

**ARBITRATION UNDER THE RULES OF ARBITRATION OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL
TRADE LAW**

GUARACACHI AMERICA, INC.

&

RURELEC PLC



Claimants

v.

PLURINATIONAL STATE OF BOLIVIA

Respondent

NOTICE OF ARBITRATION

24 NOVEMBER 2010



FRESHFIELDS BRUCKHAUS DERINGER US LLP

701 Pennsylvania Avenue, NW
Suite 600
Washington DC, 20004
United States of America

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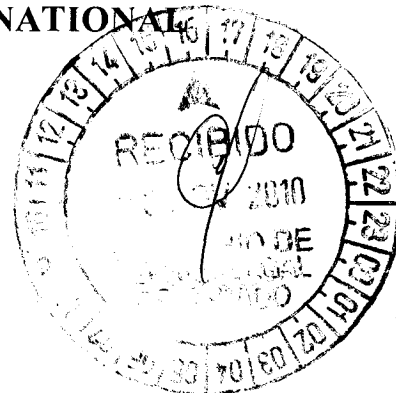
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I. INTRODUCTION

1. Guaracachi America, Inc. (*Guaracachi America*), a company incorporated in the United States of America, and Rurelec plc (*Rurelec*), a company constituted under the laws in force in the United Kingdom (together, *the Claimants*), hereby institute arbitration proceedings against the Plurinational State of Bolivia (*Bolivia*, or the *Government*) under the 1976 Arbitration Rules of the United Nations Commission on International Trade Law (the *UNCITRAL Rules*).¹

2. This arbitration claim is brought pursuant to the Treaty between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment (the *US Treaty*)² and the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Bolivia for the Promotion and Protection of Investments (the *UK Treaty*) (together, *the Treaties*).³

3. The Claimants have duly authorized the undersigned to institute and pursue arbitration proceedings on their behalf against Bolivia under the Treaties.⁴

4. As described in more detail in Section II below, this dispute concerns the Government's 1 May 2010 expropriation of the Claimants' investments in the power

¹ Article IX of the US Treaty and Article 8 of the UK Treaty (as defined in paragraph 2 of this Notice) provide that the dispute may be submitted for settlement by binding arbitration in accordance with the UNCITRAL Arbitration Rules. The 1976 UNCITRAL Arbitration Rules were revised in 2010; the revised rules entered into force on 15 August 2010. The Claimants invite Bolivia to agree to the application of the revised rules to these proceedings.

For the avoidance of doubt, this Notice of Arbitration does not include the Statement of Claim referred to in Article 18 of the UNCITRAL Rules. Pursuant to Article 3 of the UNCITRAL Rules, the arbitral proceedings are deemed commenced on the date this Notice of Arbitration is received by Bolivia.

² Treaty between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment, signed on 17 April 1998 and entered into force on 6 June 2001, **Exhibit C-17**.

³ Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Bolivia for the Promotion and Protection of Investments, signed on 24 May 1988 and entered into force on 16 February 1990, **Exhibit C-1**.

⁴ Powers of Attorney executed by Guaracachi America Inc on 11 November 2010 and by Rurelec plc on 18 November 2010, **Exhibits C-43** and **C-44**, respectively.

generation sector in Bolivia, specifically Rurelec's 50.001% shareholding in Empresa Eléctrica Guaracachi S.A. (*Guaracachi*), held through Guaracachi America, without the payment of prompt, adequate and effective compensation in violation of the Treaties and international law (the *Dispute*).

5. In this Notice, the Claimants set out briefly the jurisdictional and substantive bases upon which it is entitled to bring these proceedings. Specifically, the Claimants note that:

- (a) the Government has taken certain measures and is responsible for certain omissions (the *Measures*) in connection with the Claimants' investments which have given rise to a dispute between the Claimants and Bolivia under the Treaties (Section II);
- (b) the Government's Measures have violated the protections set out in the Treaties (Section III);
- (c) the Claimants are protected investors with qualifying investments in Bolivia which are protected under the Treaties (Section IV); and
- (d) the Claimants and Bolivia have consented to arbitration under the Treaties and the Claimants are entitled to initiate these arbitration proceedings pursuant to Article IX of the US Treaty and Article 8 of the UK Treaty, respectively (Section V).

6. The Dispute arose on 1 May 2010, the date of the expropriation of the Claimants' investments. Bolivia has been formally on notice of the Dispute since 13 May 2010, the date on which the Claimants submitted notifications of the Dispute under the Treaties to the Government (the *Notices of Dispute*).⁵ The amicable negotiation periods of three months pursuant to US Treaty Article IX.3(a) and six months pursuant to UK Treaty Article 8(1) have elapsed. Despite the Claimants' intensive efforts, the parties have been unable to reach an amicable settlement of their Dispute.

⁵ Notice of Dispute from Guaracachi America Inc to President Evo Morales, 13 May 2010, **Exhibit C-39**; Notice of Dispute from Rurelec to President Evo Morales, 13 May 2010, **Exhibit C-40**.

7. In Section VI, the Claimants propose the constitution of a three-member Tribunal to adjudicate the Dispute described herein and address certain other procedural matters. In Section VII, the Claimants set out the details of the parties to the Dispute and counsel for the Claimants. In Section VIII, the Claimants set out the relief requested in these proceedings.

8. The Claimants reserve their right to expand upon the factual and legal claims, arguments and evidence they have submitted in the present Notice during the course of the arbitral proceedings.

II. THE FACTS RELEVANT TO THE DISPUTE

A. In the early 1990s, Bolivia implemented far-reaching economic reforms aimed at developing and modernizing the country

1. In the early 1990s, Bolivia designed a legal framework aimed at attracting foreign investment

9. After years of economic instability, at the beginning of the 1990s, Bolivia devised and implemented far-reaching economic reforms aimed at attracting much needed foreign investment to stimulate the development and modernization of the country.

