

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

WASHINGTON, D.C.

In the arbitration proceeding between

TRANSCANADA CORPORATION AND TRANSCANADA PIPELINES LIMITED

Claimants

and

UNITED STATES OF AMERICA

Respondent

ICSID Case No. ARB/16/21

**ORDER OF THE SECRETARY-GENERAL TAKING NOTE OF THE
DISCONTINUANCE OF THE PROCEEDING**

REPRESENTATION OF THE PARTIES

Representing TransCanada Corporation
and TransCanada PipeLines Limited:

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Mr. James E. Mendenhall
Ms. Jennifer Haworth McCandless
Mr. Eric M. Solovy

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Representing the United States of America:

Mr. Patrick W. Pearsall
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Office of International Claims
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United States Department of State
Washington, D.C. 20520
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Date of dispatch to the Parties: March 24, 2017

1. On June 24, 2016, the International Centre for Settlement of Investment Disputes (“ICSID”) received a request for arbitration from TransCanada Corporation and TransCanada PipeLines Limited (the “Claimants”) for the institution of arbitration proceedings under the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (“the ICSID Convention”), in respect of a dispute with the United States of America (“the Request”).
2. The Request was registered on July 15, 2016, pursuant to Article 36(3) of the ICSID Convention and Rules 6(1)(a) and 7(a) of the ICSID Institution Rules.
3. The Parties agreed to constitute the Arbitral Tribunal in accordance with Article 1123 of the North American Free Trade Agreement (“NAFTA”). Under this provision, the Tribunal would consist of three arbitrators, one to be appointed by each Party, the third arbitrator and President of the Tribunal to be appointed by agreement of the Parties.
4. On July 26, 2016, the Claimants appointed Mr. David R. Haigh, a national of Canada, as Party appointed arbitrator. On September 13, 2016, the Respondent appointed Professor Sean D. Murphy, a national of the United States of America, as Party appointed arbitrator.
5. On December 19, 2016, the Claimants requested the Secretary-General to appoint a presiding arbitrator pursuant to NAFTA Article 1124.
6. On December 22, 2016, the Secretary-General invited the Parties to indicate whether they would agree to a ballot procedure to appoint the presiding arbitrator, or if the Secretary-General should proceed to make the appointment from the ICSID Panel of Arbitrators directly, pursuant to Article 1124 of the NAFTA.
7. By letters of December 23 and 28, 2016, the Parties agreed to the ballot procedure proposed by the Secretary-General.
8. On February 17, 2017, ICSID transmitted a ballot with five proposed candidates as presiding arbitrator to the Parties.
9. On February 27, 2017, the Parties informed ICSID of their agreement to suspend the proceeding for one month. On the same date, ICSID acknowledged the Parties’ suspension agreement.

10. By letter of March 23, 2017, the Parties requested the ICSID Secretary-General (no Tribunal having been constituted) to issue an order taking note of the discontinuance of the proceeding pursuant to Rule 43(1) of the ICSID Rules of Procedure for Arbitration Proceedings (“Arbitration Rules”).

11. Rule 43(1) of the ICSID Arbitration Rules provides:

If, before the award is rendered, the parties agree on a settlement of the dispute or otherwise to discontinue the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall, at their written request, in an order take note of the discontinuance of the proceeding.

ORDER

12. THEREFORE, in accordance with the Parties’ request, and pursuant to Rule 43(1) of the ICSID Arbitration Rules, I hereby take note of the discontinuance of the proceeding.



Meg Kinnear
Secretary-General