

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

IN THE PROCEEDINGS BETWEEN

Transglobal Green Energy, LLC and Transglobal Green Panama, S.A.

v.

Republic of Panama

(ICSID Case No. ARB/13/28)

First Session of the Arbitral Tribunal

PROCEDURAL ORDER No. 1

Date of Order: March 17, 2015

Dr. Andrés Rigo Sureda, President of the Tribunal
Prof. Christoph Schreuer, Arbitrator
Prof. Jan Paulsson, Arbitrator

Secretary of the Tribunal
Mercedes Cordido-Freytes de Kurowski

Transglobal Green Energy, LLC and Transglobal Green Panama, S.A. v. Republic of Panama
(ICSID Case No. ARB/13/28)
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Introduction

The first session of the Arbitral Tribunal was held on February 19, 2015 at the seat of the Centre in Washington, D.C.

Participating in the first session were:

Members of the Tribunal

Dr. Andrés Rigo Sureda, President of the Tribunal
Prof. Christoph Schreuer, Arbitrator (by video conference)
Prof. Jan Paulsson, Arbitrator (by video conference)

ICSID Secretariat

Mrs. Mercedes Cordido-Freytes de Kurowski, Secretary of the Tribunal

Attending on behalf of the Claimants

Mr. David Weiss, King & Spalding LLP
Mr. Enrique Reyes, Transglobal Green Energy, LLC
Mr. Jeffrey Carlitz, Transglobal Green Energy, LLC

Attending on behalf of the Respondent

Mr. Whitney Debevoise, Arnold & Porter LLP
Ms. Gaela K. Gehring Flores, Arnold & Porter LLP
Mr. Pedro Soto, Arnold & Porter LLP
Ms. Natalia Giraldo-Carrillo, Arnold & Porter LLP
Ms. Laura Castro, Legal Director, Embassy of the Republic of Panama

Observing via video conference on behalf of the Claimants

Mr. Roberto Aguirre Luzi, King & Spalding LLP
Mr. Don Stringham, CFO Transglobal Green Energy, LLC

Observing via video conference on behalf of the Respondent

Ms. Betzy Castro, *Jefa de Gabinete, Viceministerio de Economía, Ministerio de Economía y Finanzas*
Mr. Roberto Meana, *Director Ejecutivo, Autoridad de los Servicios Públicos*
Ms. Noemi Tile, *Directora Asesoría Legal, Autoridad de los Servicios Públicos*
Mr. Victor Urrutia, *Secretario Nacional de Energía*
Mr. Aristides Valdonedo, *Gerente de Metas, Ministerio de Economía y Finanzas*
Ms. Mariel Núñez, *Gerencia de Metas, Ministerio de Economía y Finanzas*

The President of the Tribunal (President) opened the session at 9:00 a.m. and welcomed the participants. The President introduced the Tribunal and the Secretary of the Tribunal (Secretary) and invited the parties to introduce their respective representatives.

The Tribunal and the parties considered the following:

- The Agenda adopted by the Tribunal (Annex 1) that corresponds to the Draft Agenda circulated by the Secretary on February 24, 2014.
- The Draft Procedural Order circulated by the Secretary on February 24, 2014; and
- The parties' Joint Report with their comments on the Draft Procedural Order received on December 5, 2014, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

The Tribunal and the parties discussed the items on the Agenda in order.

The parties' agreements and the Tribunal's decisions are recorded in the Procedural Order below.

The session was adjourned at 10:32 a.m.

An audio recording of the session was made and deposited in the archives of ICSID. A transcript of the session was made from the audio recording, which together with the recording were subsequently distributed to the Members of the Tribunal and the parties.

Following the session, the Tribunal now issues the present order:

Order

Pursuant to ICSID Arbitration Rule 19, this first Procedural Order sets out the Procedural Rules that the Claimant and the Respondent have agreed and the Arbitral Tribunal has determined shall govern this arbitration.

1. Applicable Arbitration Rules
Convention Article 44

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006.

2. Constitution of the Tribunal and the Tribunal Members' Declarations
Arbitration Rule 6

- 2.1. The Tribunal was constituted on February 19, 2014 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The parties confirmed that the

Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.

- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were duly distributed to the parties by the Centre.

3. Fees and Expenses of the Tribunal Members

Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

- 3.1. The fees and expenses of each arbitrator shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
- 3.2. Under the current Schedule of Fees, each arbitrator receives:
 - 3.2.1 US\$3,000 (three thousand US dollars), for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
 - 3.2.2 subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis.
- 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.

4. Presence and Quorum

Arbitration Rules 14(2) and 20(1)(a)

- 4.1. The presence of all three Members of the Tribunal constitutes a quorum for its sittings.
 - 4.1.1 the physical attendance of all Members of the Tribunal shall be required at all sittings of the Tribunal at which evidence will be heard or submissions on jurisdiction or the merits will be advanced.
 - 4.1.2 while the presence of all Members of the Tribunal shall be required at meetings during which only procedural issues will be addressed,

such attendance can be effected via virtual means of communication, including telephone and video links.

5. Decisions and Procedural Rulings of the Tribunal

Convention Article 48(1); Arbitration Rules 16, 19 and 20

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence except that where the matter is urgent; the President may issue procedural decisions without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 5.3. The President is authorized to issue Procedural Orders on behalf of the Tribunal.
- 5.4. The Tribunal's rulings on procedural matters may be communicated to the parties by the Tribunal Secretary in the form of a letter or email.

6. Delegation of Power to Fix Time Limits

Arbitration Rule 26(1)

- 6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.
- 6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal

Administrative and Financial Regulation 25

- 7.1. The Tribunal Secretary is Mercedes Cordido-Freytes de Kurowski, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the parties from time to time.
- 7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Mercedes Cordido-F. de Kurowski
ICSID
MSN J2-200

1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-3171
Fax: + 1 (202) 522-2615
Email: mkurowski@worldbank.org
Paralegal email: ifernandez1@worldbank.org

7.3. For local messenger deliveries, the contact details are:

Mercedes Cordido-F. de Kurowski
701 18th Street, N.W. (“J Building”)
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 473-3171

8. Representation of the Parties
Arbitration Rule 18

8.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For the Claimant

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9. Apportionment of Costs and Advance Payments to ICSID

Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28

- 9.1. By letters of February 20, 2014, and March 28, 2014, ICSID requested that each party pay US\$200,000 (two hundred thousand US dollars), to defray the initial costs of the proceeding. On April 14, 2014, ICSID noted the default of payment and invited either party to pay the outstanding amount of \$400,000. On May 6, 2014, the Tribunal stayed the proceedings for lack of payment pursuant to ICSID Administrative and Financial Regulation 14(3)(d). Claimants effected payment of \$200,000 on November 5, 2014, and on November 6, 2014, the Tribunal lifted the suspension of the proceedings. On November 27, 2014, ICSID requested that either party pay the outstanding cost amount of \$200,000 by December 12, 2014.
- 9.2. ICSID shall request further advances as needed. Such requests shall be accompanied by an interim statement of account.
- 9.3. The Respondent has requested that responsibility for paying the direct costs of the proceeding be shifted to Claimants without prejudice to a final decision of the Tribunal as to the allocation of costs (Respondent's submissions of November 13 and 26, 2014, and December 11, 2014).
- 9.4. The Claimants have expressed their objections to Respondent's request (Claimants' submissions of November 25, 2014 and December 18, 2014), and propose that the parties defray the direct costs of the proceeding in equal parts, without prejudice to a final decision of the Tribunal as to the allocation of costs.
- 9.5. The Tribunal heard oral arguments from the Parties during the first session, and after due deliberation will decide on this matter in due course.
- 9.6. At the date of the first session, Respondent's share of the above-referenced first advance payment request remains outstanding.

10. Place of Proceeding

Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)

- 10.1. Washington D.C. shall be the place of the proceeding. It was decided that the Tribunal may hold hearings at any other place that it considers appropriate if the parties so agree.
- 10.2. The Tribunal may deliberate at any place it considers convenient.

