

**IN THE MATTER OF AN ARBITRATION PROCEEDING UNDER THE UNCITRAL
ARBITRATION RULES (1976)**

Alberta Petroleum Marketing Commission

Claimant

v.

United States of America

Respondent

(ICSID Case No. UNCT/23/4)

PROCEDURAL ORDER NO. 1

Members of the Tribunal

Prof. Campbell A. McLachlan KC, President of the Tribunal
Mr. Stephen L. Drymer, Arbitrator
Prof. Sean D. Murphy, Arbitrator

Secretary of the Tribunal

Ms. Aïssatou Diop

Assistant to the Tribunal

Mr. Jack L.W. Wass

18 December 2023

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Introduction

The preliminary procedural session of the Tribunal was held on 30 November 2023 at 14:00 EST by videoconference. The session was adjourned at 17:42 EST.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was distributed to the Members of the Tribunal and the parties.

Participating in the conference were:

Members of the Tribunal:

Prof. Campbell A. McLachlan KC, President of the Tribunal

Mr. Stephen L. Drymer, Arbitrator

Prof. Sean D. Murphy, Arbitrator

ICSID Secretariat:

Ms. Aïssatou Diop

Assistant to the Tribunal:

Mr. Jack L.W. Wass

Participating on behalf of the Claimant:

Counsel:

Mr. Ian A. Laird

Crowell & Moring LLP

Ms. Ashley R. Riveira

Crowell & Moring LLP

Mr. Eduardo Mathison

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Mr. John R. Laird

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Ms. Lily Geyer

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Ms. Tai Williams

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Ms. Staci Gellman

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Mr. Nolan Hindmarsh

General Counsel, Alberta Petroleum Marketing Commission

Mr. Sean Peister

Justice, Government of Alberta

Mr. Kristopher Lensink

Justice, Government of Alberta

Ms. Sheri Anderson

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Participating on behalf of the Respondent:

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Ms. Lisa J. Grosh

Assistant Legal Adviser, US Department of State

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Deputy Assistant Legal Adviser, US Department of State

Mr. David M. Bigge

Chief of Investment Arbitration, US Department of State

Ms. Kristina E. Beard

Attorney-Adviser, US Department of State

Mr. Isaac D. Webb

Attorney-Adviser, US Department of State

Mr. Sam Childersen

Intern, US Department of State

The Tribunal and the parties considered the following:

- The Draft Procedural Order negotiated by the parties prior to the first session, including items on which they agreed and their respective positions regarding the items on which they did not agree, as well as proposals by the Tribunal provided in advance to the parties.
- The Draft Terms of Appointment negotiated by the parties prior to the first session, as well as proposals by the Tribunal provided in advance to the parties.

Following the session, the Tribunal now issues the present Order:

Order

This first Procedural Order sets out Procedural Rules that shall govern this arbitration. The timetable for the arbitration is attached as **Annex B**.

1. Applicable Arbitration Rules

Article 1 of the UNCITRAL Rules

- 1.1. These proceedings shall be conducted in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (1976) (“UNCITRAL Rules”), except to the extent as modified by NAFTA, Chapter 11, Section B.

2. Rulings of the Tribunal

Articles 31 and 32 of the UNCITRAL Rules

- 2.1. The Tribunal may, in its discretion, determine matters by way of procedural orders or by way of partial or final awards, or other orders, rulings, decisions, or directions. The Tribunal adopts this Procedural Order No. 1 as an initial matter, with the agreement of the parties, reserving the right, after consultation with the parties, to adopt further procedural orders at a later time, including those pertaining to the conduct of the hearing on the merits.
- 2.2. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 2.3. Article 31(1) of the UNCITRAL Rules applies to decisions taken by correspondence.
- 2.4. The President is authorized to sign procedural orders on behalf of the Tribunal.
- 2.5. The Tribunal’s rulings on procedural matters may be communicated to the parties by the ICSID Secretariat (as that term is defined in §4.1 below electronically by letter or email.

- 2.6. Any ruling of the Tribunal, including certified copies of any Award, shall be dispatched electronically to the parties.

3. Power to Fix Time Limits

Article 23 of the UNCITRAL Rules

- 3.1. The Tribunal may fix and extend time limits for the completion of the various steps in the proceeding.
- 3.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 3.3. The parties agree that a time limit shall be satisfied if a procedural step is taken or a document is received by the ICSID Secretariat on the relevant date, or on the subsequent business day if the date falls on a Saturday or Sunday. A time limit shall be computed from the date on which the limit is announced, with the day of such announcement being excluded from the calculation. Consistent with §6.1 below, time limits are satisfied if undertaken by a party by 23:59, Washington, D.C. time, on the relevant date.