10. In order to attract foreign investment, Bolivia designed a legislative framework which provided certain legal commitments to prospective foreign investors. In September 1990, Bolivia enacted its law on investments, Law No. 1182 (the *Investment Law*), to “stimulate” and “guarantee” domestic and foreign investments in Bolivia.⁶ The Investment Law provided that its guarantees would, in turn, be backed-up by bilateral and multinational investment treaties.⁷

⁶ Law No. 1182, 17 September 1990, published in the *Gaceta Oficial* No. 1662 on 17 September 1990, **Exhibit C-2**, Article 1.

⁷ *Ibid*, Article 7.

11. In 1992, Bolivia enacted Law No. 1330 (the *Privatization Law*)⁸ and in 1994 it enacted Law No. 1544 (the *Capitalization Law*)⁹ authorizing the acquisition of the assets and shares of State-controlled entities by the private sector through international public bidding processes.

12. As mandated by the Investment Law, Bolivia undertook an ambitious program of bilateral investment treaty negotiation and ratification¹⁰ in order to assure foreign investors that any investments made by them in Bolivia would (*inter alia*) be treated fairly and equitably, would be guaranteed full protection and legal security, would not be expropriated without prompt, adequate and effective compensation and that, should Bolivia breach one of these protections, investors would have the right to arbitrate against Bolivia before a neutral forum. Bolivia recognized that it was competing with other developing nations for foreign capital and that investment treaty protection would serve as an important incentive by establishing what it referred to as “a more secure investment environment for potential investors”.¹¹

13. In the years following the enactment of the Privatization Law, key industries under State control, including the electricity sector, were opened up to private capital.

2. Bolivia opened its electricity industry to foreign investors

14. In the early 1990s, the electricity sector in Bolivia was in need of significant investment in order for it to expand and support economic development. The National Electricity Enterprise (*Empresa Nacional de Electricidad* or *ENDE*) – the State company

⁸ Law No. 1330, 24 April 1992, published in the *Gaceta Oficial* No. 1735 on 5 May 1992, **Exhibit C-3**.

⁹ Law No. 1544, 21 March 1994, published in the *Gaceta Oficial* No. 1824 on 22 March 1994, **Exhibit C-4**.

¹⁰ Bolivia has entered into a broad network of bilateral investment treaties, including treaties entered into with Argentina, Austria, Belgium and Luxembourg, Chile, China, Cuba, Denmark, Ecuador, France, Germany, Italy, the Republic of Korea, the Netherlands, Peru, Romania, Sweden and Switzerland: List of Bilateral Investment Treaties concluded by Bolivia, *United Nations Conference on Trade and Development*, 1 June 2008, **Exhibit C-33**.

¹¹ Brochure of the Vice-Ministry of Energy and Hydrocarbons, 1998, **Exhibit C-16**, page 7.

responsible for all generation and transmission, as well as some distribution of electricity – was underfunded and inefficient.

15. Much-needed reforms were adopted through the enactment of Law No. 1604 of December 1994 (the *Electricity Law*).¹² The law established the legal framework for the electricity sector. It established principles to stabilize prices and tariffs throughout the country¹³ and was predicated upon the unbundling of power generation, transmission and distribution activities.¹⁴

16. The Capitalization Law provided for certain assets belonging to State-owned companies, including ENDE, to be transferred to new mixed (private and State) capital companies (*Sociedades de Economía Mixta*) which would be injected with private capital through a process that would involve increasing the mixed companies' capital and issuing the new shares (amounting to a 50% shareholding interest) to private investors through international public bidding processes.¹⁵

17. Through the capitalization process, and in accordance with the Electricity Law, ENDE's power generation assets were unbundled and divided into three separate mixed companies. One of these was Empresa Eléctrica Guaracachi S.A.M.¹⁶ (which later became Guaracachi¹⁷) to which three of ENDE's thermal power stations were transferred

¹² Law No. 1604, 21 December 1994, published in the *Gaceta Oficial* No. 1862 on 21 December 1994, **Exhibit C-5**.

¹³ Articles 45 through 55 of the Electricity Law, *ibid*, regulated electricity prices and tariffs.

¹⁴ *Ibid*, Article 15.

¹⁵ Capitalization Law, **Exhibit C-4**.

¹⁶ See Supreme Decree 24047, 29 June 1995, published in the *Gaceta Oficial* No. 1886 on 30 June 1995, **Exhibit C-9**. See also Supreme Decree 24015, 20 May 1995, published in the *Gaceta Oficial* No. 1883 on 5 June 1995, **Exhibit C-8**, authorizing the constitution of Empresa Eléctrica Guaracachi S.A.M, as a company to be capitalized under the Capitalization Law and National Secretary of Industry and Commerce Administrative Resolution No. 02-05342/95 and Certificate of Registration of Empresa Eléctrica Guaracachi S.A.M to the commercial register and Administrative Resolution No. 02-05342/95, 5 July 1995, **Exhibit C-10**.

¹⁷ Deed evidencing the conversion of the mixed capital company Empresa Eléctrica Guaracachi S.A.M into a private capital company bearing the name Empresa Eléctrica Guaracachi SA on 28 July 1995, 18 March 2003, **Exhibit C-26**.

(namely, the Guaracachi, Aranjuez and Karachipampa stations, shown on the map below).



