

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Suomi Power Networks TopCo B.V., Supernova II Bidco BV and AMF Tjänstepension AB**

**v.**

**Republic of Finland**

**(ICSID Case No. ARB/24/37)**

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**PROCEDURAL ORDER NO. 2**  
**On Transparency and Confidentiality**

***Members of the Tribunal***

Mr. Eric Schwartz, President of the Tribunal

Mr. Peter Turner KC, Arbitrator

Prof. Zachary Douglas KC, Arbitrator

***Secretary of the Tribunal***

Ms. Anna Holloway

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16 April 2025

## **I. PROCEDURAL BACKGROUND**

1. On 28 February 2025, the Tribunal circulated a draft of this order (“**Draft PO2**”) for discussion by the Parties.
2. On 18 March 2025, the Parties commented on Draft PO2.
3. On 20 March 2025, the first session was held. During the first session, the Parties and the Tribunal discussed the Parties’ comments on Draft PO2 and the draft Procedural Order No. 1.
4. On 24 March 2025, the Tribunal circulated proposed revisions to the text of Procedural Order No. 2, and invited the Parties to make any further comments on the draft by 31 March 2025, a deadline that was subsequently extended until 2 April 2025 at the Parties’ joint request.
5. In accordance with these instructions, both parties provided comments on the revised draft PO2 on 2 April 2025.
6. With the leave of the Tribunal, on 7 April 2025 the Claimant submitted comments to the points raised by the Respondent in its 2 April 2025 communication.
7. With the leave of the Tribunal, on 10 April 2025 the Respondent submitted comments to the Claimant’s 7 April 2025 communication.
8. This Procedural Order No. 2 contains the Parties’ agreements and the Tribunal’s decisions concerning the transparency regime governing this case.

## **II. LEGAL FRAMEWORK**

9. The legal framework applicable to these proceedings is determined by the Energy Charter Treaty, the ICSID Convention, and the 2022 ICSID Arbitration Rules. ICSID Arbitration Rules 62-66 contain provisions concerning the publication of the award, orders and decisions, other documents filed in the proceedings, transcripts and recordings of hearings, open hearings and the definition of confidential or protected information.
10. In accordance with ICSID Arbitration Rule 1(2), the Parties may agree on other rules governing transparency and confidentiality of this proceeding (provided such agreement does not conflict with the ICSID Convention or ICSID Administrative and Financial Regulations).
11. In this case, the Energy Charter Treaty is silent with respect to transparency /confidentiality as regards disputes between investors and Contracting Parties. Therefore, the applicable provisions are those set out in Article 48(5) of the ICSID Convention and ICSID Arbitration Rules 62-66, as amended/supplemented by Section III of this Order.
12. In accordance with ICSID Arbitration Rule 66, confidential or protected information is information which is protected from public disclosure:
  - (a) by the instrument of consent to arbitration;
  - (b) by the applicable law or applicable rules;

- (c) in the case of information of a State party to the dispute, by the law of that State;
- (d) in accordance with the orders and decisions of the Tribunal;
- (e) by agreement of the parties;
- (f) because it constitutes confidential business information or protected personal information;
- (g) because public disclosure would impede law enforcement;
- (h) because a State party to the dispute considers that public disclosure would be contrary to its essential security interests;
- (i) because public disclosure would aggravate the dispute between the parties; or
- (j) because public disclosure would undermine the integrity of the arbitral process.

### **III. TRANSPARENCY RULES**

13. The Tribunal adopts the following transparency and confidentiality rules governing the proceedings.

#### **A. AWARD (ICSID ARBITRATION RULE 62)**

14. The publication of any Award, supplementary decision on an Award, rectification, interpretation, and revision of an Award, and decision on annulment, shall be governed by the provisions of Article 48(5) of the ICSID Convention and ICSID Arbitration Rule 62. Should the Parties wish to publish the Award, they shall only publish the version that is published by ICSID.

#### **B. ORDERS AND DECISIONS (ICSID ARBITRATION RULE 63)**

15. ICSID shall publish the orders and decisions of the Tribunal, with any redactions agreed by the Parties or decided by the Tribunal, in accordance with Section G below. The Parties shall not publish any orders or decisions, save for those published by ICSID.