4. Administering Authority

- 4.1. On 30 October 2023, the parties confirmed their agreement to the designation of the International Centre for Settlement of Investment Disputes (“ICSID”) as the Administering Authority. ICSID shall render full administrative services in relation to this arbitration similar to those rendered in arbitrations under the ICSID Additional Facility Rules. The cost of ICSID’s services shall be included in the costs of the arbitration.
- 4.2. The ICSID Secretariat appoints Ms. Aïssatou Diop or such other person as ICSID may notify the Tribunal and the parties from time to time as Secretary of the Tribunal.
- 4.3. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Aïssatou Diop
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MSN C3-300
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Washington, D.C. 20433
United States of America

Tel.: +1-202-458-9833
Fax: + 1-202-522-2615
Email: adiop3@worldbank.org
Paralegal name: Ms. Colleen Ferguson
Paralegal email: cferguson2@worldbank.org
ICSID case email address: unct/23/4@icsidcases.worldbank.org

4.4. For local messenger deliveries, the contact details are:

Ms. Aïssatou Diop
ICSID
1225 Connecticut Ave., N.W.
(World Bank C Building)
3rd Floor - MSN C300
Washington, D.C. 20036
United States of America
Tel.: +1 (202) 458-1534

5. Representation of the Parties

Article of the 4 UNCITRAL Rules

5.1. Each party shall be represented by its counsel (below) and may designate additional agents, counsel, or advocates by notifying the Tribunal and the ICSID Secretariat promptly of such designation.

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Correspondence should also be sent to
the following non-counsel
representatives on behalf of Claimant:

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6. Place of Arbitration

Article 16 of the UNCITRAL Rules; NAFTA Articles 1130 and 1131

- 6.1. Washington, D.C., United States of America, shall be the place of arbitration.
- 6.2. The Tribunal may hold hearings in person at the place of the arbitration or, if the parties so agree, any other place that it considers appropriate. The Tribunal may hold hearings by any other means of communication as determined by the Tribunal after consultation with the parties.
- 6.3. The Tribunal Members may deliberate at any place and by any appropriate means they consider convenient.
- 6.4. The Award shall be deemed to be made at the place of arbitration, regardless of where it is signed.

7. Procedural Language, Translation and Interpretation

Articles 17 and 25 of the UNCITRAL Rules

- 7.1. English is the procedural language of the arbitration.
- 7.2. Documents filed in any other language must be accompanied by a human-made (*i.e.*, not machine-prepared) English translation of the document (or relevant part). The party submitting a document in a language other than English will bear the cost of the translation, subject to the Tribunal's discretion to order costs in this Arbitration.
- 7.3. If the Document is lengthy and relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at the request of any party or on its own initiative.
- 7.4. Translations need not be certified unless there is a dispute as to the content of a translation provided and the party disputing the translation specifically requests a certified version.
- 7.5. Documents exchanged between the parties in a language other than English under §12 below (Submission of Documents) need not be translated.
- 7.6. The testimony of a witness or expert called for examination during a hearing who prefers to give evidence other than in the English language shall be interpreted, simultaneously.
- 7.7. The parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §15 below), which witnesses or experts (if any) require interpretation.
- 7.8. The costs of interpretation during a hearing will be paid from the advance payments made by the parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.

8. Routing of Communications

Article 15(3) of the UNCITRAL Rules

- 8.1. The ICSID Secretariat shall be the channel of written communications between the parties and the Tribunal. In case of urgency, the President may transmit communications on behalf of the Tribunal.
- 8.2. Each party's written communications shall be transmitted by email or other electronic means to the designated counsel in the Terms of Appointment and to the ICSID Secretariat, who shall promptly send them to the Tribunal.

- 8.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the ICSID Secretariat only, provided that the submitting party notifies all parties of the making of the submission. The Tribunal Secretary shall provide each party's submission to the other party as soon as reasonably possible after both parties' submissions to the Tribunal have been made.
- 8.4. The ICSID Secretariat shall not be copied on direct communications between the parties when such communications are not intended to be transmitted to the Tribunal.
- 8.5. There shall be no *ex parte* communications with the Tribunal.

9. Number of Copies and Method of Filing of Parties' Submissions

Article 15(3) of the UNCITRAL Rules

- 9.1. By the relevant filing date, the parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and an index of all supporting documentation (the "Electronic Email Filing").¹
- 9.2. Within one (1) business day of the Electronic Email Filing, the parties shall upload the pleading with all the supporting documentation (*i.e.*, all witness statements, expert reports, exhibits, legal authorities) and updated index to the file sharing platform that has been created by ICSID for purposes of this case (the "Electronic Platform Filing").
- 9.3. Within three (3) weeks of the Electronic Platform Filing, the parties shall also upload:
 - 9.3.1. Redacted versions of any documents designated confidential pursuant to the Confidentiality Order contemplated in §24.1 below; and
 - 9.3.2. English translations of any non-English documents, pursuant to §7.2 above.
- 9.4. The parties waive hard copy submission of all filings.
- 9.5. Electronic files of submissions, witness statements, expert reports, exhibits (except any handwritten documents), and legal authorities shall be text searchable and capable of being annotated (*i.e.*, OCR PDF or Word).
- 9.6. The official date of receipt of a submission or communication shall be the day on which the electronic file is sent to the Tribunal Secretary by email.

