

[Pages 0001-0002]

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*Hand Delivered*

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Ricardo Ampuero Llerena  
Special Commission – Law No. 28933  
Jr Junín No. 319  
Lima 1, Peru

Subject: Notice of Intent to submit disputes to arbitration under the  
Peru-Singapore Free Trade Agreement

Dear Sirs:

We write on behalf of IC Power Ltd (*IC Power*) and Kenon Holdings Ltd (*Kenon*) (the *Investors*) to give notice of the Investors' intent to submit to arbitration the disputes notified to the Republic of Peru (*Peru*) in the Notices of Dispute sent on 4 October 2016, 27 June 2017 and 12 November 2018 (the *Notices*) pursuant to Article 10.17 of the Free Trade Agreement between the Government of Peru and the Government of the Republic of Singapore (*Singapore*) (the *FTA*).

Through these Notices, the Investors notified Peru of the existence of disputes under the FTA (the *Disputes*) and sought to engage in the consultations and negotiations described in Article 10.17 of the FTA. Six months have elapsed since the last Notice was sent on 12 November 2018, yet it has not been possible to resolve the Disputes through consultations and negotiations.

Consequently, this Notice of Intent is delivered pursuant to the provisions of Article 10.17.4.b of the FTA and sets out: in Section I, the factual background and legal basis of each of the existing Disputes (paragraph iv); in Section II, the approximate amount of losses caused to the Investors (paragraph v); in Section III, the Investors' consent to submit the disputes to the International Centre for Settlement of Investment Disputes (*ICSID*) (Articles 10.17.4.b and 10.17.3.a) and the waiver of their right to initiate proceedings before other dispute resolution forums in relation to the matters in dispute (paragraph iii); and in Section IV, the Investors' details (paragraph i).

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<sup>1</sup> Formerly the Bureau of International Economic Affairs, Competition and Private Investment.

## **I. Summary of the Disputes**

As outlined in the Notices, the Disputes relate to the Peruvian State's measures that breached Peru's obligations under the FTA (the *Measures*) and that caused losses to the Investors and their 74.9% stake that they held in the electric power companies Kallpa Generación SA (*Kallpa GSA*) and Cerro del Águila SA (*Cerro del Águila*), which merged in September 2017, as well as Samay I SA (*Samay*) (together, the *Peruvian Subsidiaries*).<sup>2</sup> These Measures were adopted between June 2016 and May 2017 and relate to the Secondary Frequency Regulation service awarded to Kallpa GSA, as well as the apportionment of the responsibility of payment for certain electricity transmission lines.

### **a. The Dispute relating to Secondary Frequency Regulation**

The first dispute arose as a result of the measures adopted by the Peruvian State that adversely affected Kallpa GSA's rights, obtained through a tender, to provide the Secondary Frequency Regulation (*SFR*) service to the National Interconnected Electric System (*SEIN*, for its acronym in Spanish). The SFR service allows the frequency of the SEIN to be maintained at its reference value, thereby maintaining the quality and reliability of the electricity supply in Peru.

In 2011, Peru reformed the regulatory framework relating to the SFR service in order to improve its reliability, establishing that the service would be voluntary and compensated. As part of this reform, following an extensive process of consultations and based on the recommendations of international energy consultants, the Supervisory Organism for Investment in Energy and Mining (*OSINERGMIN*, for its acronym in Spanish), the regulatory body for the electricity sector, approved Technical Procedure PR-22 "Rotating Reserve for Secondary Frequency Regulation" on 26 March 2014 (*PR-22*). According to the provisions of PR-22, SFR would be secured through long-term commitments to supply the Base Provision, complemented by a short-term (daily) Balancing Market. Part of the reserve required for the Base Provision would be contracted on a firm basis (*Firm Base Provision*), and the other part on a variable basis (*Variable Base Provision*). SFR would primarily be covered by amounts committed under the Firm Base Provision. Only once the amounts committed through Firm Base Provision were exhausted, would the Variable Base Provision and Balancing Market be called upon to provide SFR.

Under PR-22, the supplier of Firm Base Provision would be mandatorily dispatched (*ie* scheduled to supply electricity to the system independently of its place in the economic dispatch) so that it would be available to provide the Firm Base Provision of the SFR as required at any given time. PR-22 also established that, in addition to the payment of the price for the provision of the service, the provider of Firm Base would be compensated for the costs associated with the provision of the SFR service, as well as the costs associated with generating the electricity mandatorily dispatched.

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<sup>2</sup> As described in greater detail in the Notices, the Investors sold their shares to a third party on 31 December 2017, but retained their rights in relation to the notified Disputes.

[Pages 0003-0004]

On 1 October 2015, the Committee for the Economic Operation of the National Interconnected System (**COES**, for its acronym in Spanish) issued a technical note implementing PR-22 (the **Technical Note**). In accordance with PR-22, the Technical Note explicitly established that the supplier of Firm Base Provision would be mandatorily dispatched on a daily basis, regardless of whether it would have been dispatched based on economic dispatch rules. On the other hand, OSINERGMIN approved the Guidelines for the tender of the Base Provision of the SFR (the **Guidelines**), establishing that the Base Provision would be awarded to the bidder offering the lowest price for supplying the Base Provision of the SFR service.

