PCA (PERMANENT COURT OF ARBITRATION)

PCA Case No. 2018-54

TENNANT ENERGY, LLC V. GOVERNMENT OF CANADA

PROCEDURAL ORDER NO.1

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24 June 2019

Tribunal:
Cavinder Bull (President)
Doak Bishop (Appointed by the investor)
Daniel Bethlehem KCMG QC (Appointed by the State)

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Procedural Order No.1

Following the first procedural hearing with representatives of the Parties and the Tribunal on 17 June 2019, and after having consulted with the Parties, the Tribunal hereby **ORDERS** and **DIRECTS** as follows:

1. General

1.1. This Procedural Order No. 1 concerns:
(a) the general procedural rules for the arbitration;

(b) the Procedural Calendar, including provisional dates for the hearing;

(c) the procedural rules applicable to written submissions, document production, non-expert evidence and expert evidence for all hearings.

2. Applicable Arbitration Rules

2.1. The procedure in this arbitration shall be governed by the 1976 UNCITRAL Arbitration Rules **("UNCITRAL Rules")** except as modified by the provisions of Section B of Chapter Eleven of the North American Free Trade Agreement **("NAFTA")** (per Article 1120(2) of the NAFTA).

2.2. Subject to the NAFTA and the *UNCITRAL Rules,* if the provisions and rules in this Procedural Order do not address a specific procedural issue, the Tribunal shall, after consultation with the Parties, determine the applicable procedure.

3. Place of Arbitration

3.1. The place of arbitration is fixed at Washington, DC.

3.2. Meetings and hearings may take place at other locations if so decided by the Tribunal after consultation with the Parties. The Tribunal may meet at any location it considers appropriate for deliberations.

4. Case Administration

4.1. The International Bureau of the Permanent Court of Arbitration **("PCA")** shall act as registry (the **"Registry")** and administer the arbitral proceedings on the following terms:

4.1.1. In consultation with the Tribunal, the Secretary-General of the PCA shall designate a legal officer of the International Bureau to act as Registrar and Secretary to the Tribunal.

4.1.2. The Registry shall maintain an archive of filings of correspondence and submissions.

4.1.3. The Registry shall manage Parties' deposits to cover the costs of the arbitration, subject to the Tribunal's supervision.

4.1.4. If needed, the Registry shall make its hearing and meeting rooms in the Peace Palace in The Hague or elsewhere available to the Parties and the Tribunal at no charge. Costs of catering, court reporting, or other technical support associated with hearings or meetings at the Peace Palace or elsewhere shall be borne by the Parties.

4.1.5. Upon request, the staff of the PCA shall carry out administrative tasks on behalf of the Tribunal, the primary purpose of which would be to reduce the costs that would otherwise be incurred by the Tribunal carrying out purely administrative tasks. Work carried out by PCA staff shall be billed in accordance with the PCA's schedule of fees. PCA fees and expenses shall be paid in the same manner as the Tribunal's fees and expenses.

4.2. The contact details of the Registry are as follows:
Permanent Court of Arbitration

Ms. Christel Y. Tham, Legal Counsel

Ms. Diana Pyrikova, Case Manager

Peace Palace

Camegieplein 2

2517 KJ The Hague

The Netherlands

Tel.: +31 70 302 4153 /+31 70 302 4252

Fax: +31 70 302 4167

E-mail: ctham@pca-cpa.org dpyrikova@pca-cpa.org

4.3. The appointment of the PCA as Registry shall not affect the legal place or geographical venue of the arbitration, the applicable procedural rules, or other aspects of the arbitral proceedings, which shall remain subject to the Terms of Appointment, this Procedural Order No. 1 and to any other agreements between the Parties and any determinations by the Tribunal.

5. Procedural Calendar

5.1. After consulting with the Parties, the Tribunal has determined that the Procedural Calendar shall be as set out in Annex I.

5.2. The Parties may at any stage of the proceedings seek further directions from the Tribunal regarding procedural steps relating to and/or in addition to those set out in the Procedural Calendar.

5.3. Unless otherwise provided, all time limits shall refer to midnight at the place of arbitration on the day of the deadline.

6. Form of Memorials and Written Submissions

6.1. Memorials (Memorial, Counter-Memorial, Reply Memorial and Rejoinder Memorial) shall be filed and exchanged by the dates indicated in the Procedural Calendar at Annex I.