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

- 9.7. A filing shall be deemed timely if sent by a party by 23:59, Washington, D.C. time, on the relevant date.

10. Number and Sequence of Submissions

Article 21 of the UNCITRAL Rules

- 10.1. After consulting with the parties, the Tribunal has adopted the Procedural Calendar, which is set out in **Annex B**.
- 10.2. The parties may at any stage of the proceedings seek further directions from the Tribunal regarding procedural steps relating to and/or in addition to those set out in the Procedural Calendar.

11. Production of Documents

Article 24 of the UNCITRAL Rules; International Bar Association (“IBA”) Rules on the Taking of Evidence (2020)

- 11.1. Each party may request the production of documents from the other party in accordance with the procedural calendar attached as **Annex B**.
- 11.2. Requests for the production of documents shall be in writing and set forth reasons for the request in respect of each document or class of documents requested. Unless the requested party objects to production, it shall produce the requested documents within the applicable time limit. If a party objects to only a certain aspect of a request, it shall produce documents that are responsive to the non-objected portion of the request within the time limit set forth in the procedural calendar.
- 11.3. All Requests to produce documents shall be guided by Articles 3 and 9 of the IBA Rules on the Taking of Evidence in International Arbitration (2020) (“IBA Rules”) in form and scope. Documents produced by a party under this Procedural Order shall be produced as maintained in the ordinary course of business or by categories, or types of documents, or some other rational method of production and identification so to further rather than impede review and comprehension by the receiving party. Spreadsheets shall be produced in native format, if available.
- 11.4. Document requests shall be submitted in the form of a Redfern schedule, utilizing the standards set forth below. In providing objections to requests, the parties may utilize Veeder Codes. Throughout this process, counsel are to confer and work constructively to resolve any disputes over production.
- 11.5. Documents produced according to the above schedule shall not be sent to the Tribunal and shall not form part of the record unless and until a party subsequently submits them as exhibits to its written submissions in accordance

with the procedural calendar or upon authorization of the Tribunal after the exchange of submissions.

12. Submission of Documents

Article 24 of the UNCITRAL Rules

- 12.1. The Memorial and Counter-Memorial shall be accompanied by all the documentary evidence, as well as witness statements and expert reports, relied upon by the parties, including exhibits and legal authorities. Further responsive documentary evidence, as well as responsive witness statements and expert reports, relied upon by the parties in rebuttal shall be submitted with the Reply and Rejoinder.
- 12.2. The documents shall be submitted in the manner and form set forth in §12.5 below.
- 12.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last submission, unless the Tribunal determines that exceptional circumstances exist based on a reasoned written request followed by observations from the other party.
 - 12.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request, nor may that party quote or paraphrase from the documents. In addition, the non-moving party shall have an opportunity to provide comments on the request to add the documents to the record.
 - 12.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document. The other party shall also have an opportunity to submit counter-evidence.
- 12.4. The Tribunal may call upon the parties to produce documents or other evidence in accordance with Article 24 of the UNCITRAL Rules.
- 12.5. The documents shall be submitted in the following form:
 - 12.5.1. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.

- 12.5.2. Exhibits and legal authorities shall be numbered consecutively throughout these proceedings, commencing with “C-0001” and “R-0001,” and “CL-0001” and “RL-0001” respectively. The number of the exhibit or legal authority shall appear on the first page of the document, and shall be incorporated into the file name.
- 12.5.3. Electronic files and the accompanying indexes may follow the naming conventions contained in **Annex A**.
- 12.5.4. Each exhibit and legal authority that is submitted to the Tribunal shall be accessible as a separate document or, if in a compilation, separately accessible using the PDF bookmarking function.
- 12.5.5. The parties shall number the paragraphs of their written submissions consecutively.
- 12.6. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 12.7. The parties shall file all documents only once by submitting them with their submissions. Documents need not be resubmitted with witness statements even if referred to in such statements.
- 12.8. Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the exhibit number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and, if requested, hard copy format to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) (if any). Save in the case of rebuttal arguments (as to which the Tribunal shall make suitable provision for advance submission at the appropriate time), counsel shall provide a copy of any demonstrative exhibit to the other party and the Tribunal at the start of the hearing day on which it is to be used.

13. Witness Statements and Expert Reports

Article 24 of the UNCITRAL Rules

- 13.1. Witness statements and expert reports shall be filed together with the parties’ submissions.
- 13.2. Neither party shall be permitted to submit any written testimony that has not been filed with the submissions, unless the Tribunal determines that special

justification exists based on a reasoned written request followed by observations from the other party (following the procedure outlined in §12.3 above).