#### **C. WRITTEN SUBMISSIONS (ICSID ARBITRATION RULES 64 AND 67)**

16. The Parties and ICSID shall not publish the Parties' written submissions.
17. The Parties and ICSID shall not publish any submissions by non-disputing parties (if any).

#### **D. SUPPORTING DOCUMENTS (ICSID ARBITRATION RULE 64)**

18. Supporting documents, including exhibits, legal authorities, witness statements and expert reports (including annexes, appendices or exhibits thereto) shall not be published by ICSID or by the Parties.

#### **E. OPEN HEARINGS (ICSID ARBITRATION RULE 65(1)-(2))**

19. Hearings shall not be open to the public.

**F. TRANSCRIPTS AND RECORDINGS OF HEARINGS (ICSID ARBITRATION RULE 65(3))**

20. Transcripts and recordings of hearings shall not be published by ICSID or by the Parties.

**G. PROCEDURE FOR REDACTIONS - NON-DISCLOSURE OF CONFIDENTIAL OR PROTECTED INFORMATION (ICSID ARBITRATION RULE 66, RULE 67(6))**

21. With respect to publication pursuant to Sections A and B above, any confidential or protected information as defined in ICSID Arbitration Rule 66 that is submitted to the Tribunal shall be protected from disclosure and publication in accordance with the procedure set forth below.
22. Within 60 days from the date of an Award, decision or order, a Party shall give written notice to the Tribunal and the other Party that it requests the non-disclosure of certain information it considers confidential or protected. Absent such a notice within the 60-day timeline, and unless the Tribunal determines on its own initiative that certain information is not to be made public in accordance with ICSID Arbitration Rule 66, the Tribunal will authorize ICSID to publish the document without redactions from the Parties.
23. The Tribunal is mindful of the need to protect the personal data of individuals and draws the Parties' attention to section 25 of Procedural Order No. 1. When identifying protected information in accordance with paragraph 22 above, the Tribunal recommends that the Parties redact, to the extent possible, the names of individuals, possible identifiers (such as position, title, nationalities), and information that can be considered sensitive regarding any individuals mentioned in any document to be published.
24. Within 21 days of receipt of the notice referred to in paragraph 22, the other Party may raise objections to the proposed redactions.
25. If no objections are raised within the deadline established in paragraph 24, the Tribunal will authorize ICSID to publish the document at issue with the requested redactions.
26. If objections are raised within the deadline established in paragraph 24, the Parties shall confer and seek to agree on redactions within 21 days of receipt of the objections to the proposed redactions. If the Parties reach an agreement, the Tribunal will authorize ICSID to publish the document at issue with the agreed redactions.
27. If objections remain unresolved, the disputed redaction requests and the objections thereto shall be submitted to the Tribunal in the form of the Transparency Schedule set out in **Annex A** to this Order. The Tribunal shall resolve the disputed redaction requests and communicate its decision to the Parties.
28. If information is to be redacted from a document in accordance with this section G, the Parties shall provide a redacted version of the document. Upon receipt of the redacted document, the Tribunal will ask ICSID to publish the document.
29. The Parties agree that in the event of a dispute regarding proposed redactions to the Award, the power to decide shall reside with the former Members of the Tribunal, even if such Tribunal is at the time *functus officio*.
30. The former Members of the Tribunal will be compensated for time spent in the resolution of any disputes in connection with redaction of "confidential information" in the Award in accordance with Section 3 of Procedural Order No. 1, with their claims being paid from the

case fund administered by ICSID for this proceeding pursuant to ICSID Administrative and Financial Regulations.<sup>1</sup>

31. In the event that the Tribunal permits a non-disputing party to participate in the proceedings, it shall not disclose to such non-disputing party any confidential or protected information in accordance with this Order or a subsequent ruling of the Tribunal.

