

IN ARBITRATION PURSUANT TO THE RULES OF ARBITRATION
OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

WESTMORELAND COAL COMPANY

Claimant

vs.

GOVERNMENT OF CANADA,

Respondent

**CLAIMANT'S COMMENTS ON RESPONDENT'S STATEMENT OF
COSTS**

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1. In accordance with the Tribunal's email of July 12, 2024, Claimant hereby submits its observations on Respondent's Statement of Costs.
2. Article 40 of the 2013 UNCITRAL Rules applicable to this arbitration limits recoverable costs to, in relevant part, "[t]he legal and other costs incurred by the parties *in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable.*" Art. 40(2)(3) (emphasis added). Canada's cost submission is insufficient since it does not allow the tribunal to determine (1) whether it reflects "costs incurred by [Canada] in relation to the arbitration"; or (2) "whether the amount of such costs is reasonable," as required by Article 40(2)(3).
3. *First*, Canada has not confirmed that the CAD \$1,437,780 in legal fees that Canada requests reflect "costs incurred by [Canada] in relation to the arbitration." To the contrary, Canada explains that its costs submission is based upon an opaque and undefined "cost recovery" process calculated by the government. However, the "cost recovery" process does not appear to isolate the costs incurred by the government for its counsel on an hourly basis. To the extent that Canada wishes to recover those costs, it should at a minimum explain how the "cost recovery" calculation reflects the "costs incurred by [Canada] in relation to the arbitration" and is "reasonable" as required by Article 40(2)(3).
4. *Second*, Claimant notes that Canada claims CAD \$104,899.87 in "Expert and Consultant" costs for Hughes Hubbard & Reed LLP. Canada did not submit an expert report in these proceedings, and it is unclear for what purpose Hughes Hubbard & Reed LLP's services were engaged. For this reason, it is difficult to see how this expenditure "relat[es] to the arbitration" or is "reasonable" as required by the 2013 UNCITRAL Rules.
5. Moreover, despite the paucity of information provided, Canada's requested costs are not "reasonable" as required by the 2013 UNCITRAL Rules because Canada spent more than *twice* as many hours on this case as Claimant's counsel spent on the same phase of the case. According to Canada's cost submission, it devoted **6,395** hours to its defense as of the date of the cost submission. Meanwhile, Claimant devoted **2,897** hours to its case as of the same date. Claimant is not aware of any circumstance that would require Canada to dedicate such a disproportionate amount of time on this case, particularly since Canada should have benefited from its institutional knowledge having already litigated this case opposite different counsel in the *Westmoreland I* case.

Respectfully submitted,
KING & SPALDING LLP

A handwritten signature in black ink, appearing to read "Lauren Friedman". The signature is fluid and cursive, with a large initial "L" and "F".

By: _____
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