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2 January 2013

**PCA Case No. AA406: 1. GUARACACHI AMERICA, INC. (U.S.A.) 2. RURELEC PLC
(UNITED KINGDOM) v. THE PLURINATIONAL STATE OF BOLIVIA**

Dear Members of the Tribunal,

Following the filing of the Claimants' Rejoinder on Jurisdiction on 20 December 2012, the jurisdictional decision in *Teinver S.A. et al v Argentine Republic* (known as the *Aerolíneas* case) was published.¹ The Claimants submit a copy of the decision as **Exhibit CL-151** in the belief

¹ *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. The Argentine Republic* (ICSID Case No. ARB/09/1), Decision on Jurisdiction, 21 December 2012. This decision is submitted as **Exhibit CL-151**, and includes the separate opinion of Dr. Kamal Hussein (concurring in judgment).

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that it will assist the present Tribunal in its deliberations on several jurisdictional issues raised in this proceeding.

First, as the Tribunal is aware, Rurelec interprets the plain terms of the UK Treaty as protecting indirect investments, as have several investment treaty tribunals interpreting very similar treaty terms.² In *Aerolíneas*, the decision held that indirect investments were protected by the Spain–Argentina BIT, despite objections by Argentina that were similar to those made by Bolivia in this arbitration.³ In *Aerolíneas*, Argentina argued that since the BIT’s definition of investment “[did] not explicitly refer to investments made ‘directly or indirectly,’ indirectly-held investments [were] not protected.”⁴ The tribunal rejected this argument stating that there was “nothing in the broad language . . . of the Treaty”, which defined “investments” as “any kind of assets” and “property and rights of every kind”, that suggested that the BIT was only meant to cover direct investments.⁵ Moreover, the tribunal noted that its interpretation was in accord with the *jurisprudence constante* on this issue.⁶ This same case law has been described at length in Rurelec’s pleadings.⁷

Second, the *Aerolíneas* decision held that the failure to comply with an amicable settlement provision in a treaty may be excused if such an exercise would prove futile.⁸ The *Aerolíneas* tribunal also stated that where there are two disagreements between the parties, where one disagreement has been negotiated and the other has not, this previous negotiation is sufficient to comply with the amicable settlement provision of a treaty, so long as the disagreements’ subject matter are sufficiently related.⁹

² Counter-Memorial, Section III.B; Rejoinder, Section III.B.

³ *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. The Argentine Republic* (ICSID Case No. ARB/09/1), Decision on Jurisdiction, **Exhibit CL-151**, 21 December 2012, ¶ 235.

⁴ *Ibid.* at ¶ 229.

⁵ *Ibid.* at ¶ 230.

⁶ *Ibid.* at ¶¶ 231–32.

⁷ *See, e.g.*, Claimants’ Rejoinder on Jurisdiction, ¶¶ 23–26.

⁸ *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. The Argentine Republic* (ICSID Case No. ARB/09/1), Decision on Jurisdiction, **Exhibit CL-151**, 21 December 2012, ¶¶ 126, 129. *See also* Claimants’ arguments in this regard in their Rejoinder at ¶¶ 49–52.

⁹ *Ibid.* at ¶¶ 122–125. *See also* Rejoinder Section V.B.

Claimants' enclose a copy of the *Aerolíneas* decision so that the members of the Tribunal may take it into account in considering Bolivia's jurisdictional objections.

Yours sincerely,


Nigel Blackaby

Encl(s)

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