INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the Matter of the Arbitration between

RAILROAD DEVELOPMENT CORPORATION
Claimant

and

REPUBLIC OF GUATEMALA
Respondent

ICSID CASE NO. ARB/07/23

PROCEDURAL ORDER NO. 4

MEMBERS OF THE TRIBUNAL

Dr. Andrés Rigo Sureda, President
Honorable Stuart E. Eizenstat, Arbitrator
Professor James Crawford, Arbitrator

DATE: November 3, 2009

RDC v. Guatemala

Procedural Order No. 4

Considering that:

1. In Procedural Order No. 3, the Tribunal decided "To reserve its decision on whether any further exchanges of observations are required and whether a hearing on preliminary objections is necessary after considering the Respondent's memorial and the Claimant's counter-memorial on preliminary objections."

2. In the same procedural order, the Tribunal further decided "To consider under the same schedule all objections raised or to be raised or expanded by Respondent."

3. Respondent filed a Memorial on Objections to Jurisdiction on September 24, 2009 and Claimant filed its Counter-Memorial on Jurisdiction on October 26, 2009.

4. Respondent has raised the following objections:

    a) The Tribunal lacks jurisdiction because the claims advanced by Claimant relate to a dispute and "acts or facts " that predate CAFTA's entry into force.

    b) The Tribunal lacks jurisdiction because the alleged investment with respect to Usufruct Contracts No. 143 and No. 158 is not a covered investment under CAFTA because they were not conferred pursuant to Guatemalan Law.

    c) The Tribunal lacks jurisdiction over claims related to squatters and to payments into the Trust Fund because such claims are the subject of local proceedings and Claimant has

disregarded the Tribunal's Decision on Objection to Jurisdiction – CAFTA Article 10.20.5 to exclude from this arbitration claims based on the same measures that it continues to challenge in such proceedings.

5. Respondent has requested that "the Tribunal dismiss Claimant's claims for lack of jurisdiction and order to pay Guatemala's costs, legal fees and share of administrative expenses incurred in these proceedings."

6. Claimant has requested that "the Tribunal deny Respondent's jurisdictional objections without any further briefing or hearing. Pursuant to its discretionary power under Article 10.20.6, the Tribunal should also award Claimant its reasonable costs and attorney's fees incurred in responding to Respondent's frivolous objections."

7. As decided by the Tribunal in Procedural Order No. 3, "*prima facie* at least some of the objections raised and characterized by Respondent as matters of law meet such requirement to the extent that, if established, an award in favor of the Claimant could not be made."

8. Given the thoroughness of the memorials filed, the Tribunal does not need to receive further written argument but, before deciding on Respondent's objections, it would assist the Tribunal to hear the parties in oral argument.

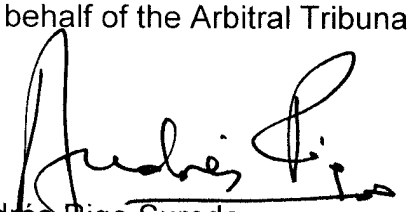
Therefore,

The Tribunal has decided:

1. To hold a hearing on the objections to jurisdiction raised by Claimant.

2. To consult the parties to fix the date for the hearing.

On behalf of the Arbitral Tribunal



Andrés Rigo Sureda
President