

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Red Eagle Exploration Limited

v.

Republic of Colombia

(ICSID Case No. ARB/18/12)

PROCEDURAL ORDER NO. 3

Members of the Tribunal

Dr. Andrés Rigo Sureda, President of the Tribunal
Mr. José Martínez de Hoz, Arbitrator
Prof. Philippe Sands, Arbitrator

Secretary of the Tribunal

Ms. Catherine Kettlewell

28 April 2021

1. On 14 April 2021, the Respondent requested that certain documents be struck from the record, “[i]n order to allow the Respondent a proper opportunity to defend its case and to avoid the unreasonable burden (in terms of time and costs) of having to review, assess and respond to documents not mentioned in the Claimant’s Reply, the Respondent respectfully requests that (i) the Tribunal strike from the record those exhibits which the Claimant has not referred to in its Reply, and (ii) order the Claimant to replace any references in its Reply to the Claimant’s Document Production with references to specific exhibits.”
2. On 25 April 2021, the Claimant opposed to the Respondent’s request.
3. The Tribunal has considered the Respondent’s request and the Claimant’s opposition. The Tribunal notes first that “for the sake of practicality” and the Tribunal’s convenience, the Claimant attached to its letter Annex A and Annex B with an index of the documents in Exhibits C-815 and C-816, respectively. These Annexes should be of assistance to all concerned.
4. The Tribunal is not persuaded that the Amended Procedural Order No. 1, on which the Respondent relies, provides a basis for striking from the record the documents referred to by the Respondent in its letter. Further, the most voluminous set of documents allegedly depriving the Respondent of a proper opportunity to defend itself were either produced by the Respondent (Exhibit C-816) in the document production phase, or produced by the Claimant at the Respondent’s request (Exhibit C-185). They (and their contents) are therefore already known to the Respondent.
5. The Tribunal needs to balance procedural efficiency and fairness so that each party may fully present its case. The Tribunal is not convinced that, in the circumstances of this case, fairness would be served by the removal of a large number of documents from the record, as requested by the Respondent. The Tribunal recalls that the weight, authority and effect to be given to any document in the record will be a matter for the Tribunal to decide in due course.
6. The Respondent’s request is denied.

On behalf of the Tribunal,

[Signed]

Dr. Andrés Rigo Sureda
President of the Tribunal
Date: 28 April 2021