6.2. All Memorials shall specify in full detail the facts and contentions of law, and relief claimed, and be accompanied by all evidence, including exhibits, witness statements, expert reports and legal authorities upon which each Party relies in support of the relevant Memorial.

6.3. In the event of a request for bifurcation to determine the Respondent's objections to jurisdiction in the initial phase of the Arbitration, the request for bifurcation shall be accompanied by the Respondent's written submissions for bifurcation. The Claimant's comments on the request shall be filed by the date indicated in the Procedural Calendar at Annex I.

6.4. On or before the date of the deadline for any Memorial, the Party in question shall send the Memorial, together with any witness statements and expert reports, and indices of exhibits and authorities (but excluding other supporting documents and legal authorities), for the attention of Tribunal by e-mail, with a copy simultaneously to opposing counsel and the PCA, in accordance with section 8 of the Terms of Appointment.

6.5. All Memorials and written submissions shall be consecutively paragraph-numbered and page-numbered in Arabic numerals and shall contain a table of contents. To facilitate filing, citations, and word processing, all Memorials and written submissions, including witness statements and expert reports or opinions, shall be provided as searchable Adobe Portable Document Format **("PDF")** files, and preceded by a hyper-linked table of contents.

6.6. All Memorials shall be accompanied by a cumulative index of all supporting documentation filed by that Party to date, setting forth for each exhibit: (a) the exhibit number; (b) the date of the exhibit; and (c) a brief description of the exhibit; and setting forth for each legal authority: (a) the legal authority number; (b) the date of the legal authority; and (c) the title of the legal authority.

6.7. Within five business days following the submission of a Memorial or written submission and accompanying documents by e-mail, hard copies of the Memorial or written submission and all

accompanying documents (except for legal authorities), shall be sent by courier to the Tribunal in A5 format or its equivalent in North America (double-sided print with spiral wire bindings), and to the PCA and opposing counsel in A4 format or US Letter (double-sided print with spiral wire bindings), organized in chronological or other appropriate order, with a separate tab for each exhibit, and preceded by a list describing each document by exhibit number, date, type of exhibit, author, and recipient (as applicable). Documents (including legal authorities) shall also be submitted in electronic form on a USB flash memory drive, preferably as searchable PDF files.

6.8. For any simultaneous submissions, each side shall submit all electronic and hard copies only to the PCA. The PCA will then distribute copies to the Tribunal and opposing counsel once both submissions have been received.

7. Document Production

7.1. The Procedural Calendar sets out the steps and applicable dates that shall govern the production of documents in this proceeding.

7.2. Each Party's request for production shall identify: a description of each requested document sufficient to identify it, or a description in sufficient detail (including subject matter) of a narrow and specific requested category of documents that are reasonably believed to exist; a statement as to how the documents requested are relevant to the case and material to its outcome; and 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 a statement of the reasons why the requesting Party assumes the documents requested are in the possession, custody or control of the other Party. The request for production shall take the form of a Redfern Schedule, as attached at Annex II (Redfern Schedule). For the purposes of this order, the term "relevance" encompasses both the term "relevance" and "materiality".

7.3. A Party shall submit its request for document production in writing to the other Party by completing columns (a), (b) and (c) of the Redfern Schedule attached at Annex II.

7.4. If the requested Party objects to production, the following procedure shall apply:
7.4.1. The requested Party shall submit a response in column (d) of the requesting Party's Redfern Schedule stating which documents or class of documents it objects to producing. The response shall state the reasons for each objection and shall indicate the documents, if any, that the Party would be prepared to produce instead of those requested.

7.4.2. The requesting Party shall respond to the other Party's objection in column (e) of its Redfern Schedule, indicating, with reasons, whether it disputes the objection.

7.4.3. The Parties shall seek agreement on production requests to the greatest extent possible.

7.4.4. To the extent that agreement cannot be reached between the requesting and the requested Party, the Parties shall submit all outstanding requests to the Tribunal for decision. All other

correspondence or documents exchanged in the course of this process shall not be copied to the Tribunal.

7.4.5. Document production requests submitted to the Tribunal for decision, together with objections and responses, must be in tabular form pursuant to the model appended to this Procedural Order as Annex II (Redfern schedule).