In February 2016, COES conducted a public tender process to award the SFR service for the period from August 2016 to July 2019, pursuant to the terms of PR-22, the Technical Note and the Guidelines. Kallpa GSA submitted the lowest bid and was, as a result, awarded the exclusive right to provide the Firm Base Provision service on a continuous basis for this three-year period, such that its thermoelectric plants (Kallpa and Las Flores) would be mandatorily and continuously dispatched up to the minimum capacity that would allow it to provide the service to supply the committed SFR reserve (initially a Rotating reserve of 240 MW increasing up to 298 MW). Consequently, on 15 April 2016, COES executed a Commitment Act with Kallpa GSA setting out its commitment to provide the SFR service pursuant to the terms of PR-22, the Technical Note and the Guidelines (**Commitment Act**).

However, two months after the tender was awarded to Kallpa GSA, and just two days before Kallpa GSA was required to declare its costs associated with generating the electricity it would dispatch, Peru radically and arbitrarily changed the terms of PR-22 which Kallpa GSA had relied on for submitting its bid and that formed the basis of the Commitment Act. On 13 June 2016, OSINERGMIN issued Resolution No. 141-2016-OS/CD (**Resolution 141**), purporting to interpret or clarify the terms of PR-22, but which in fact materially altered the terms of PR-22 for the supply of the Firm Base Provision of the SFR service.

Specifically, through Resolution 141, the Peruvian State, *inter alia*, reneged on its commitment to mandatorily dispatch the supplier of the Firm Base Provision so that it could have priority in providing the Firm Base Provision of the SFR during the three-year term covered by the Commitment Act. Through Resolution 141, Peru established that the supplier of Firm Base (which had already been awarded to Kallpa GSA in the tender) would only supply the Firm Base Provision when it was part of the economic dispatch for supplying electricity. As a result, Kallpa GSA was deprived of its right to provide the SFR service on the terms on which this service was awarded, including the right to be dispatched continuously in order to be able to provide the Firm Base of the SFR and to recover the entirety of the costs associated with the supply of this energy. These changes to PR-22 were applied retroactively to Kallpa GSA as the supplier of the Firm Base Provision, in violation of the terms of the Commitment Act, which continues to bind Kallpa GSA to provide the Firm Base Provision of the SFR at its offered price.

Resolution 141 frustrated the Investors' legitimate expectations, created by Peru, which they, through their subsidiary Kallpa GSA, relied upon when deciding to submit a bid for the provision of the SFR service. Resolution 141 constitutes an arbitrary measure, violates due process and is incompatible with Peru's previous actions and conduct. As a result, this measure contravenes Peru's obligations under the FTA including, without limitation, Peru's obligation established in Article 10.5.1 of the FTA to accord "to investments of investors of the other Party treatment in accordance with customary international law minimum standard for the treatment of aliens, including fair and equitable treatment and full protection and security".

**b. The Dispute relating to the Apportionment of Responsibility of Payment for the Facilities of the Secondary Transmission Systems and Complementary Transmission Systems**

The second dispute arises in connection with Resolution No 164-2016-OS-CD issued by OSINERGMIN on 2 July 2016, which approved a new version of the Procedure for the Apportionment of Responsibility of Payment for the Secondary Transmission Systems (*STS*) and Complementary Transmission Systems (*CTS*) (the *Amended Procedure*).

The Amended Procedure materially and arbitrarily altered the way in which the apportionment of responsibility for STS and CTS compensation payments among electricity generators was decided, through, among other things, removing the requirement that only "relevant" generators, *ie* deemed users of the transmission infrastructure, should pay for such infrastructure.

As a result of these unpredictable and arbitrary changes to the existing regulation, from 1 May 2017, the Investors' subsidiaries, Kallpa GSA and Samay, as well as other private electric power companies, have been forced to make significant additional and unforeseen payments for the use of the STS and CTS. The Amended Procedure directly benefited State-owned power generation companies, particularly Electroperú, since their payments for the use of the STS and CTS facilities reduced substantially, to the detriment of privately-owned companies like Kallpa GSA and Samay which have been adversely and materially affected.

The Amended Procedure was a measure imposed in a way which was arbitrary, discriminatory, in violation of due process and incompatible with Peru's previous actions and conduct. As a result, it breaches Peru's obligations under the FTA including, without limitation, Peru's obligation established in Article 10.5.1 of the FTA to accord "to the investments of investors of the other Party treatment in accordance with customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security".

**II. Damages suffered by IC Power and Kenon**

As a result of these unlawful Measures, the Investors have suffered significant losses to their protected investments. The approximate amount of these losses has a value in excess of US\$190 million, plus interest.

**III. Notice of intent to resort to arbitration before ICSID and waive other forums**

In light of the above, IC Power and Kenon hereby notify Peru of their intention to submit the aforementioned Disputes to arbitration before ICSID in accordance with the provisions in Article 10.17.3(a) of the FTA.

[Page 0005]

Through this notice, IC Power and Kenon consent to submit the Disputes to said jurisdiction, and waive their right to initiate any proceedings (excluding interim protection proceedings) before any other dispute resolution forum referred to in Article 10.17 paragraph (3), in relation to the matters in dispute.

**IV. Details of the Investors**

In accordance with Article 10.17.4.b(i), the names and addresses of the disputing Investors are repeated below:

Kenon Holdings Ltd.

*Address:*

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Singapore, 039192

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*Place of incorporation:*

Singapore

IC Power Ltd.

*Address:*

1 Temasek Avenue, #36-01, Millenia Tower  
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*Place of incorporation:*

Singapore

Yours sincerely,

[Signature]

**Robert Rosen**

Chief Executive Officer  
Kenon Holdings Ltd.

Chief Executive Officer  
IC Power Ltd.