

Exhibit RWE-007

Second Witness Statement of Gloria Solano Martinez

December 22, 2014

English Translation

**UNDER THE UNCITRAL ARBITRATION RULES AND SECTION B OF THE
DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE
AGREEMENT**

*Spence International Investments, LLC, Bob F. Spence,
Joseph M. Holsten, Brenda K. Copher,
Ronald E. Copher, Brett E. Berkowitz,
Trevor B. Berkowitz, Aaron C. Berkowitz and Glen Gremillion
(Claimants)*

vs.

*The Republic of Costa Rica.
(Respondent)*

ICSID Case No. UNCT/13/2

**Second Witness Statement of Gloria Solano Martinez
Public Prosecutor at the Office of the Attorney General for the Republic**

December 22, 2014

I. INTRODUCTION

1. My name is Gloria Solano Martinez. I have worked in Costa Rica's Office of the Attorney General [*Procuraduría General de la República*] since August 2000, first as Attorney for the *Procuraduría*, since June 2006, as Deputy Attorney General (*Procuradora Adjunta*), and since February 2014, as Attorney General B *Procuradora B*. This statement is complementary to my first statement of July 14, 2014.

2. In my first witness statement, I explained the interpretation given by the *Procuraduría* regarding the limits of the *Las Baulas* National Marine Park [*Parque Nacional Marino Las Baulas* ("PNMLB")], and I referred to the nature of constitutional challenges in Costa Rica. In this statement, I will respond to certain allegations contained in Claimants' Reply on the Merits and Counter-Memorial on Jurisdiction ("Reply").

3. Claimants allege that the Costa Rican State has acted in a manner that is

inconsistent with its policy regarding the boundaries of the *Las Baulas* National Marine Park (“PNMLB”). Specifically, they allege that in the case where they were consistent, there was no need to consult the *Procuraduría* for its reinterpretation of Article 1 of the Law of PNMLB of 1995.¹ Claimants also allege that the legal opinion of the *Procuraduría* issued in 2004 is not binding.² In addition, they claim that both the 2004 opinion, as well as the 2005 interpretation, were issued in an irregular manner and that they were not made public.³ Finally, Claimants allege that the *Procurador* who issued the opinions of the *Procuraduría* in 2004 and 2005 had a conflict of interest at the time he drafted the opinions.⁴ All these allegations are incorrect.

II. THE ATTORNEY GENERAL’S OFFICE LEGALLY ISSUED AN INTERPRETATION OF THE LAW THAT CREATED THE *LAS BAULAS* NATIONAL MARINE PARK IN 1995

4. In their Reply, Claimants have made a series of incorrect assertions with regard to the legal opinions issued by the Attorney General regarding the interpretation of the law.⁵ In this case, a legal opinion was issued on February 10, 2004,⁶ in response to a query sent by the Ministry of the Environment in May 2003, and a binding interpretation on December 23, 2005,⁷ in response to a query that was sent by the Ministry of the Environment and Energy in October 2005.

5. First, Claimants claim that if the 1995 Law Establishing the Park had been clear, the *Procuraduría* would not have had to issue opinions with respect to the interpretation of the

¹ Claimants’ Reply on the Merits and Counter-Memorial on Jurisdiction, October 2, 2014 (“Claimants’ Reply”), para. 68.

² See Claimants’ Reply, paras. 98-99.

³ See Claimants’ Reply, paras. 98-100.

⁴ See Claimants’ Reply, para. 102.

⁵ See Claimants’ Reply, paras. 98-103.

⁶ See Report by the Attorney General re interpretation of Law 7524, February 10, 2004 [Exhibit C-1t].

⁷ See Letter from the Attorney General to the Minister of the Environment and Energy (MINAE), December 23, 2005 [Exhibit C-1g].

Law.⁸ However, this statement is inaccurate. The Park was created in 1991 by an Executive Order. That Order clearly stated that the Park included a strip of land 125 meters from the mean high tide mark. Then, in 1995, the Law Establishing the Park was issued. In that law, reference was made to the same strip of 125 meters, but it is described as being “seaward.” In spite of this “seaward” reference, the law pointed out inland reference points for that strip of land. Likewise, it indicated that the State would carry out the expropriations that were necessary for the consolidation of the Park. Therefore, the Law of 1995 had an obvious error, since the reference “seaward” was inconsistent with the purpose of the law and with the area covered by the park since its creation in 1991. Since the issuance of the order for the creation of the Park, the territorial waters of Tamarindo Bay, between Punta Conejo and the south end of Langosta beach, up to the mean high tide mark, were part of the Park; therefore, there was no reason for the Law to “add” a strip of land 125 meters “seaward.”⁹ For this reason, the opinion of the *Procuraduría* was necessary to clarify any doubt that could exist regarding the Park’s boundaries.

6. Second, contrary to what is suggested by Claimants, the opinion of the *Procuraduría* issued in 2004 has effect, even if it is not binding.¹⁰ As a result of the Organic Law of the *Procuraduría*, two types of pronouncements can be issued by this supreme consultative body: legal opinions and *dictámenes*. The *dictámenes* are binding and take the form of administrative jurisprudence.¹¹ That is to say, they reach the level of interpretative norms within the Costa Rican legal system.¹² Legal opinions are answers that the *Procuraduría* gives to queries it receives from various administrative bodies, which do not have the same binding effect that

⁸ See Claimants’ Reply, para. 68.

