INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

United Utilities (Tallinn) B.V.

and

Aktsiaselts Tallinna Vesi

Claimants

v.

Republic of Estonia

Respondent

ICSID Case No. ARB/14/24

PROCEDURAL ORDER No. 3

Decision on Parties' Requests for Document Production

The Tribunal

Mr. David A.R. Williams, Arbitrator
Prof. Brigitte Stern, Arbitrator
Mr. Stephen L. Drymer, President

Secretary of the Tribunal

Mr. Paul-Jean Le Cannu

Date: 3 May 2016

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INTRODUCTION

1. This Procedural Order ("**Order**") addresses issues connected with the parties' respective Requests for Document Production ("**Document Requests**" or "**Requests**"), including their respective responses ("**Responses**"), objections ("**Objections**") and replies ("**Replies**") thereto, concerning which the Tribunal is requested to rule at this time.[1]

2. The Tribunal's rulings in respect of the parties' specific Requests, including the reasons therefor, are set out in the Redfern Schedules annexed to this Order as "**Annex A**" (Claimants' Document Requests) and "**Annex B**" (Respondent's Document Requests).

I. PROCEDURAL BACKGROUND

3. On 4 March 2016, the parties exchanged Document Requests in accordance with §15 of Procedural Order No. 1 (as amended) dated 19 June 2015 and the Timetable at Annex A of Procedural Order No. 2 dated 17 June 2015.

4. On 1 April 2016, the parties exchanged Responses and/or Objections to those Requests.

5. On 15 April 2016, the parties filed their Replies to each other's Objections, accompanied by Redfern Schedules setting out the parties' positions in respect of the Requests on which rulings are sought.

6. On Friday afternoon, 22 April 2016, Claimants wrote to the Tribunal as follows: "The Claimants recognise that there is no right of response to Estonia's Reply provided in the timetable at Annex A to Procedural Order No. 2. However, the Claimants seek the Tribunal's permission to bring certain matters to its attention" regarding various assertions made by Respondent in its Reply.

7. Shortly after 9:00 the following Monday, 25 April 2016, the ICSID Secretariat notified the parties that the Tribunal "invites Respondent to comment briefly … should it wish to do so, on the submissions in Claimants' 22 April 2016 letter, by Wednesday, 27 April 2016, after which no further submissions shall be made in respect of the parties' document requests."

8. Respondent duly accepted the Tribunal's invitation and provided its comments on 27 April 2016.

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[1] As set out at page 2 of their 15 April 2016 submission, discussed below, Claimants currently seek an order from the Tribunal only in connection with their Requests No. 11, 14(a)-(e), 15, 17(e), 18(a), 23 and 24, and "reserve their right to seek an order from the Tribunal in connection with further Requests …".

II. APPLICABLE STANDARDS

9. Under the ICSID Convention ("**Convention**") and Arbitration Rules ("**Rules**"), parties to ICSID arbitration have ample freedom to determine the applicable procedure in a given case, including with respect to the taking of evidence. Should the parties fail to agree, the arbitral tribunal enjoys an equally ample authority to establish the applicable procedure.

10. As regards document production, Article 43 of the Convention provides:

> Except as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings,
>
> (a) call upon the parties to produce documents or other evidence [...].

11. Similarly, Rule 34(2) of the Rules states:

> The Tribunal may, if it deems it necessary at any stage of the proceeding:
>
> (a) call upon the parties to produce documents, witnesses and experts [...].

12. In this case, §15 of Procedural Order No. 1 further provides:

> **15. Production of Documents**
>
> [...]
>
> 15.2 The conduct of document production shall be guided by the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) (the "**IBA Rules**").
>
> [...]
>
> 15.4 The Tribunal will rule on the production of the documents or categories of documents in its discretion. It may be guided by Articles 3 and 9 of the IBA Rules.

13. The parties indeed rely on the IBA Rules in their Requests, and in considering and ruling on the parties' Objections to those Requests the Tribunal has itself sought guidance from Articles 3 and 9 of the IBA Rules, including in particular:

i. Article 3.3:

> A Request to Produce shall contain:
>
> (a) *(i)* a description of each requested Document sufficient to identify it, or
>
> *(ii)* a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other

means of searching for such Documents in an efficient and economical manner;

(b) a statement as to how the Documents requested are relevant to the case and material to its outcome; and

(c) *(i)* a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Documents, and

(ii) a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party.

ii. Article 3.5:

If the Party to whom the Request to Produce is addressed has an objection to some or all of the Documents requested, it shall state the objection in writing to the Arbitral Tribunal and the other Parties within the time ordered by the Arbitral Tribunal. The reasons for such objection shall be any of those set forth in Article 9.2 or a failure to satisfy any of the requirements of Article 3.3.

iii. Article 3.7:

[...] The Arbitral Tribunal may order the Party to whom such Request is addressed to produce any requested Document in its possession, custody or control as to which the Arbitral Tribunal determines that (i) the issues that the requesting Party wishes to prove are relevant to the case and material to its outcome; (ii) none of the reasons for objection set forth in Article 9.2 applies; and (iii) the requirements of Article 3.3 have been satisfied. Any such Document shall be produced to the other Parties and, if the Arbitral Tribunal so orders, to it.

iv. Article 9.2:

The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection for any of the following reasons:

(a) lack of sufficient relevance to the case or materiality to its outcome;

(b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable;

(c) unreasonable burden to produce the requested evidence;

(d) loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;

(e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;

> (f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling; or
>
> (g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling.

v. Article 9.7 (as regards the duty of good faith, both in *requesting* and in *producing* documents):

> If the Arbitral Tribunal determines that a Party has failed to conduct itself in good faith in the taking of evidence, the Arbitral Tribunal may [...].

14. With this in mind, the Tribunal applies the following general standards:

- Specificity: A Request must identify each requested document or category of documents with sufficient precision and specificity.

- Relevance: A Request must establish the relevance of each requested document or category of documents having regard to the factual allegations in the parties' submissions and the outcome of the case for which each party contends (for purposes of this Order, the term "relevance" encompasses both "relevance" and "materiality" as those expressions are used in the IBA Rules).[2]

- Possession, custody or control: A Request must show that it is more likely than not that the requested documents exist, that they are not within the possession, custody or control of the requesting party, and that they are within the possession, custody or control of the requested party.

- Countervailing interests: Where appropriate and upon reasoned application, the Tribunal will balance the legitimate interests of the requesting party with those of the requested party, taking into account all relevant circumstances, including any legal privileges applicable to certain types of communications, the need to safeguard confidentiality, and the proportionality between the convenience of revealing potentially relevant facts and the burden imposed on the requested party by the Request.

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[2] At this stage of the proceedings, the Tribunal is only in a position to assess the *prima facie* relevance of the documents requested, having regard to the parties' written submissions and the evidence filed to date. This assessment does not preclude the Tribunal from arriving at a different assessment at a later point in the arbitration when the entirety of the parties' submissions, evidence and argument will have been presented.

III. DECISION and ORDER

15. For the reasons set out in the Redfern Schedules at Annexes A and B to this Order, the Tribunal

(1) Notes that the parties have voluntarily produced various documents responsive to a number of each other's Requests, and that, insofar as Claimants' Requests are concerned, the Tribunal is requested to rule at this time only in respect of certain of those Requests;

(2) Grants Claimants' Requests no. 11, 14(a)-(e), 15, 17(e), 18(a), 23 and 24 as specified in Annex A;

(3) Grants Respondent's Request no. 11 as specified in Annex B;

(4) Makes certain other orders as specified in Annexes A and B;

(5) Denies all other Requests in respect of which a ruling is sought at this time.

For and on behalf of the Tribunal:

[*Signed*]

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Stephen L. Drymer
President of the Tribunal

ANNEX A to PROCEDURAL ORDER NO. 3 (3 May 2016)
CLAIMANTS' DOCUMENT REQUESTS (no. 11, 14(a)-(e), 15, 17(e), 18(a), 23, 24)

ICSID CASE NO. ARB/14/24

ARBITRATION UNDER THE RULES OF THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

BETWEEN:

UNITED UTILITIES (TALLINN) B.V.
AS TALLINNA VESI

(Claimants)

- and -

THE REPUBLIC OF ESTONIA

(Respondent)

CLAIMANTS' REPLY TO ESTONIA'S OBJECTIONS TO CLAIMANTS' REQUESTS TO PRODUCE DOCUMENTS

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15 April 2016

CLAIMANTS' REDFERN SCHEDULE – INTRODUCTORY COMMENTS TO THE TRIBUNAL

1. In accordance with Procedural Order No. 1 dated 5 June 2015 and the timetable at Annex A to Procedural Order No. 2 dated 17 June 2015, the Claimants hereby enclose their Redfern Schedule setting out their Requests to Produce Documents.

Structure of this document

2. This document contains the Claimants' Reply to Estonia's Objections to the Claimants' Requests to Produce Documents. It consists of the following sections:

   i. The Claimants' General Comments to Estonia's general objections, set out at pages 3 to 8 below;

   ii. Estonia's general objections which accompanied Estonia's Objections to the Claimants' Requests to Produce Documents of 1 April 2016 at pages 9 to 15 below;

   iii. The Claimants' initial comments at page 16 which accompanied their Requests to Produce Documents of 4 March 2016; and

   iv. The Claimants' Redfern Schedule at pages 17 to 56 below.

3. While this document responds to all of Estonia's Objections, the Claimants currently seek an order from the Tribunal only in connection with their **Requests 11, 14(a) to (e), 15, 17(e), 18(a), 23 and 24**. The reasons supporting the need for an order in relation to each of these Requests are set out in the Claimants' General Comments at pages 3 to 8 below, as well as by reference to each relevant Request in the Redfern Schedule at pages 17 to 56 below.

4. However, while the Claimants currently seek an order from the Tribunal only in relation to those Requests specified above, the Claimants reserve their right to seek an order from the Tribunal in connection with further Requests on the grounds at paragraphs 5 to 10 below.

Reservation of Claimants' rights in relation to further requests for an order from the Tribunal

Ambiguous Objections from Estonia / Reformulated Requests

5. In its responses to the Claimants' Requests 4, 9 and 12, it is not clear from Estonia's Objections what the extent of the disclosure is which Estonia has accepted. In the Redfern Schedule below, the Claimants have requested confirmation from Estonia that the level of disclosure it has in fact accepted

on these Requests corresponds with the Claimants' understanding. Pending this confirmation being provided, the Claimants are not seeking an order from the Tribunal in connection with these Requests.

6. Similarly, the Claimants have reformulated Requests 5, 7 and 8 in response to Estonia's Objections and are not seeking an order from the Tribunal in connection with these Requests at present.

7. However, the Claimants reserve their right to add some or all of these Requests to those in relation to which the Claimants seek an order from the Tribunal in the event that Estonia does not provide the relevant confirmation or objects to the reformulation.

EBRD documents

8. As noted in the General Comments below as well as in relation to the relevant Requests in the Redfern Schedule, the Claimants do not accept the Objections made by Estonia to the production of Documents relating to the European Bank for Reconstruction and Development ("**EBRD**") at Requests 1, 2, 3 and 6 below (the "**EBRD Documents**"). Most of these Objections relate to alleged confidentiality and commercial sensitivity in connection with these Documents. The Claimants do not accept that any such confidentiality or commercial sensitivity applies to the EBRD Documents, and if necessary will request a ruling from the Tribunal ordering production of the EBRD Documents.

9. However, Estonia has agreed to approach the EBRD to seek the EBRD's consent for Estonia to provide the EBRD Documents to the Claimants, and has confirmed that if such consent is provided it will produce the EBRD Documents. Accordingly, in the Claimants' view it would be premature for the Claimants to seek an order from the Tribunal for production of the EBRD Documents at this time.

10. For completeness, the Claimants note in relation to paragraphs 5 to 9 above that paragraph 15.1 of Procedural Order No. 1 provides that "*the parties have agreed on a single general round of document production in these proceedings. Following the general round of document production, each party may seek the Tribunal's leave to submit additional requests for documents upon a reasoned written request followed by observations from the other party(ies).*" It is the Claimants' understanding that this provision would not require the Claimants to obtain leave from the Tribunal before making a later application to the Tribunal for an order for production of Documents already requested in Claimants' initial Request for Production of Documents of 4 March 2016, in circumstances where the Claimants have deferred seeking an order at this time while discussions between Estonia, the Claimants and

the EBRD continue. The Claimants request the Tribunal's and Estonia's confirmation on this point. If the Claimants' understanding is not correct, the Claimants request an order that Estonia produce the Documents requested at Requests 1, 2, 3, 4, 5, 6, 7, 8, 9 and 12 below.

General Comments on Estonia's Objections to the Claimants' Requests to Produce Documents

11. The following section addresses certain of the general objections made by Estonia in its Objections to the Claimants' Requests to Produce Documents.

Objections on the basis of commercial and Government confidentiality

12. In its general objections at page 14 below, Estonia objects to the production of documents which "*contain confidential commercial information of third parties unrelated to this arbitration*" on the basis that Estonia "*is bound by confidentiality with respect to any documents containing confidential commercial information under Estonian law*". On the basis of this argument, Estonia has refused to produce entire categories of Documents falling within the Claimants' Requests 11, 15, 17, 20 and 23, in reliance on Articles 9(2)(b) (legal impediment) and 9(2)(e) (commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling) of the IBA Rules.

13. The Claimants do not accept that either of these is grounds is a legitimate basis for Estonia to support the scope of the objections that it has made, for the following reasons.

14. Firstly, the Claimants do not accept Estonia's characterization of the relevant parts of Estonian law. Specifically, they do not accept that the obligation to keep relevant information confidential is as general and broad as Estonia represents it to be.

15. Under Estonian law, there is in fact a strong policy interest in favour of the disclosure of information which is created or obtained in connection with the activities of public entities. Under section 3(1) of the Estonian Public Information Act ("**EPIA**") (one of the pieces of Estonian legislation on which Estonia relies on this point), public information is information which is recorded and documented in any manner and on any medium and which is obtained or created upon the performance of public duties provided by law or legislation. All of the regulatory activities of the Estonian Competition Authority and other Estonian state entities towards which the Claimants' Requests are directed constitute the performance of public duties for the purposes of the EPIA. The starting position, therefore, is that these Documents are public information.

16. Section 35(1)(17) of the EPIA requires a holder of information to classify information as confidential if its disclosure may violate a business secret.[1] Estonia states in its general objections (at page 14 below) that 'business secret' means "*any information concerning the business activities of a company whose disclosure is likely to harm that company's interests*". Section 63(2) of the Estonian Competition Act expressly requires undertakings to determine and indicate any such information which the undertaking considers, with good reason, to be a business secret of the undertaking. It is not the case that any Document containing commercial information constitutes a business secret such that Estonia can refuse to disclose the entire Document. Only specific pieces of information which legitimately fall within this definition can be considered business secrets. For the avoidance of doubt, the Claimants

[1] See Exhibit RL-176 at page 10.

do not accept that information regarding the manner in which Estonia has regulated or made decisions in relation to third parties (rather than, say, specific information pertaining to that third party's financial affairs) constitutes business secrets for this purpose.

17. Moreover, even if there is a relevant legal obligation which requires Estonia to keep certain information confidential, the Claimants do not accept that it applies here to justify the exclusion of entire categories of Documents from Estonia's document production. Where a Document contains such a legitimate business secret, the business secret can be redacted, leaving the remainder of the Document non-confidential and capable of disclosure. Indeed, the ECA regularly removes business secrets and other confidential information from the texts of decisions and precepts which are subject to disclosure as required by section 63(5) of the Estonian Competition Act. The Claimants do not accept that Estonia can refuse to disclose entire categories of Documents on the basis that they contain business secrets. Estonia should not be permitted to resist production of Documents responsive to the Claimants' Requests on this basis, but should be required to produce the relevant Documents subject to the minimum redactions required.

18. In any event, any relevant confidentiality obligation which exists pursuant to the Estonian laws on which Estonia relies requires Estonia to keep information confidential against public disclosure. It does not constitute a legal impediment to, and is not breached by, Estonia producing Documents in the context of legal proceedings where the parties to those proceedings are under a binding obligation to keep those Documents confidential and not to use them outside of those proceedings. Pursuant to Article 3(13) of the IBA Rules, "[a]*ny document submitted or produced by a Party or non-Party in the arbitration and not otherwise in the public domain shall be kept confidential by the Arbitral Tribunal and the other Parties, and shall be used only in connection with the arbitration*". Production of Documents by Estonia to the Claimants will not result in their disclosure beyond ASTV, UUTBV and the Tribunal.

19. Moreover, even if certain specific pieces of information in the Documents sought in the Claimants' Requests could once have been considered to be confidential, the vast majority of it cannot now be considered to be so. To the extent that any information was once commercially sensitive, it is now historic and can no longer be viewed as such.

20. The core of the Claimants' position in the arbitration concerns the claim that they have been treated in a discriminatory and unfair manner, including as against other water companies. Estonia should not be permitted to exclude potentially significant information about Estonia's treatment of other water companies simply by making sweeping assertions about entire categories of Documents being confidential. Estonia should be required to produce Documents which are responsive to the Claimants' Requests, subject only to the redaction of the specific pieces of information contained therein which

are genuinely subject to current (not historic) obligations of confidentiality and disclosing the nature of the information redacted and the basis on which such redactions have been made.

21. Estonia has also made specific objections on the basis of confidentiality in relation to particular Requests. These will be addressed in the Claimants' Redfern Schedule below by reference to the relevant Requests.

Objections to the production of Documents relating to the EBRD

22. The Claimants' Requests 1, 2, 3 and 6 seek the production of certain Documents relating to the EBRD in connection with the 1994, 2000 and 2002 Loans made by the EBRD to ASTV. For the avoidance of doubt, the Claimants request Documents in the possession or control of Estonia. They do not seek the production by Estonia of Documents in the possession of the EBRD itself.

23. For the reasons explained at paragraphs 8 to 10 above, the Claimants are not currently seeking an order for the disclosure of the EBRD Documents. However, for completeness, the Claimants respond to Estonia's general objections regarding the EBRD Documents below.

24. In its general objections at pages 11 to 12 below, Estonia objects to the production of the EBRD Documents on the basis that:

i. Documents provided both "*by the EBRD to Estonia*" and "*by Estonia to the EBRD*" relating to these Requests are "*subject to commercial confidentiality and cannot be produced without the EBRD's consent*" and that Estonia "*is bound by confidentiality with respect to the documents containing confidential information under Estonian law*". In so objecting, Estonia relies on Articles 9(2)(b) (legal impediment) and 9(2)(e) (commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling) of the IBA Rules; and

ii. Pursuant to Section E 1.2 of the EBRD's Public Information Policy ("**PIP**") (Exhibit R-217), all EBRD board documents are subject to confidentiality and cannot be disclosed by Estonia to ASTV and UUTBV unless the EBRD Board approves such disclosure.

25. The Claimants do not accept either of these objections as valid.

26. In relation to (i), and for the reasons set out in the section above, the Claimants do not accept that there is any legal impediment as a matter of Estonian law which applies to prevent Estonia disclosing the EBRD Documents to the Claimants as part of this arbitration on the basis that they are confidential. Further, in those limited instances where the Estonian Government is bound by such obligations, that obligation will only apply to the specific "*business secrets*" which fall into the definition above, and would not apply to exclude the EBRD Documents as an entire category. Accordingly, the Claimants do

not consider that Article 9(2)(b) of the IBA Rules is a valid basis for Estonia's objection. In particular, the Claimants do not accept that Documents provided by Estonia to the EBRD are subject to any relevant obligation of confidentiality.

27. In relation to Article 9(2)(e) of the IBA Rules, and as noted above, the Claimants are required by Article 3(13) of the IBA Rules to keep any Documents they receive through document production confidential. Production of the EBRD Documents by Estonia to the Claimants will therefore not result in their disclosure beyond ASTV, UUTBV and the Tribunal.

28. The question is therefore whether the contents of the EBRD Documents are commercially sensitive as regards ASTV or UUTBV. They are not, for the following reasons:

i. The EBRD Documents relate to loans made to ASTV, not a third party. Any commercial information that they contain and which would be in the possession of Estonia would be commercially sensitive in *favour* of ASTV as against the rest of the world, and would not justify preventing ASTV itself from seeing that information;

ii. The EBRD Documents relate to loan agreements which are, at this point, entirely historic. The relevant loans date from 1994 (which was repaid in 2002, some 14 years ago), 2000 (made sixteen years ago and never drawn down) and 2002 (fully repaid seven years ago in 2009). As such, the Claimants do not accept that anything in the EBRD Documents would be commercially sensitive, even if the documents were disclosed more broadly (which disclosure will not result from their production in the arbitration); and

iii. There is no current prospect that either ASTV or UUTBV, or their affiliates, will be seeking any further borrowing from the EBRD.

29. Accordingly, there is no commercial sensitivity in the EBRD Documents, or any applicable general duty of confidentiality under Estonian law, which justifies Estonia objecting to the production of the EBRD Documents.

30. In relation to (ii), the Claimants do not accept that the EBRD's PIP prevents production of the EBRD Documents, for the following reasons.

i. The purpose of the PIP is to govern the way in which the EBRD itself discloses information. It does not apply to the disclosure of Documents by Estonia which are in Estonia's possession. Paragraph B of the PIP, headed "[redacted]", provides that "[redacted]", and Section E1 (relied upon by Estonia) commences "[redacted]".[2] Section E 1.2 clearly addresses disclosure by the EBRD, not document production by Estonia.

ii. The PIP addresses how information is disclosed to the general public. It does not cover the disclosure of information, on a confidential basis, to parties in an arbitration. The first Basic Principle of the PIP, repeated on the EBRD's website, states that the presumption of the EBRD is

[2] See Exhibit R-217.

that it will make information "*available to the public*". The PIP's Section D on "[redacted]" details at length how the EBRD discloses information, and the examples given relate to the disclosure of information to the public at large. However, in the case of the current Requests, the Documents requested by ASTV and UUTBV would remain confidential. The PIP does not deal with requests for information from parties to an arbitration where those parties are obliged to keep that information confidential. Rather, it is intended only to address disclosure of information to the public and the limits on that disclosure.

iii. The PIP addresses both what information will routinely be disclosed by the EBRD to the public (in Section D) and how members of the public can request access to other information covered by the PIP and held by the EBRD (in its Annex). Neither of these scenarios apply here. The Documents requested by ASTV and UUTBV are not Documents that need to be publicly requested from the EBRD, since they are by definition in the possession of Estonia.

31. For these reasons, the PIP is not a relevant reference point in considering the disclosure of Documents in this arbitration. Estonia cannot use it as a shield to prevent the production of relevant Documents which are in its possession.

32. Notwithstanding its assertion that the Documents requested are confidential, Estonia has agreed in its Objections to seek the consent of the EBRD for Estonia to provide the EBRD Documents to the Claimants, and has confirmed that if such consent is provided it will produce the EBRD Documents. The Claimants do not accept that consent from the EBRD is necessary for the disclosure of the EBRD Documents in Estonia's possession. However, as explained above, the Claimants are prepared to await the outcome of Estonia's engagement with the EBRD prior to seeking an order from the Tribunal for production of the EBRD Documents. In the event that such consent is not forthcoming or the EBRD Documents are not otherwise produced, the Claimants have reserved the right to seek an order from the Tribunal for the production of the EBRD Documents by Estonia.

Objections to the production of Documents held by the City of Tallinn

33. Estonia objects to Claimants' Requests for Documents in the possession, custody or control of the City of Tallinn (the "**City of Tallinn Documents**").

34. The Claimants note, however, that the City of Tallinn has engaged constructively with both parties in producing Documents and the Claimants therefore do not seek any order from the Tribunal in relation to the City of Tallinn Documents. Accordingly, the Claimants do not respond to Estonia's Objections regarding these Requests. However, the Claimants do not accept the arguments made by Estonia in relation to the City of Tallinn as correct, and reserve the right to respond to those arguments at a later date should it become necessary for the Claimants to do so.

35. For the avoidance of doubt, the Claimants maintain their Requests for Documents which relate to the City of Tallinn but which are in the possession, custody or control of parts of Estonia other than the City of Tallinn.

ESTONIA'S RESPONSES AND OBJECTIONS TO THE CLAIMANTS' REQUEST TO PRODUCE DOCUMENTS

Pursuant to Article 15 of the Tribunal's Procedural Order No. 1, Estonia hereby submits its Responses and Objections ("**Response**") to Claimants' Request for the Production of Documents of 4 March 2016.[3]

Estonia has located and hereby produces documents responsive to Claimants' requests, listed in the index **attached** to this Response. As agreed with Claimants, the soft copies of the documents listed in the index will be sent by courier to Claimants' counsel on Monday, 4 April 2016.

While Estonia has completed the searches with most of the relevant authorities, **it is still awaiting replies from certain authorities** who are currently processing Estonia's request for the documents under Claimants' Request for the Production of Documents. Any additional responsive documents will be produced as soon as possible on a rolling basis.

For the sake of clarity, Estonia will not produce documents regarding any correspondence between its autuhorities and Claimants as these documents are already available to Claimants.

Estonia's specific responses and/or objections relating to Claimants' individual requests are set forth in the Redfern schedule below. Estonia's general comments and objections to Claimants' requests are set out below. For the avoidance of doubt, these general comments and objections do not summarize all types of objections raised against Claimants' request but only provide a selective overview of several fundamental problems with Claimants' Request for the Production of Documents.

I. Documents in the Possession, Custody or Control of the City of Tallinn

Estonia objects to the inclusion of the City of Tallinn into Claimants' definition of "Estonia, Estonian State or the Respondent."

According to Article 15.2 of the Procedural Order No. 1, the International Bar Association's Rules on the Taking of Evidence in International Arbitration (2010) (the "**IBA Rules**") apply to the production of documents in this arbitration. Under Articles 3(c) (i) and (ii) of the IBA Rules, Claimants may only request documents which Claimants assume to be *in the possession, custody or control* of Estonia (or documents which would be unreasonably burdensome for Claimants to produce).

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[3] Terms defined in Estonia's Request dated 4 March 2016 have the same meaning in this Response to Claimants' Document Requests, unless expressly stated otherwise.

The documents in the possession, custody, or control of the City of Tallinn are not in the possession, custody or control Estonia. As Estonia made clear in its Counter-Memorial, the City of Tallinn has a very significant economic interest in this arbitration proceeding, which is *adverse to Estonia* because the City of Tallinn is a 34.7% shareholder of AS Tallinna Vesi and it would benefit from any award in AS Tallinna Vesi's favor accordingly. Moreover, the City of Tallinn exercises joint control over AS Tallinna Vesi.

