

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER 11 OF
THE NORTH AMERICAN FREE TRADE AGREEMENT (“NAFTA”)
AND THE INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTES (“ICSID”) ARBITRATION (ADDITIONAL
FACILITY) RULES**

BETWEEN:

MERCER INTERNATIONAL INC.

Claimant

AND

CANADA

Respondent

PROCEDURAL ORDER NO. 10

ICSID Case No. ARB(AF)/12/3

18 November 2015

TRIBUNAL:

**Mr. V.V. Veeder (President)
Professor Francisco Orrego Vicuña
Professor Zachary Douglas**

A: INTRODUCTION

1. The Tribunal here addresses three separate procedural differences between the Parties, regarding disputed applications for post-hearing submissions, submissions on costs and new evidence. It is appropriate to consider and decide each in turn.

B: POST-HEARING SUBMISSIONS

2. The Tribunal refers to the application by the Claimant, made by letter dated 2 October 2015, for a procedural order permitting the Parties to file simultaneously within sixty days of such order a 75-page, double-spaced, post-hearing brief, limited to: (i) addressing questions posed by the Tribunal to either Party at the Hearing held from 21 to 31 July 2015; (ii) addressing new questions the Tribunal may wish to pose with its order; and (iii) commenting on the witness testimony and party presentations at the July Hearing .
3. The Tribunal refers to the Respondent's letter dated 9 October 2015, opposing the Claimant's application. In brief, the Respondent submits that the Claimant's first application is untimely, unnecessary and, if granted, prejudicial to the Respondent.
4. *Decision:* As regards this first application, the Tribunal permits each Party, if it so wishes, to file a post-hearing written submission, not to exceed 35 pages in double-spacing (including any appendices), limited to: (a) addressing questions posed by the Tribunal to either Party at the Hearing; (b) comments on the witness testimony adduced at the Hearing; and (c) responses to non-legal submissions presented by the adverse Party' legal representatives at the Hearing.
5. Subject to the Tribunal's decision below on the third application, such written submissions shall not include any new evidence or any new legal material. Nor should such submissions by either Party include any new legal argument or repeat (save by cross-reference) that Party's earlier pleadings in this arbitration's written phase, before the Hearing.
6. The Claimant should file its written submission as soon as practicable, but no later than 31 December 2015. The Respondent should file its written submission as soon practicable after receiving the Claimant's submission, but no later than 26 February 2016.
7. The Tribunal does not think it here necessary to provide for any reply submission for either Party. It reserves the right, however, to reconsider the position after receiving the Parties' two written submissions.

C: COSTS SUBMISSIONS

8. The Tribunal refers to the application by the Claimant, made by letter dated 2 October 2015, for a procedural order: (i) fixing the date for the Parties' written submissions on costs sixty days after the last scheduled filing in the case; and (ii) limiting such submissions to quantum.
9. The Tribunal refers to the Respondent's letter dated 9 October 2015, opposing the Claimant's application. In brief, the Respondent submits that costs submissions should be "full briefs", filed within thirty days of the Tribunal's order.
10. *Decision:* As regards this second application, the Tribunal thinks it inappropriate to limit the Parties' written submissions on costs to quantum only, excluding all issues of allocation. Accordingly, it permits each Party, to file full submissions on costs.
11. The Parties should file their costs submissions no later than 15 March 2016. The Tribunal does not think it here necessary to provide for any reply costs submission for either Party. It reserves the right, however, to reconsider the position after receiving the Parties' two costs submissions and to request the Parties, if and to the extent necessary, to update the final quantum of their respective costs.

D: NEW EVIDENCE

12. The Tribunal refers to the application by the Respondent, by letter dated 6 November 2015, for permission to adduce new evidence concerning two decisions of the B.C. Utilities Commission dated 26 and 30 October 2015: namely five documents all coming into existence after the July Hearing.
13. By letter dated 13 November 2015, the Claimant opposed the Respondent's application, on the principal ground that the Respondent's application did not meet the test for "exceptional circumstances" established by Paragraph 42 of the Tribunal's Procedural Order No. 1 of 24 January 2013.
14. The Tribunal has noted the Respondent's response to the Claimant's opposition, by email message dated 13 November 2015. It has also noted the Claimant's reply to such response, by email message dated 14 November 2015.
15. *Decision:* As regards this third application, the Tribunal thinks it appropriate to permit the Respondent to submit the five documents *de bene esse*, with a brief written explanation of their relevance to the issues in this arbitration, as soon as practicable but not later than 1 December 2015. The Claimant may respond to such written explanation as soon as practicable thereafter, but not later than its post-hearing written submission (with deadline of 31 December 2015). The Respondent may reply to such response as soon as practicable thereafter, but not later than its post-hearing submission (with deadline of 26 February 2016).

16. For the time being, the five documents are not admitted into evidence; and the Tribunal reserves in full its powers to decide upon their admission or non-admission following further consideration of the Parties' submissions.

Dated: 18 November 2015

For the Tribunal:

[SIGNED]

V.V. Veeder, President