11. Procedural Language(s)

Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

- 11.1. English is the procedural language of the arbitration.
- 11.2. Routine, administrative, or procedural correspondence addressed to or sent by the ICSID Secretariat shall be in English.
- 11.3. Any written requests and applications shall be submitted in English.
- 11.4. Pleadings shall be submitted in English.
- 11.5. Expert opinions and witness statements, and any other supporting documentation shall be submitted in the principal language of the expert or witness, or the original language of the document. If that language is not English, a translation of the statement, opinion, or relevant provision of a supporting document shall be submitted within 4 weeks of its original submission.
- 11.6. Translation costs shall be deemed to constitute part of the expenses incurred by the parties in accordance with Article 61(2) of the Convention.
- 11.7. If the document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.
- 11.8. Translations need not be certified unless there is a dispute as to the translation provided and the party disputing the translation specifically requests a certified version.
- 11.9. During the hearings either English or Spanish may be used, and simultaneous interpretation services, from and into English and Spanish will be arranged by the Secretariat.
- 11.10. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in the English and Spanish languages shall be interpreted simultaneously.
- 11.11. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §19 below), which witnesses or experts require interpretation.

11.12. The costs of the interpreter(s) will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

11.13. The Tribunal shall render any orders or decisions in English.

11.14. The Tribunal shall render the Award in English.

12. Routing of Communications

Administrative and Financial Regulation 24

12.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal.

12.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the ICSID Secretariat, which shall send them to the Tribunal. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the ICSID Secretariat only, which shall send them to the Tribunal and to the parties. In such cases, the Secretariat will confirm receipt with the transmitting Party, but will wait until receiving both Parties' communications before proceeding to transmit these to the Tribunal and the other Party. If necessary, the Secretariat will provide further instructions on the submission of any pending documents through the FTP server, upon acknowledging receipt of the simultaneous correspondence.

12.3. The Tribunal Secretary shall not be copied on direct communications between the parties which are not intended to be transmitted to the Tribunal.

13. Number of Copies and Method of Filing of Parties' Pleadings

Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

13.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and a list of documents,¹ and upload the pleading with the supporting documentation to the "Box" (ICSID's file sharing system) folder created for this case.

13.1.1 The parties shall courier to the Tribunal Secretary by not later than three (3) business days after the filing:

13.1.1.1. one unbound hard copy in A4/Letter format² of the entire

¹ Please note that the World Bank server does not accept emails larger than 10 MB.

² The A4/Letter format is required for ICSID's archiving.

submission, including signed originals of the pleading, witness statements, and expert reports, together with documents (but not including legal authorities);

13.1.1.2. Four minimum hard copies in A5 format of the entire submission, including the pleading, witness statements, expert reports, and documents (but not including legal authorities); and

13.1.1.3. Five minimum USB drives, or CD-ROMs or DVDs, with full copies of the entire submission, including the pleading, witness statements, expert reports, documents, and legal authorities.

13.1.2 at the same time (not later than 3 business days after the filing), courier to the opposing party at the address(es) indicated at §[8.1] above:

13.1.2.1. one hard copy in A4/Letter format of the entire submission, including the pleading, witness statements, expert reports, and documents (but not including legal authorities); and

13.1.2.2. one USB drive, or CD-ROMs or DVDs, with a full copy of the entire submission, including the pleading, witness statements, expert reports, documents, and legal authorities.

13.2. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.

13.3. Electronic versions of a pleading shall be text searchable (i.e., OCR PDF or Word), printable, unsecured format.

13.4. Pleadings shall be accompanied by an index hyperlinked to the supporting documentation.

13.5. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary.

13.6. A filing shall be deemed timely if sent by a party by midnight, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings

Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

14.1. The Parties' Positions:

The Parties articulated their views regarding the number and sequence of pleadings, and submitted the following proposals:

14.1.1 “Claimants’ Proposal:

14.1.1.1. Claimants are seeking a cost efficient and expedited procedure for this case, and to have no bifurcation.

14.1.1.2. If Panama does not object to jurisdiction

14.1.1.2.1 Claimants shall file their Memorial on the Merits 120 days after the issuance of Procedural Order No. 1

14.1.1.2.2 Panama shall file its Counter-Memorial on the Merits 120 days after it receives Claimants’ Memorial on the Merits.

