

PUBLIC

IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF THE NORTH
AMERICAN FREE TRADE AGREEMENT
AND THE UNCITRAL ARBITRATION RULES

BETWEEN:

MESA POWER GROUP, LLC

Claimant

AND:

GOVERNMENT OF CANADA

Respondent

GOVERNMENT OF CANADA

POST-HEARING SUBMISSION

18 December 2014

Department of Foreign Affairs,
Trade and Development
Trade Law Bureau
Lester B. Pearson Building
125 Sussex Drive
Ottawa, Ontario
K1A 0G2
CANADA

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
THE TRIBUNAL LACKS JURISDICTION TO HEAR THE CLAIMANT'S CLAIM				
I. Canada Has Not Consented To Arbitrate this Dispute Because the Claimant Failed to Respect the Requirements of Article 1120				
1.	A claimant bringing a claim under NAFTA Chapter 11 bears the burden of proving that it has satisfied the conditions precedent to commence arbitration and that the Tribunal has jurisdiction over the dispute.	Canada's Counter-Memorial, ¶¶ 231-232; Canada's Closing Statements, October 31, 2014, Tr. pp. 151:24-152:9.	<p>RL-062, <i>Methanex Corporation v. United States of America</i> (UNCITRAL) Preliminary Award on Jurisdiction, 7 August 2002, ¶¶ 120-121 ("<i>Methanex - Partial Award on Jurisdiction</i>");</p> <p>RL-043, <i>Bayview Irrigation District et al. v. United Mexican States</i> (ICSID Case No. ARB(AF)/0501) Award, 19 June 2007, ¶¶ 63, 122;</p> <p>RL-042, <i>Apotex Inc. v. United States</i> (UNCITRAL) Award on Jurisdiction and Admissibility, 14 June 2013, ¶ 150 (citing <i>Phoenix Action, Ltd. v. Czech Republic</i> (ICSID Case No. ARB/06/5) Award, 15 April 2009, ¶¶ 58-64);</p> <p>CL-068, <i>ICS Inspection and Control Services Limited (U.K.) v. The Argentine Republic</i> (UNCITRAL) Award on Jurisdiction, 10 February 2012, ¶ 280;</p> <p>RL-072, <i>Tulip Real Estate Investment and Development Netherlands B.V. v. Republic of Turkey</i> (ICSID Case No. ARB/11/28) Decision on Bifurcated Jurisdictional Issue, 5 March 2013, ¶ 48;</p> <p>R-219, Canada's Closing Presentation Slides, slides 9-10.</p>	
2.	Canada's consent to arbitrate is only perfected when the requirements of Articles 1118-1121 are satisfied.	Canada's Objection to Jurisdiction, ¶¶ 18-19; Canada's Counter-Memorial, ¶ 234; Canada's Opening Statements, October 26, 2014, Tr. pp. 137:19-138:4, 198:2-8, 214:1-216:7;	<p>RL-062, <i>Methanex - Partial Award on Jurisdiction</i>, ¶ 120;</p> <p>RL-027, <i>Merrill & Ring Forestry L.P. v. Government of Canada</i> (UNCITRAL) Decision on a Motion to Add a New Party, 31 January 2008, ¶ 29 ("<i>Merrill & Ring - Decision on Motion to Add a New Party</i>");</p> <p>R-219, Canada's Closing Presentation Slides, slides 12-13; Submission of the Government of Mexico Pursuant to NAFTA Article 1128, 25 July, 2014, ¶ 4;</p>	

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
		Canada's Closing Statements, October 31, 2014, Tr. pp. 152:10-153:3.	Submission of the Government of United States Pursuant to NAFTA Article 1128, 31 July, 2014, ¶ 2.	
3.	Article 1120 allows a claim to be submitted to arbitration provided that each event giving rise to the claim occurred at least six months prior to the claim being submitted to arbitration.	Canada's Objection to Jurisdiction, ¶¶ 20-32; Canada's Counter-Memorial, ¶ 236; Canada's Opening Statements, October 26, 2014, Tr. pp. 214:12-216:4; Canada's Closing Statements, October 31, 2014, Tr. pp. 153:4-154:18.	RL-017 , <i>Black's Law Dictionary</i> , 8 th ed., s.v. "provided that", p. 1261; RL-031 , <i>NAFTA: Canadian Statement on Implementation</i> , p. 154; RL-032 , <i>The Shorter Oxford English Dictionary</i> , 5 th ed., s.v. "may", p. 1725; CL-011 , <i>Vienna Convention on the Law of Treaties</i> (1969); R-219 , Canada's Closing Presentation Slides, slide 14.	
4.	The Claimant only applied for FIT Contracts for projects connecting in the Bruce Region of Ontario, and because of transmission constraints in that region, the first possible date that the Claimant's projects could have been awarded a FIT Contract, was July 4, 2011.	Canada's Counter-Memorial ¶¶ 129-133, 163, 179, 182, 216.	C-0400 , Ontario Power Authority, FIT Contracts April 8-10 – Applicant Legal Name Order (Apr. 8, 2010) (showing that no FIT Contracts were awarded to projects of the size of the Claimant in this round of contract offers); C-0073 , Ontario Power Authority, "Priority ranking for first-round FIT Contracts" (Dec. 21, 2010) (showing that the Claimant's TTD and Arran projects applied to connect in the Bruce Region of Ontario); C-0233 , FIT CAR Priority Ranking by Region (Feb. 24, 2011), p. 1 (showing that the Claimant's TTD, Arran, North Bruce and Summerhill projects applied to connect in the Bruce Region of Ontario); R-102 , Ontario Power Authority website excerpt: "February 24, 2011 – Second Round of Large-Scale Renewable Energy Projects" (Feb. 24, 2011) (showing that no FIT Contracts were awarded to projects of the size of the Claimant in this round of contract offers); C-0292 , Ontario Power Authority, "FIT Contract Offers for the Bruce-Milton Capacity Allocation Process" (Jul. 4, 2011) (showing the first	Testimony of Cole Robertson, October 27, 2014, Tr. p. 103:9-15 (admitting that the Claimant understood that because of transmission constraints, it would have to wait for capacity on the Bruce-to-Milton line to be allocated in order to be able to compete for a FIT Contract)

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			offers for FIT Contracts for projects proposing to connect in the Bruce Region).	
5.	The Claimant failed to comply with Article 1120 when it filed its Notice of Arbitration on October 4, 2011, only three months after failing to be awarded a FIT Contract on July 4, 2011 – which was the only event that could have even possibly led to losses and hence the only event which could have given rise to the Claimant's claim.	Canada's Objection to Jurisdiction, ¶¶ 17-41; Canada's Counter-Memorial, ¶¶ 247-248, 251-252; Canada's Opening Statements, October 26, 2014, Tr. pp. 198:5-8, 214:1-216:7; Canada's Closing Statements, October 31, 2014, Tr. pp. 154:19-156:13.	C-0292, Ontario Power Authority, "FIT Contract Offers for the Bruce-Milton Capacity Allocation Process" (Jul. 4, 2011) (showing the first offers for FIT Contracts in the Bruce Region); R-219, Canada's Closing Presentation Slides, slides 15-16.	
6.	The Claimant's failure to comply with Article 1120 deprives this Tribunal of jurisdiction to hear this dispute or, in the alternative, to hear any claims which arise from events that occurred within the six-month period preceding the submission of the claim to arbitration.	Canada's Objection to Jurisdiction, ¶¶ 33-41; Canada's Counter-Memorial, ¶¶ 256-261; Canada's Closing Statements, October 31, 2014, Tr. pp. 156:10-158:11.	RL-024, <i>Generation Ukraine, Inc. v. Ukraine</i> (ICSID Case No. ARB/00/9) Award, 16 September 2003, ¶ 14.3; RL-005, <i>Enron Corporation and Ponderosa Assets, L.P. v. The Argentine Republic</i> (ICSID Case No. ARB/01/3) Decision on Jurisdiction, 14 January 2004, ¶ 88; RL-027, <i>Merrill & Ring – Decision on Motion to Add a New Party</i> , ¶¶ 28-29; RL-015, <i>Limited Liability Company AMTO v. Ukraine</i> , SCC Arbitration No. 080/2005, Final Award, 26 March 2008, pp. 34-35; RL-002, <i>Burlington Resources Inc. v. Republic of Ecuador</i> (ICSID Case No. ARB/08/5) Decision on Jurisdiction, 2 June 2010, ¶¶ 312-318; RL-011, <i>Murphy Exploration and Production Company International v. Republic of Ecuador</i> (ICSID Case No. ARB/08/4) Award on Jurisdiction,	

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			15 December 2010, ¶¶ 148-149, 157; R-212, Canada's Opening Presentation Slides, slides 113-115; R-219, Canada's Closing Presentation Slides, slide 17.	
II. The Tribunal Lacks Jurisdiction Over Certain Aspects of the Claimant's Claims				
A. The Tribunal Lacks Jurisdiction Over Any Alleged Breaches That Occurred Before the Claimant Invested In Canada				
7.	This Tribunal does not have jurisdiction to hear a challenge to a measure unless the Claimant can establish that it had invested in Canada before the challenged measure was adopted.	Canada's Counter-Memorial, ¶¶ 263-269; Canada's Opening Statements, October 26, 2014, Tr. pp. 202:20-204:17; Canada's Closing Statements, October 31, 2014, Tr. pp. 156:14-158:1.	CL-195, <i>GAMI Investments, Inc. v. The Government of the United Mexican States</i> (UNCITRAL) Final Award, 15 November 2004, § 93 (" <i>GAMI-Award</i> "); CL-081, <i>Saluka Investments BV (The Netherlands) v. The Czech Republic</i> (UNCITRAL) Partial Award, 17 March 2006, ¶ 244 (" <i>Saluka - Award</i> "); RL-041, <i>Limited Liability Company AMTO v. Ukraine</i> , SCC Arbitration No. 080/2005, Final Award, 26 March 2008, ¶ 48(c); RL-066, <i>Phoenix Action, Ltd. v. The Czech Republic</i> (ICSID Case No. ARB/06/5) Award, 15 April 2009, ¶¶ 67-68 (" <i>Phoenix Action</i> "); RL-046, <i>Cementownia "Nowa Huta" S.A. v. Turkey</i> (ICSID Case No. ARB(AF)/06/2) Award, 17 September 2009, ¶ 112; RL-054, <i>GEA Group Aktiengesellschaft v. Ukraine</i> (ICSID Case No. ARB/08/16) Award, 31 March 2011, ¶ 170; RL-052, <i>Vito G. Gallo v. Government of Canada</i> (UNCITRAL) Award, 15 September 2011, ¶ 326; R-212, Canada's Opening Presentation Slides, slides 95-99; R-219, Canada's Closing Presentation Slides, slides 18-23.	
8.	The Claimant had not invested in Canada at the time that the MOU was signed with the Korean Consortium in 2008. In fact, it has failed to prove	Canada's Counter-Memorial, ¶ 269; Canada's Opening	C-0536, Memorandum of Understanding by and among Her Majesty The Queen In Right Of Ontario, Korea Electric Power Corporation and Samsung C&T Corporation (Dec. 12, 2008);	RWS-Jennings-2, ¶¶ 12-13 (testifying that the negotiations with the Korean Consortium were publicly known by September