Map of Bolivia showing location of Guaracachi's power plants¹⁸

18. An international public bidding process for the tender of 50% of the increased capital in Guaracachi was launched in 1994 by the Ministry Responsible for the Capitalization (*Ministerio sin Cartera Responsable de Capitalización*, the **Ministry**).¹⁹ Advertisements announcing the bid were placed in the international press.²⁰

¹⁸ See 2009 Annual Report of Empresa Eléctrica Guaracachi SA, 14 April 2010, **Exhibit C-36**, p.14. The map also shows the Santa Cruz Co-Generation plant which became operational in 2009 following the transfer of two generation units from the Guaracachi plant (in order to make room for the new combined cycle plant commissioned in 2010). See license granted through Resolution SSDE No. 031/2009, 30 January 2009, **Exhibit C-34**. See also 2009 Annual Report of Empresa Eléctrica Guaracachi SA, 14 April 2010, **Exhibit C-36**, p.10.

¹⁹ See *Términos de Referencia: Procedimientos de Consulta y Licitación Pública Internacional para la selección de Inversionistas y adjudicación de la suscripción de acciones a ser emitidas por: Empresa Corani S.A.M., Empresa Guaracachi S.A.M., Empresa Valle Hermoso S.A.M. y la Venta de los Proyectos: Laguna Colorada, Puerto Suárez* as amended in July 1995 (Excerpts), **Exhibit C-7** (the **Bidding Rules**), Article 1.1.

²⁰ *Ibid*, Article 1.1.1.

19. Pursuant to the Bidding Rules, operators of the power generation businesses being tendered were required, *inter alia*, to have five years of experience operating power generation plants and a net worth of at least US\$100 million.²¹ These requirements were such that only foreign companies could qualify to be the operator.

20. Through this process, the successful bidder would subscribe for new shares in Guaracachi upon payment of a bid price based on the value it ascribed to the business.

B. Guaracachi America's investment in the electricity sector in Bolivia

21. A specifically created commission evaluated the bids for the stake in Guaracachi and, pursuant to Supreme Decree No. 24047 (the *Adjudication Decree*), recommended that Energy Initiatives, Inc., a subsidiary of GPU Power, Inc., be declared the winning bidder. This entitled it to subscribe for 50% of the shares in the newly capitalized Guaracachi for a cash injection of US\$47.1 million,²² an amount that not only recognized the value of Guaracachi's fixed assets but also the value of the business based on expectations created pursuant to the commitments and protections enshrined in the newly adopted legislation. These shares were issued to Guaracachi America,²³ a corporation constituted for that purpose²⁴ and also a subsidiary of GPU Power, Inc.²⁵

²¹ Article 5.6.4 of the Bidding Rules, **Exhibit C-7**.

²² Supreme Decree No. 24047, 29 June 1995, published in *Gaceta Oficial* No.1886 on 30 June 1995, **Exhibit C-9**.

²³ *See* Receipt evidencing Guaracachi America Inc's subscription to 50% of the shares in Empresa Eléctrica Guaracachi SAM for US\$47.131 million, 28 July 1995, **Exhibit C-12**. *See also* Letter from Central Bank of Bolivia to the Minister of Capitalization, 28 July 1995, confirming receipt of US\$47.131 million, **Exhibit C-13**.

²⁴ In accordance with the terms of the Bidding Rules, the successful bidder was required to constitute a corporation whose purpose was to subscribe to the shares in the tendered company. *See* Bidding Rules, **Exhibit C-7**, Article 2.3 and the Capitalization Contract, 28 July 1995, **Exhibit C-14**, Articles 3 (definition of "sociedad suscriptora") and 5.1.

²⁵ Several years later, GPU Power, Inc merged with another US company and, in 2003, sold its interest in Guaracachi America to Bolivia Integrated Energy Limited (BIE). Presently, Guaracachi America's ultimate shareholder is Rurelec which acquired a 100% stake in BIE in 2005. *See* para 25, below, for the details.

22. Pursuant to the Electricity Law,²⁶ Guaracachi was granted 30-year electricity generation licenses for each of its three power stations²⁷ (subsequently extended for an additional ten-year period with respect to the Guaracachi station²⁸) as well as license contracts.²⁹

23. In accordance with the Adjudication Decree,³⁰ on 28 July 1995, a “Capitalization Contract” was entered into by Bolivia (acting through the Ministry), Guaracachi America and Guaracachi (amongst other parties). This contract provided for the payment and use of the sum paid for the share subscription, 90% of which was required to be applied towards capital investments in generation capacity within a period of seven years.³¹

24. In 1999, having fulfilled its investment obligations under the Capitalization Contract, Guaracachi America increased its shareholding in Guaracachi to 50.001%.³² As a result, Guaracachi America owned a controlling stake in Guaracachi and was permitted by law to nominate five out of the seven members of its board of directors.

²⁶ Article 23 of the Electricity Law, **Exhibit C-5**.

²⁷ *See* Resolution SSDE No. 143/97, 4 December 1997, **Exhibit C-15**; Resolution SSDE No. 230/98, 18 December 1998, **Exhibit C-18**; SSDE No. 231/98, 18 December 1998, **Exhibit C-19**; Resolution SSDE No. 232/98, 18 December 1998, **Exhibit C-20**; and Resolution SSDE No. 233/98, 18 December 1998, **Exhibit C-21**.

²⁸ Resolution SSDE No 199/2007, 25 June 2007, **Exhibit C-31**.

²⁹ *See* License Contract for Power Generation at the Guaracachi Plant between the Superintendent of Electricity and Empresa Eléctrica Guaracachi SA, 21 December 1998, **Exhibit C-22**; License Contract for Power Generation at the Aranjuez Plant between the Superintendent of Electricity and Empresa Eléctrica Guaracachi SA, 27 April 1999, **Exhibit C-23**; and License Contract for Power Generation at the Karachipampa Plant between the Superintendent of Electricity and Empresa Eléctrica Guaracachi SA, 27 April 1999, **Exhibit C-24**.

³⁰ Adjudication Decree, **Exhibit C-9**, Article 3.