During the first session of the Tribunal, Claimants' counsel expressly confirmed Claimants' willingness in principle to produce documents held by the City of Tallinn: "[redacted]"[4] When confronted with Estonian counsel's question on who would be the object of potential adverse inferences if the City of Tallinn did not comply with the Tribunal's order to produce documents, Claimants' counsel admitted that it might be *Claimants*.[5]

Therefore, the responsibility for producing documents held by the City of Tallinn falls on Claimants, and Estonia objects to the production *by Estonia* of documents in the possession, custody or control of the City of Tallinn on that basis.

Estonia's objection is also supported by the principle that it is the party who has *a relevant relationship* to an entity who should make best efforts to obtain documents from that entity. In *Vito Gallo v. Canada*, both Parties objected to the opposing Party's request for production on the grounds that the responsive documents were in the possession of third parties. Canada specifically objected to the production of documents of its municipalities on these grounds. The tribunal held that both Parties should use their best efforts to gain access to the documents controlled by each Party as well as to *documents of such entities with which the Party has* a *relevant relationship*:

> "The arbitral Tribunal considers that [...] in addition to entities which may be controlled by a party, there may be entities or persons with whom a party has a relationship which is relevant for the purposes of this arbitral procee[d]ing. ***The duty of production extends to the entities controlled by each party. Furthermore, good faith also imposes a duty of best efforts to obtain documents that are in the possession of entities or persons with whom or with which the party the subject of the request has a relevant relationship.***"[6]

The tribunal in Clayton v. Canada, relying on Vito Gallo v. Canada, expressly held the principle applies equally to the party *making the request for production*:

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4 Transcript from the first session of the Tribunal dated 5 May 2015, p. 89, lines 13-15.
5 Transcript from the first session of the Tribunal dated 5 May 2015, p. 89, lines 13-15.
6 *Vito G. Gallo v. Government of Canada*, UNCITRAL, Procedural Order No. 2 (Amended), 10 February 2009, ¶ 8, **RL-179**.

> "[…] However, the Tribunal wishes to clarify that, ***for a party to claim that documents are not in its control, it must have made "best efforts" to obtain documents that are in the possession of persons or entities with whom or which the party has a relevant relationship***. This is consistent with the approach adopted by the Tribunal in Vito G. Gallo v. Government of Canada in its Procedural Order No. 2 dated February 10, 2009.[7]

It is clear that Claimants, not Estonia, have a relevant relationship to the City of Tallinn as a result of which they are in a position to access its documents while Estonia is not. This additional analysis confirms that Claimants—and not Estonia—should be responsible for producing the documents held by the City of Tallinn in this arbitration

Until this document production and as a result of Estonia's several attempts to receive documents from the City of Tallinn during this arbitration, the City of Tallinn has only agreed to the release to Estonia documents relevant to this case that relate to the year 2002 and are held by its legal advisors. The documents made available by the City of Tallinn will be produced to Claimants, but only because their disclosure by the City of Tallinn puts them into Estonia's possession.

Further, without prejudice to Estonia's objection and despite the City of Tallinn's clear adverse interest, Estonia has asked the City of Tallinn whether it would make available documents responsive to Claimants' requests. The City of Tallinn responded that it will only make available documents relating to the time of the sale of the shares in ASTV to UUTBV. After the City of Tallinn had provided these documents to Estonia, Claimants informed Estonia that the City of Tallinn had provided Claimants with copies of the same. Estonia has no means to ascertain whether the City of Tallinn is in the possession, custody or control of any additional responsive documents and/or to compel their production.

II. Documents of the EBRD

Claimants have requested a number of documents relating to ASTV's loans from the EBRD, including "*documents obtained through Estonia's participation in the EBRD.*"[8] Claimants have specifically requested documents with respect to the EBRD's internal Board of Directors' meetings such as the "*background information given to Estonia's witness, [redacted], and the rest of the EBRD's Board of Directors in September 2000*" (Request no. 3 (d)).

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7 *Clayton v Canada*, Procedural Order no. 8, 25 November 2009, h), **RL-180**.

8 In their Request no. 3(d), Claimants have requested „*Documents relating to the conclusion of the 2002 EBRD Loan, including (but not limited to): […]* ***Documents obtained through Estonia's participation in the EBRD, including but not limited to the papers for and minutes of the EBRD Board of Directors meeting at which the 2002 EBRD Loan was approved.*** " Similarly, in their Request and no. 7(a), Claimants have requested „*Documents produced by or sent to or from any part of the Estonian State addressing the rationale for, and effect of, the First 2005 Amendment to the Services Agreement, including (but not limited to):a.* ***Documents considering the impact of the***

Estonia's searches for responsive documents are limited to the documents in the possession, custody or control of Estonia and not the EBRD, which is a third party to this arbitration and neither affiliated with, nor controlled by, Estonia. This seems to be uncontroversial because Claimants' Request for the Production of Documents does not include the EBRD in the definition of the Respondent (or Estonia).

The documents provided by the EBRD to Estonia and by Estonia to the EBRD relating to Claimants' requests are subject to commercial confidentiality and cannot be produced without the EBRD's consent, and Estonia is bound by confidentiality with respect to the documents containing confidential commercial information under Estonian law. Estonia thus objects to the production of such documents under Articles 9 (2) (b) and 9 (2) (e) of the IBA Rules.

The documents concerning the meetings of the Board of Directors of the EBRD in Estonia's possession, control or custody, Estonia also notes that pursuant to Section E 1.2 of the Public Information Policy of the EBRD[9], all board documents are subject to confidentiality and will not be disclosed unless the Board approves such disclosure. Such documents include documents relating to the EBRD's own decision-making process and related internal documents, memoranda and other communications that are prepared for, exchanged in connection with, or derived from the EBRD's deliberative or decision-making processes, including any internal documents, memoranda, or other communications that are issued by or between members of the EBRD's Bank of Directors, the advisers and staff employed in the offices of the EBRD's Board members, members of the EBRD's management, its staff, or its consultants, attorneys, or agents. Estonia is bound by confidentiality with respect to the documents containing confidential commercial information under Estonian law. Estonia thus objects to the production of such documents under Articles 9 (2) (b) and 9 (2) (e) of the IBA Rules.

Estonia will request the EBRD's consent for the production of documents in the possession, custody or control of Estonia and/or [redacted]. If the EBRD grants its consent, Estonia will withdraw its objection accordingly and produce the relevant documents.

III. Overbroad Requests

Several of Claimants' requests are overbroad.

Under Article 3 (a) (ii) of the IBA Rules, Claimants must request "*a narrow and specific requested category of Documents that are reasonably believed to exist.*"

First 2005 Amendment on the control of ASTV, including any discussions of this obtained through Estonia's participation in the EBRD." *See* Claimants' Requests no. 3(d) and 7(a).

[9] Public Information Policy oft he European Bank for Reconstruction and Deveopment dated 7 May 2014, **R-217**.

In their Request no. 6, Claimants have asked for "***documents produced by or sent to or from any part of the Estonian State*** *addressing the rationale for, and effect of, the 2002 Amendment to the Services Agreement, including* ***(but not limited to)*** *a. Documents considering the impact of the 2002 Amendment on the profitability of ASTV and UUTBV's investment therein; and b. Documents considering the benefits to the City of Tallinn and any other part of Estonia resulting from this amendment, including the impact on the 2002 EBRD Loan which was being negotiated (and which ultimately led to the release of the State Guarantee).*"[10]

In their Request no. 7, Claimants have asked for "*documents produced* ***by or sent to or from any part of the Estonian State*** *addressing the rationale for, and effect of, the First 2005 Amendment to the Services Agreement, including* ***(but not limited to)****: a. Documents considering the impact of the First 2005 Amendment on the control of ASTV, including any discussions of this obtained through Estonia's participation in the EBRD.*"[11]

In their Request no. 8, Claimants have asked for "*Documents produced* ***by or sent to or from any part of the Estonian State*** *addressing the rationale for, and effect of, the 2007 Amendment to the Services Agreement, including* ***(but not limited to)****: a. Documents considering the impact of the 2007 Amendment on the profitability of ASTV and UUTBV's investment therein; and b. Documents considering the benefits to Estonia (including the City of Tallinn) resulting from this amendment.*"[12]

Claimants' Requests no. 6, 7 and 8 are overbroad because Claimants have failed to identify the parts of Estonian State which they consider may posess documents responsive to these requests. It is simply impossible for Estonia to search for responsive documents within all of its authorities. Estonia has therefore limited its searches to documents in the possession, custody or control of those parts of the Estonian state which it reasonably believes could posess the responsive documents, *i.e.* the Ministry of Finance and the City of Tallinn. Estonia has also submitted the respective requests to the City of Tallinn. Should Claimants believe that other authorities within Estonia possess the responsive documents, Estonia kindly invites Claimants to specify such authorities as well as the grounds on which Claimants believe the responsive documents are in their possession, custody or control.

Further, Claimants' Requests no. 1 to 12 are overbroad because each of them is subject to a so-called catch-all clause "*(including but not limited to)*". Therefore, while Claimants do narrow down their generic request by sub-sections specifying the nature of the requested documents, their catch-all clause before the sub-sections makes the following specifications obsolete. For example, due to such catch-all clause, in their Request no. 6, Claimants essentially ask Estonia to produce any kind of documents produced by or sent to or from anyone within all of its authorities somehow addressing the rationale for, and effect of, the 2002 Amendment to the Services Agreement. Not only is this unspecific and vague, it is simply impossible for Estonia to comply with such request. To the extent not

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10 Claimants' Request no. 6.
11 Claimants' Request no. 7.
12 Claimants' Request no. 8.

objected on any other grounds, Estonia's search for documents respsonsive to Requests no. 1 to 12 was thus limited to the documents specified in the sub-sections of the request after the generic description and the catch-all clause.

Finally, Claimants' Request no. 24 is overbroad for the reasons explained below in specific objections.

IV. Publicly Available Documents

It is undisputed between the parties that Claimants' requests do not cover documents already produced in this arbitration or documents already in the public domain.[13] Estonia's production thus does not cover documents publicly available in Estonia's commercial register, other publicly available registries, or documents exhibited to Claimants' Request for Arbitration or Memorial. For example, Estonia's production will not cover the majority of the documents requested in Claimants' Requests no. 13 and 14 since such documents are and have been available to Claimants through public sources.

V. Documents Including Commercial or Government Confidentiality

With respect to certain Claimants' requests, Estonia is restricted in producing the responsive documents because they contain confidential commercial information of third parties unrelated to this arbitration.

Estonia is bound by confidentiality with respect to any documents containing confidential commercial information under Estonian law. Generally, Estonian authorities are required to classify information confidential if its disclosure may violate a business secret.[14] Duty of confidentiality also arises under specific statutory provisions applicable to the individual governmental institutions. For example, the Estonian Competition Act prohibits the ECA officials to communicate to other persons or disclose to the public any business secrets that the official has obtained while performing its duties unless the affected company consents to the disclosure.[15] The term business secret is defined in the Estonian Competition Act as any information concerning the business activities of a company whose disclosure is likely to harm that company's interests.[16] Estonian courts interpret that definition in accordance with German case law, according to which business secrets are facts related to the business of a company and known to a restricted circle of individuals in case of which the decision to keep such information confidential has been documented or clearly recognizable.[17] With respect to the documents containing commercial information subject to

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13 Claimants' Requests for Documents dated 4 March 2016, ¶ 1.5.
14 Estonian Public Information Act, Section 35 (1) (17), **RL-176**.
15 Estonian Competition Act, Section 63 (2), **RL-176**.
16 Estonian Competition Act, Section 63 (1), **RL-176**.
17 The Supreme Court's 09.12.2008 judgement No. 3-2-1-103-08, ¶ 20, **RL-182**.

confidentiality under Estonia law, Estonia objects to Claimants'requests on the grounds of legal impediment and privilege under Article 9 (2) (b) of the IBA Rules.

Confidential documents are also exluded from disclosure on the basis of compelling commercial confidentiality under Article 9 (2) (e) of the IBA Rules. This *e.g.* applies to the documents requested in Request no. 23 with respect to the assessment of the tariffs of the heating company [redacted], which is a third party, as well as to the documents requested in Request no. 17 (e) regarding [redacted], another third party. The reasons as to why the commercial confidentiality is compelling are provided in the individual objections below.

VI. Documents Responsive to Several Claimants' Requests

Where the documents produced by Estonia are responsive to several Claimants' Requests, they are produced only once, under the request that Estonia believes the documents produced are the most responsive to.

(A) CLAIMANTS' INTRODUCTORY COMMENTS TO THEIR REDFERN SCHEDULE

1.1 These Requests to Produce Documents ("**Redfern Schedule**") are submitted by the Claimants pursuant to Procedural Order No. 1 dated 5 June 2015 and Procedural Order No. 2 dated 17 June 2015.

1.2 Any reference to Estonia, the Estonian State or the Respondent shall be construed as meaning any or all entities forming part of the Republic of Estonia, including government departments, municipal governments (including the City of Tallinn), state bodies, bodies vested with state power, and bodies exercising state functions, to include the Estonian Competition Authority (the "**ECA**"), the State Audit Office (the "**SAO**") and the Legal Chancellor, the Parliament of Estonia and its committees, members of Parliament and government ministers.

1.3 For the avoidance of doubt, these Requests include any Documents or communications between two or more bodies or entities forming part of Estonia (as defined above), as well as Documents or communications internal to each of the individual such entities or bodies.

1.4 "Document" is defined in the IBA Rules, but for the avoidance of doubt includes emails, letters, facsimiles, spreadsheets, memoranda, notes, diaries etc., both in hard copy and electronic form. The period for which Documents are requested is inclusive of the specified dates. Capitalised terms not defined in this document request are those defined in the Claimants' Request for Arbitration dated 13 October 2014 and the Claimants' Memorial dated 18 September 2015.

1.5 The Claimants request the production of the following Documents which are not in their possession, custody or control, but which the Claimants assume are in the possession, custody or control of the Respondent, based on the Documents produced by the Respondent to date and/or the manner in which the Respondent has pleaded its case to date. For the avoidance of doubt, the Claimants do not request the production of any Documents which have already been produced in the arbitration, or which are already in the public domain.

CLAIMANTS' REDFERN SCHEDULE

No.			
PRIVATISATION			
1.	**Documents or Category of Documents Requested**		Documents relating to the consideration by Estonia of the 1994 EBRD Loan and the performance by ASTV against the conditions of the loan, dating from 1998 to 8 November 2002, including (but not limited to): a. Documents relating to any concerns about ASTV's compliance with the tariff requirements, service improvements or investment levels specified by the EBRD in connection with the loan; b. Documents considering the possibility of ASTV defaulting under the loan and/or the State Guarantee being enforced; c. Documents relating to the statements by the Minister of Finance, Siim Kallas, and the Counsel to the Minister of Finance, [redacted], quoted in the media on 31 August 1999 (see Exhibit C-52) regarding the City of Tallinn's decision of 26 July 1999 to decrease ASTV's tariffs and the implications of this decision for the 1994 EBRD Loan, including the expected loss to ASTV for the coming year, including but not limited to: i. The letter written by Siim Kallas to the Tallinn City Government in this regard referred to in Exhibit C-52; ii. The response from the Tallinn City Government that the media report at Exhibit C-52 indicates was to be provided by 11 am; and iii. Notes and minutes of the "[redacted]" at which Exhibit C-52 notes Siim Kallas was to discuss the issue; and d. A signed copy of the 1994 EBRD Loan and the State Guarantee. The Claimants exhibited to their Request versions of these documents with each of their pages signed (Exhibits C-6, C-6A and C-7), but have been unable to obtain final versions with the signature pages signed.
	Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 39-42, 76, 123, 212; Exhibits C-6, C-6A, C-7, C-9 and C-52. Counter-Memorial, 91; [redacted], 13.
		Comments	The Claimants contend that there was real concern at the level of the national government about the capacity of ASTV to continue to comply with the conditions of the 1994 EBRD Loan and therefore that there was a risk that the State Guarantee could be enforced against Estonia. The Claimants claim that this was a driver for the privatisation (Memorial 39-42, 212). This is supported by the media reports at Exhibit C-52, as quoted at Memorial 42, and also by the Explanatory Memorandum prepared by [redacted] at Exhibit C-9, 20 April 2000, which states that [redacted]

		[redacted]" (Exhibit C-9 at page 141). Estonia denies that there was any risk of the State Guarantee being enforced and thereby implicitly suggests that there was limited or no value derived from the privatisation at the level of the national government (Counter-Memorial, 91; [redacted], 13). The value derived by the Estonian Government from the privatisation is a factor relevant to (among other things) the analysis of whether Estonia has accorded the Claimants fair and equitable treatment in denying the relevance of the privatisation terms and conditions. The Documents requested are therefore relevant and material to an issue in dispute in the arbitration. The 2000 EBRD Loan was not drawn down (Memorial, 76), and the 1994 EBRD Loan was ultimately replaced on 8 November 2002 by the 2002 EBRD Loan (Memorial, 123). Therefore issues concerning the 1994 EBRD Loan are likely to have been discussed throughout the period until it was replaced with the 2002 EBRD Loan.
	Objections to Document Request	The documents provided by the EBRD to Estonia and by Estonia to the EBRD relating to the 1994 EBRD Loand and the State Guarantee are subject to commercial confidentiality and cannot be produced without the EBRD's consent, and Estonia is bound by confidentiality with respect to the documents containing confidential commercial information under Estonian law. Estonia thus objects to the production of such documents under Articles 9 (2) (b) and 9 (2) (e) of the IBA Rules. The documents concerning the meetings of the Board of Directors of the EBRD in Estonia's possession, control or custody, Estonia also notes that pursuant to Section E 1.2 of the Public Information Policy of the EBRD, all board documents are subject to confidentiality and will not be disclosed unless the Board approves such disclosure. Such documents include documents relating to the EBRD's own decision-making process and related internal documents, memoranda and other communications that are prepared for, exchanged in connection with, or derived from the EBRD's deliberative or decision-making processes, including any internal documents, memoranda, or other communications that are issued by or between members of the EBRD's Bank of Directors, the advisers and staff employed in the offices of the EBRD's Board members, members of the EBRD's management, its staff, or its consultants, attorneys, or agents. Estonia is bound by confidentiality with respect to the documents containing confidential commercial information under Estonian law. Estonia thus objects to the production of such documents under Articles 9 (2) (b) and 9 (2) (e) of the IBA Rules. As indicated in the general part of objections, Estonia will request the EBRD's consent for the production of the responsive documents in Estonia's or its witnesses' possession, custody or control. In case the EBRD grants its consent, Estonia will withdraw its objection and produce these documents. Estonia further objects to the production of documents relating to the consideration by Estonia of the 1994 EBRD Loan for the period after the conclusion of the Share Sale and Subscription Agreement. Claimants argue that there was a risk that the State Guarantee under the 1994 EBRD Loan could be enforced against Estonia and that this alleged risk was a driver for the privatization. Claimants thus directly link the 1994 EBRD Loan to the City of Tallinn's decision to sell a 50.4% stake in ASTV to a private investor. This decision was made on 12 January 2001 when the City of Tallinn signed the Share Sale and Subscription Agreement after the 2000 EBRD Loan Agreement had been concluded on 31 October 2000 replacing the 1994 EBRD Loan (Counter-Memorial, ¶ 94; Memorial, ¶ 99). Consequently, the documents relating to the time period thereafter are not relevant for and cannot support Claimants' argument with respect to the importance of the 1994 EBRD Loan for the decision

		to sell a majority stake in ASTV. Estonia thus objects to the production of documents for the time period in question due to lack of sufficient relevance to the case and materiality of its outcome under Article 9 (2) (a) of the IBA Rules. To the extent not objected to and in the possession, custody or control of Estonia, Estonia will produce the documents responsive to Claimants' Request no. 1 on a rolling basis based on the replies from Estonian authorities which are still due or beig processed.
	Reply to Objections to Document Request	**The Claimants are awaiting the outcome of the engagement by Estonia with the EBRD. They reserve their right to seek an order from the Tribunal for the production of Documents pursuant to this Request.**
	Comments to Reply to Objections to Document Request	Estonia's objections to this Request on the basis of the confidentiality of EBRD Documents are misplaced for the reasons explained in the Claimants' General Comments at pages 5 to 7 above. Estonia's objections to producing the EBRD Documents relating to the 1994 EBRD Loan for the period after the conclusion of the Share Sale and Subscription Agreement on 12 January 2001 are also misplaced and are based on a mischaracterization of the Claimants' rationale for this Request. Estonia represents the Claimants' rationale as being that the conditions of the 1994 EBRD Loan and the risk that the State Guarantee could be enforced against Estonia were the drivers for the privatisation. Estonia argues that since privatisation was concluded with the signing of the Share Sale and Subscription Agreement, any documents dating from after 12 January 2001 cannot be relevant. This is an incorrect conclusion to draw. As the Claimants explained in their rationale for this Request, the 1994 EBRD Loan was not replaced until 8 November 2002, as the 2000 EBRD loan was not drawn down. For that reason, the issues concerning the 1994 EBRD loan, and thus the value derived by Estonia from the privatisation, are likely to have been discussed up until the 2002 EBRD Loan was concluded. The Claimants therefore reject Estonia's restriction on the date range of this Request. The Claimants are awaiting the outcome of the engagement by Estonia with the EBRD and so do not currently seek an order from the Tribunal in relation to this Request. However, they reserve their right to seek an order from the Tribunal for the production of Documents pursuant to this Request.
	Tribunal's Decision	**NO DECISION REQUESTED AT THIS TIME. LEAVE TO APPLY RESERVED.**
2.	**Documents or Category of Documents Requested**	Documents relating to the loan agreement concluded between the EBRD and ASTV dated 31 October 2000, including (but not limited to): a. Documents relating to the rationale for the new loan agreement to replace the 1994 EBRD Loan and the consideration of the same by Estonia (including the national government); b. Documents considering the possibility of the release of the State Guarantee in connection with this new loan, and the implications of the same;

		c. Documents considering the relevance of the terms of ASTV's privatisation to the conditions of the new loan agreement; d. The "[redacted]" given to Estonia's witness, [redacted], and the rest of the EBRD's Board of Directors in September 2000, as referred to at paragraph 10 of [redacted] Witness Statement of 5 February 2016; and e. The minutes or other documents related to the meeting of the EBRD Board of Directors of September 2000 at which the 2000 EBRD loan was approved, as referred to at paragraph 14 of [redacted] Witness Statement.
Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 39-42, 61, 76-77, 123, 212; Exhibits C-6, C-6A, C-7, C-9 and C-52. Counter-Memorial, 70, 91; [redacted], 10, 13.
	Comments	These Documents are relevant and material to the issues in this case for the reasons set out above in relation to Request No. 1. In addition, Estonia argues that it (i.e. the national government) did not review the Explanatory Memorandum or any other tender or transaction documents (Counter-Memorial 70), implying that there was little or no awareness of the terms of the privatisation at the level of the Estonian Government. The Claimants contend that the release of the State Guarantee was of material value to the Estonian Government (Memorial, 76-77) and that the Estonian Government was aware of (at least) the material terms of the privatisation (Memorial, 61, 76-77). The requested Documents are therefore also relevant and material to the issue of the degree of knowledge and awareness of the material terms of the privatisation within the Estonian Government. In relation to (d) and (e), [redacted] claims that the background information provided to the EBRD Board of Directors meeting in September 2000 "[redacted]" ([redacted], 10). The Claimants believe that the documents must however have included information regarding the 1994 EBRD Loan and compliance therewith, and the implications of any breach, which are relevant and material for the reasons set out above in relation to Request No. 1.
Objections to Document Request		The documents provided by the EBRD to Estonia and by Estonia to the EBRD relating to the 2000 EBRD Loand and the State Guarantee are subject to commercial confidentiality and cannot be produced without the EBRD's consent, and Estonia is bound by confidentiality with respect to the documents containing confidential commercial information under Estonian law. Estonia thus objects to the production of such documents under Articles 9 (2) (b) and 9 (2) (e) of the IBA Rules. The documents concerning the meetings of the Board of Directors of the EBRD in Estonia's possession, control or custody, Estonia also notes that pursuant to Section E 1.2 of the Public Information Policy of the EBRD, all board documents are subject to confidentiality and will not be disclosed unless the Board approves such disclosure. Such documents include documents relating to the EBRD's own decision-making process and related internal documents, memoranda and other communications that are prepared for, exchanged in connection with, or derived from the EBRD's deliberative or decision-making processes, including any internal documents, memoranda, or other communications that are issued by or between members of the EBRD's Bank of Directors, the advisers and staff employed in the offices of the EBRD's Board members, members of the EBRD's

		management, its staff, or its consultants, attorneys, or agents. Estonia is bound by confidentiality with respect to the documents containing confidential commercial information under Estonian law. Estonia thus objects to the production of such documents under Articles 9 (2) (b) and 9 (2) (e) of the IBA Rules. As indicated in the general part of objections, Estonia will request the EBRD's consent for the production of the responsive documents in Estonia's or its witnesses' possession, custody or control. In case the EBRD grants its consent, Estonia will withdraw its objection and produce these documents. To the extent not objected to and in the possession, custody or control of Estonia, Estonia will produce the documents responsive to Claimants' Request no. 2 on a rolling basis based on the replies from Estonian authorities which are still due or beig processed.
	Reply to Objections to Document Request	**The Claimants are awaiting the outcome of the engagement by Estonia with the EBRD. They reserve their right to seek an order from the Tribunal for the production of Documents pursuant to this Request.**
	Comments to Reply to Objections to Document Request	Estonia's objections to this Request on the basis of the confidentiality of EBRD Documents are misplaced for the reasons explained in the Claimants' General Comments at pages 5 to 7 above. The Claimants are awaiting the outcome of the engagement by Estonia with the EBRD and so do not currently seek an order from the Tribunal in relation to this Request. However, they reserve their right to seek an order from the Tribunal for the production of Documents pursuant to this Request.
	Tribunal's Decision	**NO DECISION REQUESTED AT THIS TIME. LEAVE TO APPLY RESERVED.**
3.	**Documents or Category of Documents Requested**	Documents relating to the conclusion of the 2002 EBRD Loan, including (but not limited to): a. Documents relating to the rationale for the new loan agreement to replace the 1994 EBRD Loan and the consideration of the same by Estonia (including the national government); b. Documents considering the possibility of the release of the State Guarantee in connection with this new loan, and the implications of the same; c. Documents considering the relevance of the terms of ASTV's privatisation to the conditions of the new loan agreement; d. Documents obtained through Estonia's participation in the EBRD, including but not limited to the papers for and minutes of the EBRD Board of Directors meeting at which the 2002 EBRD Loan was approved; e. Documents considering the tariff methodology in the Services Agreement; and

			f. Documents considering the return and/or profitability expected of the investment by ASTV and/or UUTBV pursuant to the privatisation.
	Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 18-19, 39-42, 61, 76-77, 123, 212; Exhibits C-6, C-6A, C-7, C-9 and C-52. Counter-Memorial, 70, 80, 87-88, 91, 93, 415-416; [redacted], 10, 13.
		Comments	These Documents are relevant and material to the issues in this case for the reasons set out above in relation to Request No. 1 and 2. In relation to requests (e) and (f), Estonia claims that the tariff methodology in the Services Agreement was unlawful (Counter-Memorial, 415-416) and asserts that the Claimants should have been aware of this alleged unlawfulness at the time of the privatisation (Counter-Memorial, 80, 87-88, 93). It is on this basis (inter alia) that Estonia denies the legitimacy of the Claimants' expectations that Estonia would take account of the terms of the privatisation in its regulatory decision-making. The Claimants contend that Estonia was content to take the benefit of the privatisation and their substantial investment until the major service improvements and financial input had been received, at which point Estonia sought to deny any obligation to take account of the deal it had made (Memorial, 18-19). Documents relating to whether the City of Tallinn or any other part of Estonia was aware at any time since the privatisation of the basis on which Estonia would later seek to invalidate its terms (including any consideration of the validity of the tariff methodology) are relevant and material to whether Estonia has treated the Claimants' investment fairly and equitably or whether Estonia should be estopped from asserting that the terms of the privatisation were illegal. For example, it is reasonable to believe that in concluding the 2002 EBRD Loan with ASTV, Estonia (through its participation in the EBRD) would have had knowledge of the terms of the privatisation and the tariff methodology. The Documents requested are therefore relevant and material to an issue in dispute in the arbitration.
	Objections to Document Request		The documents provided by the EBRD to Estonia and by Estonia to the EBRD relating to the 2002 EBRD Loand and the State Guarantee are subject to commercial confidentiality and cannot be produced without the EBRD's consent, and Estonia is bound by confidentiality with respect to the documents containing confidential commercial information under Estonian law. Estonia thus objects to the production of such documents under Articles 9 (2) (b) and 9 (2) (e) of the IBA Rules. The documents concerning the meetings of the Board of Directors of the EBRD in Estonia's possession, control or custody, Estonia also notes that pursuant to Section E 1.2 of the Public Information Policy of the EBRD, all board documents are subject to confidentiality and will not be disclosed unless the Board approves such disclosure. Such documents include documents relating to the EBRD's own decision-making process and related internal documents, memoranda and other communications that are prepared for, exchanged in connection with, or derived from the EBRD's deliberative or decision-making processes, including any internal documents, memoranda, or other communications that are issued by or between members of the EBRD's Bank of Directors, the advisers and staff employed in the offices of the EBRD's Board members, members of the EBRD's management, its staff, or its consultants, attorneys, or agents. Estonia is bound by confidentiality with respect to the documents containing confidential commercial information under Estonian law. Estonia thus objects to the production of such documents under Articles 9 (2) (b) and 9 (2) (e) of the IBA Rules.