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	<p>that it invested in Canada prior to the public announcement of the GEIA in September 2009. Further, both the Claimant's Summerhill and North Bruce investments were made after the public signing of the GEIA.</p>	<p>Statements, October 26, 2014, Tr. pp. 203:16-204:17; Canada's Closing Statements, October 31, 2014, Tr. p. 158:2-23.</p>	<p>R-177, The Star News Article, Tyler Hamilton, "Ontario eyes green job bonanza" (Sep. 26, 2009) (publicly reporting the negotiations between the Government of Ontario and the Korean Consortium for a framework agreement);</p> <p>R-068, Ministry of Energy Archived News Release, "Statement from the Minister of Energy and Infrastructure and Samsung C&T Corporation" (Sep. 26, 2009) (officially announcing the negotiation of a framework agreement with the Korean Consortium);</p> <p>C-0105, Letter (Direction) from George Smitherman, Minister of Energy to Colin Andersen, Ontario Power Authority (Sep. 30, 2009) (giving public notice that parties that signed a framework agreement with Ontario would receive a priority transmission set aside);</p> <p>R-178, The Star News Article, Tyler Hamilton, "Samsung's turbine deal in jeopardy" (Oct. 31, 2009) (reporting that the framework agreement with the Korean Consortium would provide it with priority access to Ontario's transmission grid);</p> <p>C-0087, Certificate of Incorporation for TTD Wind Project ULC under the <i>Alberta Business Corporations Act</i> (Nov. 17, 2009) (the first documentary evidence of the Claimant's investment into Canada for the TTD project);</p> <p>C-0049, Certificate of Incorporation for Arran Wind Project ULC under the <i>Alberta Business Corporations Act</i> (Nov. 17, 2009) (the first documentary evidence of the Claimant's investment into Canada for the Arran project);</p> <p>C-0322, <i>Green Energy Investment Agreement</i> (Jan. 21, 2010);</p> <p>R-076, Ministry of Energy Archived Background, "Ontario Delivers \$7 Billion Green Investment" (Jan. 21, 2010) (publicly announcing the signing of the GEIA with the Korean Consortium and describing all of its key terms);</p> <p>C-0079, Letter from Minister Brad Duguid (Ministry of Energy) to Colin</p>	<p>2009);</p> <p>Testimony of Cole Robertson, October 27, 2014, Tr. pp. 128:18-134:15; 135:3-13, 143:19-145:5, 220:20-224:10 (admitting that the key terms of the GEIA were made public in a September 2009 news article, that the Claimant was aware of this at the time it was released and that he was unaware of any evidence in the record that showed the Claimant actually invested in Ontario prior to November 2009, just that it had been authorized to so invest).</p>

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			<p>Andersen (OPA), Direction to OPA (Apr. 1, 2010) (publicly directing the OPA to negotiate power purchase agreements with the project companies of the Korean Consortium in accordance with the commitment made in the GEIA, and describing the GEIA terms);</p> <p>C-0050, North Bruce Project, ULC Certificate of Incorporation for North Bruce Project ULC under the <i>Alberta Business Corporations Act</i> (Apr. 6, 2010) (the first documentary evidence of the Claimant's investment into Canada for the North Bruce project);</p> <p>C-0041, Certificate of Incorporation for Summerhill Project ULC under the <i>Alberta Business Corporations Act</i> (Apr. 6, 2010) (the first documentary evidence of the Claimant's investment into Canada for the Summerhill project);</p> <p>R-219, Canada's Closing Presentation Slides, slide 24.</p>	
B. The Tribunal Lacks Jurisdiction to Consider The Challenged Acts Of The OPA				
9.	The OPA is not an organ of the Government of Ontario.	<p>Canada's Counter-Memorial, ¶¶ 271-281, 285-289;</p> <p>Canada's Opening Statements, October 26, 2014, Tr. p. 199:6-8;</p> <p>Canada's Closing Statements, October 31, 2014, Tr. pp. 160:13-161:4.</p>	<p>RL-050, <i>Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)</i>, I.C.J., Reports 2007, Judgment of 26 February 2007 ("Genocide Convention Case"), ¶¶ 385-388, 392-395;</p> <p>RL-057, <i>Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt</i> (ICSID Case No. ARB/04/13) Award, 6 November 2008, ¶ 170 ("Jan de Nul");</p> <p>CL-009, International Law Commission, Articles on State Responsibility, Article 4;</p> <p>CL-006, James Crawford, <i>The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries</i> (New York: Cambridge University Press, 2002) Article 4, Commentary(1), p. 94 ("ILC Articles - Commentary");</p> <p>RL-055, <i>Gustav F W Hamester GmbH & Co KG v. Republic of Ghana</i> (ICSID</p>	<p>Testimony of Bob Chow, October 28, 2014, Tr. p. 313:11-16 (testifying that the OPA is not part of the Government of Ontario);</p> <p>Testimony of Shawn Cronkwright, October 29, 2014, Tr. pp. 19:24-21:22 (testifying that the OPA is a corporation without share capital and that the OPA is not part of the Government of Ontario).</p>

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			<p>Case No. ARB/07/24) Award, 18 June 2010, ¶ 202 ("Hamster");</p> <p>C-0401, <i>Electricity Act</i>, S.O. 1998, Part II.1, s. 25.1(1), s. 25.3 ("Electricity Act") (providing that the OPA is an independent corporation and not an agent of the Crown);</p> <p>R-170, Ontario Public Appointments Secretariat website excerpt. "General Information" (providing information on the types of non-state entities for which the Government of Ontario makes appointments);</p> <p>R-097, Ontario Public Appointments Secretariat website excerpt. Agency Details: Ontario Power Authority (considered together with R-170, identifying the OPA as a "non-designated entity", meaning that it is not considered a "provincial government organization" at Ontario law).</p>	
10.	The OPA is a state enterprise.	<p>Canada's Counter-Memorial, ¶ 290;</p> <p>Canada's Rejoinder, ¶¶ 19-22;</p> <p>Canada's Opening Statements, October 26, 2014, Tr. pp. 153:4-15, 199:6-9;</p> <p>Canada's Closing Statements, October 31, 2014, Tr. pp. 161:5-164:4.</p>	<p>RL-112, <i>Wena Hotels LTD. v. Arab Republic of Egypt</i> (ICSID Case No. ARB/98/4) Award, 8 December 2000, ¶¶ 65-69;</p> <p>C-0401, <i>Electricity Act</i>, Part II.1, ss. 25.1, 25.2(3), 25.4(2)(b), 25.4(8), 25.22(2) (showing the Ontario owns the OPA because it created it through statute, has the authority to dissolve it, has ultimate ownership of its property, has the power to appoint and remove members of the Board of Directors and has the power to approve its business plans);</p> <p>R-174, Ontario Power Authority Governance and Structure By-Law, 1 November 2005, s. 3.5(ii); (<i>When Director Ceases to Hold Office</i>) (providing that a Director of the OPA can be dismissed by the Minister of Energy);</p> <p>R-212, Canada's Opening Presentation Slides, slides 89-90;</p> <p>R-219, Canada's Closing Presentation Slides, slides 27-30.</p>	
11.	Pursuant to Article 1503(2), a NAFTA Party must ensure that a state enterprise acts consistently with the obligations in Chapter 11 only when the state enterprise is	<p>Canada's Counter-Memorial, ¶¶ 291-293;</p> <p>Canada's Rejoinder, ¶¶ 17, 23;</p>	<p>RL-075, <i>United Parcel Service of America, Inc. v. Government of Canada</i> (UNCITRAL), Award on the Merits, 24 May 2007, ¶¶ 57, 62, 71, 77 ("<i>UPS - Award</i>");</p> <p>R-212, Canada's Opening Presentation Slides, slides 87-88, 91-92;</p>	

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	exercising delegated governmental authority.	Canada's Opening Statements, October 26, 2014, Tr. pp. 199:9-200:20; Canada's Closing Statements, October 31, 2014, Tr. pp. 161:9-162:8, 164:5-25.	R-219, Canada's Closing Presentation Slides, slides 27-31.	
12.	The OPA was not exercising delegated governmental authority when it ranked the Claimant's FIT projects or when it awarded FIT Contracts on July 4, 2011 as part of the Bruce-to-Milton allocation process.	Canada's Counter-Memorial, ¶¶ 302-305; Canada's Rejoinder, ¶ 23; Canada's Opening Statements, October 26, 2014, Tr. pp. 200:21-202:4; Canada's Closing Statements, October 31, 2014, Tr. pp. 162:9-18, 165:1-12.	CL-006, <i>ILC Articles - Commentary</i> , Article 8, Commentary (6), p. 112; RL-075, <i>UPS - Award</i> , ¶ 57, 62, 71, 77-78; RL-057, <i>Jan de Nul - Award</i> , ¶¶ 45-46, 169-170; R-212, Canada's Opening Presentation Slides, slides 91-94; R-219, Canada's Closing Presentation Slides, slide 31.	
13.	If the OPA is not a state enterprise, the challenged acts of the OPA still cannot be attributed to Canada pursuant to Article 8 of the ILC's Articles on State Responsibility.	Canada's Counter-Memorial, ¶ 293; Canada's Rejoinder, ¶¶ 24-38; Canada's Closing Statements, October 31, 2014, Tr. pp. 165:13-167:15.	CL-008, International Law Commission, <i>Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries</i> , 2001, Article 8, pp. 47-48; CL-342, <i>EDF (Services) Ltd v. Romania</i> (ICSID Case No. ARB/05/13) Award, 8 October 2009, ¶ 200; RL-050, <i>Genocide Convention Case</i> , ¶ 400; RL-057, <i>Jan de Nul</i> , ¶ 173; RL-055, <i>Hamester</i> , ¶¶ 178-179; RL-110, <i>Tulip Real Estate Investment and Development Netherlands B.V. v. Republic of Turkey</i> (ICSID Case No. ARB/11/28) Award, 10 March 2014.	RWS-Lo, ¶ 15 (testifying that the OPA was responsible for implementing the FIT Program and that the Ministry of Energy did not provide instructions to the OPA in terms of the implementation of the FIT Program); RWS-Duffy, ¶ 4 (testifying that the OPA acted independently in ranking the Claimant's FIT Applications); RWS-MacDougall, ¶ 10 (testifying

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			¶¶ 304-311; R-219, Canada's Closing Presentation Slides, slides 33-35.	that the OPA strictly managed the ranking of the applications); Testimony of Susan Lo, October 28, 2014, Tr. pp. 155:17-156:9 (testifying that the OPA, not the Ministry of Energy devised the ranking of FIT applications).
III. The Tribunal Lacks Jurisdiction to Consider Any Alleged Breaches Which Could Not Have Possibly Caused the Claimant Harm				
14.	Pursuant to Article 1116, the Tribunal only has jurisdiction to consider claims which actually caused losses to the Claimant.		See submissions 96 to 117 below for evidence on which measures could not have possibly caused the Claimant any harm.	
CANADA HAS NOT VIOLATED ITS NAFTA OBLIGATIONS				
I. Articles 1102, 1103 and 1106(1)(B) Do Not Apply to the Treatment Accorded to the Claimant Because of the Procurement Exemption in Article 1108				
15.	The exclusions in Article 1108(7)(a) and 1108(8)(b) apply to any measure that (1) constitutes or involves procurement, and (2) is adopted or maintained by a Party or state enterprise.	Canada's Counter-Memorial, ¶¶ 309-310.	CL-072, <i>ADF Group Inc. v. United States</i> , Award, 2003 WL 24083234, 9 January 2003, ¶¶ 160-174 (" <i>ADF - Award</i> "); RL-075, <i>UPS - Award</i> , ¶¶ 121-136; R-212, Canada's Opening Presentation Slides, slide 101; R-219, Canada's Closing Presentation Slides, slide 38.	
A. The FIT Program and the GEIA constitute or involve Procurement				
16.	A measure constitutes or involves procurement for the purposes of Article 1108 if it constitutes or involves the act of obtaining or getting a good or a service.	Canada's Counter-Memorial, ¶¶ 310-314, 320-333.	CL-072, <i>ADF - Award</i> , ¶¶ 160-174; RL-075, <i>UPS - Award</i> ¶¶ 121-136; CL-001, <i>Canada - Certain Measures Affecting the Renewable Energy Generation Sector, Canada - Measures Relating To The Feed-In Tariff Program</i> , Report of the Panel, WT/DS412/R, WT/DS426/R, 19 December	

