

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Ruby River Capital LLC

v.

Canada

(ICSID Case No. ARB/23/5)

PROCEDURAL ORDER NO. 12

**Decision on Respondent's Requests for an
Extension of Time and the Production of Certain Documents**

Members of the Tribunal

Ms. Carole Malinvaud, President of the Tribunal

Mr. Barton Legum, Arbitrator

Prof. Zachary Douglas KC, Arbitrator

Secretary of the Tribunal

Mr. Benjamin Garel

Assistant of the Tribunal

Mr. Pierre Collet

20 May 2025

I. PROCEDURAL BACKGROUND

1. On 1 May 2025, the Respondent sought leave from the Tribunal to submit a request for (i) an extension of time regarding the filing of its Rejoinder on the Merits and Reply on Jurisdiction, and (ii) the production of documents relating to the financing of the Project.
2. On 2 May 2025, the Tribunal granted leave to the Respondent, and indicated that the Claimant would have an opportunity to respond to the request, within a deadline established upon its filing. The Tribunal also invited the Respondent to take the hearing dates into account when making the request.
3. On the same day, the Respondent filed its request.
4. On 5 May 2025, the Claimant requested to be authorized to respond to the Respondent's request by 9 May 2025. On the same day, the Tribunal invited the Claimant to file its response at its earliest convenience and by 9 May 2025 at the latest.
5. On 8 May 2025, the Claimant filed its response to the Respondent's request.

II. PARTIES' POSITIONS

A. RESPONDENT

6. The Respondent submits that the second expert report from Secretariat submitted by the Claimant with its Reply on the Merits and Counter-Memorial on Jurisdiction presents a quantification of claimed damages that is fundamentally different, both methodologically and factually, from that presented in the first expert report from Secretariat filed with its Memorial.¹ For the Respondent, "*alors que la quantification proposée par Secretariat dans son premier rapport était fondée sur la seule méthode DCF, la nouvelle quantification repose maintenant en partie sur des transactions*

¹ Respondent's Request, pp. 1-2.

passées dans le cadre d'un tour de financement que la demanderesse présente comme reflétant la juste valeur marchande du projet."² The Respondent also notes that Claimant has changed the valuation date from the date of the award to 21 July 2021,³ and that Secretariat's second report relies on new witness evidence.⁴

7. The Respondent further contends that because this fundamentally different damages quantification was presented after the document production phase, it was prevented from requesting the production of documents relevant to the new valuation presented by the Claimant, which its own expert would need to understand and test.⁵
8. The Respondent therefore requests a four-week extension of time to file its Rejoinder on the Merits and Reply on Jurisdiction.⁶ The Respondent also requests the production by the Claimant, within 15 days, of « *les documents ayant servi à établir à [REDACTED] l'évaluation pré-monétaire du projet pour le quatrième tour de financement, incluant une version intégrale du « Fourth Amended and Restated Limited Partnership Agreement » du 28 janvier 2019 (pièce C-12) et ses avenants, ainsi que toutes les offres de financement et/ou accords relatifs à la souscription de titres financiers (parts de série A et obligations convertibles) reçus lors de cette levée de fonds qui s'est échelonnée de 2019 à 2021.* »⁷
9. The Respondent proposes amendments to the procedural calendar so that the requested extension of time does not affect the hearing dates, as follows: (i) to reduce by two weeks the Claimant's time to file its Rejoinder on Jurisdiction; (ii) to shift by two weeks the steps relating to the observations of the non-disputing treaty parties.⁸

² Respondent's Request, p. 1.

³ Respondent's Request, p. 2.

⁴ Respondent's Request, p. 2.

⁵ Respondent's Request, p. 2.

⁶ Respondent's Request, p. 3.

⁷ Respondent's Request, p. 3.

⁸ Respondent's Request, p. 3.

10. Lastly, the Respondent invites the Tribunal to consider adding 3 or 4 hearing days in reserve given the number of witnesses and experts that may be called to testify.⁹

B. CLAIMANT

11. The Claimant objects to the Respondent's request for an extension of time, on the grounds that no justifiable reason for it exists, as required by paragraph 13.7 of Procedural Order No. 1.¹⁰ The Claimant observes that the procedural calendar has already been amended several times as a result of the Respondent's inability to comply with deadlines relating to the document production phase.¹¹
12. The Claimant further submits that if granted, the amendments proposed by the Respondent to the procedural calendar "*would amount to a blatant violation of due process.*"¹²
13. On the merits of the request, the Claimant alleges that none of the reasons advanced by the Respondent justify an extension of time. First, "*Secretariat's reliance in its second report on past transactions in its valuation of the GNLQ Project does not reflect a 'fundamentally different' methodological approach to its first report, nor is it based on new evidence.*"¹³ Second, "[t]he Claimant's decision to instruct Secretariat to use a valuation date of 21 July 2021 instead of the date of the award does not require any new, unforeseeable analysis by Accuracy."¹⁴ Third, "[w]hile Secretariat has relied on new witness evidence in its second report, that evidence was submitted with the Claimant's Reply in direct response to the Respondent's allegations in its Counter-Memorial and/or accompanying witness evidence."¹⁵

⁹ Respondent's Request, pp. 3-5.