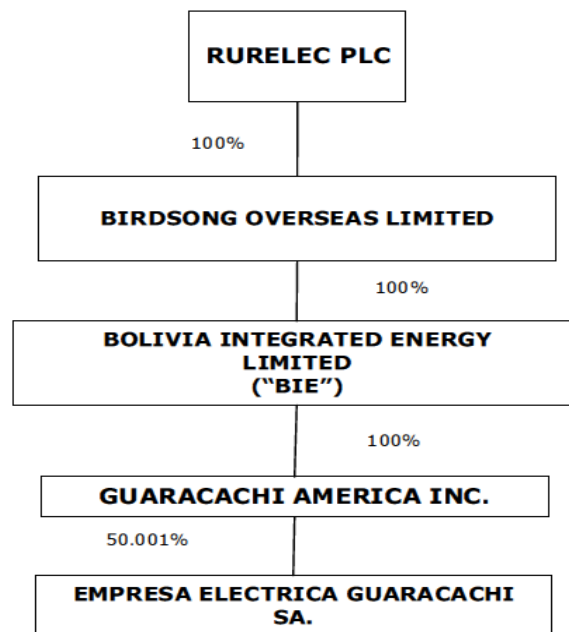
³¹ Capitalization Contract, 28 July 1995, **Exhibit C-14**, Articles 5.1 and 8.

³² *See* 2009 Annual Report of Empresa Eléctrica Guaracachi SA, 14 April 2010, **Exhibit C-36**, p.57 showing Guaracachi America’s ownership of 1,679,184 shares out of a total of 3,358,284 shares, i.e. 50.001%.

C. Rurelec's investment in the electricity sector in Bolivia

25. Rurelec, through its 100% subsidiary Birdsong Overseas Limited,³³ acquired an interest in Guaracachi in 2005 through the acquisition of Guaracachi America's parent company, Bolivia Integrated Energy Limited (*BIE*).³⁴ As a result of this acquisition, Rurelec holds a 50.001% interest in Guaracachi,³⁵ held indirectly through its 100% stake in Birdsong Overseas Limited, BIE and Guaracachi America, as illustrated in the diagram below.

Empresa Electrica Guaracachi, S.A. OWNERSHIP STRUCTURE



³³ Certificate of Incorporation of Birdsong Overseas Limited, 7 December 2005, **Exhibit C-29** and Share Certificate evidencing Rurelec's 100% stake in Birdsong Overseas Limited, 8 December 2005, **Exhibit C-30**.

³⁴ Certificate of Incorporation of Bolivia Integrated Energy Limited, 22 August 2002, **Exhibit C-25**; Share Certificate evidencing Birdsong Overseas Limited's 100% stake in Bolivia Integrated Energy Limited, 29 June 2009, **Exhibit C-35**; and Share Certificate and Share Register evidencing Bolivia Integrated Energy Limited's 100% stake in Guaracachi America, 11 December 2003, **Exhibit C-27**.

³⁵ See 2009 Annual Report of Empresa Eléctrica Guaracachi SA, 14 April 2010, **Exhibit C-36**, p.57 showing Guaracachi America's ownership of 1,679,184 shares out of a total of 3,358,284 shares, i.e. 50.001%. See also Receipt evidencing Guaracachi America Inc subscription to 50% of Empresa Eléctrica Guaracachi S.A.M for US\$47.131 million, 28 July 1995, **Exhibit C-12** and Share Register and Certificates of Empresa Eléctrica Guaracachi S.A.M, 1995, **Exhibit C-6**.

D. Guaracachi’s power generation capacity increased significantly through substantial investments sponsored by the Claimants

26. The investment targets set out in the Capitalization Contract were greatly exceeded. Through their investments in Guaracachi, the Claimants have been the largest investors in new generation capacity in Bolivia.

27. When the Capitalization Contract was executed in 1995, Guaracachi had only nine old technology “Frame 5” gas turbines, five dual fuel (gas and diesel) turbines and one aero-derivative gas turbine installed in the 1970s and early 1980s with a total installed generation capacity of 248 megawatts (*MW*). In 1996, an investment of US\$65 million was made to acquire two new “Frame 6FA” gas turbines. These new turbines were commissioned in 1999, increasing Guaracachi’s generation capacity by 142 MW (over 55%).

28. Further investments of approximately US\$110 million have been made over the last four years, increasing Guaracachi’s capacity by an additional 185 MW. This additional new capacity resulted from the addition of nine gas engines and a third “Frame 6FA” gas turbine.³⁶ Moreover, the combined cycle gas turbine project, commenced in 2007 and due to be completed in 2010, alone resulted in an investment of approximately US\$68 million – the most ambitious and important power generation project in Bolivia to date.³⁷

29. These investments, sponsored by the Claimants through the reinvestment of Guaracachi’s returns and the foregoing of dividends, were encouraged and fully supported by the Government.³⁸

³⁶ 2009 Annual Report of Empresa Eléctrica Guaracachi SA, **Exhibit C-36**, pages 11, 22.

³⁷ 2008 Annual Report of Empresa Eléctrica Guaracachi SA, **Exhibit C-32**, pages 7, 22, 25. This project was initially contemplated in Guaracachi’s original power generation license, *see* Resolution SSDE No. 143/97, 4 December 1997, **Exhibit C-15**, Annex A.

³⁸ *See, e.g.*, Resolution SSDE No. 232/98, 18 December 1998, **Exhibit C-20**.

30. Moreover, the Claimants ensured that Guaracachi's Bolivian management was trained and empowered to undertake project development, thereby facilitating the transfer of technology and know-how to Bolivia. Together with Guaracachi's management team, the Claimants pioneered the methodology for obtaining carbon credits under the UN Clean Development Mechanism and the negotiation of forward sale contracts for those credits in order to underpin the value of the combined cycle gas turbine project and strengthen Guaracachi's cash flow and credit position.