- 13.3. Interactions with witnesses and experts shall be guided by the *IBA Guidelines on Party Representation in International Arbitration (2013)*.
- 13.4. For each non-expert upon whose evidence a party wishes to rely, a signed written English-language witness statement setting out the direct evidence of the witness shall be delivered to the Tribunal and the other party. If a witness statement is a translation of a statement originally prepared in a language other than English, the English translation shall be prepared at the expense of the tendering party and, notwithstanding §7.4 above, shall be certified to be a true and correct translation. A copy of the original statement on which the translation is based shall be delivered simultaneously with the English translation.
- 13.5. Witness statements shall be guided by Article 4(5) of the IBA Rules. Each witness statement shall state: (1) the name, city and state/province of the witness; (2) his or her relationship to, and interest in, any of the parties in this arbitration; (3) an affirmation of the truth of the witness statement; and (4) the date and place of signature.
- 13.6. Witness statements shall, subject to any objection and exclusionary ruling of the Tribunal, constitute evidence of the witness in this proceeding.
- 13.7. A party that proposes to rely on the evidence of an expert shall deliver to the Tribunal and the other party an expert report guided by Article 5(2) of the IBA Rules.
 - 13.7.1. Each expert report shall attach a current curriculum vitae evidencing such qualifications.
- 13.8. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted as exhibits with the parties' submissions, in which case reference to such exhibits shall be sufficient. The procedural rules set out in the above §13.4–13.6 shall apply by analogy to the evidence of experts.
- 13.9. Expert reports shall, subject to any objection and any exclusionary ruling of the Tribunal, constitute evidence of the expert in this proceeding.
- 13.10. The parties agree that any discussions with an expert, including any comments on draft expert reports, and draft expert reports themselves, shall be privileged and not subject to production in this Arbitration.

13.11. Each witness statement and expert report shall be signed and dated, either by hand or electronically, by the witness or expert.

14. Examination of Witnesses and Experts

Articles 25 and 27(4) of the UNCITRAL Rules

- 14.1. All matters addressed in this section may be revisited at the pre-hearing organizational meeting, as appropriate.
- 14.2. A party may be called upon by the opposing party to produce at the hearing for cross-examination any factual witness or expert whose written testimony has been advanced with the submissions. The fact that a party does not call for cross-examination a witness or expert whose statement has been submitted with the other party's submissions shall not be deemed an admission by an opposing party that the facts set forth in the witness' statement or the opinions set forth in the expert's report are correct or proven.
- 14.3. Each party is responsible for summoning to the hearing those of its witnesses and experts whom the other party has called for cross-examination or whom the Tribunal has directed to appear. Each party is to bear the costs of its witnesses' and experts' appearance at the hearing, subject to the Tribunal's later allocation of costs.
- 14.4. In exceptional circumstances, the Tribunal may allow a witness or expert to appear and be examined by videoconference and, in such cases, shall issue appropriate directions.
- 14.5. If a witness or expert called for cross-examination ultimately is unable to attend the hearing in person or by videoconference for any reason, the Tribunal will hear the parties on this issue and determine the best course of action.
- 14.6. A party may call upon its own expert (who submitted an expert report) to testify if not called upon by the opposing party. In such circumstance, the opposing party shall have a right of cross-examination of any such expert.
- 14.7. Unless agreed otherwise by the parties, the scope of the direct examination of fact witnesses shall be limited to a confirmation of their statement, and/or to respond to issues that could not reasonably have been anticipated at the time the witness's written statement(s) was submitted.
- 14.8. The opposing party may cross-examine the fact witnesses or experts on relevant matters that were addressed or presented in the witness statement or expert report and other matters that directly relate to the issues in dispute of which it is reasonably believed the witness has personal knowledge or the expert is

qualified. Re-direct shall be limited to the scope of the cross. Any re-cross shall occur at the discretion of the Tribunal.

- 14.9. A party offering an expert may request that, prior to cross-examination, the expert be allowed to provide direct testimony by way of a presentation to the Tribunal, subject to time limits to be determined, specifying the areas counsel believes would benefit from further elucidation on direct testimony by the expert.
- 14.10. The Tribunal may examine a fact witness or expert at any time, either before, during or after examination by one of the parties; provided that, to the extent the Tribunal elicits new testimony, the parties may seek to re-direct or re-examine the witness or expert on that testimony.
- 14.11. The parties shall notify the opposing party which witnesses and experts it intends to call for cross-examination. On the date set forth in **Annex B**, each party shall notify the other party and the Tribunal which of its witnesses or experts it will call for direct examination at the hearing. Shortly after the parties' notifications, the Tribunal shall indicate which witnesses or experts, not called by the parties, it may wish to question, if any.
- 14.12. Unless agreed otherwise, a fact witness shall not be present in the hearing room during the opening statement or the hearing of oral testimony, nor shall he or she read any transcript of any oral testimony, prior to his or her examination. Experts shall be allowed in the hearing room at any time. For greater clarity, a witness or expert should remain sequestered once his or her testimony has begun through the conclusion of his or her testimony. If the fact witness is also a client representative, the Tribunal, having heard the parties, shall decide how best to proceed.
- 14.13. Other matters regarding hearings shall be agreed upon by the parties or decided by the Tribunal at a later stage.