⁹ See Decree 20518-MINEREM, July 9, 1991, Art. 1 [Exhibit C-1b].

¹⁰ See Claimants’ Reply, paras. 98-99.

¹¹ See Law 6815 Law related to the Attorney General, September 27, 1982, Art. 2 [Exhibit C-1o].

¹² See General Law of Public Administration, Law No. 6227 (excerpts), May 2, 1978, Art. 7 [Exhibit R-089].

binding interpretations have, but generate certain effects as legal opinions of the *Procuraduría*. In this case, a legal opinion was issued in February 2004,¹³ which was not binding, but it does have effect, and a *dictamen* was issued in December 2005,¹⁴ which is binding, binding on the consulting administration.

7. Third, Claimants allege that the legal opinion of 2004 was issued in an illegal manner because the query sent by Minister Carlos Rodríguez in 2003 had not attached a legal opinion from the legal department of the Ministry of Environment.¹⁵ They allege that the *Procurador* responsible for the query should have returned the query and should not have answered it until the necessary legal requirements were met.¹⁶ This is incorrect. In Costa Rica, Public Administration entities can make queries to the *Procuraduría* that they deem necessary; and these queries must always be answered. In the case of the legal opinion issued in February 2004, *Procurador* Jurado did not act illegally. In fact, he issued his opinion with the approval of the *Procurador General Adjunto*, as required by Costa Rican Law.¹⁷ The *Procurador* made it clear that because the query did not comply with certain legal requirements, a non-binding legal opinion was issued.¹⁸

8. Fourth, the legal interpretation issued in December 2005 was issued in a regular manner. In September 2005, the legal department of the Ministry of Environment issued a legal opinion in which it was concluded that Article 1 of the Law Establishing the *Las Baulas* National

¹³ See Report by the Attorney General re interpretation of Law 7524, February 10, 2004 [Exhibit C-1t].

¹⁴ See Letter from the Attorney General to the Minister of the Environment and Energy (MINAE), December 23, 2005 [Exhibit C-1g].

¹⁵ See Claimants' Reply, paras. 101-02.

¹⁶ See Claimants' Reply, para. 102.

¹⁷ See Report by the Attorney General re interpretation of Law 7524, February 10, 2004 [Exhibit C-1t].

¹⁸ See Report by the Attorney General re interpretation of Law 7524, February 10, 2004, p. 1 [Exhibit C-1t].

Marine Park contained an error in its drafting when it referred to “seaward.”¹⁹ Based on this opinion, the Ministry of Environment and Energy sent a query on this matter in October 2005.²⁰ By virtue of Articles 2 and 4 of the Organic Law of the *Procuraduría*, the *Procuraduría*, with the approval of the *Procurador General*, issued a *dictamen* in December 2005. In this *dictamen*, the *Procuraduría* maintained the sustained criterion of the opinion issued in February 2004, in the sense that there was a contradiction in the Law Establishing the *Las Baulas* National Marine Park. Therefore, it should be understood that the National Park included a strip of land 125 meters from the mean high tide mark.

9. None of these opinions of the *Procuraduría* changed the existing law on the boundaries of the Park. To the contrary, it confirmed the correct sense of the boundaries of the *Las Baulas* National Marine Park, in such a way as to comply with the objective of its creation.

10. Fifth, Claimants allege that the opinions of the *Procuraduría* were never reported to the land owners located in the Park.²¹ This statement is incorrect. The *Procuraduría* has the obligation of notifying the response to the entity making the query, and then it publishes its opinions on its official website.²² In other words, the pronouncements are publicly accessible once the querying bodies are notified.

¹⁹ See Letter from the Attorney General to the Minister of the Environment and Energy (MINAE), December 23, 2005, p. 1 [Exhibit C- 1g]; see also Request from MINAE to the *Procuraduría* on the Interpretation of the Law Creating the *Las Baulas* National Park, Attaching Study from Legal Department, DM-1725-05, October 19, 2005 [Exhibit R-094].

²⁰ See Letter from the Attorney General to the Minister of the Environment and Energy (MINAE), December 23, 2005, p. 1 [Exhibit C- 1g]; see also Request from MINAE to the *Procuraduría* on the Interpretation of the Law Creating the *Las Baulas* National Park, Attaching Study from Legal Department, DM-1725-05, October 19, 2005 [Exhibit R-094].

²¹ See Claimants’ Reply, para. 103.

²² The opinions are published on the page of the Costa Rican Legal Information System, which has been in use since 1997.

11. Finally, Claimants presented a series of allegations with respect to the partiality of the *Procurador* who drafted the legal opinion and the binding interpretation.²³ While I did not directly participate in the drafting of these opinions, I must make it clear that Claimants' allegations are very serious. The *Procuraduría* issues opinions and other pronouncements based on its technical-legal opinions, with absolute independence of judgment. In this specific case, I think that the query on the *Las Baulas* National Marine Park is one of the many cases that were submitted before the *Procuraduría*. In these opinions, the *Procuraduría* issued its technical-legal opinion as it does with all the other queries that this consultative body receives.

12. In addition, it should be emphasized that the opinions do not constitute the *Procurador's* personal views, as suggested by Claimants. To the contrary, they are opinions issued and approved by the *Procurador General* or the *Procurador General Adjunto*, whereby they represent the technical-legal criterion of the *Procuraduría*.

²³ See Claimants' Reply, para. 102.

The facts contained in this statement are true to the best of my knowledge and belief.

(signature)

Gloria Solano

Date: December 22, 2014