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			<p>2012, 7.131 ("Canada - Renewable Energy - Panel Report");</p> <p>CL-002, Canada - Certain Measures Affecting The Renewable Energy Generation Sector, Canada - Measures Relating To The Feed-In Tariff Program, WT/DS412/AB/R, WT/DS426, Reports of the Appellate Body, 19 February 2013, ¶ 5.59 ("Canada - Renewable Energy - AB Report");</p> <p>R-212, Canada's Opening Presentation Slides, slide 102;</p> <p>R-219, Canada's Closing Presentation Slides, slides 40, 43-46.</p>	
17.	The Ontario Power Authority was created in 2004 by the Government of Ontario and was made responsible for entering into contracts relating to the procurement of electricity supply and capacity for Ontario.	Canada's Counter-Memorial, ¶¶ 41-43; Canada's Opening Statements, October 26, 2014, Tr. pp. 152:25-153:17.	<p>C-0401, <i>Electricity Act</i>, S.O. 1998, Part II.1, s. 25.1, 25.2(5)(b)(c) (creating the OPA and making it responsible for procuring electricity supply and capacity for Ontario);</p> <p>R-033, Ontario Power Authority, Supply Mix Advice (Dec. 9, 2005), p. 10, "Generation Development" (explaining that the OPA is responsible for entering into procurement contracts for electricity supply and capacity);</p> <p>R-152, Ontario Energy Board website excerpt, "Electricity Restructuring Act, 2004", pp. 2-3 (explaining that the OPA is responsible for the procurement processes for electricity supply in Ontario);</p> <p>R-212, Canada's Opening Presentation Slides, slides 11, 14.</p>	Expert Report of Steve Dorey, ¶¶ 60-62 (explaining that the OPA was created in 2004 for the purpose of electricity procurement).
18.	In the context of the financial crisis, the Government of Ontario decided to use its purchasing power as a government to fill its electricity needs in a way that stimulated the economy. As a result, through the Minister of Energy, it directed the OPA to engage in procurement pursuant to two initiatives, the FIT Program and the Green Energy Investment Agreement.	Canada's Counter-Memorial, ¶¶ 50, 55; Canada's Opening Statements, October 26, 2014, Tr. pp. 150:23-152:9	<p>C-0401, <i>Electricity Act</i>, S.O. 1998, c. 15, s. 25.35(1) (authorizing the creation of a FIT Program designed to procure renewable energy);</p> <p>R-059, Ministry of Energy Archived News Release, "McGuinty Government's Plan Will Lead to Green Jobs and Green Energy" (May 14, 2009) (announcing the passage of the Green Energy and Green Economy Act and that the FIT Program was designed to lead to jobs and economic growth);</p> <p>R-001, Letter from the Honourable George Smitherman, Minister of Energy and Infrastructure to Colin Andersen, Ontario Power Authority (Sep. 24, 2009) (publicly directing the OPA to establish a FIT Program to procure electricity);</p>	RWS-Lo, ¶¶ 7-9 (testifying as to Ontario's goals in using its procurement powers through the FIT Program to promote clean energy and create jobs and investment opportunities).

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			<p>C-0079, Letter from Minister Brad Duguid, Ministry of Energy to Colin Andersen, Ontario Power Authority, Direction to OPA (Apr. 1, 2010) (publicly directing the OPA to negotiate power purchase agreements with the project companies of the Korean Consortium in accordance with the commitment made in the GEIA, and describing the GEIA terms);</p> <p>R-212, Canada's Opening Presentation Slides, slides 8, 15-16, 30;</p> <p>R-219, Canada's Closing Presentation Slides, slides 54, 58-60.</p>	
1. The FIT Program Constitutes or Involves Procurement				
19.	The Minister of Energy intended the FIT Program to constitute or involve the procurement of electricity and electricity generation.	Canada's Counter-Memorial, ¶¶ 50-56, 315; Canada's Opening Statements, October 26, 2014, Tr. pp. 150:11-153:24.	<p>C-0401, <i>Electricity Act</i>, S.O. 1998, s. 25.35(1) and (4) (authorizing the creation of a FIT Program designed to procure energy from renewable sources and defining a FIT Program as a procurement program);</p> <p>R-212, Canada's Opening Presentation Slides, slides 10;</p> <p>R-219, Canada's Closing Presentation Slides, slides 52, 56-57.</p>	RWS-Lo, ¶¶ 10-13 (testifying that the intention of Ontario was that the FIT Program would be a procurement program).
20.	The Minister of Energy directed the OPA to design and implement a FIT Program that constituted or involved the procurement of electricity and electricity generation.	Canada's Counter-Memorial, ¶¶ 61, 316; Canada's Closing Statements, October 31, 2014, Tr. p. 184:3-11.	<p>R-001, Letter (Direction) from the Honourable George Smitherman, Minister of Energy and Infrastructure to Colin Andersen, CEO, Ontario Power Authority (Sep. 24, 2009) (publicly directing the OPA to create a FIT Program designed to procure energy from renewable sources);</p> <p>R-212, Canada's Opening Presentation Slides, slide 16;</p> <p>R-219, Canada's Closing Presentation Slides, slide 53.</p>	RWS-Lo, ¶¶ 11, 14-15 (testifying that the Government of Ontario directed the OPA to develop the FIT Program as a procurement program).
21.	The OPA designed and implemented the FIT Program to constitute or involve the procurement of electricity and electricity generation.	Canada's Counter-Memorial, ¶¶ 317-319; Canada's Opening Statements, October 26, 2014, Tr. pp. 207:5-208:7; Canada's Closing Statements, October 31.	<p>R-053, Ontario Power Authority Presentation, "Proposed Feed-in Tariff Program Stakeholder Engagement – Session 1" (Mar. 17, 2009), p. 26 (publicly explaining that the FIT Program was a procurement method for renewable energy supply);</p> <p>C-0260, FIT Program Rules, v. 1.0., ss. 1.2, 6.3(a) (Sep. 24, 2009) (describing that the OPA would be paying the supplier to deliver electricity to Ontario and that the OPA would own associated attributes</p>	<p>RWS- MacDougall, ¶ 8 (testifying as to the OPA's role in designing the FIT Program);</p> <p>RWS-Cronkwright-2, ¶ 7 (testifying that the OPA launched the FIT Program to procure renewably generated electricity);</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
		2014, Tr. pp. 184:3-186:23.	as a result and providing an overview of the FIT Contract provisions); C-0109 , Ontario Power Authority, Feed-in Tariff Contract, Version 1.1 (Sep. 30, 2009), art. 2.10(a), 3.5, Exhibit B, ¶ 14 (describing the calculations for determining how much the OPA would pay FIT suppliers for the delivery of their electricity); R-219 , Canada's Closing Presentation Slides, slides 58-60.	Testimony of Bob Chow, October 28, 2014, Tr. p. 301:16-19 (testifying that the FIT Program was a procurement program); Testimony of Jim MacDougall, October 28, 2014, Tr. pp. 279:1-281:6, 213:7-9 (testifying that the FIT Program was a procurement program); Testimony of Shawn Cronkwright, October 29, 2014, Tr. p. 21:21-22 (testifying that the role of the OPA in the FIT Program was procurement).
22.	In <i>Canada - Renewable Energy</i> , the WTO Panel and Appellate Body found that the FIT Program involved the procurement of electricity.	Canada's Rejoinder, ¶¶ 70-71.	CL-001 , <i>Canada - Renewable Energy - Panel Report</i> , ¶ 7.152; CL-002 , <i>Canada - Renewable Energy - AB Report</i> , ¶¶ 5.75, 5.79; R-219 , Canada's Closing Presentation Slides, slide 47.	
23.	Witnesses from the Claimant, the Government of Ontario and the OPA all confirmed at the hearing that they viewed the FIT Program as a procurement program as the term "procurement" is understood in its ordinary meaning.	Canada's Closing Statements, October 31, 2014, Tr. pp. 185:22-186:18.	R-219 , Canada's Closing Presentation Slides, slides 54-60.	RWS-Cronkwright-2, ¶ 7 (testifying that the OPA launched the FIT Program to procure renewably generated electricity); Testimony of Cole Robertson, October 27, 2014, Tr. pp. 146:21-147:14, 214:16-215:6 (admitting that the FIT Program was a "procurement" program, as the term "procurement" was used in the industry); Testimony of Rick Jennings,

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
				<p>October 27, 2014, Tr. pp. 235:14-236:15 (testifying that in Ontario the Government makes procurement decisions for renewable energy);</p> <p>Testimony of Susan Lo, October 28, 2014, Tr. pp. 132:6-133:18 (testifying that the FIT Program was seen as a procurement program);</p> <p>Testimony of Jim MacDougall, October 28, 2014, Tr. pp. 279:1-281:6, 289:21-290:24 (testifying that the FIT Program was a procurement program);</p> <p>Testimony of Bob Chow, October 28, 2014, Tr. pp. 301:13-302:8, 343:7-344:10 (testifying that the FIT Program was a procurement program);</p> <p>Testimony of Shawn Cronkwright, October 29, 2014, Tr. pp. 21:3-22, 53:2-21, 94:1-95:12 (testifying that the role of the OPA in the FIT Program was procurement).</p>
2. The GEIA constitutes or involves procurement.				
24.	The GEIA is an investment framework agreement between the Government of Ontario and the	Canada's Counter-Memorial, ¶¶ 119-121.	R-076 , Ministry of Energy Archived Backgrounder, "Ontario Delivers \$7 Billion Green Investment" (Jan. 21, 2010); C-0322 , <i>Green Energy Investment Agreement</i> (Jan. 21, 2010).	RWS-Lo, ¶ 26 (testifying that the GEIA was an investment framework agreement entered into

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
	Korean Consortium.			by Ontario); RWS-Jennings-2, ¶¶ 4-5, 9-11 (testifying that the GEIA was negotiated between Ontario and the Korean Consortium as an investment framework agreement); RWS- Cronkwright-2, ¶ 10 (testifying that the GEIA is a negotiated agreement between Ontario and the Korean Consortium to which the OPA is not a party).
25.	In accordance with the commitments under the GEIA, the Minister of Energy directed the OPA to procure electricity and electricity generation from projects developed by the Korean Consortium and its partners.	Canada's Counter-Memorial, ¶¶ 122-125; Canada's Closing Statements, October 31, 2014, Tr. p. 182:1-8.	<p>C-0322, <i>Green Energy Investment Agreement</i> (Jan. 21, 2010), ss. 7.4, 8.1, 9.1 (obligating Ontario to ensure priority access to the transmission system and to direct the OPA to enter into power purchase agreements with the Korean Consortium's project companies if the Korean Consortium fulfilled certain obligations);</p> <p>C-0079, Letter from Minister Brad Duguid, Ministry of Energy to Colin Andersen, Ontario Power Authority, Direction to OPA (Apr. 1, 2010) (publicly directing the OPA to negotiate power purchase agreements with the project companies of the Korean Consortium in accordance with the commitment made in the GEIA, and describing the GEIA terms);</p> <p>C-0119, Letter from Brad Duguid, Ministry of Energy to Colin Andersen, Ontario Power Authority (Sep. 17, 2010) (publicly directing the OPA to hold in reserve 500MW of transmission capacity in the Bruce Region for power purchase agreements to be entered into with the project companies of the Korean Consortium).</p>	RWS-Cronkwright, ¶¶ 5-10 (testifying that the OPA entered into power purchase agreements with the project companies of the Korean Consortium pursuant to the direction of the Minister of Energy); RWS-Cronkwright-2, ¶¶ 3, 7, 10-11 (testifying that the OPA entered into power purchase agreements with the project companies of the Korean Consortium pursuant to the direction of the Minister of Energy); Testimony of Shawn Cronkwright, October 29, 2014, Tr. pp. 21:3-22:9, 32:9-11, 94:1-95:15 (testifying that the OPA entered