15. Pre-Hearing Organizational Meeting

- 15.1. A pre-hearing organizational meeting shall be held on a date determined by the Tribunal after consultation with the parties. It shall comprise a teleconference or videoconference between the Tribunal and the parties, or if the parties agree between the Tribunal President and the parties, and should resolve any outstanding procedural, administrative, and logistical matters (including modality of interpretation and transcription) in preparation for the hearing.
- 15.2. At a date to be determined by the Tribunal, and in any event no later than the date of the pre-hearing conference, the parties shall submit to the Tribunal jointly

– or, where they are unable to agree, separately – a proposal regarding a daily schedule for the hearing.

15.3. Prior to this meeting, the parties shall collaborate to prepare:

15.3.1. A list of the principal factual and legal issues presented to the Tribunal for its decision;

15.3.2. A chronology of key events;

15.3.3. A dramatis personae;

15.3.4. A set of key factual exhibits in chronological order (cross-referenced by exhibit number) amounting to no more than 500 pages; and

15.3.5. A chronological hyperlinked list of all factual exhibits.

16. Hearings

Articles 15(2) and 25 of the UNCITRAL Rules

16.1. Hearings before the Tribunal other than procedural or organizational meetings shall be subject to the rules set out in this Section.

16.2. The oral procedure shall consist of a hearing for examination of witnesses and experts, if any, and for oral arguments. No new evidence may be presented at the hearing except in accordance with §12.3 and §13.2 above.

16.3. The hearing may be held in-person or by any other means of communication as determined by the Tribunal after consultation with the parties. An in-person hearing shall be held at the place of the arbitration or a place to be determined in accordance with §6.2 above. The hearing venue shall be determined with enough advance notice to allow for appropriate accommodations to be made, including any travel by a party representative, witness, expert, counsel, or member of the Tribunal.

16.4. Subject to further discussion at the pre-hearing conference, the general principle of equal time for each party will be observed for the hearing, with further time allocated to the Tribunal. The parties will be responsible for timekeeping and may agree on the use of a chess clock or other procedure. The Secretary of the Tribunal may also be asked to keep time in accordance with the procedure agreed by the parties. The Tribunal may nonetheless extend the time for one party as it considers appropriate in the circumstances, including the relative number of witnesses to be cross-examined, the scope of the evidence, and the relative complexity of the claims and counterclaims. The Tribunal will have discretion

to decide, before any hearing and after consulting the parties, on the parties' allocation of time.

- 16.5. Provision for public broadcast of hearings shall be made, either in the context of a confidentiality agreement between the parties under §24.1 below, or, if no such agreement is reached, by further application to the Tribunal pursuant to that section.

17. Records of Hearings and Sessions

Article 25(3) of the UNCITRAL Rules

- 17.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.
- 17.2. Verbatim transcripts in the procedural language shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall, if possible, be available in real-time and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis. The costs of the transcript shall be shared equally by the parties in the first instance, subject to any later award of costs.
- 17.3. The parties shall agree on any corrections to the transcripts within a reasonable time to be determined at the pre-hearing conference. The agreed corrections may be entered by the court reporter in the transcripts ("revised transcripts"). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.

18. Post-Hearing Memorials and Statements of Costs

Article 38 of the UNCITRAL Rules

- 18.1. The Tribunal shall determine at a later date whether post-hearing memorials are necessary. To the extent such submissions are deemed necessary, they may not (absent leave of the Tribunal) contain new evidence, or be accompanied by new exhibits, witness statements, or expert reports. Such submissions (if deemed necessary) shall also have a page-limit that the Tribunal shall determine at a later date.
- 18.2. The Tribunal shall also determine at a later date the specifics of any costs submissions. In principle, however, such submissions may list only expenses and may not contain argumentation by the parties.

19. Publication

Article 32 of the UNCITRAL Rules; NAFTA Article 1137.4 and Annex 1137.4; Notes of Interpretation of Certain Chapter 11 Provisions NAFTA Free Trade Commission July 31, 2001, section A.

- 19.1. Pursuant to NAFTA Annex 1137.4, either party may make an award public. ICSID shall publish public versions of all submissions (exclusive of documentary evidence, witness statements and expert reports), procedural orders, decisions, and awards related to the proceeding, and may include a summary of procedural details of the case on its website.
- 19.2. In the event that any decision, order, or award of the Tribunal contains or refers to information designated as confidential in accordance with the Confidentiality Order (to be negotiated by the parties and issued by the Tribunal pursuant to §24.1 below), the Tribunal shall prepare, or direct the party that designated the information in question as confidential to prepare for its approval upon consultation with the other party, a redacted copy of the decision, order, or award.

