

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

**ENEL COLOMBIA S.A. (FORMERLY ESSA2 SPA) AND
ENEL COSTA RICA CAM S.A. (FORMERLY ENEL GREEN POWER COSTA RICA S.A.)**

Claimants

and

REPUBLIC OF COSTA RICA

Respondent

ICSID CASE NO. ARB/21/49

**ORDER OF THE TRIBUNAL TAKING NOTE OF THE
DISCONTINUANCE OF THE PROCEEDING**

Members of the Tribunal

Prof. Albert Jan van den Berg, *President*

Ms. Elisabeth Eljuri

Prof. Raúl E. Vinuesa

Assistant to the Tribunal

Ms. Emily Hay

Secretary of the Tribunal

Ms. Ana Constanza Conover Blancas

Date of dispatch to the Parties: 25 April 2023

REPRESENTATION OF THE PARTIES

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(formerly ESSA2 SpA) and Enel Costa Rica
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I. INTRODUCTION AND PARTIES

1. This case concerns a dispute submitted to the International Centre for Settlement of Investment Disputes (“ICSID” or the “Centre”) on the basis of the Agreement between the Republic of Chile and the Republic of Costa Rica on the Promotion and Reciprocal Protection of Investments, which has been in force since 8 July 2000, and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which entered into force on 14 October 1966 (the “ICSID Convention”).
2. The claimants are Enel Colombia S.A., a company incorporated under the laws of the Republic of Colombia,¹ and Enel Costa Rica CAM S.A.,² a company incorporated under the laws of Costa Rica (the “Claimants”).
3. The respondent is the Republic of Costa Rica (“Costa Rica” or the “Respondent”).
4. The Claimants and the Respondent are collectively referred to as the “Parties.” The Parties’ representatives and their addresses are listed above on page (i).

II. PROCEDURAL BACKGROUND

5. On 30 September 2021, ICSID received a request for arbitration from ESSA2 SpA and Enel Green Power Costa Rica S.A. for the institution of arbitration proceedings under the ICSID Convention, in respect of a dispute with Costa Rica (the “Request”). The Request was supplemented by letter of 12 October 2021.
6. On 13 October 2021, the Secretary-General of ICSID registered the Request, as supplemented, pursuant to Article 36(3) of the ICSID Convention and Rules 6(1)(a) and 7(a) of the ICSID Institution Rules and notified the Parties of the registration. In the Notice of Registration, the Secretary-General invited the Parties to proceed to

¹ The request for arbitration was submitted by ESSA2 SpA (a company organized under the laws of Chile) and Enel Green Power Costa Rica S.A. against the Republic of Costa Rica. By letter of 12 May 2022, the Claimants informed ICSID that Enel Colombia S.A. became the successor for all legal purposes to ESSA2 SpA.

² On 13 April 2023, the Claimants informed the Tribunal that the company name of Enel Green Power Costa Rica S.A. had changed to Enel Costa Rica CAM S.A.

constitute an arbitral tribunal as soon as possible in accordance with Articles 37 to 40 of the ICSID Convention.

7. The Parties agreed to constitute the arbitral tribunal in accordance with Article 37(2)(a) of the ICSID Convention and that the Tribunal would consist of three arbitrators, one to be appointed by each Party, the third arbitrator and President of the Tribunal to be appointed by agreement of the Parties.
8. The Tribunal is composed of Prof. Albert Jan van den Berg, a national of The Netherlands, President, appointed by agreement of the Parties; Ms. Elisabeth Eljuri, a national of Venezuela and Saint Kitts and Nevis, appointed by the Claimants; and Prof. Raúl E. Vinuesa, a national of Argentine and Spain, appointed by the Respondent.
9. On 24 October 2022, the Secretary-General, in accordance with Rule 6(1) of the ICSID Rules of Procedure for Arbitration Proceedings (2006) (the “ICSID Arbitration Rules”) notified the Parties that all three arbitrators had accepted their appointments and that the Tribunal was therefore deemed to have been constituted on that date. Ms. Ana Constanza Conover Blancas, ICSID Legal Counsel, was designated to serve as Secretary of the Tribunal.
10. In accordance with Rule 13(1) of the ICSID Arbitration Rules, the Tribunal held a first session with the Parties on 5 December 2022 by video conference.
11. Following the first session, on 20 December 2022, the Tribunal issued Procedural Order No. 1 recording the agreement of the Parties and rulings of the Tribunal on procedural matters. Procedural Order No. 1 provided, *inter alia*, that the applicable ICSID Arbitration Rules would be those in effect from 10 April 2006, that the procedural languages would be English and Spanish, and that the place of proceeding would be Washington, D.C. Procedural Order No. 1 also set out a schedule for the jurisdictional and merits phase of the proceedings.
12. On 21 February 2023, the Parties informed the Tribunal of their agreement to suspend the proceeding until further notice as they had “reached an amicable resolution of the dispute, subject to a condition being met in the coming weeks”. On 24 February 2023, the Tribunal

confirmed the Parties' agreement to suspend the proceeding until further notice and invited the Parties to keep the Tribunal updated on the status of their discussions.

13. On 3 April 2023, the Parties jointly informed the Tribunal as follows:

We inform you that the condition precedent referred to in the Parties' communications [of 21 February 2023] has been met. Thus, the amicable settlement reached by the Parties is in full force and effect. The Parties have agreed: (i) to jointly request the discontinuance of this proceeding pursuant to Rule 43 of the 2006 ICSID Arbitration Rules; (ii) that the settlement agreement need not be recorded in the form of an award; (iii) that costs incurred by the Centre and the Tribunal shall be borne by the Parties in equal shares (ie. 50/50); and (iv) that each party shall bear its own legal fees and expenses.

14. On 3 April 2023, the ICSID Secretariat confirmed receipt of the Parties' request for the discontinuance of the proceedings.

III. ORDER

15. Rule 43(1) of the ICSID Arbitration Rules provides:

If, before the award is rendered, the parties agree on a settlement of the dispute or otherwise to discontinue the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall, at their written request, in an order take note of the discontinuance of the proceeding.

16. Therefore, in accordance with the Parties' request, and pursuant to Rule 43(1) of the ICSID Arbitration Rules, the Tribunal hereby takes note of the discontinuance of the proceeding.

17. In addition, the Tribunal takes note of the Parties' agreement that each Party shall bear its own legal fees and expenses and that the costs incurred by the Centre and the Tribunal shall be borne by the Parties in equal shares.

Dated as of 25 April 2023:

[Signed]

Ms. Elisabeth Eljuri
Arbitrator

[Signed]

Prof. Raúl E. Vinuesa
Arbitrator

[Signed]

Prof. Albert Jan van den Berg
President of the Tribunal