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
				into power purchase agreements with the project companies of the Korean Consortium pursuant to the direction of the Minister of Energy).
B. The FIT Program and the GEIA are measures adopted or maintained by a Party or State Enterprise.				
26.	A measure is adopted or maintained by a Party or state enterprise if it is adopted or maintained by a provincial government in Canada or a state enterprise of a provincial government.	Canada's Counter-Memorial, ¶¶ 334-336, 340-344.	CL-072, ADF – Award, ¶ 170.	
27.	The OPA is a state enterprise.	Canada's Counter-Memorial, ¶ 290; Canada's Rejoinder, ¶¶ 19-22; Canada's Opening Statements, October 26, 2014, Tr. pp. 153:4-15, 199:6-9; Canada's Closing Statements, October 31, 2014, Tr. pp. 161:5-164:4.	RL-112, <i>Wena Hotels LTD. v. Arab Republic of Egypt</i> (ICSID Case No. ARB/98/4) Award, 8 December 2000, ¶¶ 65-69; C-0401, <i>Electricity Act</i> , S.O. 1998, Part II.1, ss. 25.1, 25.2(3), 25.4(2)(b), 25.4(8), 25.22(2) (showing the Ontario owns the OPA because it created it through statute, has the authority to dissolve it, has ultimate ownership of its property, has the power to appoint and remove members of the Board of Directors and has the power to approve its business plans); R-174, Ontario Power Authority Governance and Structure By-Law, 1 November 2005, s. 3.5(ii): (When Director Ceases to Hold Office) (providing that a Director of the OPA can be dismissed by the Minister of Energy); R-212, Canada's Opening Presentation Slides, slides 89-90; R-219, Canada's Closing Presentation Slides, slides 27-30.	

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
1. The Fit Program is a measure adopted or maintained by a Party or a state enterprise.				
28.	The FIT Program is a measure that the Government of Ontario authorized through legislation and the Minister of Energy directed the OPA to design and develop in accordance with the Government's mandate.	Canada's Counter-Memorial, ¶¶ 50-56, 315-316; Canada's Opening Statements, October 26, 2014, Tr. pp. 150:11-153:22.	C-0401 , <i>Electricity Act</i> , S.O. 1998, s. 25.35(1) and (4) (authorizing the creation of the FIT Program); R-001 , Letter from the Honourable George Smitherman, Minister of Energy and Infrastructure to Colin Andersen, Ontario Power Authority (Sep. 24, 2009) (publicly directing the OPA to create the FIT Program); R-212 , Canada's Opening Presentation Slides, slides 9-11, 15-16; R-219 , Canada's Closing Presentation Slides, slides 52-53.	RWS-Lo, ¶¶ 10-15 (testifying that the Government of Ontario authorized the creation of the FIT Program and that the Minister of Energy directed the OPA to implement it); RWS-Cronkwright-2, ¶ 3 (testifying that the OPA only implements procurement programs upon the direction of the Minister of Energy); Testimony of Shawn Cronkwright, October 29, 2014, Tr. pp. 94:1-95:1 (testifying that the OPA only implements procurement programs upon the direction of the Minister of Energy).
29.	The FIT Program was designed and implemented by the OPA pursuant to the direction of the Minister of Energy.	Canada's Counter-Memorial, ¶¶ 61, 316-317.	R-053 , Ontario Power Authority Presentation, "Proposed Feed-in Tariff Program Stakeholder Engagement - Session 1" (Mar. 17, 2009) (showing that the OPA was designing the FIT Program pursuant to the proposed Green Energy and Green Economy Act); R-055 , Ontario Power Authority Presentation, "Proposed Feed-in Tariff Project Eligibility, Application Requirements, and Application Review Stakeholder Engagement - Session 2" (Mar. 24, 2009) (showing that the OPA was designing the FIT Program pursuant to the proposed Green Energy and Green Economy Act); R-064 , Ontario Power Authority Presentation, "Proposed Feed-in Tariff Program - Revisions to Draft FIT Rules" (Jul. 21, 2009) (showing that the OPA was designing the FIT Program pursuant to the Green Energy and	RWS-Lo, ¶¶ 11, 14-15 (testifying that the Ministry of Energy provided the OPA with policy guidance concerning the FIT Program); RWS-Duffy, ¶¶ 3-5 (testifying that the Minister of Energy directed the OPA to design the FIT Program and that the OPA did design and implement it); RWS-MacDougall, ¶¶ 3-4, 7-14 (testifying that the OPA designed

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			<p>Green Economy Act);</p> <p>R-001, Letter from the Honourable George Smitherman, Minister of Energy and Infrastructure to Colin Andersen, Ontario Power Authority (Sep. 24, 2009) (publicly directing the OPA to implement the FIT Program);</p> <p>R-003, Ontario Power Authority, FIT Program Rules, v. 1.2, s. 1.1 (Nov. 19, 2009) ("FIT Program Rules, v. 1.2") (noting that the FIT Program was designed and was being implemented by the OPA).</p>	<p>and implemented the FIT Program pursuant to the direction of the Minister of Energy);</p> <p>RWS-Cronkwright-2, ¶¶ 3-4, 7 (testifying that the OPA designed and implemented the FIT Program pursuant to the direction of the Minister of Energy).</p>
2. The GEIA, and the Power Purchase Agreements entered into in fulfillment of its terms, are measures adopted or maintained by a Party or a state enterprise				
30.	The GEIA is an investment agreement entered into by the Government of Ontario and the Korean Consortium.	Canada's Counter-Memorial, ¶¶ 119-125.	<p>R-076, Ministry of Energy Archived Backgrounder, "Ontario Delivers \$7 Billion Green Investment" (Jan. 21, 2010);</p> <p>C-0322, <i>Green Energy Investment Agreement</i> (Jan. 21, 2010);</p> <p>R-077, Samsung C&T Press Release, "Samsung C&T to Build World's Largest Wind, Solar Panel Cluster in Ontario" (Jan. 22, 2010).</p>	<p>RWS-Lo, ¶¶ 23 (testifying that the Government of Ontario entered into the GEIA with the Korean Consortium);</p> <p>RWS-Jennings-2, ¶ 11 (testifying that the Government of Ontario entered into the GEIA with the Korean Consortium);</p> <p>RWS- Cronkwright-2, ¶ 10 (testifying that the Government of Ontario, not the OPA, entered into the GEIA with the Korean Consortium).</p>
31.	Pursuant to directions from the Minister of Energy, the OPA enters into power purchase agreements with the Korean Consortium in order to procure the electricity generation of the Korean Consortium's projects.	Canada's Counter-Memorial, ¶ 186.	<p>C-0079, Letter (Direction) from Brad Duguid, Minister of Energy to Colin Andersen, Ontario Power Authority (Apr. 1, 2010) (publicly directing the OPA to negotiate power purchase agreements with the project companies of the Korean Consortium in accordance with the commitment made in the GEIA, and describing the GEIA terms);</p> <p>C-0119, Letter (Direction) from Brad Duguid, Minister of Energy, to Colin Anderson, OPA (Sep. 17, 2010) (publicly directing the OPA to hold in</p>	RWS-Cronkwright, ¶¶ 5-6 (testifying that the OPA entered into power purchase agreements with the project companies of the Korean Consortium pursuant to the direction of the Minister of Energy);

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			reserve 500MW of transmission capacity in the Bruce Region for power purchase agreements to be entered into with the project companies of the Korean Consortium).	RWS-Cronkwright-2, ¶¶ 3, 7, 10-11 (testifying that the OPA entered into power purchase agreements with the project companies of the Korean Consortium pursuant to the direction of the Minister of Energy); Testimony of Shawn Cronkwright, October 29, 2014, Tr. pp. 21:3-22:9, 32:9-11, 94:1-95:15 (testifying that the OPA entered into power purchase agreements with the project companies of the Korean Consortium pursuant to the direction of the Minister of Energy).
II. The Claimant Has Failed to Demonstrate a Breach of Article 1102				
A. Article 1102 Prohibits Nationality-Based Discrimination in Favour of Canadian Nationals				
32.	Article 1102 protects a U.S. investor or the investments of a U.S. investor from being treated less favourably than, respectively, a Canadian investor or the investments of a Canadian investor, because of the U.S. investor's nationality.	Canada's Counter-Memorial, ¶¶ 354-355; Canada's Rejoinder, ¶¶ 93-100; Opening Statement of Canada, October 26, 2014, Tr. pp. 216:18-218:16; Canada's Closing Submissions, October 31, 2014, Tr. pp. 188:6-189:8.	CL-121 , <i>The Loewen Group Inc. and Raymond L. Loewen v. United States of America</i> (ICSID No. ARB/98/3) Award on Merits, 26 June 2003, ¶ 139 ("Loewen-Award"); RL-040 , <i>Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. The United Mexican States</i> (ICSID Case No. ARB(AF)/04/05) Award, 21 November 2007, ¶ 205 ("ADM - Award"); RL-096 , Meg N. Kinnear et al., <i>Investment Disputes under NAFTA: An Annotated Guide to NAFTA Chapter 11</i> (Kluwer Law International, 2006), pp. 10-1102 – 11-1102; Submission of the Government of United States Pursuant to NAFTA	

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			Article 1128, 31 July, 2014, ¶ 12; R-219, Canada's Closing Presentation Slides, slides 63-65, 71-72.	
33.	In order to prove a breach of Article 1102(1), the Claimant must prove that it (i.e. Mesa Power Group) was accorded treatment that was less favourable than the treatment that was accorded, in like circumstances, to Canadian investors.	Canada's Counter-Memorial, ¶¶ 348-353; Canada's Closing Submissions, October 31, 2014, Tr. pp. 189:17-190:17.	RL-075, UPS - Award, ¶¶ 83-84; CL-121, Loewen - Award, ¶ 139.	
34.	In order to prove a breach of Article 1102(2), the Claimant must prove that its investments were accorded treatment that was less favourable than the treatment that was accorded, in like circumstances, to the investments of Canadian investors.	Canada's Counter-Memorial, ¶¶ 348-353; Canada's Closing Submissions, October 31, 2014, Tr. pp. 189:17-190:17.	RL-075, UPS - Award, ¶¶ 83-84; CL-121, Loewen - Award, ¶ 139.	
35.	The treatment in this case was accorded to the Claimant's investments, as it was those investments, not the Claimant itself, that applied to the FIT Program. Accordingly, only Article 1102(2) applies, and the Claimant may only compare the treatment that its investments were accorded with the treatment accorded to the investments of Canadian investors.	Canada's Counter-Memorial, ¶¶ 149-164, 362.	C-0360, North Bruce Wind Energy I, FIT Application (May 29, 2010) (showing that the Claimant applied to the FIT Program through its investment, North Bruce Wind Project ULC, not directly); C-0361, North Bruce Wind Energy II, FIT Application (May 29, 2010) (showing that the Claimant applied to the FIT Program through its investment, North Bruce Wind Project ULC, not directly); C-0362, Summerhill Wind Energy I, FIT Application (May 29, 2010) (showing that the Claimant applied to the FIT Program through its investment, Summerhill Wind Project ULC, not directly); C-0363, Summerhill Wind Energy II, FIT Application (May 29, 2010) (showing that the Claimant applied to the FIT Program through its investment, Summerhill Wind Project ULC, not directly);	