20. Data Privacy

- 20.1. The Members of the Tribunal, the parties and their representatives acknowledge that the processing of their personal data (name, addresses, e-mail, etc.) is necessary for the purposes of this arbitration proceeding.
- 20.2. The parties and their representatives note that applicable data protection and privacy regulations may require providing appropriate notice to data subjects whose personal data will be processed in the arbitration proceeding, obtaining the consent of relevant individuals, where necessary, and ensuring that witnesses and experts expressly agree in their relevant statements to the reasonable use of their personal data solely in this arbitration. Should applicable regulations require action from another participant in the arbitration, the parties are invited to bring it to the attention of the other participants as necessary and/or to apply to the Tribunal for specific data protection measures to be put in place.

21. Non-Disputing NAFTA Parties

NAFTA Articles 1128 and 1129

- 21.1. Non-Disputing NAFTA Parties may make submissions to the Tribunal within the meaning of NAFTA Article 1128 by the date indicated in **Annex B**. Pursuant to NAFTA Article 1128, these submissions may only comment on questions of interpretation of NAFTA. With leave of the Tribunal, Non-Disputing NAFTA Parties may make additional submissions on questions of interpretation of NAFTA.

- 21.2. Pursuant to NAFTA Articles 1127, 1128 and 1129, Non-Disputing NAFTA Parties may attend oral hearings, and are entitled to receive a copy of confidential versions of transcripts, submissions and exhibits, including witness statements and expert reports. Non-Disputing NAFTA Parties shall, pursuant to NAFTA Article 1129, treat all information received from the Respondent as if they were a party to the arbitration, notably in respect of protection of confidential information. As such, they are required to adhere to any confidentiality agreement entered into between the parties and any Confidentiality Order issued by the Tribunal pursuant to §24.1 below.
- 21.3. The parties shall have the opportunity to comment on any Article 1128 submission only by the date set forth in **Annex B** or as otherwise set by the Tribunal.

22. Other Non-Disputing Parties

- 22.1. The Tribunal shall consider any application for permission to file a submission in this arbitration by an intending *amicus curiae*, in consultation with the parties to this arbitration, in accordance with the “*Statement of the Free Trade Commission on non-disputing party participation.*” The applications (and any allowed submissions) shall be filed by the date set forth in **Annex B**.
- 22.2. The parties to this arbitration shall have the opportunity to comment on any non-disputing party submission by the date set forth in **Annex B** or as otherwise set by the Tribunal.

23. Third Party Funding

- 23.1. Where a party’s pursuit of its claim or defense is supported by third-party funding to cover any of the costs of this arbitration in return for remuneration dependent on the outcome of the dispute, that party shall disclose the identity of the third-party funder no later than 16 January 2024, so that inter alia the Tribunal may consider any possible implications for the maintenance of the impartiality of the Tribunal.
- 23.2. Each party bears the ongoing duty to disclose any change to the information provided pursuant to §23.1 above.

24. Confidentiality

- 24.1. The parties shall seek to negotiate a draft confidentiality agreement and shall present such draft to the Tribunal no later than 16 January 2024, for inclusion in a procedural order (the “Confidentiality Order”). If the parties are unable to reach agreement, either party may request the Tribunal to resolve any such differences between the parties.

25. Disposal of Record

- 25.1. One year after the Tribunal has either (1) notified the final Award to the parties, or (2) in the event of a proceeding to set aside the final Award, following any decision on set aside and following the end of any appeals of that decision, the arbitrators shall dispose of the record of the arbitration, unless a party requests that the documents be returned to them or to their counsel, which shall be done at the expense of the requesting party.

26. Reservation

- 26.1. This Procedural Order is without prejudice to any objection the parties may raise with respect to the Tribunal's jurisdiction, or any arguments the parties may raise in response to such objections.

THE TRIBUNAL

[signed]

Mr. Stephen Drymer, Esq.

Date: 18 December 2023

[signed]

Prof. Sean D. Murphy

Date: 18 December 2023

[signed]

Prof. Campbell A. McLachlan KC

(Presiding Arbitrator)

Date: 11 December 2023

Annex A – Electronic File Naming Guidelines

Please follow these guidelines when naming electronic files and for the accompanying Consolidated Hyperlinked Index. The examples provided (in *italics*) are for demonstration purposes only and should be adapted to the relevant phase of the case.

All pleadings and accompanying documentation shall indicate the LANGUAGE in which they are submitted (e.g. SPA=Spanish; FR=French; ENG= English). Such indication should be reflected both i) in the name used to identify each individual electronic file and ii) in the Consolidated Hyperlinked Index (which shall be attached to each submission).

For cases with a single procedural language, the “LANGUAGE” designation may be omitted, except for documents in a language other than the procedural language and the corresponding translations.