		Estonia objects to the production of documents requested under this Request no. 3. Claimants argue that there was a risk that the State Guarantee under the 1994 EBRD Loan could be enforced against Estonia and that this alleged risk was a driver for the privatization. Claimants thus directly link the 1994 EBRD Loan to the City of Tallinn's decision to sell a 50.4% stake in ASTV to a private investor. This decision was made on 12 January 2001 when the City of Tallinn signed the Share Sale and Subscription Agreement after the 2000 EBRD Loan Agreement had been concluded on 31 October 2000 replacing the 1994 EBRD Loan. The negotiations with respect to the 2002 EBRD Loan began after UUTBV had acquired the shares in ASTV and because ASTV—under the participation of UUTBV—had decided not to draw the 2000 EBRD Loan. Consequently, the documents relating to the time period after the conclusion of the Share Sale and Subscription Agreement are not relevant for and cannot support Claimants' argument with respect to the alleged importance of the 1994 EBRD Loan for the decision to sell a majority stake in ASTV. Estonia thus objects to the production of documents for the time period in question due to lack of sufficient relevance to the case under Article 9 (2) (a) of the IBA Rules. As indicated in the general part of objections, Estonia will request the EBRD's consent for the production of the responsive documents in Estonia's or its witnesses' possession, custody or control. In case the EBRD grants its consent, Estonia will withdraw its objection and produce these documents. To the extent not objected to and in the possession, custody or control of Estonia, Estonia hereby produces the documents responsive to Claimants' Request no. 3 and will continue to do so on a rolling basis based on the replies from Estonian authorities which are still due or being processed.
	Reply to Objections to Document Request	**The Claimants are awaiting the outcome of the engagement by Estonia with the EBRD. They reserve their right to seek an order from the Tribunal for the production of Documents pursuant to this Request.**
	Comments to Reply to Objections to Document Request	Estonia's objections to this Request on the basis of the confidentiality of EBRD Documents are misplaced for the reasons explained in the Claimants' General Comments at pages 5 to 7 above. Estonia's objections to producing the EBRD Documents relating to the 2002 EBRD Loan specifically are also misplaced and are based on a mischaracterization of the Claimants' rationale for this Request. Estonia represents the Claimants' rationale as being that the conditions of the 1994 EBRD Loan and the risk that the State Guarantee could be enforced against Estonia were the drivers for the privatisation. Estonia argues that since privatisation was concluded with the signing of the Share Sale and Subscription Agreement, any documents dating from after 12 January 2001 cannot be relevant. Estonia misrepresents the Claimants' rationale for this Request. As is clear from the rationale above, the Claimants are seeking the 2002 EBRD Loan documents on the basis that they are relevant to whether the City of Tallinn or any other part of Estonia was aware at any time since privatisation of the basis on which Estonia would later seek to invalidate its terms. Estonia does not respond to or acknowledge this rationale. The time period after privatisation is precisely what this Request is concerned with, so Estonia's objection to producing these documents whilst not addressing the basis for the Request is misplaced.

			The Claimants are awaiting the outcome of the engagement by Estonia with the EBRD and so do not currently seek an order from the Tribunal in relation to this Request. However, they reserve their right to seek an order from the Tribunal for the production of Documents pursuant to this Request.
	Tribunal's Decision		**NO DECISION REQUESTED AT THIS TIME. LEAVE TO APPLY RESERVED.**
4.	**Documents or Category of Documents Requested**		Documents relating to the request by the City of Tallinn dated 5 May 2000 for an extended licence period for ASTV in connection with the privatisation, dating from 2000, including (but not limited to): a. Documents relating to the City of Tallinn's initial request to the Ministry of Finance for a 20-year extension (Exhibit C-13) on the basis that the "[redacted]", including internal consideration of the appropriate licence period, consideration of the recommendation by [redacted] in the Explanatory Memorandum dated April 2000 (Exhibit C-9) that the licence period be extended to 15-20 years and the drafting of the City of Tallinn's request; b. Documents provided to or prepared by or for the Ministry of Finance in connection with this request; c. Documents relating to the reply by the Ministry of Finance dated 20 June 2000 (Exhibit C-14) indicating that rather than 20 years, a licence period of 15 years would be sufficient (including documents analysing or commenting on the reasons why 15 years rather than 20 years would be sufficient, and drafts of the letter). The letter was signed by Siim Kallas as Minister of Finance and [redacted] as [redacted], and addressed to [redacted], [redacted]; d. Documents relating to the revised request by the City of Tallinn to the Ministry of Finance (sent by [redacted], [redacted], to Siim Kallas, Minister of Finance) requesting that the Government of Estonia permit the City of Tallinn to grant a 15 year Licence Period (Exhibit C-47); e. Documents provided to or prepared for the Prime Minister and his advisers in connection with this request; and f. Documents relating to the Prime Minister's reasoning for the grant of Order No 641-k of 1 August 2000 (Exhibit C-15) authorising the extended licence period of 15 years, including the statement that the extended licence period was required to permit a return on investments (including drafts of the letter).
	Relevance According to Requesting Party	**Ref. to submissions**	Memorial, 54, 109(c) and 111(a); Exhibits C-9, C-13, C-14, C-15, C-47. Counter-Memorial, 70, 441; [redacted], Section 4.
		Comments	The Claimants contend that the decision by the City of Tallinn, the Minister of Finance, the Deputy Secretary General for Financial Policy and External Relations at the Ministry of Finance and the Prime Minister of Estonia to extend the licence period for ASTV beyond the usual five year period to be 15 years was in express recognition of the scale of the investment required by the successful bidder pursuant to the privatisation, and in order to provide for a sufficient return on this investment over time (Memorial, 54).

			The Claimants allege that the action by Estonia in granting an extended licence period gave rise to a legitimate expectation that, in the period after the first five years of the Services Agreement (i.e. years 6 to 15), the tariff methodology in the Services Agreement and the Business Plan would be respected, including that the K factors would be set taking into account justified profitability as set out in the Services Agreement and Business Plan (Memorial, 109(c) and 111(a)). Estonia denies that the national government was aware of the terms of the privatisation at this time and that there was any express or implied acknowledgment of the 15 year investment horizon required by the investor, stating in connection with this decision to extend the licence period that "[redacted]" (Counter-Memorial, 70; see also Counter-Memorial 441). Estonia's expert, [redacted], then adopts the position that provided ASTV had recovered the return that it had been projected to receive by the end of year five (2005) prior to 2010, there are no deferred profits from those which were projected at the time of privatisation to be recovered ([redacted], Section 4). In other words, [redacted] adopts the position that there is no relationship between the return ASTV earns after year 5, and the investment required before year 5 – contrary to the Claimants' position. The basis on which Estonia made its decision to seek the extension of the licence period, and then to grant it, is therefore an issue in dispute between the parties which is relevant to considering whether the treatment subsequently accorded to the Claimants is, in light of this extension, fair and equitable, and whether the approach adopted by [redacted] is correct. The Documents requested are therefore relevant and material to an issue in dispute in the arbitration.
	Objections to Document Request		A vast majority of documents requested under this Request no. 4 are no longer available to Estonia because they date back more than 15 years and are no longer archived. As recognized in the IBA Rules (Article 9 (2) (d)), Estonia is not able to produce such documents on the grounds that they are no longer archived. To the extent still in the possession, custody or control of Estonia, Estonia will produce the documents responsive to Claimants' Request no. 4 on a rolling basis based on the replies from Estonian authorities which are still due or beig processed.
	Reply to Objections to Document Request		**Estonia is requested to confirm what searches it has conducted before concluding that the "*vast majority of documents requested under this Request no. 4 are no longer available*".** **Subject to Estonia providing that confirmation, no order is sought in relation to this Request.**
	Comments to Reply to Objections to Document Request		

	Tribunal's Decision		**NO DECISION REQUIRED, subject to Estonia's confirmation as requested by Claimants.**
5.	**Documents or Category of Documents Requested**		Documents relating to the drafting and issuance by the City of Tallinn of the terms of the privatisation on which potential investors were to bid, including (but not limited to): a. Documents relating to the drafting and issuance by the City of Tallinn of the Tender Notice dated 26 June 2000 (Exhibit C-12); b. Documents relating to the drafting and issuance by the City of Tallinn of the Information Memorandum dated 3 July 2000 (Exhibit C-10), including any discussion with the EBRD regarding the same; and c. Documents relating to the awareness of the terms of the privatisation at the level of the national government.
	Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 63-73, 109-112, 211, 272-282; [redacted], 152-154; Exhibits C-10, C-12. Counter-Memorial, 53, 60, 65, 70, 73, 75, 80, 87-88, 93, 415-416.
		Comments	The Claimants contend that the terms of the privatisation were specifically designed to attract investors on the basis of a return calculated over the course of 15 years and by reference to the successful bidder's Business Plan (Memorial, 63-73), including with the knowledge of the EBRD and the national government (Memorial, 61). The Claimants also contend that it was reasonable to expect that the material terms of the privatisation would be taken into account by Estonia in future regulatory decision-making (Memorial, 109-112, 211). Estonia now claims that the terms of the privatisation were contrary to the PWSSA as in force in 1999 (Counter-Memorial, 415-416) and suggests that the Claimants should have been aware of this alleged issue at the time of the privatisation (Counter-Memorial, 80, 87-88, 93) and that the City of Tallinn concluded the terms of the privatisation without sufficient authority to do so (Counter-Memorial, 60). Estonia also claims that the national government did not review any of the tender or transaction documents (Counter-Memorial, 70, 73) and indeed that Estonia "[redacted]" the terms of agreements between the City of Tallinn and ASTV (Counter-Memorial, 53). In doing so, Estonia implicitly suggests that the terms of the privatisation could not be binding on Estonia and that there was no reasonable basis to expect that Estonia would take them into account in its regulatory decision-making. In addition, the Claimants contend that the balance of control of ASTV between UUTBV and the City of Tallinn in practice (as explained in [redacted] 152-154) reflects the shared intention of the parties to the privatisation that UUTBV would control ASTV (Memorial, 272-282). Estonia claims that it was the City of Tallinn's understanding that the terms of the privatisation gave it control (or joint control) over ASTV (Counter-Memorial, 65, 75, 93). This Request seeks Documents establishing the rationale for the particular terms chosen for the privatisation, as well as the understanding of these terms by the City of Tallinn and the awareness of these terms elsewhere within Estonia. These Documents are relevant and material to the issues in dispute concerning the shared intention between the City of Tallinn and the Claimants regarding the terms of the privatisation, particularly regarding issues of control and the 15 year investment

		horizon, and therefore the *reasonableness* of the Claimants' understanding that the terms of the privatisation were compliant with the law, that the City of Tallinn was authorised to enter into them, and that such terms would be taken into account by the relevant regulator in future decision-making. The Documents are also relevant to the disputed issue of the degree of knowledge of the national government (including through its participation in the EBRD) and of the terms of the privatisation. The Documents requested are therefore relevant and material to issues in dispute in the arbitration.
	Objections to Document Request	Estonia objects to the request under Request No. 5 (c) on the grounds that it is overbroad and does not meet the requirements under Article 3 (a) of the IBA Rules. It is simply impossible and an unreasonable burden within the meaning of Article 9 (2) (c) of the IBA Rules for Estonia to search for responsive documents within all of its authorities, including any kind of "*awareness*" of the terms of privatization (e.g. the minimum sale price which was published in the Tender Notice). It is thus also unclear what "*terms of the privatization*" are exactly covered by Claimants' request. As mentioned in Estonia's general objects above, if Claimants believe that authorities within Estonia (except for the City of Tallinn) possess these documents, Estonia kindly invites Claimants to specify such authorities as well as the grounds on which Claimants believe the requested documents are in their possession, custody or control. To the extent not objected to and in the possession, custody or control of Estonia, Estonia hereby produces the documents responsive to Request no. 5 and will continue to do so on a rolling basis based on the replies from Estonian authorities which are still due or being processed.
	Reply to Objections to Document Request	**Subject to Estonia accepting the Claimants' reformulation of the Request below, no order is sought in relation to this Request.**
	Comments to Reply to Objections to Document Request	Estonia does not object to the relevance and materiality of the Documents sought in this Request. In light of Estonia's comments, the Claimants reformulate Request 5(c) to restrict the Request to Documents relating to the awareness of: a. The length of the licence period granted to ASTV in connection with the privatisation; b. The existence of the Services Agreement; c. The tariff methodology in the Services Agreement; d. The City of Tallinn's agreement to a definition of "[redacted]" with the investors; e. The role and significance of the Business Plan submitted by UUTBV; and f. The Letter of Understanding entered into by UUTBV and the City of Tallinn (Claimants' Memorial, paragraph 101). In light of this reformulation, the Claimants do not seek an order from the Tribunal at this time.
	Tribunal's Decision	**NO DECISION REQUIRED, subject to Estonia's confirmation as requested by Claimants.**
AMENDMENTS TO THE SERVICES AGREEMENT		

6.	**Documents or Category of Documents Requested**		Documents produced by or sent to or from any part of the Estonian State addressing the rationale for, and effect of, the 2002 Amendment to the Services Agreement, including (but not limited to): a. Documents considering the impact of the 2002 Amendment on the profitability of ASTV and UUTBV's investment therein; and b. Documents considering the benefits to the City of Tallinn and any other part of Estonia resulting from this amendment, including the impact on the 2002 EBRD Loan which was being negotiated (and which ultimately led to the release of the State Guarantee).
	Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 12, 118-119; [redacted], 30, 35. Counter-Memorial, 136-142, 536-538.
		Comments	The Claimants contend that the 2002 Amendment was approached on the basis of a materially "[redacted]" outcome for ASTV and UUTBV (Memorial, 12; [redacted], 30), such that the tariff increases which had been scheduled under the Services Agreement to take place from 2003 to 2005 would instead take place over the longer period of 2003 to 2010 (i.e. a redistribution of the tariffs agreed at privatisation). The Claimants contend that this amendment contributed to their legitimate expectation that the terms of the privatisation would be taken into account by Estonia in future regulatory decision-making (Memorial, 118-119). The Claimants also claim that the 2002 Amendment was in part influenced by the need to ensure that the terms of the amendment were acceptable to the EBRD in order that the 2002 EBRD Loan could be concluded and permit the release of the State Guarantee ([redacted], 35), which was of benefit to Estonia. Estonia denies this and alleges that the 2002 Amendment was "[redacted]" (Counter-Memorial, 536-538, 137). Estonia also attaches no importance to the capacity of ASTV to conclude the 2002 EBRD Loan and the release of the State Guarantee (Counter-Memorial, 136-142). The Documents sought are relevant to whether the City of Tallinn, or any other part of Estonia which considered the 2002 Amendment, shared the Claimants' view that the 2002 Amendment was not intended to materially improve the deal agreed at privatisation for the Claimants, which bears on the legitimacy of the Claimants' understanding of what the 2002 Amendment was intended to achieve and their expectation that such intention would be given effect by Estonia. The Documents are also relevant to whether the release of the State Guarantee was considered to be of value to Estonia, which is an issue in dispute. They are therefore relevant and material to an issue in dispute in the arbitration.
	Objections to Document Request		The documents provided by the EBRD to Estonia and by Estonia to the EBRD relating to the 2002 EBRD Loand and the State Guarantee are subject to commercial confidentiality and cannot be produced without the EBRD's consent, and Estonia is bound by confidentiality with respect to the documents containing confidential commercial information under Estonian law. Estonia thus objects to the production of such documents under Articles 9 (2) (b) and 9 (2) (e) of the IBA Rules. The documents requested under Request no. 6 are available to the City of Tallinn. Estonia thus objects to the Request no. 6 on the grounds that it is overbroad. As explained in Estonia's general objections above, it is simply impossible and an

			unreasonable burden within the meaning of Article 9 (2) (c) of the IBA Rules for Estonia to search for responsive documents within all of its authorities, including any kind of "*considerations*" of the impact of the 2002 Amendment on the profitability of ASTV and UUTBV's investment/benefits to the City of Tallinn "*and other parts of Estonia*", while based on the documents produced in this arbitration to date, there are no reasonable grounds to believe that Estonia would be required to consider such factors. As mentioned in Estonia's general objections above, should Claimants believe that other authorities within Estonia (except for the City of Tallinn) possess the requested documents, Estonia kindly invites Claimants to specify such authorities as well as the grounds on which Claimants believe the requested documents are in their possession, custody or control. To the extent not objected, Estonia hereby produces the documents responsive to Request no. 6 provided to Estonia by the City of Tallinn.
	Reply to Objections to Document Request		**The Claimants are awaiting the outcome of the engagement by Estonia with the EBRD. They reserve their right to seek an order from the Tribunal for the production of Documents pursuant to this Request.**
	Comments to Reply to Objections to Document Request		Estonia's objections to this Request on the basis of the confidentiality of EBRD Documents are misplaced for the reasons explained in the Claimants' General Comments at pages 5 to 7 above. The Claimants are awaiting the outcome of the engagement by Estonia with the EBRD and so do not currently seek an order from the Tribunal in relation to the EBRD Documents. However, they reserve their right to seek an order from the Tribunal for the production of the EBRD Documents pursuant to this Request.
	Tribunal's Decision		**NO DECISION REQUESTED AT THIS TIME. LEAVE TO APPLY RESERVED.**
7.	**Documents or Category of Documents Requested**		Documents produced by or sent to or from any part of the Estonian State addressing the rationale for, and effect of, the First 2005 Amendment to the Services Agreement, including (but not limited to): a. Documents considering the impact of the First 2005 Amendment on the control of ASTV, including any discussions of this obtained through Estonia's participation in the EBRD.
	Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 131, 298-300; [redacted], 66-69. Counter-Memorial, 152, 269 *et seq.*
		Comments	The Claimants contend that the impact of the First 2005 Amendment on the balance of control over ASTV between UUTBV and the City of Tallinn was that it ensured that UUTBV retained control over ASTV ([redacted], 68; Memorial, 131). The Claimants also contend that the EBRD was closely involved in the discussion of control of ASTV following the IPO and that

			the EBRD had a strong preference for retaining the existing balance of control ([redacted], 66-69). The Claimants assert that this reflects the current position with regard to the control over ASTV, namely that UUTBV controls ASTV (Memorial, 298-300). Estonia argues that the Council of the City of Tallinn approved the First 2005 Amendment "[redacted]" (Counter-Memorial, 152) and that UUTBV does not currently control ASTV (Counter-Memorial, 269 *et seq.*). Documents relating to the views of the City of Tallinn regarding how ASTV has been controlled since the First 2005 Amendment are relevant to the current balance of control between the City of Tallinn and UUTBV. In particular, Documents relating to the City of Tallinn's decision to approve the First 2005 Amendment and any impact that considerations of control had on this are relevant to clarifying the City of Tallinn's understanding of the balance of control within ASTV. The Claimants will argue that Estonia has mischaracterised the state of control of ASTV in its Counter-Memorial and that the way control is experienced in practice by UUTBV and the City of Tallinn is a distinct consideration from the formal structures of decision-making. The City of Tallinn's views of the effect of the First 2005 Amendment on the control of ASTV are therefore significant. The Documents sought are therefore relevant and material to an issue in dispute in the arbitration.
	Objections to Document Request		Estonia objects to this Request no. 7 on the grounds that it is overbroad. As noted in Estonia's general objects above, it is simply impossible and an unreasonable burden within the meaning of Article 9 (2) (c) of the IBA Rules for Estonia to search for responsive documents within all of its authorities, including any kind of "*considerations*" of the impact of the First 2005 Amendment on the control of ASTV and UUTBV's investment/benefits to the City of Tallinn, while there are no reasonable grounds to believe that Estonia would be required to consider such factors. As mentioned in Estonia's general objections above, should Claimants believe that other authorities within Estonia (except for the City of Tallinn) possess the requested documents, Estonia kindly invites Claimants to specify such authorities as well as the grounds on which Claimants believe the requested documents are in their possession, custody or control.
	Reply to Objections to Document Request		**The Claimants accept below Estonia's invitation to specify the state authorities it believes are likely to hold Documents responsive to this Request. No order is sought from the Tribunal at this time.**
	Comments to Reply to Objections to Document Request		Estonia objects to this Request on the basis that it is too broad. The Claimants reformulate this Request to encompass searches for Documents held by the Ministry of Finance. As the Ministry of Finance is responsible for managing Estonia's relationship with the EBRD, the Claimants have a reasonable basis to believe that the Ministry of Finance may possess Documents addressing the impact of the IPO of ASTV, including the consequent impact on the control over ASTV, on the EBRD's investment in ASTV through its indirect shareholding. The First 2005 Amendment is likely to have been of considerable interest to the EBRD and it is reasonable to believe that the Ministry of Finance was aware of the amendment on this basis. Notwithstanding this reformulation of the searches requested, the Claimants maintain the full Request to the extent that any responsive Documents are identified by Estonia in the course of document production more generally. However, no order is sought from the Tribunal at this time.

