 By letter dated 11 August 2022, the Claimant informed the Tribunal that it had retained the law firm Schiffer Hicks Johnson PLLC as new external counsel and that it would contact the Respondent to discuss a revised procedural calendar.
- 1.10 On 25 August 2022, the Tribunal issued the Procedural Order No. 7 in the Treaty Case and Procedural Order No. 8 in the Contract Case, containing its decisions on document production.
- 1.11 By letter dated 9 September 2022, the Respondent proposed that the Parties forgo further written submissions and present their final case at the hearings scheduled for 6-17 November 2023 or, in the alternative, adopt a procedural calendar that allowed those hearing dates to be maintained.
- 1.12 By letter dated 12 September 2022, the Claimant asserted that neither of the Respondents proposals was acceptable, and proposed a new procedural calendar leading to a hearing in early 2024.
- 1.13 By letter dated 22 September 2022, in order to ascertain whether a short postponement of the hearing was feasible under the circumstances, the Tribunal requested the Parties to indicate their availability for all two-week periods from December 2023 to April 2024.

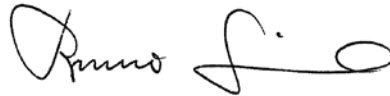
- 1.14 By letter dated 23 September 2022, the Claimant indicated its availability between December 2023 and April 2024.
- 1.15 By letter dated 28 September 2022, the Respondent indicated its availability between December 2023 and April 2024. The Respondent reaffirmed its position that the scheduled hearing dates should not change and presented a new proposal that would maintain the current hearing dates.
- 1.16 By e-mail of 4 October 2022, the Claimant asked for a short delay in the Tribunal's consideration of the timetable on account of an issue that it might raise and could impact the schedule of the proceedings.
- 1.17 By letter dated 10 October 2022, the Claimant submitted that, under the Stock Transfer Agreement executed on 23 October 1997 (the "STA"), the Respondent's contention that the standards and practices of Doe Run Peru were less protective of the environment and public health than those that were applied by Centromín and its questioning of the allocation of responsibility between Centromín and Doe Run Peru for indemnity must be submitted to an independent expert for an initial determination. The Claimant thus requested the Tribunal to include space in the procedural calendar for an independent expert determination and allocation. The Claimant also indicated that it was agreeable to the Tribunal's selection of the independent expert if the parties could not agree.
- 1.18 By letter dated 18 October 2022, the Respondent argued that, given the Claimant's admission that the expert procedure is mandatory under the STA, the Tribunal should dismiss the Contract Case with prejudice. In the alternative, the Respondent requested that the Tribunal bifurcate the proceedings and consider all jurisdictional and admissibility objections in a preliminary phase of the Contract Case.
- 1.19 By letter dated 28 October 2022, the Claimant withdrew its request to include an expert determination procedure in the timetable. The Claimant argued that, upon further review, an expert procedure is not required and, even if it were, the Respondent had waived its right to invoke that procedure. The Claimant also requested the opportunity to address Respondent's letter in its upcoming Reply and Response on Jurisdiction in the event that the Tribunal admitted a new jurisdictional objection in the Contract Case.
- 1.20 By letter dated 4 November 2022, the Respondent stated that its position remained unaltered. The Respondent also asserted that it had not waived any jurisdictional objections regarding the STA's requirement of an expert procedure and that the Claimant's substantive arguments concerning such procedure were incorrect and contradicted the Claimant's own arguments in *Renco I*.

2 Decision and Procedural Calendar

- 2.1 Having considered the views expressed by the Parties in their respective communications and taking note that the Claimant's withdrawal of their request to include an independent expert determination and allocation phase in the Procedural Calendar, the Tribunal hereby dismisses the Respondent's request for summary dismissal of the Contract Case and for the bifurcation of the proceedings. The Tribunal considers that the Respondent has not established a sufficient procedural or factual basis for summary dismissal of the Contract Case at this stage. Nor does the Tribunal consider the circumstances to have changed to such a degree that warrants the reconsideration of its decision not to bifurcate the proceedings as set forth in Procedural Order No. 3 in the Contract Case.

- 2.2 Having further considered the Parties' views regarding the adjustments to be made to the procedural calendar, and having ascertained that a short postponement of the hearing is feasible for all participants, the Tribunal decides to adopt the procedural calendar proposed by the Claimant. Accordingly, the Tribunal hereby establishes a revised procedural calendar as set forth in **Annex 1** to this Procedural Order and fixes the hearing to take place from **Tuesday, 5 March 2024 to Friday, 15 March 2024**.
- 2.3 Before or on the date of the deadline for any written submission, the Party in question shall send the submission to the Tribunal, PCA, and opposing counsel, by e-mail or secure file-sharing platform, in accordance with the Terms of Appointment and Procedural Order No. 1.

So ordered by the Tribunal.



Judge Bruno Simma
(Presiding Arbitrator)

On behalf of the Tribunal

Annex 1: Procedural Calendar

<u>Event</u>	<u>Date</u>
Preliminary Document Production	N/A (Denied)
Claimant's Memorial	Thursday, 25 January 2021
Respondent's Counter-Memorial	Friday, 1 April 2022
Simultaneous exchange of requests for production of documents	Friday, 6 May 2022
Simultaneous exchange of objections to the requests for production of documents	Friday, 20 May 2022
Simultaneous submission to the Tribunal of each Party's respective completed Redfern schedule, including answers to the objections, and production of non-objected documents	Friday, 3 June 2022
Non-Disputing State Party Submission	Tuesday, 7 June 2022
Decision from the Tribunal on the document request objections	Monday, 25 August 2022
Production by each Party of the documents ordered by the Tribunal	Thursday, 15 September 2022
Claimant's Reply on Liability and Response on Jurisdiction	Monday, 1 May 2023
Respondent's Rejoinder on Liability and Reply on Jurisdiction	Friday, 1 September 2023
Claimant's Rejoinder on Jurisdiction	Tuesday, 7 November 2023
Hearing	Tuesday, 5 March 2024 to Friday, 15 March 2024