7.4.6. The Tribunal shall rule on any such application in column (f) of the Parties' Redfern Schedule and may for this purpose refer to the *IBA Rules on the Taking of Evidence in International Arbitration 2010* **("IBA Evidence Rules")** as a guideline. Documents ordered by the Tribunal to be disclosed shall be produced within the time limit set forth in the Procedural Calendar.

7.4.7. Should a Party fail to produce documents as ordered by the Tribunal, at the request of a Party, the Tribunal may draw the inferences it deems appropriate, taking into consideration all relevant circumstances.

7.5. Documents produced according to the above procedure shall not be considered part of the evidentiary record unless and until a Party subsequently submits the document as an exhibit or legal authority to a written submission that makes reference to or relies upon it.

7.6. Claims of privilege falling under *IBA Evidence Rules* are to be resolved by means of redaction, wherever possible, and the redactions must note the IBA Rule under which the Party is claiming privilege. The entirety of a document must be produced in the event that part of it is material and relevant, and sections that are subject to privilege claims may be redacted. All claims to privilege shall be identified in a privilege log, which is to be provided to the opposing side on the date fixed for the production of responsive documents.

7.7. Privilege logs shall identify individually each document as to which a claim of privilege or sensitivity, including cabinet privilege, political sensitivity, or legal privilege has been asserted. They shall also state the circumstances giving rise to the assertion of privilege/sensitivity for each document in sufficient detail to permit the requesting Party to make an initial evaluation as to whether the assertion of privilege/sensitivity is justified.

8. Evidence and Legal Authorities

8.1. In addition to the relevant articles of the *UNCITRAL Rules* and the provisions on document production above, the Tribunal may use, as an additional guideline, the *IBA Evidence Rules,* when considering matters of evidence.

8.2. The Parties shall submit with their Memorials and written submissions all evidence and authorities on which they intend to rely upon in support of the factual and legal arguments advanced therein, including witness statements, expert reports, and documents.

8.3. In their rebuttal submissions (i.e., Reply and Rejoinder Memorials), the Parties shall submit only

additional written witness testimony, expert opinion testimony and documentary or other evidence to respond to or rebut matters raised in the other Party's prior written submission, except for new evidence they receive through document production.

8.4. Following submission of the Reply and Rejoinder Memorials, the Tribunal shall not consider any evidence that has not been introduced as part of the written submissions of the Parties, unless the Tribunal grants leave on the basis of exceptional circumstances. Should such leave be granted to one side, the other side shall have an opportunity to submit counter-evidence.

8.5. The Parties shall identify each exhibit submitted to the Tribunal with a distinct number. Each exhibit submitted by the Claimant shall begin with a letter "C" followed by the applicable number (i.e., C-l, C-2, etc.); each exhibit submitted by the Respondent shall begin with a letter "R" followed by the applicable number (i.e., R-l, R-2, etc.). The Parties shall use sequential numbering throughout the proceedings.

8.6. Statements of fact witnesses or reports of experts shall be numbered separately as "CWS-" for Claimant's witness statements and as "CER-" for Claimant's expert reports, and "RWS-" for Respondent's witness statements and "RER-" for Respondent's expert reports, followed by the applicable number and name (for example, CWS-1 [Jones]).

8.7. The Parties shall identify each legal authority submitted to the Tribunal with a distinct number. Each legal authority submitted by the Claimant shall begin with the letters "CLA" followed by the applicable number (i.e., CLA-1, CLA-2, etc.); each legal authority submitted by the Respondent shall begin with the letters "RLA" followed by the applicable number (i.e., RLA-1, RLA-2, etc.). The Parties shall use sequential numbering throughout the proceedings.

8.8. All evidence submitted to the Tribunal shall be deemed to be authentic, including evidence submitted in the form of copies, unless a Party disputes within a reasonable time its authenticity.

8.9. The Parties shall either submit all documents to the Tribunal in complete form or indicate the manner in which any document is incomplete.

9. Witnesses

9.1. Any person may present evidence as a witness, including a Party or a Party's officer, employee, or other representative.

9.2. For each witness, a written and signed witness statement shall be submitted to the Tribunal. Where in exceptional circumstances a Party is unable to obtain such a statement from a witness, the evidence of that witness shall be admitted only with leave of the Tribunal and in accordance with its directions.