31. As a result of these significant investments over the past 15 years, Guaracachi is more technologically advanced and its generation capacity 2.5 times greater than it was before Guaracachi America first invested in 1995. Guaracachi has grown to become the largest power generator in Bolivia with over a third of the effective capacity in the national interconnected electricity system under its ownership.

E. Bolivia nationalized Guaracachi without providing any compensation

32. On 1 May 2010, President Morales issued Supreme Decree No. 0493 (the *Nationalization Decree*) ordering the nationalization of 100% of Guaracachi America's shareholding in Guaracachi and transferring these shares to the State-owned electricity company, ENDE.³⁹ Neither Guaracachi nor the Claimants received any advance notice of this nationalization. Indeed, the nationalization was in open contradiction to assurances received from the Bolivian Ambassador to the United Kingdom the previous day.

33. In the early hours of the morning of 1 May 2010 and without warning, Guaracachi's offices were forcibly entered and occupied by Bolivian military personnel carrying machine guns (see photograph below of the premises' intervention that appeared in a national newspaper). A Government official communicated the terms of the Nationalization Decree to Guaracachi's General Manager, Jaime Aliaga Machicao. Mr. Aliaga and Guaracachi's Finance Manager, Marcelo Blanco Quintanilla, were then escorted from the premises at gunpoint.

³⁹ Supreme Decree No. 0493, 1 May 2010, published in the *Gaceta Oficial* No. 127NEC on 1 May 2010, **Exhibit C-37**, Article 2.



Nationalization of Guaracachi on 1 May 2010 (El Deber)⁴⁰

34. ENDE immediately appointed a new General Manager of Guaracachi, Mr. Jerges Mercado, as well as a new Finance Manager and Legal Advisor, in accordance with Article 3 of the Nationalization Decree.⁴¹ By the end of the day, the take-over was complete and Guaracachi's top management had been removed from office and replaced.

35. The Nationalization Decree provided that ENDE would pay for Guaracachi America's expropriated shareholding in an amount to be determined through a valuation process to be carried out within 120 days.⁴² The Decree provided that alleged liabilities incurred by Guaracachi – including financial, tax, commercial, regulatory, environmental, labor and social liabilities – would be deducted from the amount of compensation.⁴³

⁴⁰ See "Analistas y opositores cuestionan la medida estatal", *El Deber*, 2 May 2010, **Exhibit C-38**. See also "Guaracachi: inician proceso de arbitraje", *Los Tiempos*, 14 May 2010, **Exhibit C-41**.

⁴¹ Nationalization Decree, **Exhibit C-37**, Article 3.

⁴² *Ibid*, Article 2(III).

⁴³ *Ibid*, Articles 2(V) and 5.

F. The Claimants notified the Dispute and the claim

36. On 13 May 2010, the Claimants sent Notices of Dispute under the Treaties to President Morales, relevant cabinet Ministers and ENDE.⁴⁴ The letters reiterated the Claimants' willingness to seek an amicable settlement of the Dispute, within the context, respectively, of the three-month waiting period set out under Article IX(3)(a) of the US Treaty and the six-month waiting period set out under Article 8(1) of the UK Treaty.

37. Since then, the Claimants have attended meetings with the Government in a good faith effort to resolve the Dispute amicably. The Government, however, has indicated in its last meeting that, following its review, it will provide no compensation to the Claimants.⁴⁵

III. BOLIVIA BREACHED ITS OBLIGATIONS UNDER THE TREATIES AND INTERNATIONAL LAW

A. Bolivia expropriated the Claimants' investments without prompt, adequate and effective compensation contrary to the Treaties and international law

38. Article III of the US Treaty provides that:

1. Neither Party shall expropriate or nationalize a covered investment either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II, paragraph 3.

⁴⁴ Notices of Dispute, **Exhibit C-39** and **Exhibit-C-40**.

⁴⁵ It is noteworthy that the process of valuing the compensation to be paid for the nationalization of Guaracachi (mandated by the Nationalization Decree) was conducted unilaterally by the Government, without any input from the Claimants. Notwithstanding the fact that ENDE approved Guaracachi 2009 accounts in April 2010, in July 2010, the new State management of Guaracachi published a tender for auditors to conduct an audit of Guaracachi's 2009 accounts with the following aims: "identify and adjust over-valued assets, undervalued liabilities, incorrect appropriations [...]". *See* Public invitation to tender No. 6/2010, July 2010, **Exhibit C-42**. This exercise, the stated goal of which was to write down assets and increase liabilities, was a thinly veiled attempt to avoid paying compensation to the Claimants for the expropriation of their investments.

2. Compensation shall be paid without delay; be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken (“the date of expropriation”); and be fully realizable and freely transferable. The fair market value shall not reflect any change in value occurring because the expropriatory action had become known before the date of expropriation.

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid – converted into the currency of payment at the market rate of exchange prevailing on the date of payment – shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.⁴⁶

39. Article 5 of the UK Treaty provides that:

(1) Investments of nationals or companies of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as “expropriation”) in the territory of the other Contracting Party except for a public purpose and for a social benefit related to the internal needs of that Party and against just and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial or legal rate, whichever is applicable in the territory of the expropriating Contracting Party, until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. The national or company affected shall have the right to establish promptly by due process of law in the territory of the Contracting Party making the expropriation the

⁴⁶ US Treaty, **Exhibit C-17**, Article III.

legality of the expropriation and the amount of the compensation in accordance with the principle set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such nationals or companies of the other Contracting Party who are owners of those shares.⁴⁷

40. Through the Nationalization Decree, Bolivia has expropriated the entirety of the Claimants' investments in Guaracachi,⁴⁸ namely their 50.001% shareholding interest in the company, without prompt, just, adequate and effective compensation, contrary to Article III of the US Treaty, Article 5 of the UK Treaty and international law. More than six months after the expropriation of its investment, the Claimants have been informed that they will not receive any compensation whatsoever for the expropriation of their shares in Guaracachi.