	Tribunal's Decision		**NO DECISION REQUESTED AT THIS TIME. LEAVE TO APPLY RESERVED.**
8.	**Documents or Category of Documents Requested**		Documents produced by or sent to or from any part of the Estonian State addressing the rationale for, and effect of, the 2007 Amendment to the Services Agreement, including (but not limited to): a. Documents considering the impact of the 2007 Amendment on the profitability of ASTV and UUTBV's investment therein; and b. Documents considering the benefits to Estonia (including the City of Tallinn) resulting from this amendment.
	Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 12, 137; [redacted], 79-83; Exhibit C-123. Counter-Memorial, 173-176.
		Comments	The Claimants contend that the 2007 Amendment, which amended the schedule for the City of Tallinn to defer payment in connection with the Network Extension Programme, although it did not amend the schedule of works (as with the Second 2005 Amendment), was approached on the basis of a materially "[redacted]" outcome for both ASTV and the City of Tallinn (Memorial, 12; [redacted], 80; Exhibit C-123). The Claimants contend that this amendment, and the contractual fixing of the K factors at zero out to 2020, contributed to their legitimate expectation that the terms of the privatisation would be taken into account by Estonia in future regulatory decision-making (Memorial, 137). The Claimants also assert that the 2007 Amendment was of value to Estonia because it permitted Estonia to comply with EU requirements to have completed the Network Extension Programme by March 2011, while ASTV accepted the financial burden of assuming the costs and financial risks of the Network Extension Programme in the interim until the deferred payment was made by the City of Tallinn ([redacted], 79-83). Estonia denies that this was a "[redacted]" deal (Counter-Memorial, 175). Estonia also attaches no importance to the benefits received by the City of Tallinn in being able to defer payment (but not completion) of the Network Extension Programme for a second time (Counter-Memorial, 173-176). The Documents sought are relevant to whether the City of Tallinn, or any other part of Estonia which considered the 2007 Amendment, shared the Claimants' view that the 2007 Amendment was not intended to materially improve the deal agreed at privatisation for the Claimants, which bears on the legitimacy of the Claimants' understanding of what the 2007 Amendment was intended to achieve and their expectation that such intention would be given effect by Estonia. The Documents are also relevant to whether the deferral of payment in connection with the Network Extension Programme was considered to be of value to Estonia, which is an issue in dispute. They are therefore relevant and material to an issue in dispute in the arbitration.
	Objections to Document Request		Estonia objects to this Request no. 8 on the grounds that it is overbroad. As noted in Estonia's general objects above, it is simply impossible and an unreasonable burden within the meaning of Article 9 (2) (c) of the IBA Rules for Estonia to search for responsive documents within all of its authorities, including any kind of "*considerations*" of the impact of the 2007

		Amendment on the control of ASTV and UUTBV's investment/benefits to the City of Tallinn, while there are no reasonable grounds to believe that Estonia would be required to consider such factors. As mentioned in Estonia's general objections above, should Claimants believe that other authorities within Estonia (except for the City of Tallinn) possess the requested documents, Estonia kindly invites Claimants to specify such authorities as well as the grounds on which Claimants believe the requested documents are in their possession, custody or control.
	Reply to Objections to Document Request	**Claimants accept below Estonia's invitation to specify the state authorities it believes are likely to hold Documents responsive to this Request. No order is sought from the Tribunal at this time.**
	Comments to Reply to Objections to Document Request	Estonia does not object to this Request on the basis of relevance or materiality. Estonia objects to this Request on the basis that it is too broad. While the Claimants believe that it is likely that responsive Documents may exist within Estonian state entities, they are unable to suggest a narrower search at this time. No order is sought from the Tribunal in relation to this Request. Nevertheless, the Claimants maintain the full Request to the extent that any responsive Documents are identified by Estonia in the course of complying with other Requests. For completeness, the Claimants note that Estonia also objects to this Request on the basis that there are no reasonable grounds to believe that Estonia would be required to consider "*the impact of the 2007 Amendment on the control of ASTV and UUTBV's investment/benefits to the City of Tallinn*". However, this Request does not seek Documents considering this and it does not form part of the Claimants' rationale for this Request. The Claimants do not argue that the 2007 Amendment had any impact whatsoever on the control of ASTV. For the avoidance of doubt, the Claimants contend that Estonian state entities are likely to have considered the 2007 Amendment, its impact on the profitability of ASTV and UUTBV's investment therein and the benefit deriving therefrom to Estonia because the 2007 Amendment was important in permitting Estonia to comply with EU requirements to have completed the Network Extension Programme by March 2011.
	Tribunal's Decision	**NO DECISION REQUESTED AT THIS TIME. LEAVE TO APPLY RESERVED.**
BREACHES OF THE BIT AND AMENDMENTS TO THE REGULATORY REGIME		
9.	**Documents or Category of Documents Requested**	Documents concerning the interactions between the [redacted] (including [redacted]) and Estonian members of Parliament (notably [redacted] and Mr Reinsalu) in relation to the reform of water tariff regulation, including (but not limited to): a. Documents relating to any discussion of ASTV's tariffs and/or profitability between Estonia (including [redacted] and Mr Reinsalu) and the [redacted] ([redacted] 22);

		b. Documents in the possession of [redacted] and Mr Reinsalu relating to the origin of and rationale for the [redacted]'s proposals ([redacted] 23); c. Documents in the possession of [redacted] and Mr Reinsalu relating to the origin of and rationale for the [redacted]'s petition in relation to ASTV's tariffs ([redacted] 23); and d. Documents in the possession of [redacted] and Mr Reinsalu relating to the involvement by [redacted] or any other member of Estonian Parliament (former or present) in the legal action taken by the [redacted] in the Harju Country Court to challenge the City of Tallinn's approval of ASTV's tariffs ([redacted] 24).
Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 153-155, 182-191; [redacted], 47, 49-52, 92-100; Exhibit C-39. Counter-Memorial, 201; [redacted], 11-18, 22-24.
	Comments	The Claimants contend that the Anti-Monopoly Bill ("**AMB**") was discriminatory, unfairly targeted ASTV and was not founded on legitimate bona fide public policy objectives, including because the Explanatory Letter to the AMB (Exhibit C-39) expressly named ASTV as its intended target (Memorial, 182-191; [redacted], 92-100). The Claimants' witness [redacted] also contends that he was not aware of any genuine, widespread public discontent among ASTV customers regarding water tariff levels ([redacted], 47). The Claimants also contend that the [redacted] was a vehicle for the politically motivated actions of [redacted] and Mr Reinsalu and their parliamentary colleagues (Memorial, 153-155; [redacted], 49-52). Estonia, by contrast, seeks to portray the origins of the AMB as, inter alia, a concern that tariff levels were too low, and as a product of good faith regulatory reform arising from concerns echoed in the media and by consumers ([redacted], 11-18, 22-24). Estonia also suggests that the origin of the [redacted]'s focus on ASTV was an analysis of "[redacted]", on the basis of which "[redacted]" (Counter-Memorial, 201). Documents relating to the origins and motivation of the AMB, including any influence on decision-makers from third parties like the [redacted], is essential to the question of whether this was a discriminatory, politically-motivated act, or whether it was genuine good faith, apolitical regulation. The Documents requested are therefore relevant and material to an issue in dispute in the arbitration and will provide transparency regarding how the relevant decision-makers within Estonia reached their decisions regarding the AMB and its connection with ASTV.
Objections to Document Request		The requested documents are no longer in the possession, custody or control of Estonia because the events took place seven years ago. For the sake of clarity, Estonia has limited its searches for documents responsive to the Request no. 9 to documents in the possession, control or custody of Estonia, including the Minister of Justice, Mr. Reinsalu and a Member of the Estonian Parliament, [redacted]. Estonia has not searched for documents located with third parties such as the [redacted] which as a non-governmental organization, is neither part of Estonia nor controlled by it.

	Reply to Objections to Document Request		**The Claimants understand Estonia's Response to be a confirmation that it has conducted searches for Documents responsive to this Request held by the Minister of Justice, Mr. Reinsalu and [redacted]. If this is not correct, Estonia is requested to make this clear to the Claimants.** **On this basis, the Claimants do not seek any further searches in relation to this Request, and no order is sought from the Tribunal.**
	Comments to Reply to Objections to Document Request		
	Tribunal's Decision		**NO DECISION REQUIRED, subject to Estonia's confirmation as requested by Claimants.**
10.	**Documents or Category of Documents Requested**		Documents relating to Estonia's motivation for reforming the regulatory regime applicable to water tariffs dating from 2005 to 2012, including (but not limited to): a. the "[redacted]" regarding reform to water regulation referred to at Counter-Memorial, 422; b. Documents relating to the Ministry of Environment's consideration of the need for reform from 2006 onwards (referred to in Counter-Memorial, 159-161); c. Documents relating to the State Audit Office's consideration of the need for reform from 2005 (referred to in Counter-Memorial, 162-164); d. Documents relating to [redacted]' recommendations in 2005 and subsequent years regarding the need to decrease water tariffs, including his interactions with the Ministry of Environment (referred to in Counter-Memorial, 169, fn 170; [redacted] 20); e. Documents relating to the proposal to introduce a state level supervision over water tariffs set by local municipalities at three government cabinet meetings in October and November 2007 (referred to in Counter-Memorial, 170); and f. Documents associated with the drafting of the AMB, including drafts of the legislation, documents discussing its rationale and intended impact.
	Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 182-191; [redacted], 47, 92-100; Exhibit C-39. Counter-Memorial,159-164, 170, 422; [redacted], 20; [redacted], 11-18.
		Comments	As with the Requests above, the provenance of and rationale for the AMB is a point in dispute between the Claimants and Estonia.

			The Claimants contend that the AMB was discriminatory, unfairly targeted ASTV and was not founded on legitimate, bona fide public policy objectives, including because the Explanatory Letter to the AMB (Exhibit C-39) expressly named ASTV as its intended target (Memorial, 182-191; [redacted], 92-100). The Claimants' witness [redacted] also contends that he was not aware of any genuine, widespread public discontent among ASTV customers regarding water tariff levels ([redacted], 47). Estonia, by contrast, seeks to portray the origins of the AMB as, inter alia, a concern that tariff levels were too low, and as a product of good faith regulatory reform arising from concerns echoed in the media and by consumers ([redacted], 11-18). Documents relating to the origins of the AMB and the path of the legislators to that point and their motivation is essential to the question of whether this was a discriminatory, politically motivated act, or whether it was genuine good faith, apolitical regulation. The Documents requested are therefore relevant and material to an issue in dispute in the arbitration.
	Objections to Document Request		The documents requested under the Request no. 10 (f) are publicly available. A number of these documents (including the draft proposals for parliamentary readings, explanatory memoranda, minutes of the parliamentary readings, minutes of the meetings of the Economic Affairs Committee of the Estonian Parliament, etc.) are available at the homepage of the Estonian Parliament www.riigikogu.ee. To the extent not publicly available and in the possession, custody or control of Estonia, Estonia hereby produces the documents responsive to Request no. 10 and will continue to do so on a rolling basis based on the replies from Estonian authorities which are still due or being processed
	Reply to Objections to Document Request		**Estonia has accepted this Request.**
	Comments to Reply to Objections to Document Request		
	Tribunal's Decision		**NO DECISION REQUIRED.**
11.	**Documents or Category of Documents Requested**		Documents relating to the ECA's decision to open an investigation into water tariffs in 2008, including (but not limited to): a. Documents relating to the '[redacted]" (referred to in Counter-Memorial, 186; Exhibit C-37); and b. Documents relating to the ECA's decision to prepare its Analysis only on ASTV's tariffs.

Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 157. Counter-Memorial, 181, 184, 186; Exhibit C-37.
	Comments	The Claimants contend that ASTV has been unfairly targeted by the ECA and that the ECA's investigation of ASTV was unexpected because of the lack of previous suggestion by the ECA that ASTV's dominant position in Tallinn was giving rise to any concerns (Memorial, 157). Estonia contends that the ECA was motivated to open its investigation by the "[redacted]" and that the "[redacted]" (Counter-Memorial, 181, 184). Estonia argues that ASTV was the focus of this investigation and its Analysis because ASTV is "[redacted]" and that ASTV was already "[redacted]" because of discussion in the media (Counter-Memorial, 184). The origin of the ECA's investigation into ASTV and the reason why ASTV was the sole focus of the ECA's Analysis are issues in dispute. The Documents requested are relevant and material to the question of whether the Claimants' investments have been accorded fair and equitable treatment by Estonia, or whether Estonia has in fact acted in an unfair and discriminatory fashion with regard to the Claimants.
Objections to Document Request		To the extent the documents requested by Claimants contain confidential commercial information, Estonia objects to the production of such documents on the grounds of legal impediment and privilege under Articles 9 (2) (b) of the IBA Rules and commercial confidentiality under 9 (2) (e) of the IBA Rules. To the extent not objected to, Estonia hereby produces the documents responsive to Request no. 11 that exist and are in its possession, custody or control and will continue to do so on a rolling basis based on the replies from Estonian authorities which are still due or being processed.
Reply to Objections to Document Request		**The Claimants request an order that Estonia produce Documents responsive to this Request.**
Comments to Reply to Objections to Document Request		Estonia does not deny the relevance or materiality of these Documents. Estonia's sole objection to this Request is on the basis of commercial confidentiality. This is misplaced for the reasons explained in the Claimants' General Comments at pages 3 to 5 above. In particular, these Documents are now approximately eight years old and relate to tariffs calculated under a regulatory regime that no longer exists. They can no longer be said to be commercially sensitive or, to the extent that any such commercial sensitivity can be credibly and legitimately established, it can be addressed through appropriate redactions. The Claimants' position in the arbitration is that they have been treated in a discriminatory and unfair manner, including by the ECA's treatment of ASTV as against other water companies. Estonia should not be permitted to exclude potentially significant

			information about Estonia's treatment of other water companies, which it does not deny is relevant, simply by asserting that entire categories of Documents are confidential. Estonia should be required to produce Documents which are responsive to the Claimants' Requests, subject only to the redaction of the specific pieces of information contained therein which are genuinely subject to current (not historic) obligations of confidentiality and disclosing the nature of the information redacted and the basis on which such redactions have been made.
	Tribunal's Decision		**GRANTED, as follows.** The Request is sufficiently precise and specific. Relevance and materiality are not disputed. As discussed at § V. of Estonia's Responses and Objections (pp. 14-15 above), the duty of confidentiality by which it asserts it is bound arises by virtue of the fact, it says, that the requested documents contain confidential commercial information – that is, more specifically, "business secrets" – of third parties as the term is defined in Estonian law. Respondent shall accordingly produce (and continue to produce on a rolling basis) responsive documents, subject only to the redaction of *business secrets* as defined in the ECA and/or other applicable Estonian statute or case law as the case may be. The nature of any information redacted and the basis on which such redactions have been made shall be notified to Claimants at the same time as the documents in question are produced.
12.	**Documents or Category of Documents Requested**		Documents relating to the meeting between [redacted] and Messrs Reinsalu and [redacted] in June 2009 (referred to at [redacted], 66), including (but not limited to): a. minutes and the notes of such meetings; and b. agendas and reports on this topic prepared for such meetings.
	Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 153, fn 97, 167, 182-184. Counter-Memorial, 207; [redacted], 66.
		Comments	The Claimants contend that the AMB was part of a concerted campaign aimed at reducing ASTV's allegedly excessive profits, (Memorial, 182-184) a campaign involving Messrs Reinsalu and [redacted] (Memorial 153, fn 97) and [redacted] (Memorial, 167). Estonia argues that the AMB was a product of legitimate regulatory concern relating to the Estonian water sector (Counter-Memorial, 207). The Documents requested will evidence [redacted] (and thus the ECA's) and other key individuals' attitude to and motivation behind the AMB, a key issue in dispute in these proceedings. They are therefore relevant and material to an issue in dispute.
	Objections to Document Request		No such documents are longer in the possession, custody or control of Estonia or Messrs. [redacted] and Reinsalu.

	Reply to Objections to Document Request		**The Claimants understand Estonia's Response to be a confirmation that it has conducted searches for Documents responsive to this Request held by Estonia. If this is not correct, Estonia is requested to make this clear to the Claimants.** **On this basis, the Claimants do not consider any further searches to be necessary in relation to this Request. No order is sought from the Tribunal.**
	Comments to Reply to Objections to Document Request		
	Tribunal's Decision		**NO DECISION REQUIRED, subject to Estonia's confirmation as requested by Claimants.**
13.	**Documents or Category of Documents Requested**		The following Documents relating to the investigation of ASTV's tariffs by the Legal Chancellor: a. Documents relating to the Legal Chancellor's consultations with the ECA, including the Legal Chancellor's claimed (i) critical analysis of the ECA's Analysis, and (ii) thorough analysis of ASTV's comments on that ECA's Analysis (discussed at Counter-Memorial, 209; [redacted], 12-15); b. Documents relating to the review by the Legal Chancellor of the City of Tallinn's regulation for the approval of ASTV's tariffs (referred to at Counter-Memorial, 201-207; [redacted], 9-11), including consideration of the City of Tallinn's response to the information request (Exhibit R-132 and Exhibit R-194) and the preparation of the Legal Chancellor's Recommendation No. 8 dated 23 March 2010 (Exhibit C-168); and c. Documents relating to any action taken by the Legal Chancellor in connection with ASTV's tariffs after its Recommendation was issued, including any involvement with legal actions against ASTV in connection with its tariffs (including those commenced by consumers).
	Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 180; [redacted], 78-89; Exhibit C-193. Counter-Memorial, 201-213; [redacted], 9-15; Exhibits R-132 and R-194; Exhibit C-168.
		Comments	Estonia presents the Legal Chancellor's investigation of ASTV's tariffs as legitimate and based on genuine concern about compliance with the legal framework (Counter-Memorial, 201-213). Estonia also contends that the Legal Chancellor '[redacted]" after the Supreme Court rejected his application to have the City of Tallinn regulation approving ASTV's tariffs declared unconstitutional (Counter-Memorial, 213). The Claimants contend that the Legal Chancellor's investigation was part of a series of related, politically motivated acts by the Estonian state and that the Legal Chancellor did not conduct any independent economic analysis but simply relied on the

			ECA's flawed Analysis (Memorial, 180; [redacted], 78-89). The Claimants also contend that following the Supreme Court ruling, the Legal Chancellor made statements in the media urging consumers to bring court actions to challenge ASTV's tariffs, recommending that they base these challenges on the ECA's Analysis and the Chancellor's own conclusions about ASTV's tariffs ([redacted], 89; Exhibit C-193). The motivation of the Legal Chancellor, the degree to which his actions were coordinated with the ECA, and the other actions he took in pursuit of invalidating ASTV's tariffs are matters in dispute which are relevant to whether the Claimants' investments have been treated fairly and equit ably. The Documents requested are therefore relevant and material to an issue in dispute in the arbitration.
	Objections to Document Request		Most of the requested documents are publicly available at the document registry of the Chancellor of Justice at www.adr.rik.ee/okk. To the extent not publicly available and in the possession, custody or control of Estonia, Estonia hereby produces the documents responsive to Request no. 13 and will continue to do so on a rolling basis based on the replies from Estonian authorities which are still due or being processed.
	Reply to Objections to Document Request		**Estonia has accepted this Request.**
	Comments to Reply to Objections to Document Request		
	Tribunal's Decision		**NO DECISION REQUIRED.**
14.	**Documents or Category of Documents Requested**		Documents relating to the drafting of and rationale for the AMB, including: a. the "[redacted]" from 2009 (referred to in [redacted] 11); b. Documents forming the basis for [redacted] conclusion that tariff decisions at municipality level were being driven by a "[redacted]" or "[redacted]" ([redacted] 11); c. Documents relating to consideration of [redacted] conclusions about utility price regulation which were the "[redacted]" ([redacted] 14); d. consideration of the "[redacted]" ([redacted] 17) which concluded that the prices of water utility companies were unjustifiably high or otherwise abnormal in some cases, in particular as this related to ASTV;

		e. Documents relating to consideration of the complaints regarding water tariff increases which were "[redacted]" received from voters ([redacted] 18); f. Documents relating to the Economic Affairs Committee of the Estonian Parliament addressing the wording of, and rationale for, the AMB (including early drafts and documents related thereto, as mentioned in [redacted] 35); g. Documents relating to the discussions of the Economic Affairs Committee on 18 February 2010 ([redacted], 42); h. Documents relating to the support (or otherwise) for the AMB from different political parties; i. Documents relating to the drafting of the two explanatory letters to the AMB dated 15 October 2010 and 5 March 2010; j. Documents relating to the rationale for only making water companies above a certain size subject to the ECA's regulation (Counter-Memorial, 217; [redacted] 29-30); k. Documents relating to the rationale for the ECA's proposed amendments to the AMB dated 22 March 2010 (including consideration of the wording "[redacted]") (Counter-Memorial, 218); l. Documents relating to consideration of how previous agreements or existing regulatory arrangements between municipalities and utilities should be treated under the new law and its transitional provisions (including questions of succession) (Counter-Memorial, 220-221); m. Documents relating to consideration of how the concept of "[redacted]" should be defined and applied ([redacted], 35), including consideration of this by the ECA and Members of Parliament; n. Documents relating to the meeting between [redacted], [redacted] and Reinsalu in June 2009 regarding ASTV ([redacted], 36); o. Documents relating to specific consideration of ASTV and/or water tariffs in Tallinn in connection with the AMB and other regulatory reform from 2007 to 2011; p. Documents relating to the consultations between the drafters of the AMB and the ECA, the Ministry of Environment and Ministry of Economic Affairs and Communications (described in [redacted], 37); q. Documents relating to the reason for the decision by the coalition government to support the AMB and the consideration of the "[redacted]" (mentioned in [redacted] 40); r. Documents relating to the drafting by the ECA of the proposal to amend the AMB ([redacted], 44) and the consideration of it by decision-makers; s. Documents relating to the Economic Affairs Committee's deliberations of the ECA's amendment proposals on and around 13 May 2010 (referred to in [redacted], 45); and t. Documents relating to the decision by Parliament to pass the AMB on 17 June 2010 ([redacted], 46).
Relevance According to	**Ref. to Submissions**	Memorial, 182-191; [redacted], 47, 92-100; Exhibit C-39. Counter-Memorial, 214, 217-219, 220-221, 396, 397, 400, 407, 426; [redacted], 11-18, 29-30, 35-37, 40, 42, 44-46.

	Requesting Party	Comments	
			The Claimants contend that the AMB was discriminatory, unfairly targeted ASTV and was not founded on legitimate bona fide public policy objectives, including because the Explanatory Letter to the AMB (Exhibit C-39) expressly named ASTV as its intended target (Memorial, 182-191; [redacted], 92-100). The Claimants' witness [redacted] also contends that he was not aware of any genuine, widespread public discontent among ASTV customers regarding water tariff levels ([redacted], 47). Estonia, by contrast, seeks to portray the origins of the AMB as, inter alia, a concern that tariff levels were too low, and as a product of good faith, non-discriminatory regulatory reform arising from concerns echoed in the media and by consumers and was undertaken for "[redacted]" (Counter-Memorial, 396, 397, 400, 407, 426; [redacted], 11-18). Estonia also asserts that the AMB has its roots in other legislation promulgated by the Ministry of Environment and State Audit Office (Counter-Memorial, 214). The Claimants also contend that the AMB changed the definition of "[redacted]" and therefore the fundamental basis on which tariffs were to be calculated (Memorial, 186-191). Estonia argues that the AMB "[redacted]", was only clarificatory and "[redacted]" (Counter-Memorial, 218-219). Documents relating to the origins of, and effects of, the AMB and the path of the legislators to that point, and their motivation, is essential to the question of whether this was a discriminatory, politically motivated act, or whether it was genuine good faith, apolitical regulation. The Documents requested are therefore relevant and material to an issue in dispute in the arbitration.
	Objections to Document Request		Estonia objects to Requests no. 14 (a) to (e) because it is Estonia's—not Claimants'—burden of proof to present factual evidence in support of the statements referred to in these requests (and Estonia has discharged that burden in its Counter-Memorial and the accompanying witness statements). It is a widely-recognized principle in international arbitration practice that evidence falling within the opposing party's burden of proof should not be requested within the framework of document production.[18] Request no. 14 (n) repeats the Request no. 12 and Estonia thus refers to its comments above. A vast number of the documents requested under Request no. 14 (f) *et seq.* (except for the Request no. 14 (n)), including the draft proposals for parliamentary readings, explanatory memoranda, minutes of the parliamentary readings, minutes of the meetings of the Economic Affairs Committee of the Estonian Parliament, etc., are publicly available at the homepage of the Estonian Parliament www.riigikogu.ee.

[18] See e.g. Yves Derains. Towards Greater Efficiency in Document Production before Arbitral Tribunals – A Continental Viewpoint in Document Production in International Arbitration, ICC International Court of Arbitration Bulletin: 2006 Special Supplement, ed ICC (Paris: ICC Publishing, 2006), **RL-181**.

		To the extent not publicly available and in the possession, custody or control of Estonia, Estonia hereby produces the documents responsive to Request no. 14 and will continue to do so on a rolling basis based on the replies from Estonian authorities which are still due or being processed.
	Reply to Objections to Document Request	**The Claimants request an order that Estonia produce Documents in response to Requests 14(a) to (e).**
	Comments to Reply to Objections to Document Request	Estonia's objections to Requests 14(a) to (e) are inappropriate for the reasons below, and Claimants request an order from the Tribunal that Estonia produce documents in response to Requests 14(a) to (e). First, contrary to Estonia's objection, it is not a widely-recognised principle of international arbitration practice that evidence falling within the opposing party's burden of proof should not be requested within the framework of document production. Estonia's justification for this assertion is one article, from 2006, by Yves Derain, entitled "*Towards Greater Efficiency in Document Production before Arbitral Tribunals – A Continental Viewpoint in Document Production in International Arbitration*". From its title, it is clear that the article comes from a continental (civil law) viewpoint, and is not setting out a widely-recognised principle of international arbitration practice. In relation to this issue, Born states: *"It is sometimes suggested that a party may only obtain disclosure of documents material to issues as to which it bears the burden of proof in the underlying dispute. As one commentator explained this theory, an arbitral tribunal must determine "whether the requesting party actually needs the documents to discharge the burden of proof. If not, the request should be denied":* [Born then quotes from the same Yves Derain article relied upon by Estonia, before continuing] *There is no basis for this approach in either the IBA Rules, the ICC Task Force's report, or sound arbitral procedures. The fact that a party bears the burden of proof on an issue does not make a document it has requested any less relevant or material, nor any less important to the tribunal's fact-finding mandate. Moreover, the fact that a party bears the burden of proof on an issue does not suggest that it will, absent the requested document(s), be able to discharge that burden: it is both illogical and unfair to deny a party disclosure of documents otherwise subject to disclosure, merely because it does not bear the burden of proof with respect to the underlying issues to which the document is relevant."*[19] Born is correct to focus not on the party that bears the burden of proof, but on whether the requested documents are relevant or material. Paragraph 15.2 of Procedural Order No. 1 provides that document production in this case will be guided by the IBA Rules. Article 3(3) of the IBA Rules permits requests for documents which are relevant to the case and material to its outcome, without reference to which party bears the burden of proof in relation to the issue to which the documents sought are relevant and material. Article 9(2) sets out grounds on which the Tribunal may exclude documents from production. These

[19] Exhibit CL-27, Gary Born, "International Commercial Arbitration" (2nd Edition), Chapter 16 pages 2363-2364.

		include, inter alia, a lack of sufficient relevance or materiality (Article 9(2)(a)). They do not however include any reference to which party bears the burden of proof in relation to the issue in question. For the reasons set out in the comments section above, the documents requested at Requests 14(a) and (e) are relevant and material to an issue in dispute in the arbitration. It is irrelevant whether that issue is one on which the Claimants or the Respondent bears the burden of proof, and as a result Estonia's objection should be rejected. Second, the documents requested at Requests 14(a) to (e) all relate to statements made by one of Estonia's witnesses, [redacted]. It is critical that the Claimants be entitled to test those statements by reference to documents in Estonia's possession which it has chosen not to produce but which will indicate whether that witness evidence is accurate. It is not appropriate for Estonia to submit witness evidence, and then to argue that because it bears the burden of proving that witness evidence the Claimants should not be entitled to request documents that are likely to indicate whether or not that witness evidence is accurate. Third, requests 14(a), (c), and (d) request documents including those specifically referred to by [redacted] in the referenced paragraphs in his witness statement (the "[redacted]" ([redacted] 11), the "[redacted]" ([redacted] 14), and the "[redacted]" ([redacted] 17)). By referring to these documents in support of the conclusions [redacted] reaches, Estonia is relying on those documents. As such, pursuant to paragraphs 16.1 and 15.2 of Procedural Order No. 1, and Article 3(1) of the IBA Rules, Estonia was in fact required to produce these documents with its Counter-Memorial and [redacted] statement whether or not requested by Claimants. Having failed to comply with its obligation to produce these documents on which it relies, Estonia cannot now resist their production in response to a request from the Claimants on the basis that they relate to its own burden of proof. Further, Article 4(5)(b) of the IBA Rules requires "... *Documents on which the witness relies that have not already been submitted shall be provided*". Paragraph 17.1 of Procedural Order No. 1 provides that *"The Tribunal may consider the IBA Rules ... as guidelines with respect to the taking of evidence from witnesses of fact and experts."* Requests 14(a), (c) and (d) all include (but are not limited to) documents that should have been provided by Estonia with [redacted] witness statement, whether or not requested by the Claimants. For the reasons set out above, and in the comments section, the Claimants request an order that Estonia produce documents in response to Requests 14(a) to (e).
	Tribunal's Decision	• **REQUESTS no. 14(a) to (e): GRANTED.** It is noted that Respondent does not appear to contest the relevance of the requested documents. The primary ground of its Objection is its assertion that "it is Estonia that bears the burden of proof to present factual evidence in support of the statements referred to in these requests ...", and that in principle "... evidence falling within the opposing party's burden of proof should not be requested within the framework of document production".