14.1.1.2.3 Claimants shall file their Reply on the Merits 60 days after it receives Panama’s Counter-Memorial on the Merits.

14.1.1.2.4 Panama shall file its Rejoinder on the Merits 60 days after it receives Claimants’ Reply on the Merits.

14.1.1.2.5 The Hearing on the Merits shall be held within 45 days of receiving Panama’s Rejoinder.

14.1.1.3. If Panama objects to jurisdiction, Claimants propose having only one round of pleadings on jurisdiction, and the following schedule:

14.1.1.3.1 Claimants shall file their Memorial on the Merits 120 days after the issuance of Procedural Order No. 1.

14.1.1.3.2 Panama shall files its Counter-Memorial on the Merits and its Memorial on Jurisdiction 120 days of receiving Claimants’ Memorial on the Merits.

14.1.1.3.3 Claimants shall file their Reply on the Merits and their Counter-Memorial on Jurisdiction 60 days after receiving Panama’s Counter-Memorial on the Merits and its Memorial on Jurisdiction.

- 14.1.1.3.4 Panama shall file its Rejoinder on the Merits 60 days after receiving Claimants' Reply on the Merits and their Counter-Memorial on Jurisdiction.
- 14.1.1.3.5 The Hearing on Merits and Jurisdiction will be held within 45 days of receiving Panama's Rejoinder on the Merits."

14.1.2 "Panama's Proposal"

- 14.1.2.1 Panama proposes bifurcation of the jurisdictional and merits phases of the arbitral proceedings, and proposes the following schedule for submission of pleadings:
 - 14.1.2.1.1 Claimants shall file their Memorial on the Merits 120 days after the issuance of Procedural Order No.1.
 - 14.1.2.1.2 Panama shall file its Memorial on Jurisdiction 120 days following the submission of Claimants' Memorial on the Merits.
 - 14.1.2.1.3 Claimants shall file their Counter-Memorial on Jurisdiction 75 days following the submission of Panama's Memorial on Jurisdiction.
 - 14.1.2.1.4 Panama shall file its Reply on Jurisdiction 75 days following the submission of Claimants' Counter-Memorial on Jurisdiction.
 - 14.1.2.1.5 Claimants shall file their Rejoinder on Jurisdiction 75 days following the submission of Panama's Reply on Jurisdiction.
 - 14.1.2.1.6 The Hearing on Jurisdiction will be held no sooner than 75 days of the submission of Claimants' Rejoinder on Jurisdiction.
 - 14.1.2.1.7 Should the Tribunal issue a decision on jurisdiction which allows certain or all of Claimants' claims to proceed, Panama shall file its Counter-Memorial on the Merits 120 days following the issuance of the Tribunal's decision on jurisdiction.
 - 14.1.2.1.7.1 Claimants shall file their Reply on the Merits 90 days following the filing of Panama's Counter-Memorial on the Merits.

14.1.2.1.7.2 Panama shall file its Rejoinder on the Merits 90 days following the filing of Claimants' Reply on the Merits.

14.1.2.1.7.3 The Hearing on the Merits will be held no sooner than 90 days following the submission of Panama's Rejoinder on the Merits."

14.2. The Tribunal's Decision

14.2.1 Having considered and deliberated about the parties' respective proposals on the number and sequence of pleadings, and in accordance with the Tribunal's Decision on the Admissibility of Respondent's Preliminary Objection to the Jurisdiction of the Tribunal under Rule 41(5) of the Arbitration Rules (the "Objection") of March 17, 2015(the Tribunal's "Rule 41(5) Decision"), the Tribunal fixes the following procedural calendar for the parties' subsequent submissions.

14.2.2 Claimants shall file their Memorial on the Merits 120 days from the date of the Tribunal's Rule 41(5) Decision.

14.2.3 Respondent's Counter-Memorial on the Merits is due 120 days following the submission of Claimants' Memorial on the Merits.

14.2.4 In accordance with the Tribunal's Rule 41(5) Decision, the Tribunal has decided: (i) "to deem the Objection as a provisional notification of jurisdictional objections to be supplemented with any further objections of Respondent as soon as feasible after receipt of Claimants' Memorial on the Merits and no later than the due date of the Counter-Memorial, as required by Rule 41(1).", and (ii) "to defer its decision on bifurcation until it has received the Memorial on the Merits and Respondent's jurisdictional objections are complete."

