

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF THE NORTH
AMERICAN FREE TRADE AGREEMENT AND THE 2010 UNCITRAL ARBITRATION
RULES**

- between -

WINDSTREAM ENERGY LLC

(the “Claimant”)

- and -

GOVERNMENT OF CANADA

(the “Respondent”)

PROCEDURAL ORDER NO. 2

**ARBITRAL TRIBUNAL:
Dr. Veijo Heiskanen (President)
Mr. R. Doak Bishop
Dr. Bernardo Cremades**

**REGISTRY:
Permanent Court of Arbitration**

12 January 2014

1. The Parties' Positions

- 1.1 By e-mail of 20 December 2013, the Claimant submitted its completed Redfern Schedule ("Claimant's Redfern Schedule") to the Tribunal, setting out the three document requests to which the Respondent had objected and requesting a ruling from the Tribunal regarding the requests. The Claimant confirmed that the Parties had reached agreement on all of the Claimant's other document requests as well as the Respondent's document requests.
- 1.2 By letter dated 20 December 2013, the Respondent confirmed that there were no disputes relating to its document requests for the resolution of the Tribunal.

2. Applicable Rules and Standards

- 2.1 The process for production of documents in these proceedings is governed by Article 27(3) of the 2010 UNCITRAL Arbitration Rules ("UNCITRAL Rules") and Section 7 of Procedural Order No. 1.
- 2.2 Article 27(3) of the UNCITRAL Rules provides:

"At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine."
- 2.3 According to Article 27(4) of the UNCITRAL Rules, "[t]he arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered."
- 2.4 Additional rules governing the production of documents in these proceedings are set out in Section 7 of Procedural Order No. 1. More specifically, Section 7.4 provides:

"The Tribunal shall rule upon any disputes related to document production, pursuant to its authority under Articles 27(3) and (4) of the UNCITRAL Rules, including disputes as to whether a claimed privilege applies, and, in doing so, may seek guidance from, but is not bound by, Articles 3 and 9 of the 2010 IBA Rules."

- 2.5 In accordance with Section 7.4 of Procedural Order No. 1, the Tribunal has sought guidance from Articles 3 and 9 of the 2010 IBA Rules on the Taking of Evidence in International Arbitration ("2010 IBA Rules"), in particular Article 3.6. of the 2010 IBA Rules.

3. Reasons

- 3.1 The Tribunal has carefully reviewed the Parties' positions as set out in the Claimant's Redfern Schedule, in light of the rules and standards set out in Section 2 above. Having considered the Parties' positions, the Tribunal makes an order as set out in Section 4 below.
- 3.2 The Tribunal recalls that, at this stage, it is not called upon to make final determinations as to the relevance and materiality of the documents requested. Accordingly, the Tribunal's decision, as set out below, is based on a prima facie assessment of the relevance and materiality of the documents requested and is without prejudice to its final determinations pursuant to Article 27(4) of the UNCITRAL Rules.

4. Order

4.1 In light of the above, the Tribunal decides as follows:

- 4.1.1 The Tribunal's decisions on the Claimant's document production requests are set out in the Claimant's Redfern Schedule, which forms part of this Order;
- 4.1.2 The Respondent shall produce the requested documents as directed by the Tribunal in the Claimant's Redfern Schedule within 90 days of the date of this Order, pursuant to Annex A (Arbitration Calendar) to Procedural Order No. 1; and
- 4.1.3 The Respondent is directed to prepare an index of the documents produced pursuant to this Order.

ON BEHALF OF THE ARBITRAL TRIBUNAL



Dr. Veijo Heiskanen
President

**Annex – Claimant’s Redfern Schedule dated 20 December 2013
incorporating the Tribunal’s decision**