B. Bolivia has treated the Claimants' investments unfairly and inequitably, has failed to provide full protection and security and has impaired them through unreasonable and discriminatory measures, contrary to the Treaties

41. Article II.3 of the US Treaty provides that:

(a) Each Party shall at all times accord to covered investments fair and equitable treatment and full protection and security, and shall in no case accord treatment less favorable than that required by international law.

(b) Neither Party shall in any way impair by unreasonable and discriminatory measures the management, conduct, operation, and sale or other disposition of covered investments.⁴⁹

42. Article 2(2) of the UK Treaty provides that:

⁴⁷ UK Treaty, **Exhibit C-1**, Article 5.

⁴⁸ Nationalization Decree, **Exhibit C-37**, Article 2.

⁴⁹ US Treaty, **Exhibit C-17**, Article II.3.

(2) Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall, in any way, impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.⁵⁰

43. By nationalizing the Claimants' investments through unnecessarily violent means without promptly paying adequate compensation, Bolivia has acted unfairly and inequitably in breach of the fair and equitable treatment standard provided under Article II.3 of the US Treaty and Article 2(2) of the UK Treaty, and has impaired the management, conduct and operation of Guaracachi America's investment, and the management, maintenance, use, enjoyment and disposal of Rurelec's investment, through unreasonable and discriminatory measures, contrary to Article II.3 of the US Treaty and Article 2(2) of the UK Treaty, respectively.

IV. THE CLAIMANTS' INVESTMENTS ARE PROTECTED UNDER THE TREATIES

44. Both Guaracachi America and Rurelec are protected investors with protected investments in accordance with terms of the US and UK Treaties, respectively.

45. The US Treaty applies to "covered investment[s]", which are defined as the "investment[s] of a national or company of a Party in the territory of the other Party".⁵¹ Guaracachi America fulfils these US Treaty requirements: it is a company constituted under the laws of the United States of America with qualifying investments made within the territory of Bolivia, as explained below.

⁵⁰ UK Treaty, **Exhibit C-1**, Article 2(2).

⁵¹ US Treaty, **Exhibit C-17**, Article I(e).

46. The UK Treaty applies to the qualifying “investments” of “companies” established under the laws of the United Kingdom made within the territory of Bolivia.⁵² Rurelec fulfils these requirements: it is a company constituted under the laws of the United Kingdom with protected investments in Bolivia, as explained below.

A. The Claimants are “companies” protected under the Treaties

47. Pursuant to Article I(b) of the US Treaty, the US Treaty applies to any “company of a Party”. Articles I(a) and (b) of the US Treaty provide that:

(a) “company” means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, and includes a corporation, trust, partnership, sole proprietorship, branch, joint venture, association, or other organization;

(b) “company of a Party” means a company constituted or organized under the laws of that Party;

[...].⁵³

48. Guaracachi America is a company constituted and organized under the laws in force in the State of Delaware in the United States of America.⁵⁴ Therefore, Guaracachi America is a qualifying company under the US Treaty.

49. The protections of the UK Treaty apply to “companies” of a Contracting Party. Article 1(d) of the UK Treaty defines “companies”, in respect of the United Kingdom, as:

corporations, firms and associations incorporated or constituted under the law in force in any part of the United Kingdom [...].⁵⁵

50. Rurelec is a corporation incorporated under the laws in force in England and Wales.⁵⁶ Rurelec is therefore a qualifying company under the UK Treaty.

⁵² UK Treaty, **Exhibit C-1**, Article 1(a) and (d)(i).

⁵³ US Treaty, **Exhibit C-17**, Articles I(a) and (b).

⁵⁴ Certificate of Incorporation of Guaracachi America Inc, 13 July 1995, **Exhibit C-11**.

⁵⁵ UK Treaty, **Exhibit C-1**, Article 1(d).

B. The Claimants have made qualifying investments in Bolivia

51. Article I(d) of the US Treaty provides a broad definition of what constitutes an investment protected by the US Treaty:

(d) “investment” of a national or company means every kind of investment owned or controlled directly or indirectly by that national or company, and includes investment [sic] consisting or taking the form of:

(i) a company;

(ii) shares, stock, and other forms of equity participation, and bonds, debentures, and other forms of debt interests, in a company;

(iii) contractual rights, such as under turnkey, construction or management contracts, producing or revenue-sharing contracts, concessions or other similar contracts;

(iv) tangible property, including real property; and intangible property, including rights, such as leases, mortgages, liens and pledges;

(v) intellectual property, including: copyrights and related rights, patents, rights in plant varieties, industrial designs, rights in semiconductor layout designs, trade secrets, including know-how and confidential business information, trade and service marks, and trade names; and

(vi) rights conferred pursuant to law such as licenses and permits.

(The list of items in (i) through (vi) above is illustrative and not exhaustive.)⁵⁷

52. Articles 1(a) and 1(b) of the UK Treaty give a similarly broad definition of what constitutes an investment protected by the UK Treaty:

(a) “investment” means every kind of asset which is capable of producing returns and in particular, though not exclusively, includes:

(i) movable and immovable property and any other property rights such as mortgages, liens or pledges;

⁵⁶ Certificate of Incorporation of Rurelec plc, 19 July 2004, **Exhibit C-28**

⁵⁷ US Treaty, **Exhibit C-17**, Article I(d).