14.2.5 The Tribunal, in principle, contemplates only one round of submissions on jurisdiction, however, upon receipt of Claimants' Counter-Memorial on Jurisdiction, the Tribunal will then decide whether a second round of pleadings is needed, and if so, shall fix the dates for their filing.

14.2.6 The Tribunal has taken note of the potential conflict in the deadlines for document production and the filing of submissions brought to the Tribunal's attention in Claimants' letter of March 2, 2015. The Tribunal will address any such conflicts if and when they occur.

14.2.7 Any other time limits for the further procedure shall be fixed by the Tribunal in due course.

15. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-36

15.1. The International Bar Association's Rules on the Taking of Evidence (2010) ("IBA Rules") shall serve as guidelines regarding the production of documents.

15.2. The parties agree that either party may request the Tribunal to call for the production of documents in accordance with Arbitration Rule 34(2). Before applying to the Tribunal for an order for the production of documents, however, the parties agree to make reasonable efforts to reach agreements as to the scope and timing of production.

15.3. The Claimants informed the Tribunal that they have revised their position originally stated in the parties' Joint Report of December 5, 2014.

15.4. The parties' positions on document production depend on whether there is bifurcation or not.

15.5. If there is no bifurcation, with only four pleadings (Memorial, Counter-Memorial, Reply and Rejoinder), the parties agree that there should be simultaneous document production requests 30 days following the submission of Respondent's Counter-Memorial.

15.6. If there is bifurcation, both parties agree that any document production requests to take place during the jurisdictional phase should be limited to jurisdictional issues, but differ on the timing for the requests.

15.6.1 Claimants' position: Claimants would not agree on Respondent having the benefit of document production before its Memorial on Jurisdiction, when Claimants have not had that benefit before their Memorial on the Merits.

15.6.2 Respondent's position: Respondent requests having simultaneous document production requests on Jurisdiction, not on the Merits, 30 days following the submission of Claimants' Memorial on the Merits.

15.7. The parties agree on the following procedural schedule to be followed following the parties' document requests, regardless of whether there is bifurcation or not.

- 15.7.1 Objections to a primary document request shall be submitted 15 days following receipt of the primary document request.
- 15.7.2 Any documents not subject to Objections shall be produced 30 days following the primary document request.
- 15.7.3 Replies to objections to document requests shall be submitted 10 days following receipt of the objections.
- 15.7.4 Submission to the Tribunal of any remaining objections will be filed 10 days following submission of Replies to Objections.
- 15.7.5 Production of documents ordered by the Tribunal will occur 30 days after the issuance of the Tribunal's order.
- 15.7.6 It was further agreed that a party's subsequent submission (Reply/Rejoinder) should be filed in accordance with the pleadings submission timetable and not earlier than 30 days following the production of documents.
- 15.8. The Tribunal decided that any supplemental document production requests by a party with respect to new issues raised in the counter-party's last submission would require leave from the Tribunal.
- 15.9. The disputing parties shall file any document requests in the form of a table (commonly referred to as a "Redfern Schedule"), comprising five columns:
 - 15.9.1 Documents Requested - identifying the specific documents or narrow and specific categories of documents that have been requested;
 - 15.9.2 Justification – providing a detailed explanation of the relevance and materiality of the requested documents for each request;
 - 15.9.3 Response – either indicating the disputing party's agreement to disclose the requested document(s), and any limits on that disclosure, or the disputing party's reasoned objections to the disclosure of the requested document(s);
 - 15.9.4 Reply – providing a brief reply to the other disputing party's response in respect of documents the disclosure of which is requested; and
 - 15.9.5 Decision – stating the decision of the Tribunal on disputed requests.
- 15.10. The disclosure of documents under this Part shall be made electronically through

an FTP secure site which can be accessed by counsel to the disputing parties, in PDF format or some other similar format to which the disputing parties may later agree. Each disputing party shall provide the other disputing party, on the date of the production, with an index of the documents that it is producing.