			The Tribunal disagrees with Respondent's analysis; it prefers the analysis in this regard as set out in Claimant's Reply and Comments above. The Tribunal also agrees with Claimants' comments, in their Reply, in response to the other grounds of Respondent's Objection. • **REQUESTS no. 14(f) to (t): NO DECISION REQUESTED AT THIS TIME. LEAVE TO APPLY RESERVED.**
15.	**Documents or Category of Documents Requested**		Documents relating to any comparative analysis by the ECA of water tariff levels within Estonia in 2008-2009. In the event that no such analysis was undertaken in 2008-2009, any such analysis the nearest in time to 2008-2009.
	Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 157, 182-191; [redacted], 47, 92-100; Exhibits C-37, C-39. Counter-Memorial, 184-185, 396, 397, 400, 407, 426; [redacted], 11-18.
		Comments	The Claimants contend that the AMB was discriminatory, unfairly targeted ASTV and was not founded on legitimate bona fide public policy objectives, including because the Explanatory Letter to the AMB (Exhibit C-39) expressly named ASTV as its intended target (Memorial, 182-191; [redacted], 92-100). The Claimants' witness [redacted] also contends that he was not aware of any genuine, widespread public discontent among ASTV customers regarding water tariff levels (Memorial, 157; [redacted], 47). Estonia, by contrast, seeks to portray the origins of the AMB as, inter alia, a concern about tariff levels, and as a product of good faith, non-discriminatory regulatory reform arising from concerns echoed in the media and by consumers and was undertaken for "[redacted]" (Counter-Memorial, 396, 397, 400, 407, 426; [redacted] 11-18). Estonia also argues that the "[redacted] " (Counter-Memorial, 184) and relies on the ECA's letter to ASTV claiming that it that it had "[redacted]" (Exhibit C-37; Counter-Memorial, 185). The Documents sought are relevant to establishing whether the ECA did in fact have a well-founded concern about ASTV's tariff levels by comparison with the tariffs of other water companies, as the basis for its subsequent regulatory reform. The Documents requested are therefore relevant and material to an issue in dispute in the arbitration.
	Objections to Document Request		Estonia objects to Requests no. 15 because it is Estonia's—not Claimants'—burden of proof to present factual evidence in support of the statements referred to in these requests (and Estonia has discharged that burden in its Counter-Memorial and the accompanying witness statements). It is a widely-recognized principle in international arbitration practice that evidence falling within the opposing party's burden of proof should not be requested within the framework of document production.[20]

[20] See e.g. Yves Derains: Towards Greater Efficiency in Document Production before Arbitral Tribunals – A Continental Viewpoint in Document Production in International Arbitration, ICC International Court of Arbitration Bulletin. 2006 Special Supplement, ed ICC (Pans: ICC Publishing, 2006), **RL-181**.

		However, the results of the ECA's water market investigation of 2009 (see alsoe Request no. 20) are summarized in the internal report prepared by the ECA hereby produced by Estonia. As the document contains confidential commercial information of third parties unrelated to this arbitration, such information has been redacted in the produced document. This is because Estonia is bound by the confidentiality information in relation to such information under Estonian law which is also protected under Articles 9 (2) (b) and 9 (2) (e) of the IBA Rules.
	Reply to Objections to Document Request	**The Claimants request an order that Estonia produce Documents responsive to this Request 15, including a non-redacted version of the internal report referred to in Estonia's Objection to this Request 15.**
	Comments to Reply to Objections to Document Request	Estonia's objection based on the fact that it is Estonia's burden of proof to support the statements referred to in Request 15 is misplaced, for the reasons set out in the Claimants' Reply to Estonia's Objections to Request 14 above. As further explained in relation to Request 14, there is no foundation for Estonia's argument that the Tribunal should determine whether to make an order for production of requested documents by reference to which party bears the burden of proof in relation to the issue in question. For the reasons set out in relation to Request 14 above, the Tribunal should instead consider whether the documents requested are relevant and material to an issue in dispute in the arbitration. For the reasons set out in the relevant section above, the documents at Request 15 are relevant and material to an issue in dispute in the arbitration. It is irrelevant whether that issue is one on which the Claimants or the Respondent bears the burden of proof, and as a result Estonia's objection should be rejected. The Claimants therefore request an order that Estonia produce documents responding to this Request 15. In relation to the internal report into the ECA's water market investigation in 2009, referred to in Estonia's objections above and produced to the Claimants in redacted form, the Claimants do not accept that the document contains any confidential commercial information that would justify the redactions Estonia has made to the document. The Claimants' General Comments in relation to confidentiality are set out at pages 3 to 5 above. In relation to this document in particular, Claimants note that it relates to a survey conducted in 2009, seven years ago, when tariffs in the water industry were set under the earlier tariff regime not enforced by the ECA. Given the passage of time, the Claimants do not accept that any of the information within the document can be confidential or commercially sensitive, either against the world, or in particular as against UUTBV and ASTV. The redacted information, as well as not being commercially confidential, is relevant and material to the dispute. In particular, the Claimants note that Estonia has redacted the profitability figures for the various water utilities in Estonia. Given the centrality of Estonia's argument that ASTV was unduly profitable to this dispute, data comparing ASTV's profitability with other water companies is clearly relevant and material. Moreover, it is inconsistent for Estonia, through the ECA, to have publicly disclosed and discussed detailed information about ASTV's alleged profitability level (ECA's Analysis of ASTV, Exhibit C-38 at page 8), while objecting to the disclosure of the same information in relation to other companies on the basis that it is commercially confidential or sensitive. The Claimants therefore request an order that Estonia produce a non-redacted version of this document.

	Tribunal's Decision		**GRANTED, as follows.** Respondent objects to producing the requested documents on two grounds. The question whether "evidence falling within the opposing party's burden of proof" may or should be the object of an order for document production is addressed in the Tribunal's decision concerning Requests no. 14(a) to (e) above. The question of Respondent's duty of confidentiality with respect to "confidential commercial information of third parties" is addressed in the Tribunal's decision concerning Request no. 11 above. Respondent shall produce responsive documents, including the "internal report prepared by the ECA" to which Respondent refers, subject only to the redaction of *business secrets* as defined in the ECA and/or other applicable Estonian statute or case law as the case may be. The nature of any information redacted and the basis on which such redactions have been made shall be notified to Claimants at the same time as the documents in question are produced.
16.	**Documents or Category of Documents Requested**		The following Documents concerning the creation of the ECA's Methodology and its implementation in connection with ASTV: a. Documents relating to the ECA's consideration of whether the principles in the Methodology are mandatory; and b. Minutes, notes, presentations, correspondence and similar documents relating to the meetings of the ECA with the [redacted] on 18 and 21 October 2010 regarding the Draft Methodology (referred to at [redacted], 77).
	Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 192. Counter-Memorial, 225; [redacted], 77-78.
		Comments	The Claimants contend that the ECA's decision-making, including the adoption of its Methodology and the implementation of this Methodology in relation to ASTV, was flawed, unfair and discriminatory. The Claimants contend that the ECA did not take into account substantial concerns and detailed comments made by the water industry in connection with the Draft Methodology (Memorial, 192); rather, the request for comments was a box-ticking exercise. Estonia asserts that the ECA acted as a prudent regulator and incorporated "[redacted]" comments (Counter-Memorial, 225; [redacted], 78). The Documents sought will provide evidence of the extent to which the ECA considered the comments made by the water industry, or that the process was in fact a box-ticking exercise, and the manner in which the ECA sought to apply the Methodology to ASTV. The Documents requested are therefore relevant and material to an issue in dispute in the arbitration.
	Objections to Document Request		To the extent in the possession, custody or control of Estonia, Estonia hereby produces the documents responsive to Request no. 16 and will continue to do so on a rolling basis based on the replies from Estonian authorities which are still due or being processed.

	Reply to Objections to Document Request		**Estonia has accepted this Request.**
	Comments to Reply to Objections to Document Request		
	Tribunal's Decision		**NO DECISION REQUIRED.**
17.	**Documents or Category of Documents Requested**		Documents concerning the consideration by the ECA of ASTV's tariff application dated 9 November 2010 and its accompanying report from [redacted], including: a. records of internal meetings and meetings with ASTV described in [redacted] (referred to at Counter-Memorial, 229); b. Documents relating to the rationale for the ECA's letter of 28 February 2011 informing ASTV of its intention to reject ASTV's tariff application and its initiation of an investigation of ASTV's existing tariffs; c. Documents relating to the rationale for ECA's rejection of ASTV's application on 2 May 2011; d. Documents relating to the rationale for ordering ASTV to lower its tariffs in ECA Order dated 10 October 2011; and e. Documents relating to the rationale for the order to [redacted] to lower its tariffs (referred to at Counter-Memorial, 237).
	Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 193-196; [redacted], 108-113. Counter-Memorial, 229, 237.
		Comments	Estonia contends that the ECA "[redacted]", including because the application was inconsistent with the law and ASTV had not provided enough detail about the economic calculations underlying the tariffs (Counter-Memorial, 229). The Claimants contend that the ECA did not engage properly with ASTV's criticisms of the ECA's approach and that ASTV was treated in an unfair and discriminatory way (Memorial, 193-196; [redacted], 108-113). Evidence of the ECA's internal understanding of the criticisms made by ASTV, and the extent to which it engaged with them, is relevant to this disputed issue. The rationale for the ECA's decision-making is also relevant to whether the ECA was treating ASTV in the same way as other similar cases (such as [redacted]) or was acting in a discriminatory fashion.

	The Documents requested are therefore relevant and material to an issue in dispute in the arbitration.
Objections to Document Request	Estonia objects to the production of the documents requested under Request no. 17 (e) since such documents contain confidential information, including confidential business information, related to a third party, [redacted]. Estonia is bound by the confidentiality information in relation to such information under Estonian law which is also protected under Articles 9 (2) (b) and 9 (2) (e) of the IBA Rules. To the extent not objected to and in the possession, custody or control of Estonia, Estonia hereby produces the documents responsive to Request no. 17 that exist and are in its possession, custody or control and will continue to do so on a rolling basis based on the replies from Estonian authorities which are still due or being processed. For the sake of clarity, Estonia will not produce the voluminous correspondence between ASTV and the ECA preceding the decisions mentioned in Requests no. 17 (b) to (d) as it is already available to Claimants.
Reply to Objections to Document Request	**The Claimants request an order that Estonia produce Documents responsive to Request 17(e).**
Comments to Reply to Objections to Document Request	Estonia does not deny the relevance or materiality of the Documents under Request 17(e). Estonia's sole objection to this Request is on the basis of commercial confidentiality. This is misplaced for the reasons explained in the Claimants' General Comments at pages 3 to 5 above. In particular, these Documents are now approximately five years old and any commercial information they contain is therefore historic. [redacted] is not a competitor with ASTV as it operates in a different geographical area. These Documents cannot be said to be commercially sensitive or, to the extent that any such commercial sensitivity can be credibly and legitimately established, it can be addressed through appropriate redactions. The core of the Claimants' position in the arbitration concerns the claim that they have been treated in a discriminatory and unfair manner, including by the ECA's treatment of ASTV as against other water companies. It is part of Estonia's positive case that the ECA did not discriminate against ASTV because it made "[redacted]" in relation to [redacted] (Counter-Memorial, paragraph 237). Estonia should not be permitted to exclude potentially significant information about Estonia's treatment of other water companies, which it does not deny is relevant and which Estonia itself has put at issue in this arbitration, simply by asserting that entire categories of Documents are confidential. Estonia should be required to produce Documents which are responsive to the Claimants' Requests, subject only to the redaction of the specific pieces of information contained therein which are genuinely subject to current (not historic) obligations of confidentiality and disclosing the nature of the information redacted and the basis on which such redactions have been made.
Tribunal's Decision	• **REQUESTS no. 17(a) to (d): NO DECISION REQUIRED.**

			• **REQUEST no. 17(e): GRANTED, as follows.** Respondent's Objection to Request no. 17(e) is based solely on its duty of confidentiality under Estonian law. The question of Respondent's duty of confidentiality with respect to "confidential commercial information of third parties" is addressed in the Tribunal's decision concerning Request 11 above. Respondent shall produce (and continue to produce on a rolling basis) responsive documents, subject only to the redaction of *business secrets* as defined in the ECA and/or other applicable Estonian statute or case law as the case may be. The nature of any information redacted and the basis on which such redactions have been made shall be notified to Claimants at the same time as the documents in question are produced.
18.	**Documents or Category of Documents Requested**		Documents and analyses supporting the ECA's conclusion, in its November 2009 report, that "[redacted]" (Exhibit C-38, p. 33.), including in particular, Documents and analyses underlying the ECA's estimate of: a. ASTV's WACC of 8.31% (Table 7, p. 28), including the "[redacted]" of market risk premium and debt premium adopted by EU regulators; and b. invested assets and return on them (Table 8, p. 30).
	Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 15(e); Exhibit C-38. Counter-Memorial, 198.
		Comments	The Claimants' claim arises from the treatment by Estonia of ASTV on the basis of the analysis in the November 2009 report, namely Estonia has refused to permit ASTV to increase its tariffs in line with the Services Agreement. This refusal, and the reasons for it, forms the basis of the Claimants' claims in this arbitration (Memorial, 15(e)). It is Estonia's case, based on the conclusions reached in ECA's November 2009 report, that "[redacted]" (Counter-Memorial, 198). The requested Documents are relevant and material to the assessment of whether the ECA, even on the assumption that it was legitimate for it to ignore the Services Agreement (which the Claimants do not accept), conducted a proper and impartial analysis of ASTV's profitability in its November 2009 report, and whether its conclusions were appropriate or flawed.
	Objections to Document Request		With respect to the CEER documents under Request no. 18 (a), Estonia is bound by the CEER Internal Rules according to which all internal documents of the CEER available to its members are subject to strict confidentiality and cannot be disclosed to third parties without the consent of the CEER. Estonia thus objects to the production of such documents on the grounds of legal impediment and privilege under Article 9 (2) (b) of the IBA Rules and on the grounds off commercial confidentialy under Article 9 (2) (e) of the IBA Rules.

		To the extent not objected to and in the possession, custody or control of Estonia, Estonia hereby produces the documents responsive to Request no. 18 that exist and are in its possession, custody or control and will continue to do so on a rolling basis based on the replies from Estonian authorities which are still due or being processed.
	Reply to Objections to Document Request	**The Claimants request an order that Estonia produce Documents responsive to Request 18(a).**
	Comments to Reply to Objections to Document Request	Estonia does not deny the relevance or materiality of the Documents under Request 18(a). Estonia's sole objection to this Request is on the basis of confidentiality. Estonia's objection on the basis of commercial confidentiality is misplaced for the reasons explained in the Claimants' General Comments at pages 3 to 5 above. Estonia has failed to identify how any of the Documents responsive to Request 18(a) are specifically subject to commercial confidentiality. In any event, to the extent that such commercial confidentiality exists, it can be addressed through appropriate redactions. Estonia's objection on the basis of the CEER Internal Rules is not supported. Estonia fails to identify the specific rule which it says prevents it from disclosing any and all Documents responsive to Request 18(a) (nor does it even produce the internal rules themselves). Estonia does not establish how it would be a breach of any such confidentiality obligation to disclose limited, historic information in the context of legal proceedings to parties required to keep this information confidential, particularly where such information concerns the market risk premium and debt premium used by EU regulators seven years ago. On Estonia's own case, the information contained in these Documents formed a critical part of how the ECA reached its conclusion in its 2009 Analysis regarding ASTV's allegedly unjustified level of profitability, being one of the key issues underlying one of the key documents in this arbitration (Counter-Memorial, 198; Exhibit C-38, Table 7 on page 28). Estonia should not be permitted to exclude potentially significant information about the basis on which Estonia reached its conclusion in relation to ASTV in the 2009 ECA Analysis, which it does not deny is relevant and which Estonia itself relies on in this arbitration, simply by asserting that entire categories of Documents are confidential. Estonia should be required to produce Documents which are responsive to the Claimants' Requests, subject only to the redaction of the specific pieces of information contained therein which are genuinely subject to current (not historic) obligations of confidentiality and disclosing the nature of the information redacted and the basis on which such redactions have been made.
	Tribunal's Decision	• **REQUEST no. 18(a): GRANTED, as follows.** Respondent's Objection is based solely on what it refers to as a rule of "strict confidentiality" under the CEER Internal Rules. It has not, however, produced those Rules or identified the specific rule in question, which, it claims, bars it from producing the requested documents. The matter of Respondent's duty of confidentiality with respect to "confidential commercial information of third parties" under Estonian law is addressed in the Tribunal's decision concerning Request no. 11 above.

			Respondent shall produce (and continue to produce on a rolling basis) responsive documents, subject only to the redaction of *business secrets* as defined in the ECA and/or other applicable Estonian statute or case law as the case may be. The nature of any information redacted and the basis on which such redactions have been made shall be notified to Claimants at the same time as the documents in question are produced. • **REQUEST no. 18(b): NO DECISION REQUIRED.**
19.	**Documents or Category of Documents Requested**		Documents supporting the ECA's conclusion, in its 2 May 2011 decision (Exhibit C-42) at p. 44. to reject ASTV's tariff application, that "[redacted]"; and the ECA's conclusion, in its October 2011 Prescription on ASTV's tariffs, that "[redacted]". (Exhibit C-44, p. 42.) In particular, Documents underlying: a. the ECA's estimates of ASTV's RAB (Exhibit C-42, p. 33; Exhibit C-44, p. 33); b. the ECA's treatment of excess cash, indexation of RAB and depreciation, and other adjustments in its estimates of ASTV's RAB; c. the differences in the ECA's estimates of ASTV's RAB in the 2011 rejection of ASTV's tariff application and 2011 Prescription (Exhibit C-44, p. 33); and d. the ECA's estimates of ASTV's WACC of 8.18%. (Exhibit C-44, p. 36).
	Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 15(e); Exhibits C-42 and C-44. Counter-Memorial, 231, 236.
		Comments	By its May 2011 decision, Estonia refused to permit ASTV to increase its tariffs in line with the Services Agreement. Moreover, implementation of the prescription would result in decreased tariffs in even greater discrepancy to the Services Agreement. This refusal and attempted implementation, and the reasons for them, form the basis of the Claimants' claims in this arbitration (Memorial, 15(e)). It is Estonia's case, based on the conclusions reached in the ECA's May 2011 decision, that "[redacted]" (Counter-Memorial, 231). Based on these conclusions, in the ECA's October 2011 Prescription, that "[redacted]" (Counter-Memorial, 236). The requested Documents are relevant to the issue of assessing whether the ECA, even on the assumption that it was legitimate for it to ignore the Services Agreement (which the Claimants do not accept), conducted a proper and impartial analysis of ASTV's profitability in reaching these conclusions before ordering ASTV to apply for lower tariffs.

	Objections to Document Request		Estonia refers to the documents including the ECA's internal analysis with respect to ASTV produced in reply to Request no. 15. To the extent in the possession, custody or control of Estonia, Estonia will produce further documents responsive to Request no. 19 on a rolling basis based on the replies from Estonian authorities which are still due or being processed.
	Reply to Objections to Document Request		**Estonia has accepted this Request.** **For the avoidance of doubt, to the extent that there is overlap with Documents falling under Request 15, the Claimants maintain their Request under Request 15, including for a non-redacted version of the ECA's internal analysis with respect to ASTV.**
	Comments to Reply to Objections to Document Request		
	Tribunal's Decision		**NO DECISION REQUIRED.**
20.	**Documents or Category of Documents Requested**		Documents relating to [redacted] claim that [redacted] (, 36).
	Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 156-174, 222. Counter-Memorial, 188; [redacted], 36.
		Comments	The Claimants contend that ASTV was unfairly targeted by the ECA while conducting its review of the water market (Memorial, 156-174, 222). The Respondent states that the conclusion from the analysis referred to by [redacted] was the reason why '[redacted]" (Counter-Memorial, 188). The requested documents are relevant and material to assessing the motive for the ECA's decision to focus on ASTV which is relevant and material to the Claimants' case.
	Objections to Document Request		Estonia refers to the ECA's water market investigation of 2009 produced in response to Request no. 15. As the document contains confidential commercial information of third parties unrelated to this arbitration, such information has been redacted in the produced document. This is because Estonia is bound by the confidentiality information in relation to such information under Estonian law which is also protected under Articles 9 (2) (b) and 9 (2) (e) of the IBA Rules.

			To the extent in the possession, custody or control of Estonia, Estonia will produce further documents responsive to Request no. 20 on a rolling basis based on the replies from Estonian authorities which are still due or being processed.
	Reply to Objections to Document Request		**Estonia has accepted this Request.** **For the avoidance of doubt, to the extent that there is overlap with Documents falling under Request 15, the Claimants maintain their Request under Request 15, including for a non-redacted version of the ECA's internal analysis with respect to ASTV.**
	Comments to Reply to Objections to Document Request		
	Tribunal's Decision		**NO DECISION REQUIRED.**
21.	**Documents or Category of Documents Requested**		Documents detailing any consideration by the ECA of the City of Tallinn's reviews of ASTV's tariffs or costs.
	Relevance According to Requesting Party	**Ref. to Submissions**	Counter-Memorial, 4; [redacted], 39.
		Comments	[redacted] claims that "[redacted]" ([redacted], 39). Estonia also argues that "[redacted]" (Counter-Memorial, 4). This request is relevant to an assessment of the way in which the City of Tallinn acted as regulator. This is relevant to the issue of whether there was a need for regulatory change vis-à-vis ASTV.
	Objections to Document Request		To the extent in the possession, custody or control of Estonia, Estonia will produce documents responsive to Request no. 21 on a rolling basis based on the replies from Estonian authorities which are still due or being processed.
	Reply to Objections to Document Request		**Estonia has accepted this Request.**

	Comments to Reply to Objections to Document Request		
	Tribunal's Decision		**NO DECISION REQUIRED.**
22.	**Documents or Category of Documents Requested**		Documents regarding any analysis that the ECA conducted using "[redacted]" in or around November 2009 ([redacted], 47).
	Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 162. [redacted], 47.
		Comments	The Claimants contend that the ECA's analysis was not conducted according to objective best practices taking into account all the facts it knew about ASTV, but in order to justify a foregone conclusion that ASTV was excessively profitable (Memorial, 162). [redacted] states that the ECA altered its analysis after "[redacted]", and claims that the subsequent analysis that was presented in its November 2009 report "[redacted]" as the analyses based on confidential data ([redacted], 47). However, [redacted] provides no documentary evidence to support his claim. The Documents requested will show whether the ECA's conclusions were supported by all the facts it knew about ASTV.
	Objections to Document Request		To the extent in the possession, custody or control of Estonia, Estonia will produce further documents responsive to Request no. 22 on a rolling basis based on the replies from Estonian authorities which are still due or being processed. For the sake of clarity, Estonia will not produce the voluminous correspondence between ASTV and the ECA with respect to the 2008-2009 analysis of as it is already available to Claimants.
	Reply to Objections to Document Request		**Estonia has accepted this Request.**
	Comments to Reply to Objections to Document Request		

	Tribunal's Decision		**NO DECISION REQUIRED.**
23.	**Documents or Category of Documents Requested**		Documents relating to the ECA's assessment of the tariffs of the heating company [redacted] in 2011-2012, including Documents relating to the calculation of RAB and the assessment of justified profitability by the ECA in relation to [redacted].
	Relevance According to Requesting Party	**Ref. to Submissions**	Memorial, 201; [redacted], 125-126. Counter-Memorial, 418.
		Comments	The Claimants contend that the ECA's approach to the assessment of the RAB and the justified profitability of the heating company [redacted] is inconsistent with the way ASTV's tariffs were assessed by the ECA, and that this constitutes discriminatory treatment of ASTV (Memorial, 201; [redacted], 125-126). Estonia denies that the treatment of [redacted] by the ECA was different from that accorded to ASTV and denies that this constitutes discrimination (Counter-Memorial, 418). Documents underlying the ECA's assessment of [redacted] tariffs and justified profitability are relevant and material to the disputed issue of whether the ECA treated [redacted] differently from ASTV and therefore the issue of whether the ECA was acting in a discriminatory fashion. They are therefore relevant and material to an issue in dispute.
	Objections to Document Request		Estonia objects to the production of the documents requested under Request no. 23 since such documents contain confidential information, including confidential business information, related to third parties. As explained above in the general part above, Estonia is therefore bound by the confidentiality obligation in relation to these documents under Estonian law. Estonia thus objects to the request on the grounds of legal impediment and privilege under Article 9 (2) (b) of the IBA Rules and on the grounds of the commercial confidentiality under Article 9 (2) (e) of the IBA Rules. The reasons for these documents to remain confidential are also compelling because they relate to a third party active in another sector than ASTV and because Estonia has already explained in detail to ASTV its reasoning behind the assessment of the RAB and the justified profitability of [redacted], such explanation being even published by ASTV in its 13 February 2013 press release available at https://newsclient.omxgroup.com/cdsPublic/viewDisclosure.action?disclosureId=541490&messageId=667045. It is neither material nor decisive for the case to disclose any further confidential commercial information with respect to a party not related to this arbitration.
	Reply to Objections to Document Request		**The Claimants request an order that Estonia produce Documents responsive to this Request.**

	Comments to Reply to Objections to Document Request	Estonia objects to this Request on the basis of commercial confidentiality. This objection is misplaced for the reasons explained in the Claimants' General Comments at pages 3 to 5 above. In particular, any relevant commercial information contained in the Documents sought will be historic and, as Estonia itself states, relates to an entirely different sector than that in which ASTV operates. Contrary to Estonia's assertion, this weighs in favour of such Documents being considered not commercially sensitive as against the Claimants. In any event, the Claimants are required to keep any Documents obtained pursuant to these Requests confidential. To the extent that any commercial confidentiality legitimately exists, it can be addressed through appropriate redactions These Documents are material to an issue in dispute in the arbitration: whether ASTV was treated in a discriminatory and unfair manner by the ECA by reference to other companies, including by specific reference to [redacted]. It is not sufficient for Estonia to assert that they have already explained the disputed point before. The purpose of document production is to enable the parties to test the other parties' claims. The Claimants are not required to take at face value the assertions Estonia has made in relation to its regulatory treatment of [redacted], but are entitled to seek the production of the Documents underlying this treatment. Estonia should not be permitted to exclude potentially significant Documents relevant to an issue that is in dispute between the parties, simply by asserting that entire categories of Documents are confidential. Estonia should be required to produce Documents which are responsive to the Claimants' Request, subject only to the redaction of the specific pieces of information contained therein which are genuinely subject to current (not historic) obligations of confidentiality and disclosing the nature of the information redacted and the basis on which such redactions have been made.
	Tribunal's Decision	**GRANTED, as follows.** Respondent disputes the materiality and decisiveness (to borrow Estonia's phrase) of the requested documents. However, decisiveness in not a necessary criterion for production of documents; and, in any event, whether or not the requested documents are "decisive of the case" necessarily remains to be determined. The Tribunal considers that the requested documents are, though, potentially material to the arbitration. The matter of Respondent's duty of confidentiality with respect to "confidential commercial information of third parties" under Estonian law is addressed in the Tribunal's decision concerning Request no. 11 above. Respondent shall accordingly produce responsive documents, subject only to the redaction of *business secrets* as defined in the ECA and/or other applicable Estonian statute or case law as the case may be. The nature of any information redacted and the basis on which such redactions have been made shall be notified to Claimants at the same time as the documents in question are produced.
24.	**Documents or Category of Documents Requested**	Communications between the ECA, the Ministry of Economic Affairs and Communications and the European Commission in 2011–13 relating to ASTV's Complaint, including any analyses that the ECA provided to the European Commission to support its decision to reject ASTV's 2011 tariff application.
		Memorial, 162-172.