**H. DISCLOSURE OF HIGHLY CONFIDENTIAL INFORMATION IN ICSID CASE NO. ARB/24/38 AND ITS USE AT THE HEARINGS IN THE ARBITRATION**

32. Notwithstanding any confidentiality provisions contained in this PO2, the Parties shall be entitled to disclose information from these proceedings (including the Award, orders and decisions of the Tribunal, the Parties' written submissions and supporting documents, transcripts and recordings of hearings, and documents produced by the Parties in response to document production requests) in ICSID Case No ARB/24/38 (*Sauna UK BidCo Limited v Republic of Finland*), subject to the procedure set forth in paragraphs 33-37 below being followed in the case of material marked as "Highly Confidential".
33. Each Party shall be permitted to designate especially sensitive material as "Highly Confidential Information" in accordance with Rule 66 of the ICSID Arbitration Rules.
34. Highly Confidential Information shall be kept confidential by the Tribunal and each of the Parties, and shall be used only in connection with the Arbitration. This requirement shall apply except and to the extent that disclosure may be required of a Party to fulfil a legal duty, protect or pursue a legal right, or enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority. The Tribunal may issue orders to set forth the terms of this confidentiality. This requirement shall be without prejudice to all other obligations of confidentiality in the arbitration.
35. A Party wishing to designate material as Highly Confidential Information shall do so in the following manner:
- i. The first page of each document containing Highly Confidential Information is to be clearly marked with the words: "**Highly Confidential Information**".
  - ii. To the extent that information stored or recorded in the form of electronic or other media is produced in such form, the producing party may designate such information as Highly Confidential Information by cover letter clearly identifying such information.
  - iii. If the document also contains information that the designating Party believes is not Highly Confidential Information, it shall indicate the relevant pages or paragraphs that contain or do not contain Highly Confidential Information, as may be more appropriate. The receiving Party may request that the producing Party provide a version of the document in which the Highly Confidential Information is redacted. The producing Party shall not unreasonably withhold consent from creating a redacted version so long as (i) the amount of information not redacted on the document is substantial in amount

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<sup>1</sup> As the proceeding will conclude upon dispatch of the Tribunal's Award, any costs incurred after the dispatch of the Award (e.g., arbitrator fees for time spent addressing disputed confidentiality designations) will not be considered part of the costs of the proceeding. To ensure the payment of any fees incurred by the former Members of the Tribunal in connection with disputes over redactions of the Award, the Parties agree that ICSID will maintain the case trust fund open after the proceeding is concluded. ICSID will close the case trust fund once the arbitrators have submitted their claims for fees relating to the resolution of disputes over redactions of the Award, if any, and those claims have been paid.

and significant in substance, and (ii) the burden associated with providing such redacted documents is not undue (such burden to be determined based in part on the total number of documents for which the request is made).

36. A Party may challenge the other Party's designation of documents, material, or information designated as Highly Confidential Information by notice to the designating Party within 21 days after receiving that information. The notice shall identify the information the challenging Party considers to have been mis-designated as Highly Confidential Information, and the reasons it believes the information is not Highly Confidential Information. The designating Party shall respond to any such notice within 21 days either by removing the Highly Confidential Information designation or providing the reasons for its designation of the information as Highly Confidential Information.
37. If the Parties are unable to agree whether the documents, materials, or information constitute Highly Confidential Information, a Party may make an application to the Tribunal to resolve the dispute. The Party asserting that the materials are Highly Confidential Information shall have the burden of establishing that they warrant the designation. Any successful challenge to the designation of documents, materials, or information as Highly Confidential Information shall not operate as a waiver of any protections otherwise afforded to such documents, materials, or information on any other basis. The Tribunal shall endeavor to rule on any applications filed within 14 days of receiving such application.
38. If any Party wishes to use information designated as Highly Confidential Information at any hearing held as part of the Arbitration, a protocol for such use will be agreed—and if necessary, ordered by the Tribunal—during the Pre-Hearing Organizational Conference.

On behalf of the Tribunal,

[signed]

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Eric Schwartz  
President of the Tribunal  
Date: 16 April 2025

**ANNEX A TO PROCEDURAL ORDER NO. 2**  
**TRANSPARENCY SCHEDULE**

[insert Party]	Request [1]
Information sought to be protected from disclosure	
Legal basis for protection	
Comments	
Reply by opposing Party	
Decision	