9.3. Each witness statement shall contain at least the following:
(a) the full name and present address of the witness;

(b) a description of the witness's position and qualifications, if relevant to the dispute or to the contents of the statement;

(c) a description of any past and present relationship between the witness and the Parties, counsel, or members of the Tribunal;

(d) a description of the facts on which the witness's testimony is offered and, if applicable, the source of the witness's knowledge;

(e) copies of all documents relied upon or alternatively, where the document is already in the record, citations to such documents as indexed under paragraph 8.5 above;

(f) an affirmation of the truth of the statements; and

(g) the signature of the witness and the date it was given.

9.4. Only witnesses that are called to be cross-examined by the other Party, or who are directed to appear by the Tribunal, shall testify at the hearing. Notwithstanding the above, at the request of a Party, the Tribunal may allow, in limited circumstances where it is reasonable and appropriate to do so, a witness offered by that Party but not called to be cross-examined by the other Party, or directed by the Tribunal to appear, to testify at the hearing.

9.5. At the same time, any Party may indicate that it does not wish to question a witness. The fact that a Party does not request the presence of a witness for cross-examination will not be deemed as an admission by that Party nor will it imply that the Party accepts the substance of that witness's witness statement(s) is correct or proven.

9.6. Each Party shall be responsible for ensuring attendance of its own witnesses to the applicable hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance.

9.7. The Tribunal may, on its own initiative, summon any other witness to appear.

9.8. If a witness fails to appear at a hearing, the Tribunal may, at its discretion, summon the witness to appear at a later date, if it is satisfied that: (1) there was a compelling reason for the witness' failure to appear; (2) the testimony of the witness is relevant to the adjudication of the dispute; and (3) providing a further opportunity for the witness to appear will not unduly prejudice the opposing Party.

9.9. The Tribunal may consider the witness statement of a witness who provides a valid reason for failing to appear at a hearing, having regard to all the surrounding circumstances, including the fact that the witness was not subject to cross-examination. A witness who is not called for cross-examination has a valid reason not to appear. The Tribunal shall not consider the witness statement of a witness who fails to appear and does not provide a valid reason.

9.10. Each Party shall advance the costs of appearance of its own witnesses. The Tribunal will decide

upon the appropriate allocation of such costs in its final award.

9.11. At any hearing, the examination of each witness shall proceed as follows:
(a) the witness shall make a declaration of truthfulness;

(b) although direct examination will be given in the form of witness statements and expert reports, the Party presenting the witness may conduct a brief direct examination for the purpose of introducing the witness, correcting, if necessary, any errors in the witness statement and addressing matters that have arisen after the witness statement was given, if any;

(c) the adverse Party may then cross-examine the witness on relevant matters that were addressed or presented in the witness statement;

(d) the Party presenting the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination, with re-cross-examination limited to the witness's testimony on re-examination at the discretion of the Tribunal; and

(e) the Tribunal may examine the witness at any time, either before, during or after examination by any of the Parties.

9.12. The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Tribunal may in its discretion:
(a) refuse to hear a witness if it considers that the facts with respect to which the witness will testify are either proven by other evidence or are irrelevant;

(b) limit or refuse the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or

(c) direct that a witness be recalled for further examination at any time.

9.13. It shall not be improper for counsel to meet with witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare the examinations.

9.14. Unless the Parties agree otherwise, a factual witness shall not be present in the hearing room during the hearing of oral testimony, discuss the testimony of any other witness, or read any transcript of any oral testimony, prior to his or her examination. This limitation does not apply to a witness of fact if that witness is the designated party representative.

9.15. The party representative referred to in paragraph 9.14 means the individual(s) designated by a Party to act as its agent and give instructions to counsel at the hearing.

9.16. If the Parties so agree, or in the case of disagreement between the Parties, upon the acceptance of the Tribunal, witnesses may be examined by videoconference.

10. Experts

10.1. Each Party may retain and submit the evidence of one or more experts to the Tribunal.

10.2. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted with the Parties' written submissions, in which case the reference to the number of the exhibit will be enough.