Relevance According to Requesting Party	**Ref. to Submissions**	Exhibit C-227.
	Comments	The Claimants contend that it was the ECA's flawed economic analysis that was the basis for its erroneous conclusion that ASTV was (and still is) earning excessive profits (Memorial, 162-172). In 2012, the ECA presented an analysis to the European Commission that its analysis corroborated its claim that "[redacted]" and that "[redacted]" (Exhibit C-227). On Estonia's case, then, the ECA's economic analysis was sound and its decisions based thereon are appropriate. The Documents requested will shed light on whether the ECA's economic approach, even on the assumption that it was legitimate for it to ignore the Services Agreement (which the Claimants do not accept), was appropriate. This is central to the Claimants' case that the ECA's economic approach when exercising its regulatory function, resulting in its refusal to approve ASTV's tariff application on the basis of its conclusion that ASTV was (and still is) earning excessive profits, was flawed.
Objections to Document Request		According to Claimants, the requested documents are required to "shed light" on the ECA's economic approach, in particular in relation to Exhibit C-227 cited by Claimants. With respect to the communication between the ECA, the Ministry of Economick Affairs and Communications and the European Commission beyond the ECA's economic analysis, Estonia objects to the Request no. 24 on the grounds that it lacks relevance to the case and materiality to its outcome under Article 9 (2) (a) of the IBA Rules. To extent not objected to and in the possession, custody or control of Estonia, Estonia hereby produces the documents responsive to Request no. 24 that exist and are in its possession, custody or control and will continue to do so on a rolling basis based on the replies from Estonian authorities which are still due or being processed.
Reply to Objections to Document Request		**The Claimants request an order that Estonia produce Documents responsive to this Request.**
Comments to Reply to Objections to Document Request		Estonia objects to the Request insofar as it seeks communications between the ECA, the Ministry of Economic Affairs and Communications and the European Commission, other than the ECA's 2012 economic analysis provided to the European Commission, on the basis of relevance. Estonia does not however deny the relevance of the ECA's 2012 analysis provided to the European Commission. The communications associated with the development of this analysis and its provision to the European Commission, including any queries or criticisms in relation to the analysis which led to amendments being made to it, are also relevant and material to the critical question in this dispute of whether the ECA's economic approach in exercising its regulatory function was (and is) appropriate. The Claimants therefore request an order that Estonia produce Documents responsive to the full scope of this Request.
Tribunal's Decision		**GRANTED.**

		Respondent's Objection is based on the claimed lack of relevance and materiality of certain of the requested documents–specifically, "communications between the ECA, the Ministry of Economic Affairs and Communications and the European Commission in 2011–13 relating to ASTV's Complaint". Respondent does not object (on this ground) to the production of "analyses that the ECA provided to the European Commission to support its decision to reject ASTV's 2011 tariff application". In its "general" Responses and Objections at p. 14 above, Respondent also states that Request no. 24 is "overbroad for the reasons explained below in specific objections"; it does not, however, provide the promised explanation. As regards Respondent's first assertion, the Tribunal considers that Claimants have adequately demonstrated that the documents in question are indeed potentially relevant to the case, including (though not solely) in connection with the ECA's 2012 economic analysis (Ex. C-227). As regards Respondent's assertion concerning the lack of specificity of the Request (which, as noted, is not explained), the Tribunal considers that the Request is sufficiently specific.

ANNEX B to PROCEDURAL ORDER NO. 3 (3 May 2016)
RESPONDENT'S DOCUMENT REQUESTS

UNITED UTILITIES (TALLINN) B.V.

(Netherlands)

and

AS TALLINNA VESI

(Estonia)

Claimants

–v–

THE REPUBLIC OF ESTONIA

Respondent

(ICSID Case No. Arb/14/24)

RESPONDENT'S REPLY TO CLAIMANTS' OBJECTIONS TO RESPONDENT'S REQUEST FOR THE PRODUCTION OF DOCUMENTS

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15 April 2016

ESTONIA'S REQUEST FOR THE PRODUCTION OF DOCUMENTS

Estonia submits its requests pursuant to Article 15 of the Tribunal's Procedural Order No. 1 and the International Bar Association's Rules on the Taking of Evidence in International Arbitration (2010) ("**IBA Rules**") referred to in Article 15.2 of the Procedural Order No. 1.

Please take note that, as per the IBA Rules, Estonia's requests are specifically tailored to documents relevant to the case and material to its outcome. The enclosed Redfern Schedule provides Estonia's basis for each request.

The requested documents are not in Estonia's possession, custody, or control, and Estonia believes the documents requested are within Claimants' possession, custody, or control, and their production would not be unduly burdensome.

For avoidance of doubt, Estonia's Request does not cover documents available in Estonia's commercial register, other publicly available registries, or documents exhibited to Claimants' Request for Arbitration or Memorial.

Estonia's Request, however, covers documents which are in the possession, custody, or control of the City of Tallinn, as well as documents originating from the City of Tallinn which are in Claimants' possession, custody, or control. As Estonia explained at length during the first session of the Tribunal held on 5 May 2015, Estonia cannot presently access any documents of the City of Tallinn.[1] During the first session, Claimants' counsel addressed Estonia's concern and expressly confirmed Claimants' willingness in principle to produce such documents: "[redacted]"[2]

The following non-exhaustive list of definitions shall apply to Estonia's Request:

The term "**ASTV**" means Aktsiaselts Tallinna Vesi and any of its subsidiaries.

The term "**Claimants**" means UUTBV and ASTV jointly.

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1 See, *e.g.* Transcript from the first session of the Tribunal dated 5 May 2015, p. 83, lines 21-25; p. 85, lines 2 *et seq.*

2 Transcript from the first session of the Tribunal dated 5 May 2015, p. 89, lines 13-15.

The term "**Claimants' Group**" means UUTBV, ASTV, their present and former direct and indirect parents, controlling persons, subsidiaries or affiliates (*i.e.* entities directly or indirectly controlled or owned by any entity that directly or indirectly owns or controls UUTBVand/or ASTV), and the present and former employees, agents, representatives, servants, consultants and/or attorneys of any of the foregoing entities, and the City of Tallinn.

The term "**Document(s)**" includes any paper or non-paper embodiment of any information, including, but without limitation, letters, memoranda, notes, computer generated data, calendars, books, records, minutes, studies, reports, financial analyses, notebooks, messages, facsimiles, spreadsheets, ledgers, legal instruments, agreements, drawings, sketches, graphs, prints, drafts, secretarial notes, work pads, diaries, CDs, DVDs, brochures, computer files, announcements, electronic mail messages, or any other writings, records, or tangible objects produced or reproduced mechanically or electronically.

The term **"ECA"** means the Estonian Competition Authority.

The term "**First 2005 Amendment**" means the amendment of agreements, including the Shareholders' Agreement and ASTV's Articles of Association, concluded between the City of Tallinn and Claimants on 10 March 2005.

The term "**IPO**" means initial public offering.

The term **"Prospectus"** means the offering circular of ASTV regarding the offering of shares in ASTV dated 27 May 2005 (Exhibit C-113).

The term "**Services Agreement**" means the services agreement concluded between the City of Tallinn and ASTV on 12 January 2001.

The term "**Shareholders' Agreement**" means the shareholders' agreement concluded between UUTBV, ASTV and the City of Tallinn on 12 January 2001.

The term "**Technical Services Agreement**" means the agreement concluded between ASTV and UUTBV on 29 March 2001 and assigned by UUTBV to [redacted] on 16 December 2003 as referred to, *inter alia*, on pp. 1973 *et seq.*, 1885 of Exhibit C-113, under which [redacted] provides certain services to ASTV.

The term "**Underwriting Agreement**" means the underwriting agreement dated 27 May 2005 concluded between ASTV, UUTBV, the City of Tallinn and [redacted] for the purpose of conducting the IPO of ASTV's shares.

The term "**UUTBV**" means United Utilities (Tallinn) B.V.

The term "**2002 Amendment**" means the amendment of the Services Agreement concluded between the City of Tallinn and Claimants on 30 September 2002.

The term "**2005 Amendment**" means the amendment of the Services Agreement concluded between the City of Tallinn and Claimants on 14 March 2005.

The term "**2007 Amendment**" means the amendment of the Services Agreement concluded between by the City of Tallinn and Claimants on 30 November 2007.

The term "**2009 Amendment**" means the amendment of the Services Agreement concluded between the City of Tallinn and Claimants on 16 September 2009.

CLAIMANTS' GENERAL COMMENTS ON THE SCOPE OF ESTONIA'S REQUESTS

1. In its letter dated 4 March 2016 enclosing its Requests (the "**Scope Letter**"), Estonia set out several high-level comments to define the scope of the Requests and the terms used therein. The Claimants make the following comments on the scope of Estonia's Requests as set out in the Scope Letter. These comments form part of the Claimants' Objections to the individual Requests below and any acceptance by the Claimants of Estonia's Requests in the following pages is qualified by these comments.

Scope Objection 1

2. Estonia's Redfern Schedule, commencing on page 5 of the Scope Letter, commences with a preamble that *"Estonia hereby requests the following Documents that are within the possession, custody, or control of any entity of Claimants' Group*". "*Claimants' Group*" is defined on page 2 to include (inter alia) UUTBV's and ASTV's "*present and former direct and indirect parents, controlling persons, subsidiaries or affiliates (i.e. entities directly or indirectly controlled or owned by any entity that directly or indirectly owns or controls UUTBV and/or ASTV), and the present and former employees, agents, representatives, servants, consultants and/or attorneys of any of the foregoing entities, and the City of Tallinn*". As this request is made by way of a preamble before Estonia's table setting out individual requests, it is understood that it is intended to define the scope of all of the individual requests in Estonia's Redfern Schedule. The Claimants object to the breadth of this request as follows.

A. Parents, controlling persons and affiliates

3. As a general proposition, it is self-evident that the Claimants do not have control of Documents in the custody of their present and former direct and indirect parents, controlling persons or affiliates (defined as "*entities directly or indirectly controlled or owned by any entity that directly or indirectly owns or controls UUTBV and/or ASTV*"), nor do the Claimants control the Documents of the present and former employees, agents, representatives, servants, consultants and/or attorneys of any of those entities. The Claimants therefore cannot produce Documents held by those entities pursuant to Estonia's Requests.

B. The EBRD

4. Turning to specific examples, the Claimants note that one of the Claimants' former indirect parents was the European Bank for Reconstruction and Development ("**EBRD**"), which between 2003 and 2010 held a 25% indirect interest in UUTBV. The EBRD therefore falls within the scope of Estonia's definition of "*Claimants' Group*", and therefore within the custodians whose Documents are sought in Estonia's Redfern Schedule.
5. The Claimants do not control the EBRD and the EBRD's Documents. They therefore cannot produce any Documents held by the EBRD which are not already in the Claimants' possession.
6. In an email dated 25 March 2016, the Claimants proposed to Estonia that the parties jointly approach the EBRD to request the production of mutually agreed categories of Documents relevant to the issues in dispute in the arbitration. The Claimants expressed that in making this approach to the EBRD with the sanction of both parties, and in particular the sanction of Estonia as a member of the EBRD, it was hoped that the EBRD would be willing to cooperate.

7. By an email dated 31 March 2016, Estonia declined to make such a joint approach, while maintaining its request for "[redacted]". By maintaining this request, Estonia takes the position that the Documents requested are relevant to the case and material to its outcome (Article 3(3)(b) of the IBA Rules on the Taking of Evidence in International Arbitration (the "**IBA Rules**")). As such, its refusal to make the joint approach to the EBRD which creates the best chance of these Documents being made available is unreasonable. The Claimants do not control the EBRD. As Estonia is not willing to participate in the proposed practical solution, the Claimants can only repeat their objection to producing Documents held by the EBRD.

C. The City of Tallinn

8. The City of Tallinn is a direct parent of ASTV, as well as being specifically named in Estonia's definition of "*Claimants' Group*". The Scope Letter also specifies on page 2 that Estonia's Requests cover Documents "*which are in the possession, custody, or control of the City of Tallinn, as well as documents originating from the City of Tallinn which are in Claimants' possession, custody, or control*".
9. The Claimants do not control the City of Tallinn. Indeed, it is for this reason that the Claimants' own Requests to Estonia sought Documents from the City of Tallinn. The Claimants therefore cannot produce Documents held by the City of Tallinn pursuant to Estonia's Requests.
10. As for Documents originating from the City of Tallinn which are in the Claimants' possession, custody or control, the City of Tallinn is part of Estonia for the purposes of international law. Documents originating from the City of Tallinn are therefore already in Estonia's possession and the Claimants should not be required to produce them.
11. For completeness, the Claimants reject Estonia's suggestion in the Scope Letter that, during the first session of the Tribunal held on 5 May 2015, Claimants' counsel "*expressly confirmed Claimants' willingness in principle to produce such documents*", where by "*such documents*" Estonia means Documents in the possession of the City of Tallinn. The Claimants do not control the City of Tallinn and so naturally cannot commit to produce Documents held by the City of Tallinn. It is clear from the context of the statement that the Claimants' counsel was dismissing the relevance of the arguments about access to Documents to the question of bifurcation. As the Tribunal had itself noted immediately before in answer to Estonia's concerns about accessing the City of Tallinn's Documents (Page 85, lines 10-11), the Tribunal has many coercive powers which can assist Estonia on this front. The Claimants' counsel simply reiterated this point, and then noted that if the Claimants were asked for Documents, they would produce them if the requests were specific and relevant. The implicit, and obvious, limit to this is that the Claimants cannot produce Documents which are not within their possession, custody or control. This statement cannot be construed as some broad commitment by the Claimants to produce Documents that they neither possess nor control.
12. In any event, the Claimants understand that the City of Tallinn has granted the Respondent's legal team full access to its archives. The City of Tallinn has also copied and sent to both parties a number of files of documents relevant to requests made of the City of Tallinn by the Respondent's legal team (the "**CoT Files**"). The Documents within the CoT Files are therefore in the possession of both parties, and there is no requirement on either party to produce Documents within the CoT Files to each other as part of the document production process.

13. As regards any Documents not included in the CoT Files, without prejudice to the points made above and to any argument concerning Estonia's control of these documents as evidenced by Estonia's access to the City of Tallinn's archives, the Claimants will produce such Documents originating from the City of Tallinn as are within their possession and which are responsive to Estonia's requests.

Scope Objection 2

14. Estonia's Requests 1 to 8 are neither narrow nor specific, as required by Article 3(3)(a)(ii) of the IBA Rules, but are instead requests for broad categories of Documents. It is not reasonable or proportionate for the Claimants to search every possible hard copy or electronic location of such broad categories of Documents. Without prejudice to this objection, the Claimants have carried out a reasonable and proportionate search of their hard-copy archived files and their accessible electronic files for the requested Documents, and where appropriate have also searched sets of Documents provided to them by certain of their legal and financial advisers.
15. The Claimants' legal advisers will be providing the Claimants with some further Documents within the next two weeks. The Claimants do not expect these to include any additional responsive Documents. However, to the extent any such responsive Documents are located, they will be provided to Estonia as soon as practicable.

ESTONIA'S GENERAL REPLY TO CLAIMANTS' OBJECTIONS TO ESTONIA'S REQUEST FOR THE PRODUCTION OF DOCUMENTS

15 April 2016

Pursuant to Article 15 of the Tribunal's Procedural Order No. 1, Estonia hereby submits its Reply to Claimants' Objections to Estonia's Request for the Production of Documents of 4 March 2016 ("**Reply**").[3]

Estonia's specific replies to Claimants' responses and/or objections to Estonia's individual requests are set forth in the attached Redfern schedule. Estonia's general replies and comments are set out below.

I. Scope of Claimants' Group

In light of Claimants' objections, Estonia is willing to modify the definition of the Claimants' Group for the purposes of Estonia's Request for the Production of Documents ("**Estonia's Requests**") so that Claimants only need to search for documents in the possession, custody or control of their present and former direct and indirect parents, controlling persons, subsidiaries or affiliates from the United Utilities Group, the City of Tallinn, and the present employees, agents, representatives, servants, consultants and/or attorneys of any of the foregoing entities.

a) Documents in the possession, custody or control of parents, controlling persons and affiliates of Claimants

UUTBV has always been a special purpose vehicle that was incorporated for the participation of the United Utilities' Group and its joint venture partners (*i.e.*, International Water and later the EBRD) in ASTV. Since November 2010, UUTBV has been fully owned by the United Utilities group. Because UUTBV is a special purpose vehicle, the actual decision-making and analytical process with respect to UUTBV's investment in ASTV has been taking place at the level of UUTBV's indirect and direct parents or affiliates. Recognizing that UUTBV may be unable to obtain documents from its former parents, Estonia is willing to limit the request to documents in the possession, custody or control of parents, controlling persons and affiliates from the United Utilities Group. Similarly, Estonia is willing to limit the request not to include documents in the possession, custody or control of these entities' former employees, agents, representatives, servants, consultants and/or attorneys.

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[3] Terms defined in Estonia's Request for the Production of Documents dated 4 March 2016 have the same meaning in this Reply, unless expressly stated otherwise.

Only Claimants—not Estonia—have *a relevant relationship* to these entities and persons, which is why Claimants should make best efforts to obtain documents from these persons and entities.

Estonia further notes that Claimants do have control of documents responsive to Estonia's Requests available to their employees because such documents are obviously related to their employment relationship and are thus a work product owned by the employer, *i.e.*, the entity of the Claimants' Group, and not the employee.

b) Documents in the possession, custody or control of the EBRD

Estonia included the EBRD in the definition of the Claimants' Group since the EBRD is a long-time joint venture partner of United Utilities and a former indirect parent of both Claimants.[4] Because the decisions with respect to the UUTBV's participation in ASTV were not taken at the level of UUTBV but at the level of its parents, the documents available to the EBRD will include documents relevant for such decisions.

Claimants, on the other hand, did not request the production of the documents held by the EBRD in their Request for the Production of Documents ("**Claimants' Requests**"). This is because Claimants' Requests seek documents that "*Claimants assume are in the possession, custody or control of the Respondent*" (Claimants' Request, p. 2) and not the EBRD. The EBRD is also not covered by Claimants' definition of the "*Respondent, Estonia or the Estonian State*" (Claimants' Request, p. 2). The only documents regarding the EBRD which Claimants have requested concern such that were exchanged between the EBRD and Estonia or provided to the witnesses of Estonia by the EBRD, and that are in the possession, custody or control of Estonia or its witnesses. Estonia has explained in its Responses and Objections to the Claimants' Requests that such documents are subject to commercial confidentiality and cannot be produced without the EBRD's consent.[5] Estonia has requested the EBRD's consent for the production of these documents and is currently awaiting the reply from the EBRD. Once the EBRD has responded, Estonia will inform Claimants accordingly.

In their email of 25 March 2016, Claimants proposed to Estonia that the parties jointly approach the EBRD to request the production of "[redacted]". Claimants explained the need for such an approach by arguing that both parties were seeking Documents which were likely to be "[redacted]" and that "[redacted]". However, the truth is that there is no such overlap since the only party requesting the documents held by the

4 Claimants' Memorial, ¶¶ 125 *et seq.*, 140; Respondent's Counter-Memorial, ¶¶ 143 *et seq.*

5 Estonia's Responses and Objections to Claimants' Request for the Production of Documents of 4 March 2016, dated 1 April 2016, p. 5.

EBRD is Estonia (see above). Estonia cannot agree to a proposal that would essentially result in a retroactive extension of the scope of the documents requested in the Claimants' Requests. Consequently, Estonia declined Claimants' proposal since it did not find a "joint approach" to be suitable under the circumstances.

However, in light of Claimants' objections, Estonia waives its request for the documents in the possession, custody, or control of the EBRD, and therefore only asks Claimants to produce the documents concerning the EBRD and responsive to Estonia's Requests that are in the possession, custody, or control of the Claimants' Group as defined above.

c) Documents in the possession, custody or control of the City of Tallinn

Estonia further maintains that Claimants—not Estonia— should be responsible for producing the documents held by the City of Tallinn in this arbitration.

The documents in the possession, custody or control of the City of Tallinn are not in the possession, custody or control Estonia. As Estonia made clear in its Counter-Memorial, the City of Tallinn has a very significant economic interest in this arbitration proceeding, which is *adverse to Estonia* because the City of Tallinn is a 34.7% shareholder of ASTV and it would benefit from any award in ASTV's favor accordingly. Moreover, the City of Tallinn exercises joint control over ASTV and is thus indisputably part of the Claimants' Group as defined in the Estonia's Requests.

Estonia's explained in its responses and objections to Claimants' Requests that the inclusion of the City of Tallinn in the definition of the Claimants' Group is supported by the principle that it is the party who has *a relevant relationship* to an entity who should make best efforts to obtain documents from that entity. In *Vito Gallo v. Canada*, both Parties objected to the opposing Party's request for production on the grounds that the responsive documents were in the possession of third parties. Canada specifically objected to the production of documents of its municipalities on these grounds. The tribunal held that both Parties should use their best efforts to gain access to the documents controlled by each Party as well as to *documents of such entities with which the Party has* a *relevant relationship*:

> "The arbitral Tribunal considers that [...] in addition to entities which may be controlled by a party, there may be entities or persons with whom a party has a relationship which is relevant for the purposes of this arbitral procee[d]ing. ***The duty of production extends to the entities controlled by each party. Furthermore, good faith also imposes a duty of best efforts to obtain documents that are in***

> ***the possession of entities or persons with whom or with which the party the subject of the request has a relevant relationship.***"[6]

The tribunal in *Clayton v. Canada*, relying on *Vito Gallo v. Canada*, held that the principle applies equally to the party *making the request for production*:

> "[…] However, the Tribunal wishes to clarify that, ***for a party to claim that documents are not in its control, it must have made "best efforts" to obtain documents that are in the possession of persons or entities with whom or which the party has a relevant relationship***. This is consistent with the approach adopted by the Tribunal in Vito G. Gallo v. Government of Canada in its Procedural Order No. 2 dated February 10, 2009.[7]

It is clear that Claimants, not Estonia, have a relevant relationship to the City of Tallinn as a result of which they are in a position to access its documents while Estonia is not.

When Estonia asked the City of Tallinn whether it would make available documents responsive to the Claimants' Requests, the City of Tallinn disclosed the from the files of the City of Tallinn only documents relating to the time of the sale of the shares in ASTV to UUTBV although the Claimants' Requests also concern time periods after the original sale of the shares in 2001 (*e.g.*, Claimants' Requests no. 3-4, 6-8). The access of Estonia's legal team to the City of Tallinn's archives has been subject to the same limitation. Thus, the City of Tallinn's response to the request for documents has been so far very selective and has excluded any documents from a more recent time period than 2001.

Estonia has no means to ascertain whether the City of Tallinn is in the possession, custody or control of any additional responsive documents and/or to compel their production.

Claimants, on the other hand, confirm in their reply to Estonia's Requests that they will produce documents "*originating from the City of Tallinn*" but "*not included in the [City of Tallinn's] Files*".[8] This confirms that Claimants are able to obtain responsive documents that the City of Tallinn withheld from Estonia.

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6 *Vito G. Gallo v. Government of Canada*, UNCITRAL, Procedural Order No. 2 (Amended), 10 February 2009, ¶ 8, **RL-179**.
7 *Clayton v Canada*, Procedural Order no. 8, 25 November 2009, h), **RL-180**.
8 *See* Claimants' General Comments on the Scope of Estonia's Requests above, pp. 6-7, ¶ 13.

The close cooperation between Claimants and the City of Tallinn is further illustrated by the fact that after the City of Tallinn replied to Estonia's request and submitted a selection of the responsive documents (see above), Claimants informed Estonia that the City of Tallinn had provided Claimants with copies of the same. When Estonia asked Claimants to make a proposal for confirming that the sets of the documents received by both parties were identical, Claimants offered to request that the City of Tallinn send a letter to both parties confirming the identity of the content of the documents. Estonia is currently awaiting such confirmation.

This additional analysis confirms that Claimants—and not Estonia—should be responsible for producing the documents held by the City of Tallinn in this arbitration and for compelling the City of Tallinn to comply with the full request of both parties. As Claimants pointed out in their Objections to the Estonia's Requests by referring to the first session of the Tribunal held on 5 May 2015, "*the Tribunal has many coercive powers which can assist Estonia on this front*".[9] In the first session, Claimants' counsel also confirmed that Claimants were in principle willing to produce documents held by the City of Tallinn: "[redacted]"[10] Estonia thus respectfully requests the Tribunal to order Claimants to make their best efforts to obtain documents from the City of Tallinn responsive to all of Estonia's Requests.

II. Scope of Documents Requested by Estonia

Estonia maintains its requests with respect to all categories of documents. Estonia has done everything possible to simplify Claimants' search for the requested documents. All of Estonia's Requests are narrow and very specific. Each request exactly defines the type of documents requested. For example, in Request no. 1, Estonia has specifically asked for "legal and financial due diligence reports", "memoranda", "analyses", "internal approvals" and "communications" instead of simply referring to "documents", and has also always specifically defined the circle of relevant persons who have produced or received the documents. Moreover, if Estonia has referred to "other documents", it has always specified which documents are relevant for the specific request. In several cases such as Requests no. 9, 10, 11, and 14, Estonia has only asked for one document or one type of documents, specifying from which entity/person such document(s) originate(s). Finally, unlike Claimants' Requests, Estonia's Request include no catch-all clauses which would make them too broad or unspecific.

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9 *See* Claimants' General Comments on the Scope of Estonia's Requests above, p. 6, ¶ 11.

