

PCA CASE N° 2020-07

**IN THE MATTER OF AN ARBITRATION
UNDER THE ENERGY CHARTER TREATY**

- and -

THE UNCITRAL ARBITRATION RULES

-between-

NORD STREAM 2 AG

-and-

THE EUROPEAN UNION

PROCEDURAL ORDER NO. 3

The Arbitral Tribunal

Professor Ricardo Ramírez Hernández (Presiding Arbitrator)
Professor Philippe Sands QC
Justice David Unterhalter SC

4 December 2020

1. Procedural History

- 1.1 Paragraph 9.1 of Procedural Order No. 1 provides that “[a]fter 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.”
- 1.2 In accordance with the PCA’s letters dated 27 April 2020 and 11 November 2020, the Tribunal fixed Tuesday, 8 December 2020, as the date for a videoconference hearing on the Respondent’s Request for a Preliminary Phase on Jurisdiction (the “**Hearing**”).

2. Videoconference Platform and Participants

- 2.1 The Hearing shall be held using the *Zoom* videoconference platform. The log-in details for the videoconference shall be circulated by the PCA a day before the Hearing.
- 2.2 Access to the videoconference shall be restricted to the members of the Tribunal, the Parties’ representatives, the Assistant to the Presiding Arbitrator, and PCA staff (the “**Participants**”). In this regard, the Parties are each requested to provide by no later than **Monday, 7 December 2020** a full list of the representatives who will attend the Hearing on their behalf.¹ Any person not included on the lists provided by the Parties will not be admitted to the videoconference, unless otherwise decided by the Tribunal upon request by any of the Parties.
- 2.3 All Participants shall join the videoconference at least 30 minutes in advance of the Hearing. All Participants shall remain connected to the videoconference for the duration of the Hearing. Private break-out rooms (within the main videoconference) will be made available for the exclusive use of the Tribunal and each side. The PCA shall be responsible for redirecting the Tribunal and each side to their respective break-out rooms.
- 2.4 The PCA shall record the Hearing in both audio and video. No other Participants shall record any part of the Hearing, unless otherwise decided by the Tribunal upon request by any of the Parties.

3. Internet Connection and Devices

- 3.1 The Parties are responsible for ensuring that each of their representatives connects to the videoconference through a stable internet connection offering sufficient bandwidth and uses a camera, microphone, and speaker of adequate quality.
- 3.2 Participants should consider using a wired Ethernet connection instead of WiFi. Participants are also encouraged to keep a smartphone or tablet, having at the minimum a 4G data connection and mobile hotspot functionality, available as a backup internet connection at all times during the Hearing.
- 3.3 A dial-in telephone audio option shall be offered as a backup option for Participants experiencing difficulties with computer audio. Certain key Participants may wish to dial-in by phone in addition to connecting through their computer, so as to be able to switch seamlessly to telephone audio in case they should happen to be disconnected at any point.

¹ In order to facilitate identification of all attendees, Participants are encouraged to change their username on the videoconference platform to [First Name][Last Name][*please add* “(Claimant)” or “(Respondent)” *respectively*].

4. Technical Problems

- 4.1 Each Party shall designate, by no later than **Monday, 7 December 2020**, one of its representatives to act as videoconferencing contact person (“**VC Emergency Contact Person**”) for purposes of addressing any technical incidents which arise during the Hearing.
- 4.2 The VC Emergency Contact Person shall be responsible for advising the Tribunal and the PCA on the videoconference if an essential Participant from his or her side is disconnected or otherwise cannot participate, such that the Tribunal is requested to suspend the Hearing. Alternatively, the VC Emergency Contact Person can notify and address any technical issues to Ms. Alejandra Martinovic of the PCA (tel: +31 61 511 1429; e-mail: amartinovic@pca-cpa.org), without interrupting the Hearing.
- 4.3 The Tribunal may temporarily or permanently suspend the Hearing if it deems the functioning of the videoconference system to be inadequate or likely to prejudice the due process rights of any of the Parties or the integrity of the proceeding. The Parties are asked to bear in mind that a full recording of the Hearing will be available, mitigating the prejudice arising from the failure of any given Participant to be able to follow the entire Hearing.

5. Hearing Agenda

- 5.1 The Hearing will start at 13:00 CET, and will end at the latest at 15:30 CET. Subject to any changes that the Tribunal may deem necessary or appropriate to make during the Hearing, the schedule for the Hearing shall be as follows:

<i>Time (CET)</i>	<i>Item</i>	<i>Allocated time</i>
13:00	Respondent’s opening statement	25 minutes
13:25	Claimant’s opening statement	25 minutes
13:50	Break	15 minutes
14:05	Respondent’s rebuttal	10 minutes
14:15	Claimant’s sur-rebuttal	10 minutes
14:25	Tribunal’s questions (if any)	
14:40	Break	15 minutes
14:55	Respondent’s closing statement	7 minutes
15:02	Claimant’s closing statement	7 minutes
15:09	Closing of the Hearing	


- 5.2 In accordance with paragraph 6.9 of Procedural Order No. 1, the Parties may make use of demonstrative exhibits (such as PowerPoint slides and charts), provided that no new evidence is contained therein, and that such exhibits include citations to the relevant evidence on the record. An electronic copy of any such demonstrative exhibit shall be simultaneously provided by the Party submitting such exhibit to the other Party, the PCA, and the Tribunal at least one hour prior to use.
- 5.3 The presentation of any evidence, authority, or demonstrative exhibit shall be made through the screen-sharing function of the videoconference platform in order that the speaker and the relevant document can be seen simultaneously at all times. The Parties are encouraged to designate one person on each side (the “**Document Manager**”) who shall be responsible for the presentation of evidence, authority, or demonstrative exhibit through the screen sharing function of the videoconference platform during the Hearing. The Parties may also seek assistance from the PCA in presenting documents during the Hearing. The Parties shall notify the PCA at the latest by

Monday, 7 December 2020 whether they intend to use their own Document Manager for presentation of documents during the Hearing or if they prefer to rely on the PCA.

6. Etiquette

- 6.1 All Participants without an active role at any given moment should mute their own audio and turn off their video.
- 6.2 Participants should join the Hearing from a location without background noise and with adequate lighting. Participants should also consider using a headset (headphones with integrated microphone) of good quality.
- 6.3 The above provisions on etiquette may be adjusted or supplemented by the Tribunal, in consultation with the Parties, in the course of the Hearing.

So ordered by the Tribunal.



Professor Ricardo Ramírez Hernández
(Presiding Arbitrator)

On behalf of the Tribunal