10.3. The provisions set out in relation to witnesses shall apply, *mutatis mutandis,* to the evidence of experts, except that, unless the Parties agree otherwise, expert witnesses shall be allowed to be present in the hearing room at any time and in addition to paragraph 9.11(a), may at the request of the presenting Party, provide a presentation on his or report(s) for a duration to be determined at the Pre-Hearing Conference by the Tribunal in consultation with the Parties. In addition, each expert report shall contain:

(a) a description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;

(b) a confirmation that this is the expert's own, impartial, objective, unbiased opinion which has not been influenced by the pressure of the dispute resolution process or by any party to the arbitration;

(c) a statement that the expert understands that, in giving his or her report, his or her duty is to the Tribunal, and that he or she complies with that duty;

(d) a statement of the facts on which he or she is basing his or her expert opinions and conclusions;

(e) his or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions;

(f) an affirmation of his or her genuine belief in the opinions expressed in the expert report;

(g) a statement that, if the expert subsequently considers that his or her opinions require any correction, modification or qualification, he or she will notify the parties to this arbitration and the arbitral tribunal forthwith; and

(h) if the expert report has been signed by more than one person, an attribution of the entire or specific parts of the expert report to each author.

10.4. The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference (including expert fees), and conclusions of any such expert.

11. Amici

11.1. If a request for the submission of an amicus curiae brief is filed by the date indicated in the Procedural Calendar, the Tribunal will give the appropriate directions in the exercise of its powers

under Article 15 of the *UNCITRAL Rules.*

11.2. By the relevant dates to be indicated in the Procedural Calendar or as determined by the Tribunal, the Parties shall have the opportunity to: (1) make submissions on any request for the submission of an amicus curiae brief; and (2) file simultaneous observations on issues raised in any amicus curiae brief submitted pursuant to a decision of the Tribunal.

12. Transparency

12.1. All filings to the Tribunal, hearing transcripts, and directions, orders and awards of the Tribunal generated during the course of this arbitration shall be made available to the public, subject to redaction of confidential information.

12.2. Hearings shall be open to the public. The Tribunal may hold portions of hearings *in camera* to the extent necessary to ensure the protection of confidential information.

13. Hearings

13.1. After consultation with the Parties, the Tribunal shall issue, for each hearing, a procedural order convening the meeting, establishing its place, time, agenda, and all other technical and ancillary aspects.

13.2. Subsequent procedures shall be determined by the Tribunal in further consultation with the Parties.

13.3. As a general principle, neither Party shall advance any new factual allegations or any new legal arguments at the hearing that have not already been stated in the Memorials and written submissions in accordance with the Procedural Calendar, unless expressly permitted by the Tribunal.

13.4. As a general principle, documents relied upon by the Parties must be filed with the Memorials and written submissions in accordance with the Procedural Calendar and no new documents may be presented by either Party at the hearing unless expressly permitted by the Tribunal.

13.5. Nonetheless, demonstrative exhibits may be presented by a Party based on documents in the record. Demonstrative exhibits shall contain citations to the relevant documents in the record. Such demonstrative exhibits are to be provided in electronic and hard copy to the Tribunal and the other Party.

13.6. Should the Tribunal grant leave to a party to present new factual allegations, new legal arguments or new documents in the course of the hearing, it should grant the other party the opportunity to respond and introduce new evidence to rebut the same.

13.7. Save as provided for in this Procedural Order, as a general principle, no new fact or expert witness may be presented by either Party at the hearing; and no witness shall be heard orally at the hearing who has not provided a witness statement or expert report in accordance with the Procedural Calendar.

13.8. At or before the hearing, the Tribunal shall decide, in farther consultation with the Parties, whether and when the Parties shall submit post-hearing submissions and replies to post-hearing submissions, whether in addition to or in substitution for oral closing arguments at the hearing. The Tribunal may fix a page-limit for such post-hearing submissions, in further consultation with the Parties. At the close of the hearing, the Tribunal may close the record as regards all issues addressed at that hearing.

14. Procedural language of the Arbitration, Translation and Interpretation

14.1. Having regard to the circumstances of the case, the procedural language of this arbitration is English.

14.2. All Memorials, written submissions, witness statements, expert reports and administrative or procedural correspondence shall be submitted in English, provided that witness statements or expert reports may be submitted in the principal language of the witness or expert, and shall be accompanied by an English translation.

14.3. If any Party submits into evidence a document in any language other than English, an English translation of the document - or of the relevant portions, in the case of lengthy documents -shall be submitted simultaneously with the original text. Such documentation includes all evidential and legal materials upon which that Party relies, including documentary evidence, factual witness statements and expert witness statements or reports. Where a document produced in the course of document production has been prepared in a language other than English, no translation of such document shall be required unless and until it is submitted into evidence as an exhibit.