10 Transcript from the first session of the Tribunal dated 5 May 2015, p. 89, lines 13-15.

ANNEX B to PROCEDURAL ORDER NO. 3 (3 May 2016)
RESPONDENT'S DOCUMENT REQUESTS

United Utilities (Tallinn) B.V. and Aktsiaselts Tallinna Vesi v. Republic of Estonia

(ICSID Case No. ARB/14/24)

Redfern Schedule for Document Requests

RESPONDENT'S REQUESTS

GENERAL COMMENTS and RULINGS by THE TRIBUNAL – Applicable to all of Respondent's Requests:

(1) "*Claimants' Group*"

In its "General Reply" at p. 8 above (in particular at §1 (a)), Respondent has modified its definition of "*Claimants' Group*" for the purposes of its Requests,

from: "*UUTBV, ASTV, their present and former direct and indirect parents, controlling persons, subsidiaries or affiliates (i.e. entities directly or indirectly controlled or owned by any entity that directly or indirectly owns or controls UUTBVand/or ASTV), and the present and former employees, agents, representatives, servants, consultants and/or attorneys of any of the foregoing entities, and the City of Tallinn*" (as set out in the definitions at p. 3 above),

to: "[*UUTBV, ASTV, their*] *present direct and indirect parents, controlling persons, subsidiaries or affiliates from the United Utilities Group, the City of Tallinn, and the present employees, agents, representatives, servants, consultants and/or attorneys of any of the foregoing entities.*"

At pp. 9-10 (§1(b)) above Respondent further modified its original definition of "Claimants' Group", which Respondent considered *included the EBRD*, by stating that it "waives its request for the documents in the possession, custody, or control of the EBRD, and therefore only asks Claimants to produce the documents concerning the EBRD and responsive to Estonia's Requests that are in the possession, custody, or control of the Claimants' Group as defined above". (Emphasis added.)

As regards the City of Tallinn, for the reasons discussed below, Requests to obtain documents held by the City shall be treated separately than requests for documents held by other entities. Accordingly, the City of Tallinn is also excluded from the definition of "Claimants' Group" for purposes of Respondent's Requests.

It is this modified understanding of "Claimants' Group" (as the expression is used by Respondent) that the Tribunal bears in mind when ruling on Respondent's individual Requests below.

(2) Claimants' *"General Comments on the Scope of Estonia's Requests"*

All of Claimants' Objections refer to their "General Comments" (pp. 5-7 above), which consist of two "Scope Objections".

It is not clear to the Tribunal whether a decision is required in respect of "Scope Objection 1" (scope of "Claimants' Group") – it rather appears that no decision is required – in view of the modified definition of the expression discussed above, the Tribunal's ruling regarding Requests for documents held by the City of Tallinn (see below), and Respondent's Replies to Claimants' Objections to individual Requests.

As for "Scope Objection 2" (lack of specificity, proportionality in respect of Requests no. 1 to 8), here too it does not appear from the Respondent's Replies to Claimants' Objections concerning these Requests that any decision is required from the Tribunal. Where Claimants raise these or similar issues in their individual Objections, these are addressed in the Tribunal's decisions below.

(3) Documents in the possession, custody or control of the City of Tallinn

The Tribunal notes the parties' disagreement as to which of them "controls" the City of Tallinn or is otherwise in a "relevant relationship" (or what in the circumstances might be called a "*more* relevant relationship") with the City of Tallinn such as to require the party in question to use its best efforts to obtain documents that may be in the City's possession.

The Tribunal considers that in the circumstances of this case neither party can be said in fact to control the conduct of the City of Tallinn. By the same token Claimants and Respondent are both in a relationship with the City such as entitle the Tribunal to expect each of them to use best efforts to obtain documents from the City; it being understood that in the circumstances their ability in fact to do so, and the City's willingness in fact to comply with all such efforts, may be less than absolute.

According to Claimants these questions are largely moot, as "[redacted]" (Claimants letter to Tribunal dated 22 April 2016, p. 4). However, Claimants' assertion in this regard is based on what they refer to as their "[redacted]" that the City has "[redacted]" (email to the City of Tallinn dated 22 April 2016, annexed to Claimants' letter to the Tribunal) – an understanding that, in the Tribunal's view, is *disproven* by Respondent (Respondent's letter to the Tribunal dated 27 April 2016). Moreover, from the materials submitted to the Tribunal to date, it appears that Estonia cannot reasonably be asked to do more than it has already done to attempt to obtain the documents it requests from the City of Tallinn. Something more is clearly required.

Accordingly, the Tribunal orders Claimants to use their best efforts obtain from the City of Tallinn documents requested by Estonia in its Document Requests.

ANNEX B to PROCEDURAL ORDER NO. 3 (3 May 2016)
RESPONDENT'S DOCUMENT REQUESTS

Estonia hereby requests the following Documents that are within the possession, custody, or control of any entity of Claimants' Group:

No.			
1.	**Documents or Category of Documents Requested**		Legal and financial due diligence reports, memoranda, analyses, internal approvals, communications and other documents, such as reports from site visits and discussions with the management of ASTV, the officials of the City of Tallinn and/or their advisors, prepared by UUTBV (then called International Water UU (Tallinn) B.V.), any of its direct or indirect shareholders, ASTV, the City of Tallinn and/or the legal or other advisors of any of those entities in connection with UUTBV's bid to invest in ASTV of 1 December 2000.
	Relevance According to Requesting Party	**Ref. to Submissions**	Claimants' Memorial, ¶ 65; Respondent's Counter-Memorial, ¶¶ 74, 87 *et seq.*; Exhibits C-10, pp. 221, 224, 228; C60-65; C-76; Expert Report of [redacted], ¶¶ 2.36-2.38.
		Comments	The statements made and exhibits submitted by Claimants refer to an extensive due diligence process conducted by UUTBV before submitting its bid, including visits to a physical data room, on-site visits, interviews with the management and respective municipal and state authorities. The requested documents are necessary for the assessment of UUTBV's legitimate expectations regarding the legal framework and tariff setting practices applicable to its investment and the basis for its bid, including any profitability projections.
	Objections to Document Request		**The Claimants accept this Request subject to their comments on the scope of Estonia's Requests above and the following comments.** The Claimants have carried out a reasonable and proportionate search of their hard-copy archived files and their accessible electronic files for the requested Documents, and also searched sets of Documents provided to them by certain of their legal and financial advisers. The Claimants' legal advisers will be providing the Claimants with some further Documents within the next two weeks. The Claimants do not expect these to include any additional responsive Documents. However, to the extent any such responsive Documents are located, they will be provided to Estonia as soon as practicable.

		The Claimants object to producing privileged Documents. Please refer to the privilege log at Appendix A for details.
	Reply to Objections to Document Request	Estonia notes that Claimants have agreed to produce the documents requested under this Request no. 1 and that Claimants may provide further documents as soon as practicable. Estonia respectfully requests the Tribunal to order the production of all documents containing legal advice from any in-house counsels of the Claimants' Group which are responsive to the Estonia's Request no. 1 because such legal advice is not privileged under Estonian or other applicable domestic law of EU member states. For the sake of clarity and without prejudice to the above, Estonia expects Claimants to produce all mark-ups of transaction documents by Claimants' lawyers which any of the member of the Claimants' Group or their advisors have provided to the City of Tallinn and which were not included in the files submitted by the City of Tallinn to Estonia with a copy of the same to Claimants (*see* Section I (c) of the General Part of the Reply). This is because any legal privilege was waived by providing the document to the City of Tallinn. This document request is also subject to the Parties' disagreement on Claimants' general objections as set out above. Estonia especially refers to the General Part of the Reply with respect to Claimants' responsibility for producing the documents held by the City of Tallinn in this arbitration (*see* Section I (c) of the General Part of the Reply).
	Comments to Reply to Objections to Document Request	Not applicable.
	Tribunal's Decision	The only decision required here concerns Respondent's request that Claimants be ordered to produce "all documents containing legal advice from any in-house counsel of the Claimants' Group which are responsive to Estonia's Request no. 1," because, Respondent says, "such legal advice is not privileged under Estonian or other applicable domestic law of EU member states". In response, Claimants declare that Respondent's assertion is incorrect and that certain of the advice that they received from in-house counsel is indeed subject to legal privilege in the jurisdictions in which the counsel in question were located (Claimants' letter to the Tribunal dated 22 April 2016, p. 4). Respondent vigorously disputes this on a number of grounds, and further submits that the Claimant has in any event not met its burden to prove that the privilege that it asserts applies to each document allegedly covered by the privilege in question (Respondent's letter to the Tribunal dated 27 April 2016).

		The Tribunal fully agrees with Respondent that Claimants' assertions of privilege cannot be adequately examined in the absence of specific and pertinent information, and that the privilege log produced by Claimants is notably devoid of such information. Claimants shall accordingly prepare a detailed and specific privilege log, which shall identify and substantiate, in respect of each document, the particular privilege(s) that they assert including at the very least the information identified by Respondent in its 27 April 2016 letter (§ II, 2nd paragraph, at p. 4). This supplemented privilege log shall be produced at the same time as the documents produced further to the present order. Respondent is hereby granted leave to re-apply to the Tribunal in respect of Claimants' privilege claims, should it choose to do so and in event that the parties are otherwise unable to resolve any dispute connected with these claims, within 10 days of receipt of Claimants' supplemented privilege log.

2.	**Documents or Category of Documents Requested**		Legal and financial due diligence reports, memoranda, analyses, internal approvals, communications and other documents prepared by UUTBV, any of its direct or indirect shareholders, ASTV, the City of Tallinn and/or the legal or other advisors of any of those entities in connection with the negotiations of the Shareholders' Agreement.
	Relevance According to Requesting Party	**Ref. to Submissions**	Claimants' Memorial, ¶ 9, 65, 84, 90; Respondent's Counter-Memorial, ¶¶ 74, 87 *et seq.*, 125; Exhibits C-10, pp. 221, 224, 228; C-16; C-60-66; C-76, C78-79; Expert Report of [redacted], ¶¶ 2.36-2.38.
		Comments	The statements made and exhibits submitted by Claimants refer to an extensive due diligence process conducted by UUTBV before submitting its bid (including visits to a physical data room, on-site visits, interviews with the management and respective municipal and state authorities) and negotiations of the agreements underlying the investment, including the Shareholders' Agreement. The requested documents are necessary for the assessment of UUTBV's legitimate expectations with respect to the legal and contractual framework applicable to its investment and the corporate governance structure of ASTV, including the nature of control exercised over the company and the cooperation between the City of Tallinn and UUTBV with respect to the management of ASTV.
	Objections to Document Request		**The Claimants accept this Request subject to their comments on the scope of Estonia's Requests above and the following comments.** The Claimants have carried out a reasonable and proportionate search of their hard-copy archived files and their accessible electronic files for the requested Documents, and also searched sets of Documents provided to them by certain of their legal and financial advisers. The Claimants' legal advisers will be providing the Claimants with some further Documents within the next two weeks. The Claimants do not expect these to include any additional responsive Documents. However, to the extent any such responsive Documents are located, they will be provided to Estonia as soon as practicable. The Claimants object to producing privileged Documents. Please refer to the privilege log at Appendix A for details.
	Reply to Objections to Document Request		Estonia notes that Claimants have agreed to produce the documents requested under this Request no. 2 and that Claimants may provide further documents as soon as practicable.

		Estonia respectfully requests the Tribunal to order the production of all documents containing legal advice from any in-house counsels of the Claimants' Group which are responsive to the Estonia's Request no. 2 because such legal advice is not privileged under Estonian or other applicable domestic law of EU member states. For the sake of clarity and without prejudice to the above, Estonia expects Claimants to produce all mark-ups of transaction documents by Claimants' lawyers which any of the member of the Claimants' Group or their advisors have provided to the City of Tallinn and which were not included in the files submitted by the City of Tallinn to Estonia with a copy of the same to Claimants (*see* Section I © of the General Part of the Reply). This is because any legal privilege was waived by providing the document to the City of Tallinn. This document request is also subject to the Parties' disagreement on Claimants' general objections as set out above. Estonia especially refers to the General Part of the Reply with respect to Claimants' responsibility for producing the documents held by the City of Tallinn in this arbitration (*see* Section I © of the General Part of the Reply).
	Comments to Reply to Objections to Document Request	Not applicable.
	Tribunal's Decision	Same as with respect to Request no. 1.

3.	**Documents or Category of Documents Requested**		Legal and financial due diligence reports, memoranda, analyses, internal approvals, communications, and other documents prepared by UUTBV, any of its direct or indirect shareholders, ASTV, the City of Tallinn and/or the legal or other advisors of any of those entities in connection with the negotiations of the Services Agreement.
	Relevance According to Requesting Party	**Ref. to Submissions**	Claimants' Memorial, ¶ 9, 65, 84; Respondent's Counter-Memorial, ¶¶ 74, 87 *et seq.*; Exhibits C-10, pp. 221, 224, 228; C-16, C-60-65; C-76; Expert Report of [redacted], ¶¶ 2.36-2.38.
		Comments	The statements made and exhibits submitted by Claimants refer to an extensive due diligence process conducted by UUTBV before submitting its bid (including visits to a physical data room, on-site visits, interviews with the management and respective municipal and state authorities) and negotiations of the agreements underlying the investment, including the Services Agreement. The requested documents are necessary for the assessment of UUTBV's legitimate expectations regarding the legal and contractual framework applicable to its investment, including the terms and conditions applicable to the tariffs of ASTV.
	Objections to Document Request		**The Claimants accept this Request subject to their comments on the scope of Estonia's Requests above and the following comments.** The Claimants have carried out a reasonable and proportionate search of their hard-copy archived files and their accessible electronic files for the requested Documents, and also searched sets of Documents provided to them by certain of their legal and financial advisers. The Claimants' legal advisers will be providing the Claimants with some further Documents within the next two weeks. The Claimants do not expect these to include any additional responsive Documents. However, to the extent any such responsive Documents are located, they will be provided to Estonia as soon as practicable.
	Reply to Objections to Document Request		Estonia notes that Claimants have agreed to produce the documents requested under this Request no. 3 and that Claimants may provide further documents as soon as practicable. In fact, Claimants have thus far produced only one email responsive to the Request no. 3 which covers the documents related to the Services Agreement—the key contract for UUTBV's investment in ASTV and the central piece of evidence from which Claimants derive their alleged legitimate expectations. It is therefore Estonia's expectation that Claimants will produce additional documents under this request, including communications, internal approvals, memoranda, analyses, and other documents and correspondence. Estonia also notes that Claimants do not assert any kind of legal advice privilege under this request.

		Otherwise, this document request is subject only to the Parties' disagreement on Claimants' general objections as set out above.
	Comments to Reply to Objections to Document Request	Not applicable.
	Tribunal's Decision	**NO DECISION REQUIRED.**

4.	**Documents or Category of Documents Requested**		Legal and financial due diligence reports, memoranda, analyses, internal approvals, communications, and other documents prepared by UUTBV, any of its direct or indirect shareholders, ASTV, the City of Tallinn and/or the legal or other advisors of any of those entities in connection with the negotiations of the 2002 Amendment.
	Relevance According to Requesting Party	**Ref. to Submissions**	Claimants' Memorial, ¶¶ 117 *et seq.*; First Witness Statement of [redacted], ¶¶ 18-38; Exhibits C-30, C-99a, C-100a, 102a, 103a.; Respondent's Counter-Memorial, ¶¶ 136 *et seq.*
		Comments	The 2002 Amendment extended the initial period of the Services Agreement until 2010 and fixed the K-coefficients for this entire term. The requested documents are required to verify the economic rationale behind the fixed levels for K-coefficients, including the cost-based calculations of the K-coefficients for future tariffs and their compliance with the law. The requested documents are also required to verify that all required internal approvals of the 2002 Amendment were provided (*e.g.* approval from the Supervisory Board of ASTV, approvals within the United Utilities' group, approvals at the City of Tallinn).
	Objections to Document Request		**The Claimants accept this Request subject to their comments on the scope of Estonia's Requests above and the following comments.** The Claimants have carried out a reasonable and proportionate search of their hard-copy archived files and their accessible electronic files for the requested Documents. Having considered the Documents identified by the searches and the probability that additional responsive Documents may have existed previously, the Claimants are also currently investigating the practicality of recovering additional archived electronic files from this period. To the extent that any further responsive Documents are located through this process, the Claimants will produce them to Estonia as soon as they become available. The Claimants note that Estonia has not explained what internal approvals it alleges were required from the Supervisory Board of ASTV, within the United Utilities group, or at the City of Tallinn, or the relevance of any such approvals or failure to obtain those approvals, particularly where the amendments have been treated as valid by all parties since 2002. The Claimants' rights in this regard are reserved.
	Reply to Objections to Document Request		Estonia notes that Claimants have agreed to produce the documents requested under this Request no. 4 and that Claimants may provide further documents as soon as practicable.

		The Articles of ASTV make the conclusion of the agreements such as the 2002 Amendment subject to the consent of the Supervisory Board of ASTV.[11] Given the importance of the Services Agreement, it is reasonable to assume that further internal approvals within the Claimants' Group (including UUTBV and its parent companies) were required for the conclusion of the 2002 Amendment which amended the Services Agreement. At the level of UUTBV, this is evident based on the documents produced by Claimants in response to the Request no. 5 below since these documents include the minutes of UUTBV' Management Board meeting ratifying the execution of the 2005 Amendment. The requested internal approvals will, on the one hand, verify that such approvals were obtained. On the other hand, these documents will demonstrate how the requirement to conclude the 2002 Amendment was presented and discussed internally within the Claimants' Group and what was the economic rationale behind the fixed levels for K-coefficient approved by the authorized governance bodies of the Claimants' Group. Estonia thus maintains its request for such internal approvals and respectfully requests the Tribunal to order their production. This document request is also subject to the Parties' disagreement on Claimants' general objections as set out above.
	Comments to Reply to Objections to Document Request	Not applicable.
	Tribunal's Decision	**NO DECISION REQUIRED.**

[11] ASTV Articles of Association, as amended on 24 May 2011, Clause 3.3.3 (this requirement has remained unchanged since UUTBV's investment in ASTV in 2001), **C-253**.

5.	**Documents or Category of Documents Requested**		Legal and financial due diligence reports, memoranda, analyses, internal approvals, communications, and other documents prepared by UUTBV, any of its direct or indirect shareholders, ASTV, the City of Tallinn and/or the legal or other advisors of any of those entities in connection with the negotiations of the 2005 Amendment.
	Relevance According to Requesting Party	**Ref. to Submissions**	Claimants' Memorial, ¶ 131b; Exhibit C-31; Respondent's Counter-Memorial, ¶ 153.
		Comments	The requested documents are required to verify the economic and legal rationale behind the 2005 Amendment. They are also required to verify that all required internal approvals of the 2005 Amendment were provided (*e.g.* approval from the Supervisory Board of ASTV, approvals within the United Utilities' group, approvals at the City of Tallinn).
	Objections to Document Request		**The Claimants accept this Request subject to their comments on the scope of Estonia's Requests above and the following comments.** The Claimants have carried out a reasonable and proportionate search of their hard-copy archived files and their accessible electronic files for the requested Documents. The Claimants note that Estonia has not explained what internal approvals it alleges were required from the Supervisory Board of ASTV, within the United Utilities group, or at the City of Tallinn, or the relevance of any such approvals or failure to obtain those approvals, particularly where the amendments have been treated as valid by all parties since 2005. The Claimants' rights in this regard are reserved.
	Reply to Objections to Document Request		Estonia notes that Claimants have agreed to produce the documents requested under this Request no. 5 and that Claimants may provide further documents as soon as practicable. The Articles of ASTV make the conclusion of the agreements such as the 2005 Amendment subject to the consent of the Supervisory Board of ASTV.[12] Given the importance of the Services Agreement, it is reasonable to assume that further internal approvals within the Claimants' Group (including UUTBV and its parent companies) were required for the conclusion of the 2005 Amendment which amended the Services Agreement. Claimants have thus far only produced responsive documents with respect to UUTBV's Management Board (documents no. 52, 53 in the Index to the Claimants' Document Production). These documents have been produced without annexes.

[12] ASTV Articles of Association, as amended on 24 May 2011, Clause 3.3.3 (this requirement has remained unchanged since UUTBV's investment in ASTV in 2001), **C-253**.

		The requested internal approvals within the rest of the Claimants' Group (including the parent companies of UUTBV) will, on the one hand, verify that the internal approvals were obtained. On the other hand, these documents will demonstrate how the requirement to conclude the 2005 Amendment was presented and discussed internally within the Claimants' Group and what was the economic rationale behind the 2005 Amendment approved by the authorized governance bodies of the Claimants' Group. Estonia thus maintains its request for such internal approvals and respectfully requests the Tribunal to order their production, including *inter alia* the missing annexes to the documents with respect to UUTBV's Management Board mentioned above. This document request is also subject to the Parties' disagreement on Claimants' general objections as set out above. Estonia especially refers to the General Part of the Reply with respect to Claimants' responsibility for producing the documents held by the City of Tallinn in this arbitration (*see* Section I (c) of the General Part of the Reply). Consequently, Estonia respectfully requests the Tribunal to order Claimants to make their best efforts to obtain the documents responsive to the Request no. 5 from the City of Tallinn.
	Comments to Reply to Objections to Document Request	Not applicable.
	Tribunal's Decision	**NO DECISION REQUIRED.**

6.	**Documents or Category of Documents Requested**		Legal and financial due diligence reports, memoranda, analyses, internal approvals, communications, and other documents prepared by UUTBV, any of its direct or indirect shareholders, ASTV, the City of Tallinn and/or the legal or other advisors of any of those entities in connection with the negotiations of the 2007 Amendment.
	Relevance According to Requesting Party	**Ref. to Submissions**	Claimants' Memorial, ¶¶ 133 *et seq.*; Exhibits C-32, C-129; First Witness Statement of [redacted], ¶¶ 77 *et seq.*; Respondent's Counter-Memorial, ¶¶ 173 *et seq.*
		Comments	The 2007 Amendment fixed the K-coefficients for 13 years, while at the same time legislation was being discussed for the transfer of regulatory authority over the water market to the ECA. The requested documents are required to verify the economic rationale behind the fixed levels for K-coefficients, including the cost-based calculations of the K-coefficients for future tariffs and their compliance with the law. They will further reveal the parties' understanding of the tariff approval process after the transfer of regulatory powers to the ECA. The requested documents are also required to verify that all required internal approvals of the 2007 Amendment were provided (*e.g.* approval from the Supervisory Board of ASTV, approvals within the United Utilities' group, approvals at the City of Tallinn).
	Objections to Document Request		**The Claimants accept this Request subject to their comments on the scope of Estonia's Requests above and the following comments.** The Claimants have carried out a reasonable and proportionate search of their hard-copy archived files and their accessible electronic files for the requested Documents. The Claimants note that Estonia has not explained what internal approvals it alleges were required from the Supervisory Board of ASTV, within the United Utilities group, or at the City of Tallinn, or the relevance of any such approvals or failure to obtain those approvals, particularly where the amendments have been treated as valid by all parties since 2007. The Claimants' rights in this regard are reserved. Estonia also has not explained how any Documents in the Claimants' possession are relevant to establishing the "*compliance with the law*" of ASTV's tariffs. Nor has Estonia explained how the "*parties' understanding of the tariff approval process after the transfer of regulatory powers to the ECA*" is relevant to the issues in dispute, nor indeed how Documents relating to the 2007 Amendment would provide evidence of such understanding given that the 2007 Amendment occurred several years before the parties to it (the Claimants and the City of Tallinn) were made aware of the possibility of the transfer of regulatory power to the ECA. The Claimants' rights in this regard are also reserved.

	Reply to Objections to Document Request	Estonia notes that Claimants have agreed to produce the documents requested under this Request no. 6. Estonia has established in the Counter-Memorial that Claimants had anticipated a change in the regulatory framework of water tariffs, including a change in the regulator, already in 2005.[13] Further, the initiatives to transfer the regulatory function from the local governments to a state agency date back to the time before the 2007 Amendment[14] and these initiatives had already been publicly discussed before the 2007 Amendment was signed.[15] The documents requested in relation to the 2007 Amendment will thus reveal how the anticipated reform of the regulatory framework was considered by Claimants in the course of negotiations of the 2007 Amendment which fixed the K-coefficient for 13 years. The documents requested under Request no. 6 are thus clearly relevant and material for the dispute which is why Estonia maintains its request for the production of these documents. The Articles of ASTV applicable at the time made the conclusion of the 2007 Amendment subject to the consent of the Supervisory Board of ASTV.[16] Given the importance of the Services Agreement, it is reasonable to assume that further internal approvals within the Claimants' Group (including UUTBV and its parent companies) were required for the conclusion of the 2007 Amendment which amended the Services Agreement. Claimants have thus far only produced certain documents with respect to UUTBV's Management Board. Claimants have thus far only produced a responsive document with respect to UUTBV's Management Board (document no. 63 in the Index to the Claimants' Document Production). This document was produced without annexes. The requested internal approvals within the rest of the Claimants' Group (including the parent companies of UUTBV) will, on the one hand, verify that the internal approvals were obtained. On the other hand, these documents will demonstrate how the requirement to conclude the 2007 Amendment was presented and discussed internally within the Claimants' Group and what was the economic rationale behind the fixed levels for K-coefficient approved by the authorized governance bodies of the Claimants' Group. Estonia thus maintains its request for such internal approvals and respectfully requests the Tribunal to order their production, including *inter alia* the missing annexes to the document with respect to UUTBV's Management Board mentioned above. This document request is also subject to the Parties' disagreement on Claimants' general objections as set out above. Estonia especially refers to the General Part of the Reply with respect to Claimants' responsibility for producing the documents held by the City of Tallinn in this arbitration (*see* Section I (c) of the General Part of the Reply).

13 Respondent's Counter-Memorial, ¶ 156.
14 Respondent's Counter-Memorial, ¶¶ 159 *et seq.*
15 Respondent's Counter-Memorial, ¶¶ 165 *et seq.*, 172.
16 Articles of association of ASTV, as amended on 27 April 2005, Clauses 6.3.3, 6.3.3.1, **R-17**.

