

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF THE
NORTH AMERICAN FREE TRADE AGREEMENT AND THE
UNCITRAL ARBITRATION RULES (1976)**

-between-

**THEODORE DAVID EINARSSON, HAROLD PAUL EINARSSON, RUSSELL JOHN
EINARSSON, AND GEOPHYSICAL SERVICE INCORPORATED
("Claimants")**

-and-

**GOVERNMENT OF CANADA
("Respondent", and together with Claimants, the "Disputing Parties")**

(ICSID CASE NO. UNCT/20/6)

PROCEDURAL ORDER NO. 5

Decision on Request for a Filing Extension for Claimants' Reply and New Hearing Dates

The Arbitral Tribunal

Ms. Carita Wallgren-Lindholm (Presiding Arbitrator)

Mr. Trey Gowdy

Mr. Toby Landau KC

Administrative Authority

ICSID

Tribunal Secretary

Ms. Geraldine R. Fischer

12 February 2024

I. Procedural Background

1. On 2 January 2024, Claimants notified Canada and the Tribunal that they may require additional time to file the Reply as a result of Mr. Theodore David Einarsson's passing.
2. On 30 January 2024, Claimants requested an extension for filing the Reply until 21 March 2024 as the passing of Mr. Theodore David Einarsson was stated to have caused a delay in instructing counsel and preparing the Reply. Moreover, Claimants argued that the extension was needed as Respondent had failed to comply with the Tribunal's document production order, to the effect that Claimants were missing documents that might be crucial to Claimants' Reply. This extension, Claimants argued, would give them the appropriate additional time to submit the Reply once the Tribunal had ordered Respondent to produce those documents.
3. During the 6 February 2024 Case Management Conference ("2024 CMC" or "CMC"), Claimants accepted a possible filing date by end February 2024, albeit noting that this would pose a strain. The Tribunal agreed, without objection from Respondent, that the 8 February 2024 Reply filing date would be lifted for now without setting a new date for the submission.
4. During the CMC, the Procedural Calendar was discussed as a whole, in view of the approaching Hearing as scheduled and the further delays incurred and likely to be incurred, including a possible request for extending the filing date for Respondent's Rejoinder, should Claimants' requested extension for the Reply be granted. The Tribunal and the Parties also discussed the time that might be needed to decide Claimants' Motion to Compel and the time for further production by Respondent if the Motion were granted.
5. Respondent in the CMC requested a hearing on the Motion to Compel, which Claimants did not oppose. It was noted, however, that such hearing would likely cause further delay, ultimately leaving very little time between the last written submissions and commencement of the Hearing as now scheduled for September 2024. The virtual hearing on the Motion to Compel was tentatively set for **1 March 2024** subject to Canada's confirmation, which was received later the same day.
6. The Parties agreed that the Hearing needs to be postponed and they noted that the earliest available date previously indicated by the Tribunal after September 2024 was in March 2025. The Parties then asked for a renewed assessment of the Tribunal's availability in the hope of scheduling the Hearing before the end of the year.

II. The Tribunal's Analysis and Decision

7. Further to the Parties' request, the Tribunal has made a renewed inventory of available 2024 Hearing dates. Pending other matters, the Tribunal has noted a possible opening for hearing dates later in fall 2024, but the Tribunal will not be able to confirm these dates for a few weeks. Recognizing the desirability of a Hearing prior to March 2025 and due to this uncertainty, the Tribunal believes that the deadline for the Claimants' Reply should be set

now for **Thursday 29 February 2024**, also bearing in mind that the hearing date for the Motion to Compel has now been set for **Friday 1 March 2024**, with time and duration to be confirmed. Any other adjustments to the Procedural Calendar as a result of the extension now granted to Claimants for the Reply will be addressed later, as may be requested, or found appropriate as a consequence of the new Hearing dates.

8. The Tribunal has therefore decided that:

- (1) Claimants' Reply shall be filed by **Thursday 29 February 2024**.
- (2) New Hearing dates shall be set as soon as possible, with the Tribunal revisiting this question after 1 March 2024.
- (3) Any other adjustments to the Procedural Calendar will be subsequently set by the Tribunal in consultation with the Parties.

Dated: 12 February 2024

Place of Arbitration: Calgary, Alberta, Canada

[Signed]

Carita Wallgren-Lindholm
(Presiding Arbitrator)

[Signed]

Trey Gowdy

[Signed]

Toby Landau KC