

September 30, 2022

BY E-MAIL

Members of the Tribunal
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**Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd. v. Romania
(ICSID Case No. ARB/15/31)**

Dear Members of the Tribunal:

Claimants submit the following comments on the admissibility of the submission made by ICDER and Greenpeace Romania (the “Amici”) addressing the litigation relating to ADC No. 9/2011 for Cârnic leading to Decision No. 187 dated February 16, 2022 issued by the Ploiești Court of Appeal.

The Tribunal observed in PO19 that it has discretion to allow non-parties to make a submission where (i) they assist the Tribunal in determining a factual or legal matter by bringing a different perspective, knowledge or insight than the disputing parties; (ii) they address a matter within the scope of the dispute; (iii) they have a significant interest in the arbitration; (iv) there is public interest in the subject-matter of the arbitration; and (v) the submission avoids disrupting the proceedings and does not unduly burden or unfairly prejudice either disputing party.¹

Applying these factors, the Tribunal admitted most of the Amici’s November 2018 submission including their arguments about developments in the litigation relating to the Cârnic ADC.²

Here, ICDER offers its observations as a participant in the subject litigation opposing Romania’s issuance of the ADCs for Cârnic; the litigation relating to ADC No. 9/2011 for Cârnic including the February 16, 2022 decision of the Ploiești Court of Appeal is a matter within the scope of the dispute, as reflected in the submissions of both parties; this arbitration remains a matter of public interest; and the limited length (three-pages) and scope of the Amici submission, coupled with the parties’ agreement on a schedule for

¹ Procedural Order No. 19 dated December 7, 2018 ¶¶ 47-51.

² PO19 ¶¶ 60-69, 75(1) (admitting Sections I, II, and III of the submission “to the extent that they refer to factual issues within the specific knowledge of the Applicants and in relation to the interests the Applicants claim should be protected”). *See also* Amicus Submission dated November 2, 2018 at 12-13, § III(2) (discussing litigation relating to ADC No. 4/2004 and ADC No. 9/2011 for Cârnic); Claimants’ Comments on Non-Disputing Parties’ Submission dated Feb. 28, 2019 ¶¶ 108-135 (addressing the Amici’s submission about the ADCs and the status of the litigation).

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potential response, ensure that acceptance of the submission will neither unduly burden the proceedings nor prejudice either party.

Thus, while the Amici regrettably waited over seven months from the date of the court decision to file their application, given that their submission is only three pages and that the parties have agreed to address its substance within two weeks, Claimants do not oppose admission of the Amici's submission and should be permitted to address its substance.

Respectfully submitted,



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cc: Respondent's counsel