14.4. The Parties are not required to produce certified translations; a confirmation from counsel that the document is a translation will suffice. Each Party reserves its right to: (i) challenge the accuracy of the English translation submitted by the other and submit a new translation that clearly identifies the differences; and (ii) submit additional translated parts of any document not submitted or translated in its entirety. Should a Party challenge the accuracy of the translation submitted by the other Party, the challenging Party may request that the Tribunal order that a certified translation be prepared. Should the wording of the certified translation substantially match that of the uncertified one, its cost shall be borne by the challenging Party.

14.5. Any witness giving oral evidence may give such evidence in his or her mother tongue, in whole or in part, provided that interpretation into English to the satisfaction of the Tribunal is supplied by the Party presenting the witness for oral evidence. Any Party intending to present oral evidence in a language other than English shall notify the Tribunal and the other Party at least thirty days in advance and shall be responsible for providing suitable interpretation of such evidence into

English.

14.6. As a general principle, each Party shall bear the costs of translation of documents and interpretation of testimony on which it intends to rely, without prejudice to the decision of the Tribunal as to which Party shall ultimately bear those costs and in what amount.

15. Communications (other than Submissions)

15.1. As a general principle, no *ex parte* communications shall take place between any Party and the Tribunal.

15.2. Each Party shall send any written communication for the attention of the Tribunal by e-mail, with a copy simultaneously to opposing counsel and the PCA, subject to paragraph 6.7.

15.3. As a general principle, the Tribunal does not wish to be copied in inter-Party correspondence. Accordingly, the Tribunal should be sent only those communications that the Parties intend the Tribunal to read and act upon.

15.4. Correspondence between the Parties and the Tribunal shall be confined to requests for rulings and administrative matters. Argumentation shall be reserved for written submissions lodged in relation to issues under consideration by the Tribunal or for hearings before the Tribunal.

15.5. A Party should immediately notify the Tribunal and the other Party of any change in counsel.

16. Status of Orders

16.1. The provisions of this and future orders shall apply in addition to the Terms of Appointment executed by the Parties and the Tribunal.

16.2. Procedural orders made by the Tribunal shall remain in force unless expressly amended or terminated by the Tribunal.

16.3. The Tribunal shall be free to decide any issue by way of an order, a partial or interim Award, or a final Award, as it may deem appropriate.

16.4. Any order made by the Tribunal (including this Procedural Order No. 1 and the Procedural Calendar) may, at the request of a Party or upon the Tribunal's own initiative, be varied where the circumstances so require in the Tribunal's discretion, after consultation with the Parties. However, the Tribunal reminds the Parties that repeated or multiple requests for reconsideration that are found by the Tribunal to be without proper grounds may entail adverse costs consequences as well as being treated as an abuse of process.

17. Decisions of the Tribunal

17.1. In accordance with Article 31(1) of the *UNCITRAL Rules,* any award or other decision of the Tribunal shall be made by a majority of the Members of the Tribunal.

17.2. Procedural decisions may be taken by the Presiding Arbitrator after consultation with the Co-Arbitrators whenever possible. An order signed by the Presiding Arbitrator shall be taken to be an order of the Tribunal.

18. Extensions of Time

18.1. The Tribunal may grant reasonable extensions of time, upon application by a Party or on the Tribunal's own motion before the expiry of any time limit, as determined by the Tribunal in its discretion. In cases of urgency, the Presiding Arbitrator is authorised to grant, or refuse, applications for an extension of time without consultation with other members of the Tribunal, subject to ratification by the Tribunal as soon as possible thereafter.

18.2. If either Party should experience any difficulty with any time-limit, it is imperative that such difficulties are notified to the other Party and the Tribunal immediately, as soon as it arises and before the expiry of the time limit.

18.3. As a general principle, neither Party should request an extension of time without first having sought agreement, on the basis of mutual courtesy, from the other Party via inter-Party communications, and any request should, to the extent reasonably practicable, be made at least five (5) working days before the relevant deadline.

18.4. Short extensions may also be agreed between the Parties as long as they do not affect later dates in the timetable and the Tribunal is informed before the original due date.

19. Disposal of Record

19.1. Twelve months after the Tribunal has notified the final award to the Parties, the arbitrators shall be at liberty to dispose of the record of the arbitration, unless the Parties ask that the documents be returned to them or to their counsel, which will be done at the expense of the requesting Party.