(ii) shares in and stock and debentures of a company and any other form of participation in a company;

(iii) claims to money or to any performance under contract having a financial value;

(iv) intellectual property rights and goodwill;

(v) any business concessions granted by the Contracting Parties in accordance with their respective laws, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their characters as investments. Investments made before the date of entry into force as well as those made after entry into force shall benefit from the provisions of this Agreement;

(b) “returns” means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees.⁵⁸

53. Prior to the expropriation of the Claimants’ investments by Bolivia, Rurelec, through Guaracachi America, owned a 50.001% shareholding in Guaracachi, a company established under the laws of Bolivia.⁵⁹

⁵⁸ UK Treaty, **Exhibit C-1**, Article 1(a).

⁵⁹ Guaracachi America owns a direct 50.001% in Guaracachi. *See* Receipt evidencing Guaracachi America Inc subscription to 50% of the shares in Empresa Eléctrica Guaracachi S.A.M for US\$47.131 million, 28 July 1995, **Exhibit C-12**; Share Register and Certificates of Empresa Eléctrica Guaracachi S.A.M, 1995, **Exhibit C-6**; 2009 Annual Report of Empresa Eléctrica Guaracachi SA, **Exhibit C-36**, at p.57 showing Guaracachi America’s ownership of 1,679,184 shares out of a total of 3,358,284 shares. Rurelec holds a 50.001% interest in Guaracachi through its 100% stake in Birdsong Overseas Limited, Bolivia Integrated Energy Limited and Guaracachi America. *See* Certificate of Incorporation of Birdsong Overseas Limited, 7 December 2005, **Exhibit C-29** and Share Certificate evidencing Rurelec’s 100% stake in Birdsong Overseas Limited, 8 December 2005, **Exhibit C-30**; Certificate of Incorporation of Bolivia Integrated Energy Limited, 22 August 2002, **Exhibit C-25** and Share Certificate evidencing Birdsong Overseas Limited’s 100% stake in Bolivia Integrated Energy Limited, 29 June 2009, **Exhibit C-35**; Certificate of Incorporation of Rurelec plc, 19 July 2004, **Exhibit C-28**; Certificate of Incorporation of Guaracachi America Inc, 13 July 1995, **Exhibit C-11** and Share Certificate and Share Register evidencing Bolivia Integrated Energy Limited’s 100% stake in Guaracachi America, 11 December 2003, **Exhibit C-27**. *See* corporate structure chart at para 25.

54. Moreover, the Claimants investments, through Guaracachi, also included investments in property, intellectual property and rights pursuant to law such as licenses and permits.

55. The Claimants therefore have made significant investments in Bolivia that fall within the definition of “investment” under the Treaties.

56. The Claimants’ investments are thus protected by the Treaties.

V. THE PARTIES’ CONSENT TO ARBITRATION UNDER THE TREATIES AND THE UNCITRAL RULES

57. Bolivia expressly and unequivocally consented to resolve investment disputes with US investors through international arbitration by virtue of Article IX of the US Treaty, which provides:

1. For purposes of this Treaty, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of or relating to an investment authorization, an investment agreement or an alleged breach of any right conferred, created or recognized by this Treaty with respect to a covered investment.

2. A national or company that is a party to an investment dispute may submit the dispute for resolution under one of the following alternatives:

(a) to the courts or administrative tribunals of the Party that is a party to the dispute; or

(b) in accordance with any applicable, previously agreed dispute-settlement procedures; or

(c) in accordance with the terms of paragraph 3.

3. (a) Provided that the national or company concerned has not submitted the dispute for resolution under paragraph 2 (a) or (b), and that three months have elapsed from the date on which the dispute arose, the national or company concerned may submit the dispute for settlement by binding arbitration:

(i) to the [International Centre for Settlement of Investment Disputes], if the [International Centre for Settlement of Investment Disputes] is available; or

(ii) to the Additional Facility of the [International Centre for Settlement of Investment Disputes], if the [International Centre for Settlement of Investment Disputes] is not available; or

(iii) in accordance with the UNCITRAL Arbitration Rules; or

(iv) if agreed by both parties to the dispute, to any other arbitration institution or in accordance with any other arbitration rules.

[...]

4. Each Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice of the national or company under paragraph 3 (a) (i), (ii), and (iii) or the mutual agreement of both parties to the dispute under paragraph 3 (a) (iv). [...]⁶⁰

58. Similarly, Bolivia expressly and unequivocally consented to resolve investment disputes with UK investors through international arbitration by virtue of Article 8 of the UK Treaty, which provides:

(1) Disputes between a national or company of one Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement in relation to an investment of the former which have not been legally and amicably settled shall after a period of six months from written notification of a claim be submitted to international arbitration if either party to the dispute so wishes.

(2) Where the dispute is referred to international arbitration, the investor and the Contracting Party concerned in the dispute may agree to refer the dispute either to:

(a) the International Centre for the Settlement of Investment Disputes (having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington DC on 18 March 1965 and the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings); or

⁶⁰ US Treaty, **Exhibit C-17**, Article IX.

(b) the Court of Arbitration of the International Chamber of Commerce;
or

(c) an international arbitrator or *ad hoc* arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

If after a period of six months from written notification of the claim there is no agreement to an alternative procedure, the parties to the dispute shall be bound to submit it to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force. The parties to the dispute may agree in writing to modify these Rules.⁶¹

59. The Treaties constitute Bolivia's consent to arbitration. The consent of the Claimants is constituted and provided by this Notice.

60. Through this Notice, the Dispute is duly submitted to arbitration under the UNCITRAL Rules pursuant to Article IX.3(iii) of the US Treaty and Article 8 of the UK Treaty. The Claimants notified Bolivia of the Dispute under the Treaties in their written Notices of Dispute to the President of Bolivia dated and received on 13 May 2010 and sought the commencement of negotiations and consultations for its amicable settlement.⁶²

61. Despite the Claimants' efforts, no amicable settlement of the Dispute has been reached and both the three and six-month waiting periods following the date on which the Dispute arose contemplated in Article IX.3(a) of the US Treaty and Article 8(1) of the UK Treaty, respectively, have now elapsed.

