

PCA Case No. 2021-26

**IN THE MATTER OF AN ARBITRATION UNDER
ANNEX 14-C OF THE CANADA-UNITED STATES-MEXICO AGREEMENT
("CUSMA"), CHAPTER 11 OF THE NORTH AMERICAN FREE TRADE
AGREEMENT ("NAFTA"),
AND THE 2013 UNCITRAL ARBITRATION RULES**

- between -

WINDSTREAM ENERGY LLC

(the "Claimant")

- and -

THE GOVERNMENT OF CANADA

(the "Respondent", and together with the Claimant, the "disputing parties")

CORRECTION OF AWARD

The Arbitral Tribunal

Ms Wendy Miles KC (Presiding Arbitrator)

Prof. John Gotanda

Rt. Hon. Beverley McLachlin

Administering Authority

Permanent Court of Arbitration

Tribunal Secretary

Mr José Luis Aragón Cardiel

11 June 2026

I. PROCEDURAL HISTORY

1. On 20 April 2026, the Tribunal issued an Award in the present arbitration.
2. On 20 May 2026, the Respondent, “[i]n accordance with Article 36 of the *UNCITRAL Rules*”, requested the correction of certain clerical errors in the Award (the “**Request for Correction**”).
3. On 21 May 2026, the Tribunal acknowledged receipt of the Request for Correction and invited the Claimant’s comments on the Request for Correction.
4. On 22 May 2026, the Claimant submitted its comments on the Request for Correction (the “**Claimant’s Comments**”), stating that it did not object to the Request for Correction, with the exception of the proposed corrections to paragraphs 8, 177(a)(i), 381, and 404 of the Award.
5. On 25 May 2025, the Tribunal invited the Respondent to reply on the Claimant’s Comments.
6. On 26 May 2026, the Respondent submitted its reply to the Claimant’s Comments (the “**Respondent’s Reply**”), agreeing to withdraw the requested corrections to paragraphs 8, 381, and 404 of the Award, while maintaining that paragraph 177(a)(i) of the Award must be corrected.

II. THE TRIBUNAL’S ANALYSIS

7. The Tribunal notes that under Article 38 of the *UNCITRAL Rules* it has the power to order corrections of any computation, clerical, or typographical error in the award. Article 38 of the *UNCITRAL Rules* provides as follows:
 1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.

2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
3. Such corrections shall be in writing and shall form part of the award. The provisions of article 34, paragraphs 2 to 6, shall apply.
8. The Tribunal takes note of the disputing parties' agreement on making the corrections in the Award as requested by the Respondent in its Request for Correction, with the exception of the proposed corrections to paragraphs 8, 177(a)(i), 381, and 404 of the Award.
9. The Tribunal further takes note of the Respondent's subsequent withdrawal of the proposed corrections to paragraphs 8, 381, and 404 of the Award from its Request for Correction.
10. Accordingly, the only requested correction disputed between the disputing parties pertains to paragraph 177(a)(i) of the Award.
11. Paragraph 177(a)(i) of the Award provides as follows:

Secondly, as to challenging the FIT Contract termination following the *Windstream I* Award, the Claimant submits that:

 - a. the FIT Contract was not terminated until 20 February 2020, so no findings arising out of its termination could have been made in *Windstream I*, as:
 - i. the Claimant had argued that effective termination was May 2012, because the Project could not meet MCOD (4 May 2017), but this was rejected; and¹
12. The Respondent submits that the reference to the FIT Contract's MCOD date as "*4 May 2017*" in paragraph 177(a)(i) of the Award must be changed to "*4 May 2015*".
13. The Claimant agrees with the Respondent that "*the MCOD date is May 4, 2015, not May 4, 2017*".² However, the Claimant contends that the proposed correction would change the meaning of the sentence, which is, as is the case with the paragraphs for which the Respondent withdrew its requests for correction, a direct quote to the award in

¹ *Windstream II* Award, para. 177(a)(i).

² Claimant's Comments.

Windstream I, which was not so corrected. According to the Claimant, the “sentence[] in question rightly refer[s] to the May 4, 2017 date as the relevant date, but wrongly characterize[s] them as the MCOD date”. Rather, 4 May 2017 represents the date when the IESO’s right to terminate the FIT Contract arose. On this basis, the Claimant submits that the Respondent’s requested correction of paragraph 177(a)(i) of the Award is, as a substantive matter, incorrect.

14. The Respondent asserts that paragraph 177(a)(i) of the Award is not a direct quote of the *Windstream I* award and maintains that the statement contained therein is “*factually incorrect and needs to be corrected as requested*”.³
15. Having carefully reviewed the disputing parties’ submissions, the Tribunal considers paragraph 177(a)(i) of the Award to be an accurate representation of the submission made by the Claimant in paragraph 237 of its Reply, which, in the relevant part, reads as follows:

In *Windstream I*, Windstream argued that, as of May 2012, the FIT Contract was effectively cancelled because the Project could not meet the MCOD date of May 4, 2017.