		Consequently, Estonia respectfully requests the Tribunal to order Claimants to make their best efforts to obtain the documents responsive to the Request no. 6 from the City of Tallinn.
	Comments to Reply to Objections to Document Request	Not applicable.
	Tribunal's Decision	**NO DECISION REQUIRED.**

7.	**Documents or Category of Documents Requested**		Legal and financial due diligence reports, memoranda, analyses, internal approvals, communications, and other documents prepared by UUTBV, any of its direct or indirect shareholders, ASTV, the City of Tallinn and/or the legal or other advisors of any of those entities in connection with the negotiations of the 2009 Amendment.
	Relevance According to Requesting Party	**Ref. to Submissions**	Claimants' Memorial, ¶¶ 138 *et seq.*; Exhibit C-33; First Witness Statement of [redacted], ¶¶ 89 *et seq.*
		Comments	The requested documents are required to verify the economic and legal rationale behind the 2009 Amendment. They are also required to verify that all required internal approvals of the 2009 Amendment were provided (*e.g.* approval from the Supervisory Board of ASTV, approvals within the United Utilities' group, approvals at the City of Tallinn).
	Objections to Document Request		**The Claimants accept this Request subject to their comments on the scope of Estonia's Requests above and the following comments.** The Claimants have carried out a reasonable and proportionate search of their hard-copy archived files and their accessible electronic files for the requested Documents. The Claimants note that Estonia has not explained what internal approvals it alleges were required from the Supervisory Board of ASTV, within the United Utilities group, or at the City of Tallinn, or the relevance of any such approvals or failure to obtain those approvals, particularly where the amendments have been treated as valid by all parties since 2009. The Claimants' rights in this regard are reserved.
	Reply to Objections to Document Request		Estonia notes that Claimants have agreed to produce the documents requested under this Request no. 7. The Articles of ASTV make the conclusion of the 2009 Amendment subject to the consent of the Supervisory Board of ASTV.[17] Given the importance of the Services Agreement, it is reasonable to assume that further internal approvals within the Claimants' Group (including UUTBV and its parent companies) were required for the conclusion of the 2009 Amendment which amended the Services Agreement. At the level of UUTBV, this is evident based on the documents produced by Claimants in response to the Request no. 5 above since these documents include the minutes of UUTBV' Management Board meeting ratifying the execution of the 2005 Amendment. The requested internal approvals within the Claimants' Group will, on the one hand, verify that the internal approvals were obtained. On the other hand, these documents will demonstrate how the requirement to conclude the 2009

[17] ASTV Articles of Association, as amended on 24 May 2011, Clause 3.3.3 (this requirement has remained unchanged since UUTBV's investment in ASTV in 2001), **C-253**.

		Amendment was presented and discussed internally within the Claimants' Group and what was the economic rationale behind the 2009 Amendment approved by the authorized governance bodies of the Claimants' Group. Estonia thus maintains its request for such internal approvals and respectfully requests the Tribunal to order their production. This document request is also subject to the Parties' disagreement on Claimants' general objections as set out above. Estonia especially refers to the General Part of the Reply with respect to Claimants' responsibility for producing the documents held by the City of Tallinn in this arbitration (*see* Section I (c) of the General Part of the Reply). Consequently, Estonia respectfully requests the Tribunal to order Claimants to make their best efforts to obtain the documents responsive to the Request no. 7 from the City of Tallinn.
	Comments to Reply to Objections to Document Request	Not applicable.
	Tribunal's Decision	**NO DECISION REQUIRED.**

8.	**Documents or Category of Documents Requested**		Legal and financial due diligence reports, memoranda, analyses, internal approvals, communications, and other documents prepared by UUTBV, any of its direct or indirect shareholders, ASTV, the City of Tallinn and/or the legal or other advisors of any of those entities in connection with the negotiations of the First 2005 Amendment.
	Relevance According to Requesting Party	**Ref. to Submissions**	Claimants' Memorial, ¶¶ 131; Exhibit C-29; First Witness Statement of [redacted], ¶¶ 66 *et seq.*; Respondent's Counter-Memorial, ¶¶ 150 *et seq.*; Exhibit R-185.
		Comments	The First 2005 Amendment changed the corporate governance structure of ASTV by increasing the number of the members of the Supervisory Board of ASTV. Consequently, UUTBV lost the majority in the Supervisory Board. The requested documents are necessary for the assessment of the parties' understanding of the corporate governance structure of ASTV, including the nature of control exercised over the company and the cooperation between the City of Tallinn and UUTBV with respect to the management of ASTV. The requested documents are also required to verify that all required internal approvals of the First 2005 Amendment were provided (*e.g.* approvals within the United Utilities' group, approvals at the City of Tallinn). Estonia refers to the General Part of the Reply with respect to Claimants' responsibility for producing the documents held by the City of Tallinn in this arbitration (*see* Section I (c) of the General Part of the Reply). Consequently, Estonia respectfully requests the Tribunal to order Claimants to make their best efforts to obtain the documents responsive to the Request no. 8 from the City of Tallinn.
	Objections to Document Request		**The Claimants accept this Request subject to their comments on the scope of Estonia's Requests above and the following comments.** The Claimants have carried out a reasonable and proportionate search of their hard-copy archived files and their accessible electronic files for the requested Documents. The Claimants note that Estonia has not explained what internal approvals it alleges were required from within the United Utilities group, or at the City of Tallinn, or the relevance of any such approvals or failure to obtain those approvals, particularly where the amendments have been treated as valid by all parties since 2005. The Claimants' rights in this regard are reserved.
			Estonia notes that Claimants have agreed to produce the documents requested under this Request no. 8.

	Reply to Objections to Document Request	The First 2005 Amendment included an agreement to carry out the IPO and to amend the Articles of ASTV for that purpose. These decisions are subject to the authority of the General Meeting and the consent of the Supervisory Board of ASTV.[18] Given the importance of the IPO after which UUTBV was left with a minority stake in ASTV and a minority seat in the Supervisory Board, it is reasonable to assume that further internal approvals within the Claimants' Group (including UUTBV and its parent companies) were required for the conclusion of the First 2005 Amendment. Claimants have thus far only produced certain documents with respect to UUTBV's Management Board (documents no. 52, 53 in the Index to the Claimants' Document Production). These documents have been produced without annexes. The requested internal approvals within the Claimants' Group will, on the one hand, verify that the internal approvals for the IPO and the changes to the governance structure of ASTV were obtained. On the other hand, these documents will demonstrate how the consequences of the IPO, including the minority participation of UUTBV in ASTV and its impact on the control over ASTV, were presented and discussed internally within the Claimants' Group. Estonia thus maintains its request for such internal approvals and respectfully requests the Tribunal to order their production, including *inter alia* the missing annexes to the documents with respect to UUTBV's Management Board mentioned above. This document request is also subject to the Parties' disagreement on Claimants' general objections as set out above. Estonia especially refers to the General Part of the Reply with respect to Claimants' responsibility for producing the documents held by the City of Tallinn in this arbitration (*see* Section I (c) of the General Part of the Reply). Consequently, Estonia respectfully requests the Tribunal to order Claimants to make their best efforts to obtain the documents responsive to the Request no. 8 from the City of Tallinn.
	Comments to Reply to Objections to Document Request	Not applicable.
	Tribunal's Decision	**NO DECISION REQUIRED.**

[18] Articles of association of ASTV, as amended on 27 April 2005, Clauses 6.2.7.1, 6.3.2.1, 6.3.2.8, 6.3.3, **R-17**; *See* also Listing rules of the Tallinn Stock Exchange, Clause 3.3.8, **RL-7**;

9.	**Documents or Category of Documents Requested**		Legal due diligence reports prepared by ASTV or its advisors, including the arranger(s), in connection with the IPO of shares in ASTV which took place in June 2005.
	Relevance According to Requesting Party	**Ref. to Submissions**	Exhibit C-113.
		Comments	The issuer or the arranger(s) of an IPO carry out a due diligence in preparation for the offering, which results in a written report or reports on the issuer's business, including its contractual rights, applicable regulatory regime, etc. The requested documents are necessary for the assessment of UUTBV's and ASTV's awareness of the risks and uncertainties associated with the tariff regime of ASTV under the applicable regulatory framework including any potential changes thereto, its effects on agreements with the City of Tallinn, and the understanding of governance structure of ASTV, including the nature of control exercised over the company.
	Objections to Document Request		**The Claimants accept this Request subject to their comments on the scope of Estonia's Requests above and the following comments.** The Claimants object to producing privileged Documents. Please refer to the privilege log at Appendix A for details. The Claimants note that they have a copy of legal advice from [redacted] to the City of Tallinn in connection with the IPO. Without prejudice to any arguments with respect to privilege which may apply, the Claimants note that this document is already in the possession of the City of Tallinn - and therefore is in Estonia's possession - and is not relevant to the issues in dispute. Accordingly, the Claimants have not produced this document.
	Reply to Objections to Document Request		Estonia confirms that the legal advice from [redacted] to the City of Tallinn mentioned by Claimants above is not in the possession, custody or control of Estonia as it was not included in the files submitted by the City of Tallinn to Estonia (*see* Section I (c) of the General Part of the Reply). Further, this legal advice is no longer privileged since the City of Tallinn shared it with Claimants. Estonia thus respectfully requests the Tribunal to order the production of the relevant document.

		Estonia respectfully requests that Claimants be ordered to produce all legal due diligence reports that were either prepared by the in-house counsel of the Claimants' Group or that were provided to the City of Tallinn by the members of the Claimants' Group or their advisors. This is because all such documents are not covered by the legal advice privilege. This document request is also subject to the Parties' disagreement on Claimants' general objections as set out above. Estonia especially refers to the General Part of the Reply with respect to Claimants' responsibility for producing the documents held by the City of Tallinn in this arbitration (*see* Section I (c) of the General Part of the Reply).
	Comments to Reply to Objections to Document Request	Not applicable.
	Tribunal's Decision	Same as with respect to Request no. 1 (re. privilege).

10.	**Documents or Category of Documents Requested**		The Underwriting Agreement dated 27 May 2005.
	Relevance According to Requesting Party	**Ref. to Submissions**	Exhibit C-113, pp. 1879, 1993, 1994.
		Comments	The Prospectus for ASTV's 2005 IPO refers to the Underwriting Agreement concluded between ASTV, UUTBV, the City of Tallinn and [redacted]. Agreements concluded between underwriters and selling shareholders in the framework of an IPO such as the requested Underwriting Agreement typically include certain comfort provided to the underwriters (*e.g.* representations, warranties, indemnities, covenants, including any possible disclosures). The wording and the language of such comfort are necessary for the assessment of UUTBV's and ASTV's awareness of the risks and uncertainties associated with the tariff regime of ASTV under the contracts concluded with the City of Tallinn and the applicable regulatory framework, including any potential changes thereto and its effects on the agreements with the City of Tallinn.
	Objections to Document Request		**The Claimants accept this Request.** The City of Tallinn is a party to this agreement. It is therefore in the possession of the City of Tallinn which is part of Estonia. Notwithstanding this objection, the Claimants have produced this agreement in the interests of procedural efficiency. The Claimants do so without prejudice to similar objections with respect to other Documents.
	Reply to Objections to Document Request		Estonia notes that Claimants have agreed to produce the document requested under this Request no. 10. Estonia also confirms that the requested Underwriting Agreement was not included in the files submitted by the City of Tallinn to Estonia (*see* Section I (c) of the General Part of the Reply). This document request is also subject to the Parties' disagreement on Claimants' general objections as set out above. Estonia especially refers to the General Part of the Reply with respect to Claimants' responsibility for producing the documents held by the City of Tallinn in this arbitration (*see* Section I (c) of the General Part of the Reply).

	Comments to Reply to Objections to Document Request	Not applicable.
	Tribunal's Decision	**NO DECISION REQUIRED.**

11.	**Documents or Category of Documents Requested**		The resolution and the minutes of the meeting of the Supervisory Board and the General Meeting of ASTV that approved the proposal for distribution of dividends for the financial year 2000.
	Relevance According to Requesting Party	**Ref. to submissions**	Exhibit C-90, pp. 10, 32; Exhibit C-94, p. 14; Respondent's Counter-Memorial, ¶ 133.
		Comments	The requested resolution and the minutes of the Supervisory Board and the General Meeting of ASTV are not available in the Estonian commercial register. As they concern cash flows between UUTBV and ASTV as of UUTBV's investment, the requested documents are necessary to verify the allocation of the profit of ASTV to UUTBV.
	Objections to Document Request		**The Claimants accept this Request subject to their comments on the scope of Estonia's Requests above and the comment below.** The Claimants have produced the minutes of the General Meeting requested. For the avoidance of doubt, the Claimants note that the Supervisory Council minutes only approve the agenda for the General Meeting (not the proposal for the distribution of dividends) and are therefore not responsive to this Request.
	Reply to Objections to Document Request		Estonia notes that Claimants have agreed to produce the minutes of the General Meeting requested under this Request no. 11. The Articles of ASTV applicable at the time did not only authorize the Supervisory Board to approve the agenda for the General Meeting but also required it to approve the financial statements prepared by the Management Board and to propose amendments to the proposal for the distribution of profit.[19] Since this applies to the distribution of dividends for the financial year 2000, Estonia maintains its request for the production of the minutes of the meeting of the Supervisory Board. Estonia thus respectfully requests the Tribunal to order their production.
	Comments to Reply to Objections to Document Request		Not applicable.

[19] Articles of association of ASTV, as amended on 15 June 2000, Clauses 6.3.3, 6.3.3.1, 6.3.3.6, **C-11**.

	Tribunal's Decision	The Request for production of the minutes of the meeting of the Supervisory Board is **GRANTED.** The Tribunal considers that the potential relevance of the minutes and their responsiveness to Respondent's Request has been adequately shown by Respondent.

12.	**Documents or Category of Documents Requested**		ASTV's applications for the tariffs charged in the years 2001 – 2010 and any memoranda, analyses and internal approvals, including the approval by the Supervisory Board, regarding those applications.
	Relevance According to Requesting Party	**Ref. to Submissions**	Respondent's Counter-Memorial, ¶¶ 424-425; Witness Statement of [redacted], ¶ 39.
		Comments	The requested documents are required to verify the economic rationale behind the tariffs applied for by ASTV, including the cost-based calculations and their compliance with the law. The process of the preparation of tariff applications and the respective analyses and discussions will illustrate the conflict of interest of the City of Tallinn as ASTV's shareholder and regulator and will thus demonstrate the need for transferring the regulatory power to a state authority.
	Objections to Document Request		**The Claimants accept this Request subject to their comments on the scope of Estonia's Requests above and the following comments.** Estonia has not explained how any Documents in the Claimants' possession are relevant to establishing the "*compliance with the law*" of ASTV's tariffs. The Claimants' rights in this regard are reserved.
	Reply to Objections to Document Request		Estonia notes that Claimants have agreed to produce the documents requested under this Request no. 12. However, Claimants have not produced the tariff applications for the years 2001-2003. The requested tariff applications are relevant for establishing the compliance of ASTV's tariffs with the applicable law. This is because the applications will reveal to which extent the proposed tariffs resulted from cost-based calculations required under the law. Estonia argues in the Counter-Memorial that the tariffs, including the fixed K-coefficients, were not in compliance with the law, including that they were not cost-based.[20]
	Comments to Reply to Objections to Document Request		Not applicable.

[20] Respondent's Counter-Memorial, ¶¶ 126 *et seq.*, 406, 416, 445 *et seq.*

	Tribunal's Decision	**NO DECISION REQUIRED.**

13.	**Documents or Category of Documents Requested**		The decisions of the City of Tallinn regarding ASTV's applications for the tariffs charged in the years 2001 – 2010, and any correspondence, memoranda or analyses prepared by the City of Tallinn, ASTV or their respective advisors regarding those tariff applications.
	Relevance According to Requesting Party	**Ref. to Submissions**	Respondent's Counter-Memorial, ¶¶ 424-425; Witness Statement of [redacted], ¶ 39.
		Comments	The documents are necessary to verify the economic rationale behind the tariffs applied for by ASTV, including the cost-based calculations and their compliance with the law. The details of the tariff approval process will illustrate the conflict of interest of the City of Tallinn as ASTV's shareholder and regulator and will thus demonstrate the need for transferring the regulatory power to a state authority.
	Objections to Document Request		**The Claimants accept this Request subject to their comments on the scope of Estonia's Requests above.**
	Reply to Objections to Document Request		Estonia notes that Claimants have agreed to produce the documents requested under this Request no. 13. However, Claimants have not produced documents with respect to the tariffs for the years 2001-2003 and 2006. Estonia refers to the General Part of the Reply with respect to Claimants' responsibility for producing the documents held by the City of Tallinn in this arbitration (*see* Section I (c) of the General Part of the Reply). Consequently, Estonia respectfully requests the Tribunal to order Claimants to make their best efforts to obtain the documents responsive to the Request no. 13 from the City of Tallinn. Estonia confirms that it has not received the documents responsive to the Request no. 13 from the City of Tallinn (*see* Section I (c) of the General Part of the Reply).
	Comments to Reply to Objections to Document Request		Not applicable.

	Tribunal's Decision	**NO DECISION REQUIRED.**

14.	**Documents or Category of Documents Requested**		Invoices or other documents showing the amount of management fees paid by ASTV to UUTBV under the Technical Services Agreement.
	Relevance According to Requesting Party	**Ref. to Submissions**	Exhibit C-113, pp. 1973-1974; Respondent's Counter-Memorial, ¶¶ 64, 131, 505.
		Comments	The documents are required to identify the amount of management fees paid by ASTV to UUTBV. These fees affect the profitability of UUTBV's investment and indicate a departure from the agreed terms of UUTBV's investment in ASTV.
	Objections to Document Request		**The Claimants accept this Request subject to their comments on the scope of Estonia's Requests above and the following comments.** The Claimants have produced invoices up to February 2016. The Claimants do not accept that such fees constituted a "[redacted]" of UUTBV's investment in ASTV. See e.g. C-20 at pages 404-405 and 459; C-80, C-81, C-87 and C-88. To the extent that this is Estonia's proposition, the Claimants do not accept that these fees, for ongoing services provided after the date of UUTBV's investment involving additional man-hours and know how transfer, which would comprise a cost to UUTBV or other members of the Claimants' Group, necessarily increase the profitability of UUTBV's investment.
	Reply to Objections to Document Request		Estonia notes that Claimants have agreed to produce the documents requested under this Request no. 14. Estonia has established in the Counter-Memorial that the original terms of the tender approved by the City of Tallinn restricted the revenue of the private investor in ASTV to the earned dividends and expressly excluded any management fees.[21] The fees generated by UUTBV above under the Technical Services Agreement in addition to the yearly dividends clearly demonstrate a departure from these terms.
			Not applicable.

[21] Respondent's Counter-Memorial, ¶ 64.

	Comments to Reply to Objections to Document Request	
	Tribunal's Decision	**NO DECISION REQUIRED.**

15.	**Documents or Category of Documents Requested**		Claimants' communication with the press, other media, and/or any media advisors regarding the arbitration and the underlying dispute with the Estonian Competition Authority relating to ASTV's tariffs, including, *inter alia*, emails, letters, and telephone notes which evidence any information or documents provided by Claimants to the media and/or media advisors in relation to this arbitration and the underlying dispute.
	Relevance According to Requesting Party	**Ref. to Submissions**	Respondent's Request for Immediate Procedural Order, 27 January 2016, ¶¶ 10 *et seq.*; Respondent's Application for Provisional Measures, 26 February 2016, ¶¶ 6 *et seq.*
		Comments	As explained in Respondent's Request for Immediate Procedural Order dated 27 January 2016 and Respondent's Application for Provisional Measures dated 26 February 2016, Claimants have engaged in a public communication campaign in the Estonian media from the very beginning of this arbitration. The requested documents reflecting the communication with the press and other media as well as with media advisors are relevant and material for assessing Claimants' extensive media campaign.
	Objections to Document Request		**The Claimants object to this Request.** The purpose of document production is to allow the parties to obtain evidence relevant to the substantive dispute and relevant to the parties' respective positions in relation to the Claimants' claims. This is clear from the timetable of the arbitration. It is not appropriate for Estonia to use this process to request Documents unconnected with either the Claimants' claims or Estonia's defense thereto and connected only with Estonia's Application for Provisional Measures. It is even less appropriate to do so where Estonia will have submitted all of its written arguments in connection with the Application for Provisional Measures before any Documents are produced in response to its requests, and both parties will have submitted all of their written arguments and the Tribunal will have been asked to proceed to rule on the Application for Provisional Measures on the papers before the document production process will be completed. In any event, this Request is a fishing expedition with no justification. The Claimants showed in their Response to Estonia's Application that on any measure, the Claimants cannot credibly be said to have engaged in a media campaign of any sort. The Request also contains no date range and seeks to require an unduly onerous search by the Claimants, including more than seven years of Documents related to the Claimants' communications as a listed company. The Documents sought are not relevant to the issues in dispute in the arbitration, which should properly be viewed as those relating to the substance of the arbitration. It is neither appropriate nor proportionate for the Claimants to be required to produce these Documents.

	Reply to Objections to Document Request	In this arbitration, Claimants accuse Estonia of being involved in a negative publicity campaign against ASTV since 2009.[22] Estonia's position is that Claimants have been actively pursuing an aggressive media campaign against the Estonian Government already before this arbitration, and that the media's attention to the subject matter of the dispute has been orchestrated and fueled by Claimants and not Estonia.[23] The requested documents will thus show that the media attention was the consequence of Claimants' own actions. The time frame relevant for the media campaign and thus the documents requested under this Request no. 15 has been already defined by Claimants who allege a media campaign by Estonia from 2009 onwards. Estonia has also credibly demonstrated that Claimants were engaged in a media campaign through several articles with pro-Claimant rhetoric which is by no means objective, balanced or constructive, and includes statements directly from the management of ASTV as well as one-sided views on the matter through friendly third parties and journalists.[24] Estonia's request for the production of Claimants' communication with the press and media in relation to the subject matter of the dispute is therefore not a fishing expedition – it is based on a reasonable assumption that such communication exists. The requested documents will show that the alleged media campaign was solely orchestrated by Claimants and will thus confirm Estonia's defense in this arbitration. Estonia therefore respectfully requests the Tribunal to order the production of the documents responsive to this Request no. 15.
	Comments to Reply to Objections to Document Request	Not applicable.
	Tribunal's Decision	**DENIED.** The Tribunal is not persuaded of the relevance and/or the materiality of the parties' so-called media campaigns.

22 Claimants' Memorial, ¶¶ 21c, 219.
23 Respondent's Application for Provisional Measures, ¶¶ 6 *et seq.*; Respondent's Reply on the Application for Provisional Measures dated 1 April 2016, ¶¶ 7, 16 *et seq.*
24 Respondent's Application for Provisional Measures, ¶¶ 6 *et seq.*, ¶¶ 13 *et seq.*; Respondent's Reply on the Application for Provisional Measures dated 1 April 2016, ¶¶ 31 *et seq.*

16.	**Documents or Category of Documents Requested**		Annexes 1 through 4 and any other documents attached to the Explanatory Memorandum, included in Exhibit C-9 as an attachment to the Minutes of the meeting of the City of Tallinn Committee for preparing and implementing the tender dated 20 April 2000.
	Relevance According to Requesting Party	**Ref. to Submissions**	Exhibit C-9, pp. 136, 137, 138, 144, 148, 150, 152; Claimants' Request for Arbitration, ¶¶ 18, 19; Claimants' Memorial, ¶¶ 43, 47-49, 51, 52; Expert Report of [redacted], ¶¶ 2.8-2.10, 2.29, 2.31, 3.7, 3.10-3.12, 3.44.
		Comments	The Explanatory Memorandum is an essential document for assessing the City of Tallinn's understanding of the tender. It refers to Annexes 1 through 4, which were not submitted by Claimants. These documents are relevant and material for a comprehensive understanding of the rationale of the City of Tallinn behind the tender.
	Objections to Document Request		**The Claimants accept this Request subject to their comments on the scope of Estonia's Requests above and the following comments.** The Explanatory Memorandum and its annexes were drafted and issued by the City of Tallinn and its advisers. As the City of Tallinn is part of Estonia, these Documents are therefore already in Estonia's possession. However, notwithstanding this objection and on the basis that the Claimants have located Annexes 1 to 4 of the Explanatory Memorandum, the Claimants will produce those documents in order to avoid further dispute on this point and in the interests of procedural efficiency. The Claimants do so without prejudice to similar objections with respect to other Documents falling within this Request or any similar Documents.
	Reply to Objections to Document Request		Estonia notes that Claimants have agreed to produce the documents requested under this Request no. 16. Estonia refers to the General Part of the Reply with respect to Claimants' responsibility for producing the documents held by the City of Tallinn in this arbitration (*see* Section I (c) of the General Part of the Reply). Consequently, Estonia respectfully requests the Tribunal to order Claimants to make their best efforts to obtain the documents responsive to the Request no. 16 from the City of Tallinn.
	Comments to Reply to Objections to Document Request		Not applicable.

	Tribunal's Decision	**NO DECISION REQUIRED.**

17.	**Documents or Category of Documents Requested**		All documents attached to the document designated as the "[redacted]" as attached to Exhibit C-111, the Letter from ASTV to the City of Tallinn dated 14 September 2004.
	Relevance According to Requesting Party	**Ref. to Submissions**	Exhibit C-111; First Witness Statement of [redacted], ¶ 95.
		Comments	The "[redacted]" as included in Exhibit C-111 refers to documents referred to as (i) "[redacted]", (ii) "[redacted]" for compensation of connection fees and costs, (iii) agreed calculation of Stormwater Service Fee from 2006 onwards, and (iv) copy of revised definition of special needs customer. These documents were not submitted by Claimants. The requested documents are relevant and material to assess the tariff increase as accepted in the Letter from ASTV to the City of Tallinn dated 14 September 2004 and will illustrate the conflict of interest of the City of Tallinn as a shareholder and regulator of ASTV.
	Objections to Document Request		**The Claimants accept this Request subject to their comments on the scope of Estonia's Requests above and the following comments.** The Letter from ASTV to the City of Tallinn dated 14 September 2004 is in the possession of the City of Tallinn. As the City of Tallinn is part of Estonia, these documents are therefore already in Estonia's possession. In any event, having conducted a reasonable and proportionate search, the Claimants have been unable to locate the Documents sought in this Request.
	Reply to Objections to Document Request		Estonia finds it remarkable that Claimants are missing attachments to their own letter to the City of Tallinn. Estonia confirms that the documents provided by the City of Tallinn to Estonia did not include documents responsive to this Request no. 17. Estonia refers to the General Part of the Reply with respect to Claimants' responsibility for producing the documents held by the City of Tallinn in this arbitration (*see* Section I (c) of the General Part of the Reply). Consequently, Estonia respectfully requests the Tribunal to order Claimants to make their best efforts to obtain the documents responsive to the Request no. 17 from the City of Tallinn.

	Comments to Reply to Objections to Document Request	Not applicable.
	Tribunal's Decision	**NO DECISION REQUIRED.**

APPENDIX A: CLAIMANTS' PRIVILEGE LOG

Request 1

The Claimants object to producing the following categories of documents within Request 1 which contain legal advice:

i) mark-ups of transaction documents by the Claimants' lawyers;
ii) notes of legal advice prepared by the Claimants' lawyers; and
iii) legal due diligence reports prepared by the Claimants' lawyers.

These documents are protected by legal advice privilege.

Request 2

The Claimants object to producing the following categories of documents within Request 2 which contain legal advice:

i) mark-ups of transaction documents by the Claimants' lawyers.

These documents are protected by legal advice privilege.

Request 9

The Claimants object to producing the following categories of documents within Request 9 which contain legal advice:

i) legal due diligence reports prepared by the Claimants' lawyers.

These documents are protected by legal advice privilege.