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			<p>C-0364, Twenty-Two Degrees, FIT Application (Nov. 25, 2009) (showing that the Claimant applied to the FIT Program through its investment, Twenty Two Degree Wind Project ULC, not directly);</p> <p>C-0365, Arran Wind, FIT Application (Nov. 25, 2009) (showing that the Claimant applied to the FIT Program through its investment, Arran Wind Project ULC, not directly).</p>	
<p>B. The Claimant Inappropriately Attempts to Prove a Breach of Article 1102 by Comparing the Treatment that It Received with the Treatment Accorded to the Investments of non-Canadian Investors</p>				
36.	The Claimant cannot prove that Canada violated Article 1102 based on treatment accorded to NextEra Energy, because NextEra Energy is a U.S. investor, not an investment of a Canadian investor.	Canada's Counter-Memorial, ¶¶ 358-360; Canada's Closing Submissions, October 31, 2014, Tr. pp. 191:19-194:7.	<p>R-141, Bloomberg Businessweek website excerpt, "Company Overview of NextEra Energy Resources, LLC" (showing that NextEra is a Florida-based company);</p> <p>R-142, EDGAR Search Results, "NEXTERA ENERGY INC CIK#: 0000753308" (Last Updated Feb. 24, 2014) (showing that NextEra is a Florida-based company).</p>	Testimony of Susan Lo, October 28, 2014, Tr. pp. 178:11-16 (testifying that she believes that NextEra is a Florida company);
37.	The Claimant cannot prove that Canada violated Article 1102 based on treatment accorded to NextEra Canada, Boulevard Associates and Pattern Renewable Holdings Canada, because each is the investment of U.S. investors in Canada, not the investment of a Canadian investor.	Canada's Counter-Memorial, ¶¶ 356-360; Canada's Rejoinder, ¶ 93; Canada's Closing Submissions, October 31, 2014, Tr. pp. 191:19-194:7.	<p>R-141, Bloomberg Businessweek website excerpt, "Company Overview of NextEra Energy Resources, LLC" (showing that NextEra is a Florida-based company);</p> <p>R-142, EDGAR Search Results, "NEXTERA ENERGY INC CIK#: 0000753308" (Last Updated Feb. 24, 2014) (showing that NextEra is a Florida-based company);</p> <p>R-193, Bloomberg Businessweek, Company Overview of Samsung Renewable Energy Inc. (Jun. 17, 2014) (showing that Samsung Renewable Energy Inc. is a subsidiary of Samsung C&T Corp.);</p> <p>R-194, Bloomberg Businessweek, Snapshot of Samsung C&T Corp (000830: Korea SE) (Jun. 17, 2014) (showing that Samsung C&T Corp. is a Korea-based company).</p>	Testimony of Susan Lo, October 28, 2014, Tr. pp. 178:11-16 (testifying that she believes that NextEra is a Florida company);
38.	The Claimant cannot prove that Canada violated Article 1102 based	Canada's Rejoinder, ¶ 94; Canada's Closing	R-193 , Bloomberg Businessweek, Company Overview of Samsung Renewable Energy Inc. (Jun. 17, 2014) (showing that Samsung	

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
	on treatment accorded to Samsung Canada because Samsung Canada is the investment of a Korean investor in Canada, not the investment of a Canadian investor.	Submissions, October 31, 2014, Tr. pp. 191:19-194:7.	Renewable Energy Inc. is a subsidiary of Samsung C&T Corp.); R-194 , Bloomberg Businessweek, Snapshot of Samsung C&T Corp (000830: Korea SE) (Jun. 17, 2014) (showing that Samsung C&T Corp. is a Korea-based company).	
C. Even if They Were Appropriate Comparators for Article 1102, the Claimant Has Failed to Show that its Investments were Accorded Treatment in Like Circumstances with the Treatment Accorded to Pattern Renewable Holdings Canada and Samsung Canada				
39.	The treatment accorded to Pattern Renewable Holdings Canada and Samsung Canada pursuant to the GEIA was not accorded in like circumstance with the treatment accorded to the Claimant as an applicant to the FIT Program.	See submissions 60 to 64 below for evidence on the differences in the circumstances in which the challenged treatment was accorded.		
D. The Claimant has Failed to Show that its Investments Were Accorded Less Favorable Treatment than that Accorded to the Investments of Canadian Investors who submitted Applications to the FIT Program				
40.	The Claimant's investments were accorded treatment in like circumstances with the treatment accorded to other applicants to the FIT Program in the Bruce and West of London regions of Ontario.	Canada's Counter-Memorial, ¶¶ 376-378; Canada's Rejoinder, ¶ 104.		
41.	The Claimant's FIT applications were reviewed for completeness and eligibility in exactly the same way that all other FIT applications were reviewed.	Canada's Counter-Memorial, ¶¶ 66, 140-143.	R-003 , FIT Program Rules, v. 1.2 (Nov. 19, 2009), s. 4 (setting out the rules for the completeness and eligibility review of all FIT applications); R-134 , Ontario Power Authority, FIT Application Management Extranet, FIT-FZ2K5LZ - Twenty Two Degree Energy (Jun. 27, 2013), pp. 2-4 (communication from the OPA assisting the Claimant in filing a complete application, similar to communications sent to other FIT applicants); R-135 , Ontario Power Authority, FIT Application Management Extranet,	RWS-Duffy, ¶¶ 15-21 (testifying that all FIT applicants went through the same completeness and eligibility review).