15.11. Correspondence or documents exchanged in the course of this document disclosure process shall not be copied to the Tribunal, except as set out in this Procedural Order.

15.12. Where documents are protected by privilege or protected on the grounds of special political or institutional sensitivity, their disclosure does not operate as a waiver, and they must be promptly returned to the disclosing disputing party.

15.12.1 Where a disputing party receives a document or documents from the other disputing party which it reasonably believes may be protected by privilege or protected on the grounds of special political or institutional sensitivity, it shall promptly inform the disclosing disputing party of the disclosure of the document(s), and seek confirmation that such disclosure was intentional. If the disclosing disputing party declares that the disclosure was not intentional, the documents shall be promptly returned to the disclosing disputing party.

16. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the parties, including exhibits and legal authorities.

16.2. A party shall not submit new witnesses or experts during the second round of pleadings unless they are responsive to matters raised for the first time in the other party's previous pleading. Furthermore, Claimants or Respondent shall not bring new arguments in their Reply Memorial on the Merits or Rejoinder on the Merits, respectively, unless the new arguments are rebutting or addressing claims, issues or arguments raised by the other party in the previous pleadings.

16.3. The documents shall be submitted in the manner and form set forth in §13 above.

16.4. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other party.

16.4.1 Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.

- 16.4.2 If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.
- 16.5. The Tribunal may call upon the parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).
- 16.6. The documents shall be submitted in the following form:
- 16.6.1 Exhibits shall be numbered consecutively throughout these proceedings.
- 16.6.2 The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.
- 16.6.3 Each Exhibit shall have a divider with the Exhibit identification number on the tab.
- 16.6.4 A party may produce several documents relating to the same subject matter within one Exhibit, numbering each page of such Exhibit separately and consecutively.
- 16.6.5 Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively.
- 16.6.6 Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.7. The parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
- 16.8. Demonstrative exhibits (such as Power Point slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and

interpreter(s) at the hearing.

17. Witness Statements and Expert Reports

Convention Article 43(a); Arbitration Rule 24

- 17.1. Witness statements and expert reports shall be filed together with the parties' pleadings.
- 17.2. The parties disagree on whether witness statements and expert reports shall constitute the direct testimony of the respective fact witnesses and expert witnesses (Respondent's position), or not (Claimants' position). The Tribunal takes note of the parties' respective positions, and will decide on the matter at a later stage in the arbitration.
- 17.3. The Tribunal shall not admit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist.
- 17.4. Each witness statement and expert report shall be signed and dated by the witness.

18. Examination of Witnesses and Experts

Arbitration Rules 35 and 36

- 18.1 Prior to the oral procedure and no later than 40 days before the oral hearing, each Party may call upon the other Party, or the Tribunal may call upon either Party, to produce for cross-examination at the oral procedure any witness or expert whose written statement the requested Party has advanced with its written submissions.
- 18.2 As previously indicated under para. 17.2 *supra*, the parties disagree on the duration and scope of a direct examination. The Tribunal has taken note of Claimants' proposal of having a 15-minute direct examination of witnesses and experts, as well as of Respondent's position, that the witnesses' statements, and experts' reports shall constitute their direct testimony, and that there should only be a very brief introduction of that witness or expert. The Tribunal will decide at the time of the pre-hearing organizational meeting.
- 18.3 The scope of the cross-examination shall be limited to (i) the issues addressed by the witness or expert in his or her direct testimony or report and/or (ii) impeachment of the witness unless for good cause shown the Tribunal agrees to a broader cross examination. Re-direct examination shall be limited to the subject of the cross-examination.

18.4 Witnesses and experts shall be examined by each Party under the control of the President of the Tribunal. Before giving evidence, witnesses shall make the declaration set out in Arbitration Rule 35(2), and experts the declaration set out in Arbitration Rule 35(3). The Tribunal may examine the witness or expert at any time during the oral procedure.

18.5 Witnesses of fact shall not be allowed in the hearing room before giving their oral evidence, unless and to the extent that they also are Party representatives. Experts shall be allowed in the hearing room at any time, and during the examination of other experts.