SUBMISSION TYPE	ELECTRONIC FILE NAMING GUIDELINES
MAIN PLEADINGS	Title of Pleading–LANGUAGE
	<i>Memorial on Jurisdiction-FR</i>
	<i>Counter-Memorial on the Merits and Memorial on Jurisdiction-SPA</i>
	<i>Reply on Annulment-FR</i>
	<i>Rejoinder on Quantum-ENG</i>
SUPPORTING DOCUMENTATION Exhibits	C-####–LANGUAGE
	R-####–LANGUAGE
	To be produced sequentially throughout the case.
	CLAIMANT’S FACTUAL EXHIBITS
	<i>C-0001-ENG</i>
	<i>C-0002-SPA</i>
	RESPONDENT’S FACTUAL EXHIBITS
	<i>R-0001-FR</i>
	<i>R-0002-SPA</i>
	Legal Authorities
RL-####–LANGUAGE	
To be produced sequentially throughout the case.	
CLAIMANT’S LEGAL AUTHORITIES	
<i>CL-0001-ENG</i>	
<i>CL-0002-FR</i>	
RESPONDENT’S LEGAL AUTHORITIES	
<i>RL-0001-SPA</i>	
<i>RL-0002-ENG</i>	
Witness Statements	Witness Statement–Name of Witness–Name of Submission–LANGUAGE

	<i>Witness Statement-Maria Jones-Memorial on Jurisdiction-SPA</i>
	<i>Witness Statement-Maria Jones-Reply on Jurisdiction-[Second Statement]-ENG</i>
Expert Reports	<i>Expert Report-Name of Expert-Type-Name of Submission-LANGUAGE</i>
	<i>Expert Report-Lucia Smith-Valuation-Memorial on Quantum-ENG</i>
	<i>Expert Report-Lucia Smith-Valuation-Reply on Quantum-[Second Report]-ENG</i>
Legal Opinions	<i>Legal Opinion-Name of Expert-Name of Submission-LANGUAGE</i>
	<i>Legal Opinion-Tom Kaine-Counter-Memorial on the Merits-FR</i>
	<i>Legal Opinion-Tom Kaine-Rejoinder on the Merits-[Second Opinion]-FR</i>
Exhibits to Witness Statements, Expert Reports, Legal Opinions	WITNESS/EXPERT INITIALS-###
	<i>For exhibits filed with the Witness Statement of [Maria Jones]</i>
	<i>MJ-0001</i>
	<i>MJ-0002</i>
	<i>For exhibits filed with the Legal Opinion of [Tom Kaine]</i>
	<i>TK-0001</i>
	<i>TK-0002</i>
	<i>For exhibits filed with the Expert Report of [Lucia Smith]</i>
	<i>LS-0001</i>
	<i>LS-0002</i>
INDICES	Consolidated Hyperlinked Index
	Index of Exhibits-C-##### to C-#####
	<i>Index of Exhibits-C-0001 to C-0023</i>
	Index of Legal Authorities-RLA-### to RLA-###
	<i>Index of Legal Authorities-RLA-0001 to RLA-0023</i>
OTHER APPLICATIONS	Name of Application-[Party]-LANGUAGE
	<i>Preliminary Objections under Rule 41(5)-SPA</i>
	<i>Request for Bifurcation-ENG</i>
	<i>Request for Provisional Measures-[Respondent]-SPA</i>
	<i>Request for Production of Documents-[Claimant]-SPA</i>
	<i>Request for Stay of Enforcement-FR</i>
	<i>Request for Discontinuance-[Claimant]-ENG</i>
	<i>Post-Hearing Brief-[Claimant]-SPA</i>
	<i>Costs Submissions-[Respondent]-ENG</i>
	<i>Observations to Request for [XX]-[Claimant]-SPA</i>

Annex B – Procedural Calendar

Procedural Step	Party/Tribunal	+Days	Filing Date ²
Claimant’s Memorial			
Memorial	Claimant	120 days from Date of Procedural Order No. 1	16 April 2024
Request for Bifurcation			
Request for Bifurcation of Preliminary Objection(s)	Respondent	30 Days from the Claimant’s Memorial	16 May 2024
Claimant’s Observations on Request	Claimant	30	17 June 2024
Respondent’s Reply to Claimant’s Observations	Respondent	20	8 July 2024
Claimant’s Rejoinder to Respondent’s Reply	Claimant	20	29 July 2024
Tribunal’s Decision on Request to Bifurcate	Tribunal	Approx. 15	13 August 2024
Bifurcation of Preliminary Objection(s) (if granted)			
Memorial on Preliminary Objection(s)	Respondent	60 days from Tribunal Decision on Bifurcation	15 October 2024
Counter-Memorial on Preliminary Objection(s)	Claimant	60	16 December 2024
Non-Disputing Party Submissions (Article 1128)	Mexico, Canada and the public	30 days from Counter-Memorial	15 January 2025
<i>Requests for Production of Documents (Redfern Schedule), if any</i>	Claimant & Respondent	30 days from Counter-Memorial	14 February 2025
<i>Responses/Objections to Document Requests</i>	Claimant & Respondent	30	17 March 2025
<i>Reply to Objections to Document Requests/ Requests to the Tribunal/Voluntary Production</i>	Claimants & Respondent	15	1 April 2025
<i>Tribunal’s Decisions on Document Production</i>	Tribunal	Approx. 15	16 April 2025

