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By email

Geneva, 19 June 2023

**Re: *Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd. v. Romania*
(ICSID Case No. ARB/15/31)**

Dear Mr. President,

Dear Members of the Tribunal,

We refer to the Tribunal's instructions of 14 June 2023 inviting the Parties to submit a short reply to their communications of 13 June 2023 on the admissibility of the *Amici* application. The Respondent has three comments on the Claimants' communication of 13 June 2023.

First, the Claimants note that according to Annex C of the Canada-Romania BIT "the non-disputing party that files the submission [is not] entitled to make further submissions in the arbitration."¹ However, contrary to the Claimants' suggestion, the treaty does not prohibit non-disputing parties from making more than one

¹ Canada-Romania BIT, at **Exhibit C-1**, p. 28.

submission. It merely provides that non-disputing parties are not “entitled to make further submissions”, i.e. they cannot make multiple submissions as of right.² The Tribunal nonetheless may allow them to do so, as a matter of discretion.

Second, paragraph 24.5 of Procedural Order No. 1 does not prohibit non-disputing parties from making new applications to make submissions. It only prohibits non-disputing parties from making a further submission in relation to a pending application. Here, the *Amici* have made a fresh application to make a new submission. Further, ICSID Arbitration Rule 37, to which paragraph 24.5 of Procedural Order No.1 refers, does not rule out multiple applications from non-disputing parties.

Third, the Claimants’ complaint that “[a]dmitting the Amici Reply would be manifestly burdensome” does not dovetail with their argument that the *Amici* submission “is limited to legal arguments on points already thoroughly debated between the Parties”.³ Admission of the *Amici* submission would also not delay the completion of the proceeding, given that the Parties have already agreed on a short timetable (2 weeks) to file their responses.

Yours sincerely,



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² Certain *Amici* have already made a “further submission” to the Tribunal on 18 September 2022 (which was additional to a first submission dated 2 November 2018). Both submissions were admitted into the record.

³ Letter from Claimants to Tribunal (NDP's application) dated 13 June 2023, p. 2 and 3.