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			<p>FIT-FNRGE96 – Arran Wind Energy (Jun. 27, 2013), pp. 1-5 (communication from the OPA assisting the Claimant in filing a complete application, similar to communications sent to other FIT applicants);</p> <p>R-212, Canada's Opening Slides, slides 17-19.</p>	
42.	<p>The Claimant's FIT applications were given a provincial ranking in exactly the same way that all other FIT applications were given a provincial ranking. There was no other ranking given to any project – only a single provincial ranking.</p>	<p>Canada's Counter-Memorial, ¶¶ 67-71, 149-162;</p> <p>Canada's Rejoinder, ¶¶ 200-202;</p> <p>Canada's Closing Statements, October 31, 2014, Tr. pp. 246:5-248:25.</p>	<p>R-003, FIT Program Rules, v. 1.2 (Nov. 19, 2009), s. 4.1(a), 4.2(d), 5.2(a), 5.4(b), 13.2(a), 13.4, 13.5 (describing the single time stamp accorded to each and every application to the FIT Program)</p> <p>R-082, London Economics Report (Mar. 31, 2010), p. 16 (concluding that the OPA ran a fair and consistent evaluation of the four criteria points during the review process);</p> <p>C-0073, Ontario Power Authority, Priority ranking for First Round FIT Contracts (Dec. 21, 2010) (showing the provincial ranking for each FIT Application, as well as an ordering per region based solely on the provincial ranking);</p> <p>R-212, Canada's Opening Slides, slides 20-24;</p> <p>R-219, Canada's Closing Slides, slides 124-125.</p>	<p>RWS-Duffy, ¶¶ 13, 40-55 (testifying that all launch period FIT applications were assigned a single ranking based on the number of COD acceleration days to which they were entitled which was then converted into a time stamp pursuant to the FIT Rules);</p> <p>Testimony of Bob Chow, October 28, 2014, Tr. pp. 316:14-318:13, 341:12-342:23, 344:12-347:10, 349:10-353:9 (testifying that the only ranking that the OPA considers when awarding FIT contracts is the provincial ranking);</p> <p>Testimony of Shawn Cronkwright, October 29, 2014, Tr. pp. 86:14-88:11 (testifying that the only ranking that the OPA considers when awarding a FIT contract is the provincial ranking).</p>
43.	<p>The Claimant's FIT applications were considered for contracts using the same processes used for all other applications in the initial awards of FIT Contracts in April 2010 and</p>	<p>Canada's Counter-Memorial, ¶¶ 90-95, 149-164, 179-181.</p>	<p>C-0400, Ontario Power Authority, FIT Contracts Offered by Legal Applicant Name (Apr. 8, 2010) (showing that no other applications for large projects like the Claimant's received a contract offer in the Bruce Region);</p>	<p>RWS-Duffy, ¶¶ 40-49, 52, 55, 56-61 (testifying as to the method used to review FIT applications, including the Claimant's, and award contracts in April 2010 and</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
	February 2011.		<p>C-0233, FIT CAR Priority Ranking by Region (Feb. 24, 2011) (showing that no other applications for large projects like the Claimant's received a contract offer in the Bruce Region);</p> <p>R-102, Ontario Power Authority website excerpt: "February 24, 2011 – Second Round of Large-Scale Renewable Energy Projects" (Feb. 24, 2011) (showing that no other applications for large projects like the Claimant's received a contract offer in the Bruce Region).</p>	February 2011).
44.	The Claimant had the same level of access to Ministry of Energy, OPA, Hydro One and IESO staff as all other applicants to the FIT Program for the purposes of understanding the FIT Program and obtaining information – they simply chose not to avail themselves of the opportunities available to them.	Canada's Counter-Memorial, ¶¶ 207-210; Canada's Rejoinder, ¶¶ 107-108, 209, 214.	R-212 , Canada's Opening Slides, slide 13.	<p>RWS-Lo, ¶¶ 52-54, 57 (testifying that the Renewable Energy Facilitation Office provided a centralized access point for all FIT applicants to connect with appropriate government and agency resources and that if a FIT applicant requested a meeting, the Ministry of Energy met with them);</p> <p>RWS-Chow, ¶¶ 51, 55 (testifying that FIT applicants approached the OPA throughout the course of the FIT Program and that all FIT applicants were on equal ground based on general information the OPA provided in these meetings and through its websites, webinars, etc.);</p> <p>RWS-MacDougall, ¶¶ 11, 30-35, 49 (testifying that over the course of the FIT Program, the OPA communicated with 200-300 FIT applicants and that the OPA was careful to ensure all FIT applicants</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
				<p>were given the same access to information);</p> <p>Testimony of T. Boone Pickens, October 26, 2014, Tr. pp. 279:24-281:2 (admitting that the Claimant did not reach out to the Ministry of Energy or the OPA with questions about its FIT applications).</p>
45.	<p>The Claimant had the same information at the same time as all other FIT applicants regarding the capacity that would be made available on the new Bruce-to-Milton line, and the timing of when that new line would receive final approvals. Thus, it had the same opportunity to be prepared for the process of allocating that new capacity as all other FIT Applicants.</p>	<p>Canada's Counter-Memorial, ¶¶ 182-189.</p>	<p>Dorey-004, Letter from Robert Hornung, President of Canadian Wind Energy Association ("CanWEA") to the Ontario Power Authority ("OPA"), Renewable Energy Transmission Priorities in the Plan, p. 4 (Dec. 15, 2006) (showing that the public and the industry had knowledge of the progress on the new Bruce-to-Milton line and the capacity it might potentially make available for renewable energy generators in the Bruce Region);</p> <p>Dorey-017, Hydro One, Records of Consultation, 2007 (showing the public nature of the development of the Bruce-to-Milton line);</p> <p>R-036, Letter from Jan Carr, CEO, Ontario Power Authority to Laura Formosa, President and CEO (Acting), Hydro One Inc. (Mar. 23, 2007) (publicly available letter discussing the need for the new Bruce-to-Milton line and how much capacity it could create);</p> <p>R-037, Hydro One website, Bruce-to-Milton Transmission Reinforcement Leave to Construct Application, EB - 2007-0050 (Mar. 29, 2007) (showing the public nature of the development of the Bruce-to-Milton line);</p> <p>R-039, Hydro One, Amended Record of Consultation, Bruce-to-Milton, Transmission Reinforcement Project (Oct. 27, 2007) (showing the public nature of the development of the Bruce-to-Milton line);</p> <p>R-040, Ontario Energy Board, Notice Of Amended Application - Leave to Construct a Transmission Reinforcement Project Between the Bruce</p>	<p>RWS-Cronkwright, ¶¶ 12-14, 16 (testifying that the amount of capacity to be made available by the Bruce-to-Milton line was well known from at least near the beginning of the FIT Program);</p> <p>Expert Report of Steve Dorey, ¶¶ 88-107 (explaining the timelines and approval process for the Bruce-to-Milton line);</p> <p>Testimony of Cole Robertson, October 27, 2014, Tr. pp. 37:3-10, 103:9-15 (admitting that the Claimant was aware that approximately 1,200MW would become available when the Bruce-to-Milton line came online);</p> <p>Testimony of Jim MacDougall, October 28, 2014, Tr. pp. 255:18-257:21 (testifying that before the FIT Program was even launched, it was known that additional megawatts would become</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			<p>Power Facility and Milton Switching Station, All in the Province of Ontario (Bruce-to-Milton Transmission Reinforcement Project) (Dec. 11, 2007) (providing public notice of the progress on the new Bruce-to-Milton line and the capacity it might create);</p> <p>Dorey-016, Hydro One, Environmental Assessment Report – Bruce-to-Milton, Part ES-1-ES-4, 2008 (showing the public nature of the development of the Bruce-to-Milton line);</p> <p>Dorey-013, Ontario Energy Board – Hydro One Argument in Chief Bruce-to-Milton Transmission Reinforcement Project (Jun. 23, 2008) (showing the public nature of the development of the Bruce-to-Milton line);</p> <p>Dorey-011, Ministry of Environment, Bruce-to-Milton Transmission Reinforcement Environmental Assessment Review, 2009 (showing the public nature of the development of the Bruce-to-Milton line);</p> <p>R-095, IESO Wind Power Standing Committee Meeting Minutes, Action Item 52 (Sep. 23, 2010), pp. 3, 7 (showing the public nature of the development of the Bruce-to-Milton line);</p> <p>R-105, Ministry of Natural Resources, Notice of Decision made under the provision of the <i>Niagara Escarpment Planning and Development Act</i>, R.S.O. 1990 (May 10, 2011) (public decision of the Minister to allow the development of the Bruce-to-Milton line);</p> <p>R-145, Hydro One website excerpt: “Bruce-to-Milton Transmission Reinforcement Project” (showing the public nature of the development of the Bruce-to-Milton line);</p> <p>R-150, Niagara Escarpment Commission website excerpt, “Appeals” (showing the public nature of the development of the Bruce-to-Milton line);</p> <p>R-212, Canada’s Opening Slides, slide 61.</p>	<p>available when the Bruce-to-Milton line came online);</p> <p>Testimony of Shawn Cronkwright, October 29, 2014, Tr. pp. 88:17-92:11 (testifying that the public would have been aware of the additional capacity that would become available with the Bruce-to-Milton line);</p> <p>Testimony of Seabron Adamson, October 29, 2014, Tr. p. 180:19-181:13 (admitting that the wind industry would have been aware of the Bruce-to-Milton line since the time of its proposed development).</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
46.	The Claimant had the same information at the same time as all other FIT applicants with respect to how the OPA originally intended to allocate the capacity that would be made available on the new Bruce-to-Milton line, including the fact that the allocation would be preceded by a chance for developers to change their connection points.	Canada's Counter-Memorial, ¶¶ 100-103, 192-193, 197, 412, 425; Canada's Rejoinder, ¶¶ 186-187; Canada's Closing Statements, October 31, 2014, Tr. pp. 249:1-255:25	<p>C-0034, Ontario Power Authority Presentation, "The Economic Connection Test Process" (Mar. 23, 2010), slides 12, 14-15, 22-23 (describing for all FIT applicants the steps in the ECT process, including the window to change connection points that would be provided, and confirming that the intention was to use this process to allocate the Bruce-to-Milton capacity);</p> <p>C-0088, Ontario Power Authority Presentation, "The Economic Connection Test – Approach, Metrics and Process" (May 19, 2010), slides 39-41 (describing for all FIT applicants the steps in the ECT process, including the window to change connection points that would be provided, and confirming that the intention was to use this process to allocate the Bruce-to-Milton capacity);</p> <p>R-098, Ortech Newsletter "HEADS UP FOR ONTARIO ECT PROJECTS" (showing that the industry was aware that a chance to change connection points would be part of the ECT process);</p> <p>C-0073, Ontario Power Authority, Priority ranking for First Round FIT Contracts (Dec. 21, 2010) (publicly indicating in the notes that projects would be allowed to change connection points prior to an ECT and that the Bruce-to-Milton capacity would be allocated through an ECT);</p> <p>C-0444, Email from Lo. Sue (MEI) to JoAnne Butler, Shawn Cronkwright, Michael Lyle (May 12, 2011), p. 2 (indicating that allocating the Bruce-to-Milton capacity and allowing a change in connection points in advance would be consistent with the FIT Rules and what had been told to the industry and public);</p> <p>R-113, Letter from Robert Hornung, President of CanWEA to the Honourable Brad Duguid, Minister of Energy (May 27, 2011) (showing that the industry had been told that the Bruce-to-Milton allocation would include a chance to change connection points in advance of the process being run);</p> <p>R-212, Canada's Opening Slides, slides 62-65, 69;</p>	<p>RWS-Chow, ¶¶ 25-30, 41 (testifying that the ECT would have included an option for a developer to change the connection point of its project and that additional capacity from the Bruce-to-Milton line was to be allocated as part of a province-wide ECT);</p> <p>RWS-Cronkwright, ¶ 15 (testifying that the ECT would have included an option for a developer to change the connection point of its project and that additional capacity from the Bruce-to-Milton line was to be allocated as part of a province-wide ECT);</p> <p>RWS Lo, ¶ 46 (testifying that the ECT would have included an option for a developer to change the connection point of its project and that additional capacity from the Bruce-to-Milton line was to be allocated as part of a province-wide ECT);</p> <p>Testimony of Jim MacDougall, October 28, 2014, Tr. pp. 252:16-255:17, 256:16-257:21, 268:1-273:10 (testifying that the ECT would have included an option for a developer to change the connection point of its project and that additional capacity from the</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			R-219, Canada's Closing Slides, slides 126-130.	Bruce-to-Milton line was to be allocated as part of a province-wide ECT); Testimony of Seabron Adamson, October 29, 2014, Tr. pp. 181:14-206:17 (admitting that the ECT would have included an option for a developer to change the connection point of its project and that additional capacity from the Bruce-to-Milton line was to be allocated as part of a province-wide ECT).
47.	The Claimant's applications were subject to the June 3 Minister's Direction to the OPA, like all FIT applicants in the Bruce and West of London regions, and thus had the same opportunities and same limitations as all such other applications in the Bruce and West of London regions. In fact, the Claimant also requested a connection point change for one of its projects.	Canada's Counter-Memorial, ¶ 191; Canada's Rejoinder, ¶ 173; Canada's Closing Statements, October 31, 2014, Tr. p. 256:21-25.	R-011, Letter (Direction) from Minister Brad Duguid, Ministry of Energy to Colin Andersen, Ontario Power Authority (Jun. 3, 2011) (public direction and notice of the Bruce-to-Milton process opening up for all applicants which, like the Claimant, had applied for a connection in the Bruce and West London regions); R-121, OPA Memo Request "Connection Point Amendment Window Requests"(Jun. 28, 2011), p. 2 (evidencing the number of applicants who took advantage of the change in connection point window, and thus, the industry's readiness for the change window); R-212, Canada's Opening Slides, slides 70-74.	Testimony of Bob Chow, October 28, 2014, Tr. p. 359:7-8 (testifying that the Claimant changed the connection point for one of its projects following the June 3 Direction).
48.	The Claimant had the same notice that a change in connection point window would be opened as part of the allocation of the new capacity on the Bruce-to-Milton line, and the same length of time to act pursuant to the June 3 Minister's Direction to	Canada's Counter-Memorial, ¶¶ 197-201, 212-214; Canada's Rejoinder, ¶¶ 186-190; Canada's Closing	R-105, Ministry of Natural Resources, Notice of Decision made under the provision of the <i>Niagara Escarpment Planning and Development Act</i> , R.S.O. 1990 (May 10, 2011) (public decision of the Minister to allow the development of the Bruce-to-Milton line, which was known to be the catalyst for the Bruce-to-Milton allocation); C-0090, Email from Sue Lo (Ministry of Energy) to Phil Dewan (Counsel	RWS-Chow, ¶¶ 49-59 (testifying that no developer was given advance knowledge of the connection point change window but that FIT applicants knew in advance of the June 3 Direction that a change window would occur

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
	the OPA, as all other FIT applicants in the Bruce and West of London regions.	Statements, October 31, 2014, Tr. pp. 256:14-257:5.	<p>Public Affairs) (May 12, 2011) (showing that NextEra itself confirmed that it did not receive advance notice of connection point change window);</p> <p>R-113, Letter from Robert Hornung, President of CanWEA to the Honourable Brad Duguid, Minister of Energy (May 27, 2011) (showing that the industry had been told that the Bruce-to-Milton allocation would include a chance to change connection points in advance of the process being run, that it was expecting it to occur shortly and had been preparing for it);</p> <p>C-0068, Email from Jim MacDougall, Ontario Power Authority to Nicole Geneau, NextEra (May 31, 2011) (showing that the OPA was careful not to disclose information about the upcoming Bruce-to-Milton allocation before the public directive);</p> <p>R-011, Letter (Direction) from Minister Brad Duguid, Ministry of Energy to Colin Andersen, Ontario Power Authority (Jun. 3, 2011) (public direction and notice of the Bruce-to-Milton process opening up the process for all applicants which, like the Claimant, had applied for connection in the Bruce and West London region);</p> <p>R-121, OPA Memo Request "Connection Point Amendment Window – Requests" (Jun. 28, 2011) (evidencing the number of applicants who took advantage of the change in connection point window, and thus, the industry's readiness for the change window);</p> <p>R-212, Canada's Opening Presentation Slides, slides 75-77.</p>	<p>at some point and that advance work would be necessary to meet a potentially short timeframe in which to make the changes);</p> <p>RWS-MacDougall, ¶¶ 43-47 (testifying that no developer was given advance knowledge of the connection point change window but that it was common knowledge in the industry that the Bruce-to-Milton transmission line had recently passed one of its final outstanding regulatory hurdles and that the running of an ECT to allocate this capacity would include a window to change connection points);</p> <p>RWS-Lo, ¶¶ 55-56 (testifying that developers were never given preferential access to information about the Bruce-to-Milton allocation process such as when it would occur or what it would entail).</p>
49.	The Claimant had the same information regarding connections to the transmission grid (at both the L7S circuit and on the Bruce to Longwood (500kV) line) in the Bruce Region as all other FIT applicants, and the same	Canada's Rejoinder, ¶¶ 107-108, 206-218; Canada's Closing Statements, pp. 138:3-139:9.	<p>R-175, IESO, "System Impact Assessment Report - Kingsbridge II Wind Generation Station (WGS)", IESO REP 0329 (Feb. 9, 2007) (showing that other investors who wanted to connect to the Bruce to Longwood (500kV) line asked the IESO and were publicly known to have been able to connect);</p> <p>R-179, Ontario Power Authority Presentation, "Feed-in Tariff Program: Transmission and Distribution Technical Information Session" (Nov. 20,</p>	RWS-Chow, ¶¶ 10, 31-33, 46-48 (testifying that information provided in the TAT Table was intended to reflect the weakest portion of a circuit and that the TAT Table expressly referred FIT applicants to the IESO if they