19. Pre-Hearing Organizational Meetings
Arbitration Rule 13

19.1. A pre-hearing organizational meeting shall be held on a date determined by the Tribunal with prior consultation with the parties by telephone between the Tribunal, or its President, and the parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

20. Hearings
Arbitration Rules 20(1)(e) and 32

20.1. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments.

20.2. The hearing shall be held in Washington, D.C. in accordance with §10.1 above.

20.3. The hearing shall take place on the earliest date on which the Tribunal becomes available after the 60th day following the filing of the last written submission, in consultation with the parties.

20.4. The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.

20.5. The total amount of time allocated to the presentation of argument and examination of witnesses and experts during hearings shall be further discussed during a pre-hearing organizational meeting by telephone conference to take place at least 30 days prior to the first day of the hearing.

20.6. Absent an agreement of the parties to hold open hearings, they shall be closed to the public.

21. Records of Hearings and Sessions
Arbitration Rules 13 and 20(1)(g)

- 21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 21.2. The Tribunal Secretary may prepare summary minutes of hearings and sessions upon request.
- 21.3. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.
- 21.4. The parties shall agree on any corrections to the transcripts within 60 days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

22. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)

- 22.1. The Parties agree that the topic of Post-Hearing Submissions will be addressed at a later stage in the arbitration.
- 22.2. In accordance with Arbitration Rule 28(2) and upon request of the Tribunal, the parties shall submit respective statements of costs.

23. Publication

Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)

- 23.1. Claimants consent to ICSID’s publication of any ruling issued in the present proceeding.
- 23.2. Without prejudice to later decisions regarding the publication of any given Tribunal ruling, at this time, the Republic of Panama does not consent to ICSID’s publication of rulings issued in the present proceeding.

Other Matters

The Parties informed the Tribunal that they did not have any other matters that required discussion at the First Session.

The session was adjourned at 10:32 a.m.

An audio recording and a transcript of the session were made and deposited in the archives of ICSID. Both were subsequently distributed to the Members of the Tribunal and the parties.

[signed]

Dr. Andrés Rigo Sureda
President of the Tribunal
Date: March 17, 2015

Transglobal Green Energy, LLC and Transglobal Green Panama, S.A. v. Republic of Panama
(ICSID Case No. ARB/13/28)
Procedural Order No. 1

ANNEX 1

Transglobal Green Energy, LLC and Transglobal Green Panama, S.A.

v.

Republic of Panama

(ICSID Case No. ARB/13/28)

First Session of the Arbitral Tribunal

Date:

Venue: Time:

Draft Agenda

1. Applicable Arbitration Rules (Convention Article 44)
2. Constitution of the Tribunal and Tribunal Members' Declarations (Arbitration Rule 6)
3. Fees and Expenses of the Tribunal Members (Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees)
4. Presence and Quorum (Arbitration Rules 14(2) and 20(1)(a))
5. Decisions of the Tribunal and Procedural Rulings of the Tribunal (Arbitration Rule 16)
6. Delegation of Power to Fix Time Limits (Arbitration Rule 26(1))
7. Secretary of the Tribunal (*Administrative and Financial Regulation 25*)
8. Representation of the Parties (Arbitration Rule 18)
9. Apportionment of Costs and Advance Payments to ICSID (Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28)
10. Place of Proceeding (Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3))
11. Procedural Language(s) (Arbitration Rules 20(1)(b) and 22)
12. Routing of Communications (Administrative and Financial Regulation 24)
13. Number of Copies and Method of Filing of Parties' Pleadings (Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23)
14. Number and Sequence of Pleadings (Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31)
15. Production of Documents (Convention Article 43(a); Arbitration Rules 24 and 33-36)
16. Submission of Documents (Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24)
17. Witness Statements and Expert Reports (Convention Article 43(a); Arbitration Rule 24)
18. Examination of Witnesses and Experts (Arbitration Rules 35 and 36)
19. Pre-Hearing Organizational Meetings (Arbitration Rule 13)
20. Hearings (Arbitration Rules 20(1)(e) and 32)
21. Records of Hearings and Sessions (Arbitration Rules 13 and 20(1)(g))

22. Post-Hearing Memorials and Statements of Costs (Convention Article 44; Arbitration Rule 28(2))
23. Publication (Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4))