² All dates are subject to recalculation based on the prior procedural step(s), and where a filing date would otherwise be adjacent to, or fall on, a holiday or non-business day, the parties will work in good faith to seek agreement to adjust the schedule to a more suitable filing date, such as the next business day.

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Procedural Order No. 1 – Annex B

Procedural Step	Party/Tribunal	+Days	Filing Date ²
<i>Production of Remaining Documents</i>	Claimant & Respondent	15	1 May 2025
Reply on Preliminary Objection(s)	Respondent	30 days from Production of Remaining Documents or from Non-Disputing Party Submissions (Article 1128) (whichever comes at the latest date)	2 June 2025
Rejoinder on Preliminary Objection(s)	Claimant	45	17 July 2025
<i>Inter Partes</i> Notification of Witnesses/Experts (if any) to be Called for Cross Examination	Claimant & Respondent	10	28 July 2025
Notification to the Tribunal of Witnesses/Experts (if any) to be Called for Cross Examination	Claimant & Respondent	5	4 August 2025
Pre-Hearing Organizational Meeting	All	TBD	TBD
Hearing on Preliminary Objection(s)	All	TBD	TBD
Tribunal Decision or Award on Preliminary Objection(s)	Tribunal	TBD	TBD
Proceedings on Jurisdiction/Merits (if bifurcation denied, or bifurcated preliminary objection dismissed)			
Counter-Memorial the Merits and Memorial on Non-Bifurcated Jurisdictional Defenses	Respondent	90 days from Tribunal decision denying bifurcation or dismissing bifurcated preliminary objection	TBD

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Procedural Order No. 1 – Annex B

Procedural Step	Party/Tribunal	+Days	Filing Date ²
Non-Disputing Party Submissions (Article 1128) & Applications by other non-disputing parties for leave to file <i>amicus</i> submissions	Mexico, Canada and the public	30 days from Counter-Memorial the Merits and Memorial on Non-Bifurcated Jurisdictional Defenses	TBD
Simultaneous Observations <i>amicus</i> applications	Claimant & Respondent	30 days from Applications for <i>Amicus</i> Submissions	TBD
Tribunal Decision on <i>Amicus</i> applications	Tribunal	Approx. 20	TBD
<i>Amicus</i> Submissions (if any)		15 days from Tribunal's Decision	TBD
<i>Requests for Production of Documents (Redfern Schedule)</i>	<i>Claimant & Respondent</i>	30 days from Counter-Memorial	TBD
<i>Responses/Objections to Document Requests</i>	<i>Claimant & Respondent</i>	30	TBD
<i>Reply to Objections to Document Requests/Voluntary production</i>	<i>Claimant & Respondent</i>	15	TBD
<i>Tribunal's Decisions on Document Production</i>	<i>Tribunal</i>	Approx. 15	TBD
<i>Production of Remaining Documents</i>	<i>Claimant & Respondent</i>	15	TBD
Reply on Merits and Counter Memorial on Non-Bifurcated Jurisdictional Objections	Claimant	60 days from Production of Remaining Documents or from Non-Disputing Party Comments on <i>Amicus</i> Submissions (whichever comes at the latest date)	TBD
Rejoinder on Merits and Reply on Non-Bifurcated Jurisdictional Objections	Respondent	60 days from Reply on Merits and Counter Memorial on Non-Bifurcated Jurisdictional Objections	TBD

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Procedural Order No. 1 – Annex B

Procedural Step	Party/Tribunal	+Days	Filing Date²
Rejoinder on Non-Bifurcated Jurisdictional Objections (if any)	Claimant	30 days	TBD
<i>Inter Partes</i> Notification of Witnesses/Experts to be Called for Cross Examination	Claimant & Respondent	10	TBD
Notification to the Tribunal of Witnesses/Experts (if any) to be Called for Cross Examination	Claimant & Respondent	5	TBD
Pre-Hearing Organizational Meeting	All	TBD	TBD
Hearing on Jurisdiction and the Merits	All	TBD	TBD
Simultaneous Submissions on Costs	Claimant & Respondent	TBD	TBD
Simultaneous Observations on Costs Submissions	Claimant & Respondent	TBD	TBD
Decision or Award Non-bifurcated issues and/or on the Merits	Tribunal	TBD	TBD

Additional procedural steps may be added, or steps may be amended by the Tribunal or by agreement of the disputing parties, as required.