16. While it is undisputed between the disputing parties that the correct date of the FIT Contract’s MCOD is 4 May 2015, changing paragraph 177(a)(i) to reflect this date would mischaracterise the submission made by the Claimant. As noted by the Claimant, “the sentence[] in question rightly refer[s] to the May 4, 2017 date as the relevant date, but wrongly characterize[s] them as the MCOD date”.⁴ Indeed, the Claimant’s argument in *Windstream I* was not that it was the inability to complete the project by 4 May 2015, the MCOD, that caused its effective termination in May 2012, but rather the inability to complete the Project before the OPA’s right to terminate the FIT Contract would be triggered on 4 May 2017, two years after the MCOD.⁵ Thus, it is paragraph 290 of the *Windstream I* Award and paragraph 237 of the Claimant’s Reply that appear to erroneously introduce the reference to the MCOD, or rather fail to add that the 4 May 2017 date is two years after the MCOD. As paragraph 177(a)(i) of the Award merely

³ Respondent’s Reply.

⁴ Claimant’s Comments.

⁵ See *Windstream I* Award, para. 189.

reflects the Claimant's submission in an accurate fashion, the Tribunal finds there is no error to correct in the Award.

III. CORRECTIONS

17. For the reasons set forth above, pursuant to Article 38 of the UNCITRAL Rules and the disputing parties' agreement, the Tribunal makes the following corrections of clerical errors contained in the Award:
- (a) In paragraph 53(c) of the Award, rather than "*merged into the Ontario Independent Electricity Systems Operator*" the text shall read: "*amalgamated with Ontario's Independent Electricity System Operator*";
 - (b) Paragraphs 53(c)(i) and 53(c)(ii) of the Award shall be merged and "(with exception of the CEO)" shall be added after the phrase "*the Minister of Energy*", so that the corrected paragraph 53(c)(i) of the Award reads as follows: "*is governed by a Board of Directors that oversees its business and affairs, appointed by and serving at the pleasure of the Minister of Energy (with exception of the CEO);*";
 - (c) The numbering of paragraphs 53(c)(iii) and 53(c)(iv) of the Award shall be adjusted, so that they appear in the Award as paragraphs 53(c)(ii) and 53(c)(iii) respectively;
 - (d) In paragraph 56 of the Award, the word "*implemented*" shall be inserted into the phrase in round brackets "*through OPA then IESO*" so that the corrected part of paragraph 56 of the Award reads as follows: "... *are the renewable energy regime under GEGEA (implemented through OPA then IESO) and the Crown land lease regime.*";
 - (e) In paragraph 58(a) of the Award, "(except waterpower projects)" shall be added after the phrase "*renewable sources*", so that the corrected paragraph 58(a) of the Award reads as follows: "*OPA was to pay a 20-year fixed premium price for energy from renewable sources (except waterpower projects), including onshore and offshore wind; and*";

- (f) In paragraph 114(e) of the Award, “*a letter from MEP*” shall be replaced with the following text: “*a letter from MOE*”;
- (g) In paragraph 118(b) of the Award, “, 2018” shall be inserted after the phrase “*Green Energy Repeal Act*”, so that the corrected part of paragraph 118(b) of the Award reads as follows: “*on 6 December 2018, the Green Energy Repeal Act, 2018 ...*”;
- (h) In paragraph 237 of the Award, the reference to “*this Windstream I arbitration*” in the last sentence of the paragraph shall be replaced with “*this Windstream II arbitration*”, so that the corrected sentence in paragraph 237 of the Award reads: “*Therefore, the most efficacious approach is to deal with the relevant Windstream I Award findings that apply to this Windstream II arbitration as they arise in the course of this Award.*”;
- (i) In paragraph 344(b) of the Award, the word “*of*” shall be inserted between the words “*situations*” and “*expropriation*”, so that the corrected part of paragraph 344(b) of the Award reads as follows: “*none of the prior awards involves situations of expropriation of a contract,⁶⁸⁹ ...*”;
- (j) In paragraph 418 of the Award, the word “*returned*” shall be inserted before the phrase “*(which it was)*”, so that the corrected sentence in paragraph 418 of the Award reads as follows: “*It remained, in accordance with its terms and governing national law, unilaterally terminable by IESO, provided the security deposit was returned (which it was).*”;
- (k) In footnote 97 in paragraph 74(b) of the Award, an opening bracket around “*d*” shall be added, so that the corrected footnote 97 reads as follows: “*Memorial, para. 141 (d).*”;
- (l) In paragraph 378 of the Award, a footnote 862 at the bottom of the page shall be added, which shall read as follows: “*Memorial, para. 474.*”; and
- (m) In footnote 1076 in paragraph 470(d) of the Award, the duplicative reference to “*the Ontario*” shall be removed, so that the corrected part of footnote 1076 reads as

follows: “*Memorial, para. 487: (“Despite its promises to Windstream and the tribunal’s determination [...], the Ontario Government ...”.*

18. The remainder of the Award dated 20 April 2026 remains unchanged. For the avoidance of any doubt, the Tribunal also issues a corrected version of the Award, where the above-mentioned corrections of clerical errors are implemented.

Dated: 11 June 2026

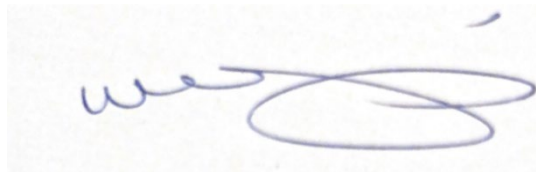
Place of Arbitration: Toronto



Prof. John Gotanda
Arbitrator



Rt. Hon. Beverley McLachlin
Arbitrator



Ms Wendy Miles KC
Presiding Arbitrator