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
	<p>opportunity to apply for those connections.</p>		<p>2009), slide 7 (making clear to all FIT applicants that the information in the TAT table was for guidance only, and represented the weakest part of the circuit);</p> <p>C-0149, E-mail from Bobby Adjemian (NextEra) to Ioan Agavriloai (IESO) (Jul. 2, 2010) (showing that, unlike the Claimant, when other developers had questions about capacity, they approach the relevant entity);</p> <p>C-0234, E-mail from Bobby Adjemian (NextEra) to Bob Chow (OPA) (Jan. 18, 2011) (showing that the OPA was aware of the need to ensure that disclosing non-public information was not disclosed to particular developers);</p> <p>R-181, E-mail from Chuck Edey to Cole Robertson and Mark Ward (Jan. 21, 2011) (showing that the Claimant was aware of the possibility of connecting to the Bruce to Longwood (500kV) line);</p> <p>C-0166, Ontario Power Authority, Transmission Availability Table (Jun. 3, 2011) (providing the express guidance that if a developer wanted to connect to the Bruce to Longwood (500kV) line, it should speak with IESO);</p> <p>C-0298, E-mail from Tracy Garner (OPA) to Bob Chow (OPA) (Jun. 6, 2011) (showing that the OPA was not responding directly to FIT proponents and was providing the same information to everyone by posting questions and answers directly on the FIT website);</p> <p>R-115, Email (including attachment) from Shawn Cronkwright, Ontario Power Authority to Bob Chow et al., Ontario Power Authority (Jun. 6, 2011) (showing that the OPA was not responding directly to FIT proponents and was providing the same information to everyone by posting questions and answers directly on the FIT website);</p> <p>C-0291, Ontario Power Authority, Questions and Answers, Bruce-to-Milton Contract Allocation Process (Jun. 8, 2011) (showing that the OPA was providing the same response to everyone about the capacity on the</p>	<p>wished to connect to the Bruce to Longwood (500kV line);</p> <p>RWS-Chow-2, ¶¶ 17-27 (testifying that the information provided in a TAT Table was meant to be indicative only, that this was explained to FIT applicants during webinars and that FIT applicants had applied to connect to the Bruce to Longwood (500kV) line as early as the launch period);</p> <p>Testimony of Seabron Adamson, October 29, 2014, Tr. pp. 166:6-174:18 (admitting that the information in the TAT Table was meant to be indicative only and that FIT applicants could have asked the OPA if they required further information).</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			L7S circuit).	
50.	The June 3 Minister's Direction to the OPA was not adopted or developed for the purpose of favouring any particular investment of NextEra, Suncor, International Power Canada or any other applicant. The June 3 Direction was nationality neutral, as shown by the fact that some investments of Canadian investors benefited, and some did not.	Canada's Counter-Memorial, ¶¶ 421-426; Canada's Rejoinder, ¶¶ 92, 106, 191-199; Canada's Opening Statements, October 26, 2014, Tr. pp. 220:10-221:21; Canada's Closing Statements, October 31, 2014, Tr. pp. 148:1-20, 256:14-260:18.	<p>C-0073, Ontario Power Authority, "Priority ranking for first-round FIT Contracts" (Dec. 21, 2010) (when considered with C-0292, showing that the June 3 Direction benefitted some Canadian investors, but not others);</p> <p>R-182, DRAFT Ontario Power Authority Presentation, "Economic Connection Test (ECT) Moving Forward" (Mar. 1, 2011) (showing that the Bruce-to-Milton allocation process had been under design as early as March 2011, and that it was developed with a view to being fair to industry expectations, not favouring particular developers);</p> <p>C-0067, Ontario Ministry of Energy Presentation, "DRAFT Bruce-to-Milton Next Steps" (May 5, 2011) (showing that the Bruce-to-Milton allocation process was developed with a view to being fair to industry expectations, not favouring particular developers);</p> <p>C-0269, Ministry of Energy Presentation, "Bruce-to-Milton Transmission Line FIT Contract Awards" (May 12, 2011) (showing that the Bruce-to-Milton allocation process was developed with a view to being fair to industry expectations, not favouring particular developers);</p> <p>C-0292, Ontario Power Authority, "FIT Contract Offers for the Bruce-Milton Capacity Allocation Process" (Jul. 4, 2011) (when considered with C-0073, showing that the June 3 Direction benefitted some Canadian investors, but not others);</p> <p>R-212, Canada's Opening Slides, slides 76-78.</p>	<p>RWS-Lo, ¶¶ 14, 54-55 (testifying that at no time were special promises made to individual developers, and at no time were any special preferences accorded);</p> <p>RWS-Lo-2, ¶¶ 12-19 (testifying that none of the policy decisions taken concerning the June 3 Direction related specifically to NextEra or its projects);</p> <p>RWS-Cronkwright-2, ¶ 23 (testifying that he did not believe that the June 3 Direction was developed to favour particular proponents);</p> <p>Testimony of Susan Lo, October 28, 2014, Tr. pp. 168:3-178:23 (testifying that the Ministry of Energy did not give an advantage to one FIT applicant over another);</p> <p>Testimony of Jim MacDougall, October 28, 2014, Tr. pp. 250:21-252:2, 257:22-258:11 (testifying that the OPA did not have any discussions with the Ministry of Energy with respect to which specific FIT applicants would receive FIT contracts).</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
III. The Claimant Has Failed to Demonstrate a Breach of Article 1103				
A. Article 1103 Prohibits Nationality-Based Discrimination in Favour of Investors and their Investments from States other than Canada and the United States				
51.	Article 1103 protects a U.S. investor or the investments of a U.S. investor from being treated less favourably than, respectively, an investor from Mexico, or some other third-state or the investments of such investors, because of the U.S. investor's nationality. This MFN clause does not permit comparison of the treatment accorded to investors or the investments of the same nationality as the Claimant.	Canada's Rejoinder, ¶¶ 113-116; Canada's Opening Statements, October 26, 2014, Tr. pp. 221:22-223:12; Canada's Closing Statements, October 31, 2014, Tr. pp. 191:5-192:2, 194:8-196:17.	CL-121 , <i>Loewen - Award</i> , ¶ 139; RL-040 , <i>ADM - Award</i> , ¶ 205; CL-066 , UNCTAD, Most-Favored Nation Treatment, UNCTAD Series on Issues in International Investment Assessment II, p. 27 (" <i>MFN, UNCTAD</i> "); RL-094 , United Nations, Draft Articles on Most-Favored-Nation Clauses, with Commentaries, Yearbook of the International Law Commission, 1978, Vol. 2, Part II, p. 27; R-219 , Canada's Closing Slides, slides 66, 73-77.	
52.	In order to prove a breach of Article 1103(1), the Claimant must prove that it (i.e. Mesa Power Group) was accorded treatment that was less favourable than the treatment that was accorded, in like circumstances, to Mexican or other third state investors.	Canada's Counter-Memorial, ¶¶ 348-353; Canada's Closing Statements, October 31, 2014, Tr. pp. 189:17-190:17.	CL-033 , <i>S.D. Myers, Inc. v. Government of Canada</i> , First Partial Award, 2000 WL 34510032 (November 12, 2000), ¶ 252 (" <i>S. D. Myers - First Partial Award</i> "); CL-039 , <i>Pope & Talbot Inc. v. The Government of Canada</i> , Award on the Merits of Phase 2 (April 10, 2001), ¶ 31 (" <i>Pope & Talbot - Award on Merits of Phase 2</i> "); CL-040 , <i>Marvin Feldman v. United Mexican States</i> (ICSID Case No. ARB(AF)/99/1) Award, 16 December 2002, ¶ 171 (" <i>Feldman-Award</i> "); CL-036 , <i>Merrill & Ring Forestry L.P. v. Canada</i> (UNCITRAL) Award, 31 March 2010, ¶¶ 81-82 (" <i>Merrill & Ring - Award</i> "); RL-075 , <i>UPS - Award</i> , ¶ 83; CL-121 , <i>Loewen - Award</i> , ¶ 139; RL-040 , <i>ADM - Award</i> , ¶ 205;	

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			R-219, Canada's Closing Slides, slides 66, 70-77	
53.	In order to prove a breach of Article 1103(2), the Claimant must prove that its investments were accorded treatment that was less favourable than the treatment that was accorded, in like circumstances, to the investments of Mexican or other third state investors.	Canada's Counter-Memorial, ¶¶ 348-353; Canada's Closing Statements, October 31, 2014, Tr. pp. 189:17-190:17.	CL-033, <i>S. D. Myers - First Partial Award</i> , ¶ 252; CL-039, <i>Pope & Talbot - Award on Merits of Phase 2</i> , ¶ 31; CL-040, <i>Feldman - Award</i> , ¶ 171; CL-036, <i>Merrill & Ring - Award</i> , ¶¶ 81-82; RL-075, <i>UPS - Award</i> , ¶ 83; CL-121, <i>Loewen - Award</i> , ¶ 139; RL-040, <i>ADM - Award</i> , ¶ 205; R-219, Canada's Closing Slides, slides 66, 70-77	
54.	The treatment in this case was accorded to the Claimant's investments, as it was those investments, not the Claimant itself, that applied to the FIT Program. Accordingly, only Article 1103(2) applies, and the Claimant may only compare the treatment that its investments were accorded with the treatment accorded to the investments of Mexican or other third state investors.	Canada's Counter-Memorial, ¶¶ 128-133, 362	C-0360, North Bruce Wind Energy I, FIT application, (May 29, 2010) (showing that the Claimant applied to the FIT Program through its investment, North Bruce Wind Project ULC, not directly); C-0361, North Bruce Wind Energy II, FIT Application, (May 29, 2010) (showing that the Claimant applied to the FIT Program through its investment, North Bruce Wind Project ULC, not directly); C-0362, Summerhill Wind Energy I, FIT Application, (May 29, 2010) (showing that the Claimant applied to the FIT Program through its investment, Summerhill Wind Project ULC, not directly); C-0363, Summerhill Wind Energy II, FIT Application, (May 29, 2010) (showing that the Claimant applied to the FIT Program through its investment, Summerhill Wind Project ULC, not directly); C-0364, Twenty-Two Degrees Wind Project, FIT Application, (Nov. 25, 2009) (showing that the Claimant applied to the FIT Program through its investment, Twenty-Two Degrees Wind Project ULC, not directly); C-0365, Arran Wind, FIT Application (Nov. 25, 2009) (showing that the Claimant applied to the FIT Program through its investment, Arran Wind	

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			Project ULC, not directly).	
B. The Claimant Inappropriately Attempts to Prove a Breach of Article 1103 by Comparing the Treatment that It Received with the Treatment Accorded to the Investments of another U.S. Investor				
55.	The Claimant cannot compare the treatment that its investments were accorded with the treatment of NextEra Energy Inc., because NextEra Energy Inc. is a U.S. investor, not the investment of a Mexican or third State investor.	Canada's Counter-Memorial, ¶ 351; Canada's Rejoinder Memorial, ¶¶ 112-116; Canada's Opening Statement, October 26, 2014, Tr. pp. 222:2-223:12; Canada's Closing Statements, October 31, 2014, Tr. pp. 191:23-192:2.	R-141 , Bloomberg Businessweek website excerpt, "Company Overview of NextEra Energy Resources, LLC" (showing that NextEra is a Florida-based company); R-142 , EDGAR Search Results, "NEXTERA ENERGY INC CIK#: 0000753308" (Last Updated Feb. 24, 2014) (showing that NextEra is a Florida-based company).	Testimony of Susan Lo, October 28, 2014, Tr. pp. 178:11-16 (testifying that she believes that NextEra is a Florida company);
C. The Claimant has Failed to Prove that the Government of Ontario Accorded the Korean Consortium More Favourable Treatment Simply by Negotiating an Investment Agreement				
56.	Article 1103 does not prohibit a NAFTA Party from entering into an investment agreement such as the GEIA.	Canada's Counter-Memorial, ¶¶ 371-374; Canada's Rejoinder, ¶¶ 117-122; Canada's Opening Statement, October 26, 2014, Tr. p. 225:5-22; Canada's Closing Statement, October 31, 2014, Tr. p. 225:6-20.	RI-065 , <i>Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. The Government of Mongolia</i> (UNCITRAL) Award on Jurisdiction and Liability, 28 April 2011, ¶¶ 475-476, 488 ("Paushok - Award"); CL-066 , <i>MFN</i> , UNCTAD, p. 29.	
57.	The negotiation of the GEIA and the content of its key terms were known	Canada's Counter-	R-177 , The Star News Article, Tyler Hamilton, "Ontario eyes green job bonanza" (Sep. 26, 2009) (publicly reporting the negotiations between	RWS-Jennings-2, ¶¶ 11-13 (testifying that in September 2009