¹⁰ Claimant's Response, paras. 5-6

¹¹ Claimant's Response, para. 7.

¹² Claimant's Response, para. 8.

¹³ Claimant's Response, para. 9.a).

¹⁴ Claimant's Response, para. 9.b).

¹⁵ Claimant's Response, para. 9.c).

14. The Claimant states that should the Tribunal be minded to grant an extension of time to the Respondent, it would consent to a 9-day extension, from 28 June to 7 July 2025.¹⁶
15. Regarding the Respondent's request for the production of documents, the Claimant submits that it is both untimely and unjustified. Untimely, because the Respondent has already requested the documents it now seeks to obtain, albeit in a manner that was deemed insufficiently narrow and specific by the Tribunal, which rejected the request. The Claimant contends that the Respondent could have submitted, but did not submit, a narrower or more specific request at the time, and cannot submit now a revised request.¹⁷ Unjustified, because, the Claimant submits, (i) the Respondent is already in possession of the information it purportedly seeks to obtain through its latest document production request;¹⁸ (ii) the Respondent did not explain why the requested documents are material to the outcome of the dispute;¹⁹ and (iii) the Respondent's request is open-ended and overly broad.²⁰
16. Lastly, the Claimant agrees with the Respondent that holding additional hearing days in reserve would be prudent, and "*proposes reserving specifically Saturday 13 December as well as Monday 15 to Wednesday 17 December 2025.*"

III. ANALYSIS AND TRIBUNAL'S DETERMINATIONS

17. The Tribunal notes that the [REDACTED] valuation based on a past financing round, which was only accessory in the Claimant's initial damages case, now represents 25% of the claimed damages. The Tribunal can accept that the Respondent's document production requests would have been different if that had been the case in

¹⁶ Claimant's Response, paras. 11-13.

¹⁷ Claimant's Response, paras. 14-19.

¹⁸ Claimant's Response, para. 21.

¹⁹ Claimant's Response, para. 22.

²⁰ Claimant's Response, para. 23.

the first Secretariat report. And the Tribunal has not found in the record of the case information or documents explaining the calculation of this [REDACTED] evaluation.

18. Furthermore, the Tribunal notes that in order to prepare its [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
an informed decision as to a possible participation in the Project.

19. The Tribunal is therefore inclined to grant the Respondent's request with respect to Exhibit C-12 in full together with its amendments and all subscription agreements for the 4th round of funding from 2019 to 2021.
20. The Tribunal acknowledges that the Respondent will need some time to review these documents before finalizing its next submission, but is also cognizant of the disruptive knock-on effect that a month-long extension of time could have on the subsequent dates in the procedural calendar, especially so close to the hearing.
21. The Tribunal considers that (a) a three-week extension of time is adequate to allow the Respondent to address the modifications to the Claimant's damages claim; (b) those modifications are not argued to relate to the questions of jurisdiction presented before this Tribunal and do not justify an extension of time for the filing of the Respondent's Reply on Jurisdiction; and (c) it is appropriate under the circumstances to require the Respondent to file its Rejoinder on the Merits separately from its Reply on Jurisdiction and to maintain the procedural calendar for all steps other than the Rejoinder on the Merits.
22. Lastly, the Tribunal expects that the Parties will be efficient in their examinations of witnesses and experts at the hearing. It considers that the hearing dates and duration as currently scheduled are sufficient to accommodate the potential number of

²¹ Exhibit SEC-0205-ENG-FRA p.3

witnesses and experts to be called to testify at the hearing, and does not consider it necessary to reserve additional hearing days as suggested by the Parties.

IV. ORDER

23. For the foregoing reasons, the Tribunal orders:

- the Claimant to provide to the Respondent, within 15 days from the issuance of this Order, *i.e.* by 4 June 2025, Exhibit C-12 in full with amendments and all subscription agreements for the 4th round of funding from 2019 to 2021;
- the Respondent to file its Reply on Jurisdiction as scheduled on or before 28 June 2025 and to file its Rejoinder on the Merits by 19 July 2025;
- all subsequent dates in the Procedural Calendar to be maintained as shown in Annex A.

On behalf of the Tribunal,

Ms. Carole Malinvaud
President of the Tribunal
Date: 20 May 2025

Annex:

Annex A – Procedural Calendar Amended as of 20 May 2025