62. Guaracachi America has not submitted the Dispute under Article IX.2(a) or (b) of the US Treaty. In addition, Rurelec and Bolivia have not agreed on any of the alternative procedures established in Article 8(2)(a) to (c) of the UK Treaty to resolve the Dispute within six months of the written notification of the claim.

⁶¹ UK Treaty, **Exhibit C-1**, Article 8.

⁶² Notices of Dispute, **Exhibit C-39** and **Exhibit C-40**.

63. Accordingly, the Dispute is validly submitted to arbitration under the UNCITRAL Rules pursuant to Article IX.3(iii) of the US Treaty and Article 8(2), final paragraph, of the UK Treaty, respectively.

VI. CONSTITUTION OF THE ARBITRAL TRIBUNAL; PLACE, ADMINISTRATION AND LANGUAGE OF THE ARBITRATION

64. The Treaties do not specify the number of arbitrators that shall constitute the Tribunal, nor the method for their appointment. In accordance with Article 5 of the UNCITRAL Rules, and in light of the substantial amounts involved in these proceedings, the Claimant proposes that the Tribunal be composed of three arbitrators, one arbitrator to be appointed by the Claimants one by the Government, and the President of the Tribunal to be chosen by agreement of the two party-appointed arbitrators in consultation with each party within 30 days after the nomination by Bolivia of their party-appointed arbitrator.

65. The Claimants will notify Bolivia of the appointment of its arbitrator in due course.

66. As the parties have not agreed upon the place where the arbitration is to be held,⁶³ it will be for the Tribunal, once constituted, to determine the place of arbitration pursuant to Article 16 of the UNCITRAL Rules. The Claimants propose New York City in the United States of America as the place of the arbitration.

67. The Claimants consider that it would be appropriate to designate an institution to provide appointing and administrative services, and technical and secretarial assistance to this arbitration, and will make submissions in this respect in due course.

68. The Treaties are silent on the question of the language of the arbitration, and the parties have not reached an agreement on this issue. The Tribunal, once constituted, shall

⁶³ US Treaty, **Exhibit C-17**, Article IX.5 provides: “Any arbitration under paragraph 3(a)(ii), (iii) or (iv) shall be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.”

therefore determine the language of the arbitration in accordance with Article 17 of the UNCITRAL Rules. The Claimants propose English and Spanish as joint working languages of the arbitration.

VII. NAMES AND ADDRESSES OF THE PARTIES – NOTICES

69. The Claimants in this arbitration are:

Guaracachi America, Inc.
32 Loockerman Square
Suite L-100
Dover
Delaware
United States of America

and

Rurelec plc
Prince Consort House
Fifth Floor
27-29 Albert Embankment
London SE1 7TJ
United Kingdom

70. The Claimants are represented in this arbitration by the following counsel, to whom all correspondence and notices relating to this arbitration should be addressed:

Nigel Blackaby
Lluís Paradell
Gisele Stephens-Chu
Caroline Richard
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Email: nigel.blackaby@freshfields.com;
lluis.paradell@freshfields.com;
gisele.stephens-chu@freshfields.com;
caroline.richard@freshfields.com

71. This Notice is served on Bolivia at each of the following addresses:

President of the Plurinational State of Bolivia
Juan Evo Morales Ayma
Palacio de Gobierno
Calle Ayacucho esquina Comercio s/n, Plaza Murillo
La Paz, Bolivia

Minister of Legal Defence of the State
Elizabeth Arismendi Chumacero
Av. Mariscal Santa Cruz
Edificio Hansa 4to Piso
La Paz, Bolivia

72. Unless and until Bolivia informs the Claimants of other addressees for notices and correspondence relating to this arbitration, the Claimants will continue to address such notices and correspondence to the addressees set out in paragraph 71 above.

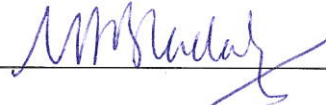
VIII. THE CLAIMANTS' REQUEST FOR RELIEF

73. On the basis of the foregoing, without limitation and fully reserving its right to supplement this request, the Claimants respectfully request the following relief:

- (a) DECLARE that Bolivia has breached the Treaties and international law, and in particular, that it has:
 - (i) expropriated the Claimants' investments without prompt, just, adequate and effective compensation, in violation of Article III of the US Treaty and Article 5 of the UK Treaty and international law; and
 - (ii) failed to accord the Claimants' investments fair and equitable treatment and full protection and security, and impaired them through unreasonable and discriminatory measures, in violation of Article II.3 of the US Treaty and Article 2(2) of the UK Treaty.

- (b) ORDER Bolivia to compensate the Claimants for Bolivia's breaches of the Treaties and international law in an amount to be determined at the appropriate stage in these proceedings, in any freely convertible currency accepted by the Claimants, plus interest until full payment of the award is made;
- (c) AWARD such other relief as the Tribunal considers appropriate; and
- (d) ORDER Bolivia to pay the costs of these arbitration proceedings, including the fees and expenses of the Tribunal, the fees and expenses of the institution which is selected to provide appointing and administrative services and assistance to this arbitration, the fees and expenses relating to the Claimants' legal representation, and the fees and expenses of any expert appointed by the Claimants or the Tribunal, plus interest.

Respectfully submitted on 24 November 2010



FRESHFIELDS BRUCKHAUS DERINGER US LLP

Nigel Blackaby

Lluís Paradell

Gisele Stephens-Chu

Caroline Richard

for the Claimants