

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

ENERFLEX US HOLDINGS INC. AND EXTERRAN ENERGY SOLUTIONS, L.P.

Claimants

and

UNITED MEXICAN STATES

Respondent

(ICSID Case No. ARB/23/22)

**ORDER TAKING NOTE OF THE DISCONTINUANCE OF THE
PROCEEDING**

Members of the Tribunal

Ms. Dyalá Jiménez Figueres, President
Prof. Dr. Silvina S. González Napolitano, Arbitrator
Prof. Dr. Stephan W. Schill, Arbitrator

Secretary of the Tribunal

Ms. Elisa Méndez Bräutigam

Assistant of the Tribunal

Ms. Karima Sauma

Date of dispatch to the Parties: 3 June 2024

REPRESENTATION OF THE PARTIES

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Exterran Energy Solutions, L.P.:*

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and

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I. INTRODUCTION

1. This case concerns a dispute submitted to the International Centre for Settlement of Investment Disputes (“**ICSID**” or the “**Centre**”) on the basis of the North American Free Trade Agreement (“**NAFTA**”), the United States-Mexico-Canada Agreement (the “**USMCA**”), and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “**ICSID Convention**”).
2. The claimants are Enerflex US Holdings Inc. and Exterran Energy Solutions, L.P. (the “**Claimants**”), two companies constituted under the laws of the State of Delaware.
3. The respondent is the United Mexican States (the “**Respondent**”).
4. The Claimants and the Respondent are collectively referred to as “**Parties**”. The Parties’ representatives and their addresses are listed above on page (i).

II. PROCEDURAL HISTORY

5. On 16 June 2023, ICSID received a Request for Arbitration dated 16 June 2023 from the Claimants against the United Mexican States (the “**Request**”).
6. On 23 June 2023, the Secretary-General of ICSID registered the Request in accordance with Article 36 of the ICSID Convention and Rules 6(1)(a) and 7(a) of the ICSID Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (the “**ICSID Institution Rules**”) and notified the Parties of the registration. In the Notice of Registration, the Secretary-General invited the Parties to proceed to constitute an arbitral tribunal as soon as possible in accordance with Rule 7(c) of the ICSID Institution Rules.
7. The Parties agreed to constitute the Tribunal in accordance with NAFTA Article 1123, pursuant to which the Tribunal shall be comprised of three arbitrators, one appointed by each disputing party and the third, presiding arbitrator appointed by agreement of the Parties.

8. In their Request, the Claimants appointed Professor Dr. Stephan W. Schill, a national of the Federal Republic of Germany, as an arbitrator. On 13 September 2023, the Respondent appointed Professor Dr. Silvina S. González Napolitano, a national of the Argentine Republic, as an arbitrator.
9. Absent agreement of the Parties on the method to appoint the presiding arbitrator, on 1 December 2023 the Secretary-General of ICSID appointed Ms. Dyalá Jiménez Figueres, a national of the Republic of Costa Rica, as the presiding arbitrator pursuant to NAFTA Article 1124.
10. On 11 December 2023, the Secretary-General, in accordance with Rule 21(1) of the 2022 ICSID Rules of Procedure for Arbitration Proceedings (“**ICSID Arbitration Rules**”), notified the Parties that all three arbitrators had accepted their appointments and that the Tribunal was therefore deemed to have been constituted on that date. Ms. Elisa Méndez Bräutigam, ICSID Legal Counsel, was designated to serve as Secretary of the Tribunal.
11. In accordance with ICSID Arbitration Rule 29, the Tribunal held a first session with the Parties on 29 January 2024 by video-conference.
12. Following the first session, on 1 February 2024, the Tribunal issued Procedural Order No. 1 on procedural matters. On the same date, the Tribunal issued Procedural Order No. 2 on transparency and confidentiality.
13. On 21 February 2024, following exchanges between the Parties, the Tribunal issued a new procedural calendar.
14. On 19 May 2024, the ICSID Secretariat received a letter from the Claimants requesting the discontinuance of the proceeding pursuant to Rule 56 of the ICSID Arbitration Rules, which states:

(1) If a party requests the discontinuance of the proceeding, the Tribunal shall fix a time limit within which the other party may oppose the discontinuance. If no objection in writing is made within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Tribunal shall issue an order taking note

of the discontinuance of the proceeding. If any objection in writing is made within the time limit, the proceeding shall continue.

(2) The Secretary-General shall fix the time limit and issue the order referred to in paragraph (1) if the Tribunal has not yet been constituted or if there is a vacancy on the Tribunal.

15. On 20 May 2024, the Tribunal took note of the Claimants' request and directed the Respondent to state whether or not it opposed the discontinuance by 24 May 2024. On the same date, the ICSID Secretariat received a communication from the Respondent stating that it had no objections to the discontinuance of the proceeding.
16. On 22 May 2024, the Tribunal asked the Parties to clarify whether they agreed that each Party was to bear its own costs and expenses, including legal expenses, and if they wished the Order to say so. On 22 May and 23 May 2024, the Parties confirmed their agreement and requested that the Order say so accordingly.

III. EXPENSES

17. In accordance with ICSID Administrative and Financial Regulation 15(1)(a), by letter of 28 June 2023, the Secretariat invited the Claimants to pay a deposit to cover the administrative expenses, fees and expenses of the Tribunal in a total amount of USD 150,000. ICSID received the Claimants' payment on 14 July 2023.
18. Pursuant to ICSID Administrative and Financial Regulation 15(1)(b), by letter of 21 July 2023, the Secretariat invited the Parties to pay a deposit to cover the administrative expenses, fees and expenses of the Tribunal in the amount of USD 300,000.
19. The Claimants' payment of USD 150,000 dated 14 July 2023 fully satisfied their share of the amount required. ICSID received the Respondent's payment of USD 150,000 on 1 April 2024.
20. On 22 and 23 May 2024, the Parties informed the Tribunal that they agree that each of them shall bear their own expenses, including legal expenses, and that the unused portions of the deposit to ICSID shall be reimbursed to them. The Tribunal understands this

agreement to mean also that the Parties are to bear the fees and expenses of the Tribunal as well as the administrative fees of the Centre in equal parts. Given the fact that each Party paid half of the deposit, such reimbursement shall be made to the Parties in proportion to the payments that the Parties advanced to ICSID.

IV. ORDER

21. Therefore, considering the above and in accordance with Rule 56 of the ICSID Arbitration Rules, the Tribunal
- a. TAKES NOTE of the discontinuance of the proceeding;
 - b. TAKES NOTE of the Parties' agreement that each of them shall bear their own expenses, including legal expenses, as well as an equal part of the fees and expenses of the Tribunal and the administrative fees of the Centre; and
 - c. ORDERS that the remaining balance of the unused portions of the deposit shall be reimbursed to the Parties in proportion to the payments that the Parties advanced to ICSID.

[Signed]

Prof. Dr. Silvina S. González Napolitano
Arbitrator

[Signed]

Prof. Dr. Stephan W. Schill
Arbitrator

[Signed]

Ms. Dyalá Jiménez Figueres
President of the Tribunal