

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

COMISIÓN EJECUTIVA,	)	
HIDROELÉCTRICA DEL RÍO LEMPA,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 08-135-GMS
v.	)	
	)	
NEJAPA POWER COMPANY, LLC,	)	
	)	
Defendant.	)	

**MEMORANDUM**

**I. INTRODUCTION**

Presently before the court is defendant’s motion for reconsideration of the court’s July 18, 2008 order granting plaintiff’s application pursuant to 28 U.S.C. § 1782.<sup>1</sup> The defendant, Nejapa Power Company, LLC, (“NPC”), argues that reconsideration and vacatur are appropriate for the following reasons: (1) plaintiff failed to provide defendant with notice of its application; (2) plaintiff’s application contained material factual misrepresentations; (3) Section 1782 does not apply to private foreign or international arbitrations; and (4) the case law cited by plaintiff’s in support of its application is inapposite. For the reasons stated below, the court concludes that there is no basis for reconsideration.

**II. STANDARD OF REVIEW**

As a general rule, motions for reconsideration should be granted only “sparingly.” *Karr v.*

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<sup>1</sup> Plaintiff, La Comisión Ejecutiva Hidroeléctrica del Río Lempa (“CEL”) filed its Application for an Order Granting Discovery for Use in a Foreign Proceeding Pursuant to 28 U.S.C. § 1782 on July 3, 2008 (D.I. 2).

*Castle*, 768 F. Supp. 1087, 1090 (D. Del. 1991). In this district, these types of motions are granted only if it appears that the court has patently misunderstood a party, has made a decision outside the adversarial issues presented by the parties, or has made an error not of reasoning, but of apprehension. See, e.g., *Shering Corp. v. Amgen, Inc.*, 25 F. Supp. 2d 293, 295 (D. Del. 1998); *Brambles USA, Inc. v. Blocker*, 735 F. Supp. 1239, 1240 (D. Del. 1990) (citing *Above the Belt, Inc. v. Mel Bonhannan Roofing, Inc.*, 99 F.R.D. 99 (E.D. Va. 1983)); see also *Karr*, 768 F. Supp. at 1090 (citing same). Moreover, even if the court has committed one of these errors, there is no need to grant a motion for reconsideration if it would not alter the court's initial decision. See *Pirelli Cable Corp. v. Ciena Corp.*, 988 F. Supp. 424, 455 (D. Del. 1998).

### III. DISCUSSION

The defendant contends that reconsideration of the court's July 18, 2008 order is warranted. The court disagrees. First, contrary to the defendant's assertion, the court is not convinced that under Section 1782 plaintiff is actually required to provide the defendant prior notice of its application. Indeed, Section 1782 does not expressly require that notice be provided to the party from whom discovery is being sought. Second, it is not readily apparent to the court that the defendant misled or misrepresented the facts regarding the Tribunal's position towards discovery. It is clear from the record that the parties themselves never reached agreement on this issue. The Tribunal's ultimate position on this issue, however, is less clear. Third, the court is not persuaded by the legal authority relied upon by the defendant. In fact, the Supreme Court's decision in *Intel* (and post-*Intel* decisions from other district courts) indicate that Section 1782 does indeed apply to private foreign arbitrations. See *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 258 (2004); *In re Roz Trading Ltd.*, 469 F. Supp. 2d 1221, 1226-27 (N.D. Ga. 2006); *In re Application of Hallmark Capital*

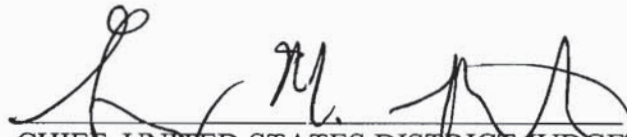
*Corp.*, 534 F. Supp. 2d 951, 954-55 (D. Minn. 2007). The defendant's arguments simply do not justify reconsideration in this case.

Furthermore, the court is not persuaded (nor has the defendant demonstrated) that it has either patently misunderstood a party, made a decision outside the adversarial issues presented, or made an error of apprehension. The defendant's motion for reconsideration is therefore denied.

#### IV. CONCLUSION

For the foregoing reasons, the court will deny the defendants' motion for reconsideration.

Dated: October 17, 2008

  
CHIEF, UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

COMISIÓN EJECUTIVA,  
HIDROELÉCTRICA DEL RÍO LEMPA,

Plaintiff,

v.

NEJAPA POWER COMPANY, LLC,

Defendant.

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C.A. No. 08-135-GMS

**ORDER**

IT IS HEREBY ORDERED that:

- 1. The defendant's motion for reconsideration is DENIED.

Dated: October 14, 2008



CHIEF, UNITED STATES DISTRICT JUDGE

**FILED**

OCT 14 2008

U.S. DISTRICT COURT  
DISTRICT OF DELAWARE