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Department of Justice



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VIA EMAIL

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July 19, 2024

Dear Professor Kaufmann-Kohler and Members of the Tribunal,

Re: *Westmoreland Coal Company v. Government of Canada* (ICSID Case No. UNCT/23/2)

Pursuant to the Tribunal's July 12, 2024 direction, Canada provides two observations on the Claimant's Statement of Costs dated June 14, 2024. In accordance with the Tribunal's direction at the hearing,¹ Canada does not comment on how the Tribunal should allocate costs in this case. Both observations pertain to specific issues with the Claimant's claimed Attorneys' Fees, and do not articulate Canada's position on the Claimant's general entitlement to costs in this case.

First, the Claimant appears to claim more in Attorneys' Fees than it has explained it would be required to pay its counsel. Specifically, the Claimant claims USD 3,240,552.50 in Attorneys' Fees.² However, according to its description of its hybrid "capped fee and success fee" arrangement, the Claimant would only be required to pay King & Spalding a maximum of USD 3,211,552.50.³ The Claimant thus appears to be asking for a minimum of USD 29,000 more in costs than it would be required to pay if it were successful. Costs awards should not exceed what a disputing party incurs.

¹ Hearing on Jurisdiction Transcript, Day 2, May 3, 2024, 318:4-8.

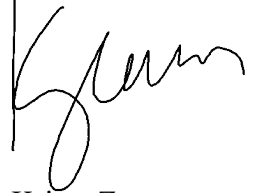
² Claimant's Statement of Costs, June 14, 2024, p. 2.

³ Claimant's Statement of Costs, June 14, 2024, fn. 2. According to the Claimant, this amount is comprised of "USD 2,425,000.00 of fees invoiced by King & Spalding on a capped-fee basis, and a further USD 786,552.50 of fees invoiced and payable if Claimant succeeds on jurisdiction."

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Second, the Claimant has provided no basis for determining the reasonableness of its claim for Attorneys' Fees under Article 40(2)(e) of the applicable UNCITRAL Arbitration Rules. For example, the Claimant has provided no hourly rates or levels of effort that were invoiced in this case. Canada recalls that any costs that it might be ordered to pay to the Claimant would be public funds, a fact that requires greater transparency and justification than the Claimant has provided in its Statement of Costs.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Zeman', with a period at the end.

Krista Zeman
A/Deputy Director and Senior
Counsel
Trade Law Bureau

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