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
	by September 2009, months prior to its signature. Further, the key terms were publicly described when the GEIA was signed and announced in January 2010.	Memorial, ¶ 408; Canada's Rejoinder, ¶ 155; Canada's Opening Statements, pp. 171:19-173:1; Canada's Closing Statements, pp. 216:5-217:9, 218:17-222:5.	Ontario and the Korean Consortium for a framework agreement); R-068 , Ministry of Energy Archived News Release, "Statement from the Minister of Energy and Infrastructure and Samsung C&T Corporation" (Sep. 26, 2009) (officially announcing the negotiation of a framework agreement with the Korean Consortium); C-0105 , Letter (Direction) from George Smitherman, Minister of Energy to Colin Andersen, Ontario Power Authority (Sep. 30, 2009) (giving public notice that parties that signed a framework agreement with Ontario would receive a priority transmission set aside); R-178 , The Star News Article, Tyler Hamilton, "Samsung's turbine deal in jeopardy" (Oct. 31, 2009) (reporting that the framework agreement with the Korean Consortium would provide it with priority access to Ontario's transmission grid); R-212 , Canada's Opening Slides, slides 34-36; R-219 , Canada's Closing Slides, slides 106-111.	the negotiation of the GEIA and its key terms were made public in local media); Testimony of Cole Robertson, October 27, 2014, Tr. pp. 128:18-134:15; 135:3-13, 143:19-145:5 (admitting that the key terms of the GEIA were made public in a September 2009 news article and that the Claimant was aware of this at the time it was released); Testimony of Seabron Adamson, October 29, 2014, Tr. pp. 211:10-218:7 (admitting that the Claimant could have known about the GEIA and its key terms as early as September 2009, prior to applying to the FIT Program).
58.	The Claimant invested in Canada and applied to the FIT Program, following the announcement of the negotiation of the GEIA in September, and again following the public announcement of the signed GEIA in January 2010.	Canada's Counter-Memorial, ¶ 408; Canada's Rejoinder, ¶ 155; Canada's Opening Statements, Tr. pp. 171:19-173:12; Canada's Closing Statements, Tr. pp. 217:10-222:5.	C-0087 , Certificate of Incorporation for TTD Wind Project ULC under the <i>Alberta Business Corporations Act</i> (Nov. 17, 2009) (the first documentary evidence of the Claimant's investment into Canada for the TTD project); C-0049 , Certificate of Incorporation for Arran Wind Project ULC under the <i>Alberta Business Corporations Act</i> (Nov. 17, 2009) (the first documentary evidence of the Claimant's investment into Canada for the Arran project); C-0322 , <i>Green Energy Investment Agreement</i> (Jan. 21, 2010); R-076 , Ministry of Energy Archived Backgrounder, "Ontario Delivers \$7 Billion Green Investment" (Jan. 21, 2010) (publicly announcing the signing of the GEIA with the Korean Consortium and describing all of its key terms);	Testimony of T. Boone Pickens, October 26, 2014, Tr. pp. 269:20-271:1, 275:18-276:22 (admitting that the Claimant's FIT applications were submitted following the announcement of the GEIA); Testimony of Cole Robertson, October 27, 2014, pp. 144:19-21, 145:3-13, 220:20-224:10 (admitting that the key terms of the GEIA were made public in a September 2009 news article and that the Claimant was aware of this

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			<p>C-0079, Letter from Minister Brad Duguid (Ministry of Energy) to Colin Andersen (OPA), Direction to OPA (Apr. 1, 2010) (publicly directing the OPA to negotiate power purchase agreements with the project companies of the Korean Consortium in accordance with the commitment made in the GEIA, and describing the GEIA terms);</p> <p>C-0050, North Bruce Project, ULC Certificate of Incorporation for North Bruce Project ULC under the <i>Alberta Business Corporations Act</i> (Apr. 6, 2010) (the first documentary evidence of the Claimant's investment into Canada for the North Bruce project);</p> <p>C-0041, Certificate of Incorporation for Summerhill Project ULC under the <i>Alberta Business Corporations Act</i> (Apr. 6, 2010) (the first documentary evidence of the Claimant's investment into Canada for the Summerhill project);</p> <p>R-219, Canada's Closing Presentation Slides, slides 24, 107, 110-111.</p>	<p>at the time it was released, prior to applying to the FIT Program);</p> <p>Testimony of Bob Chow, October 28, 2014, Tr. p. 140:5-15 (testifying that as soon as the GEIA was announced, FIT applicants like the Claimant would know the Korean Consortium was interested in the Bruce Region due to its strong wind regime);</p> <p>Testimony of Seabron Adamson, October 29, 2014, Tr. pp. 211:10-212:21 (admitting that the Claimant could have known about the GEIA and its key terms as early as September 2009, prior to applying to the FIT Program).</p>
59.	The Claimant had the same opportunity to approach the Government of Ontario and seek to negotiate an investment agreement as did the Korean Consortium, but it never did so.	<p>Canada's Rejoinder, ¶¶ 117-122;</p> <p>Canada's Opening Statements, Tr. pp. 139:18-140:2;</p> <p>Canada's Closing Statements, Tr. pp. 233:11-238:11.</p>	<p>C-0536, Memorandum of Understanding by and among Her Majesty The Queen In Right Of Ontario, Korea Electric Power Corporation and Samsung C&T Corporation (Dec. 12, 2008), Art. 4.1, 4.2 (showing that the MOU with the Korean Consortium only applied with respect to 2,500MW and that the Government was not restricted in its other procurement efforts);</p> <p>R-076, Ministry of Energy, "Ontario Delivers \$7 Billion Green Investment", Archived Backgrounder (Jan. 21, 2010) (publicly announcing the signing of the GEIA with the Korean Consortium and describing all of its key terms);</p> <p>R-078, CityNews, "Korean Deal Approved: Wind Solar Farms Coming to Ontario" (Jan. 21, 2010) (reporting on the public announcement of the GEIA and its key terms and on the invitation of the Premier for other</p>	<p>RWS-Lo, ¶ 29 (testifying that the Government of Ontario was open to exploring investment opportunities with other companies, not just the Korean Consortium);</p> <p>RWS-Jennings-2, ¶¶ 7-8 (testifying that public statements were made by the Government of Ontario that they were open to considering other proposals of comparable size and manufacturing commitments);</p> <p>Testimony of T. Boone Pickens, October 26, 2014, Tr. pp. 280:2-</p>

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			<p>developers to approach the Government of Ontario with proposals);</p> <p>C-0322, <i>Green Energy Investment Agreement</i> (Jan. 21, 2010), Art 8.7 (expressly permitting the Government of Ontario to enter into investment agreements with other developers similar or better than the GEIA);</p> <p>R-212, Canada's Opening Slides, slide 31-33;</p> <p>R-219, Canada's Closing Slides, slides 118-122</p>	<p>283:21 (admitting that the Claimant never approached the Government of Ontario with a proposal for an investment agreement);</p> <p>Testimony of Cole Robertson, October 27, 2014, Tr. p. 146:2-7 (admitting that the Claimant never approached the Government of Ontario with a proposal for an investment agreement);</p> <p>Testimony of Rick Jennings, October 27, 2014, Tr. p. 264:16-265:9, 333:9-15 (testifying that the MOU and the GEIA did not prevent Ontario from doing other GEIA-like deals with other developers and that after the GEIA was signed the Government of Ontario continued to talk to investors with respect to potential investment agreements);</p> <p>Testimony of Susan Lo, October 28, 2014, Tr. p. 31:20-25 (testifying that investors regularly come forward to the Government of Ontario with proposals related to green energy).</p>

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D. The Claimant Has failed to Show that the Treatment Accorded to the Korean Consortium and its Partners under the GEIA, Such as the Priority Transmission Access in the Bruce Region, Was Accorded in Like Circumstances to the Treatment Accorded to its Investments under the FIT Program				
60.	The Claimant's investments applied to the FIT Program and sought to obtain power purchase agreements for their projects through this program, identifying connection points in the Bruce Region of Ontario.	Canada's Counter-Memorial, ¶¶ 128-133.	<p>C-0360, North Bruce Wind Energy I, FIT Application, (May 29, 2010);</p> <p>C-0361, North Bruce Wind Energy II, FIT Application, (May 29, 2010);</p> <p>C-0362, Summerhill Wind Energy I, FIT Application, (May 29, 2010);</p> <p>C-0363, Summerhill Wind Energy II, FIT Application, (May 29, 2010);</p> <p>C-0364, Twenty-Two Degrees Wind Project, FIT Application, (Nov. 25, 2009);</p> <p>C-0365, Arran Wind Project, FIT Application, (Nov. 25, 2009);</p> <p>C-0073, OPA, Priority Ranking for first-round FIT Contracts (Dec. 21, 2010) (showing that the Claimant's TTD and Arran projects applied to connect in the Bruce Region of Ontario);</p> <p>C-0233, FIT CAR Priority Ranking (Feb. 24, 2011), p. 1 (showing that the Claimant's TTD, Arran, North Bruce and Summerhill projects applied to connect in the Bruce Region of Ontario).</p>	Testimony of Cole Robertson, October 27, 2014, Tr. pp. 145:14-147:14 (admitting that the Claimant's investments applied to the FIT Program and sought FIT Contracts for projects with connection points in the Bruce Region).
61.	Pattern Renewable Holdings Canada and Samsung Canada were able to access 500MW of reserved transmission capacity and obtain power purchase agreements in the Bruce Region, not through the FIT Program, but rather pursuant to specific Ministerial Directions issued to the OPA as a result of the GEIA.	Canada's Counter-Memorial, ¶¶ 121-123, 204-206, 368-370.	<p>C-0322, <i>Green Energy Investment Agreement</i> (Jan. 21, 2010), ss. 7.4, 8.1, 9.1 (obligating Ontario to ensure priority access to the transmission system and to direct the OPA to enter into power purchase agreements with the Korean Consortium's project companies if the Korean Consortium fulfilled certain obligations);</p> <p>C-0079, Letter from Minister Brad Duguid (Ministry of Energy) to Colin Andersen (OPA), Direction to OPA (Apr. 1, 2010) (publicly directing the OPA to negotiate power purchase agreements with the project companies of the Korean Consortium in accordance with the commitment made in the GEIA, and describing the GEIA terms);</p> <p>C-0119, Letter from Brad Duguid (Ministry of Energy) to Colin Andersen (OPA) (Sep. 17, 2010) (publicly directing the OPA to hold in reserve</p>	<p>RWS-Lo, ¶ 25 (testifying that the Korean Consortium was given priority access pursuant to the terms of the GEIA, not the FIT Program);</p> <p>RWS-Cronkwright-2, ¶¶ 10-12 (testifying that the OPA entered into power purchase agreements with the Korean Consortium and that the Korean Consortium's projects were given priority access to Ontario's transmission grid pursuant to directions issued by</p>

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			<p>500MW of transmission capacity in the Bruce Region for power purchase agreements to be entered into with the project companies of the Korean Consortium);</p> <p>R-212, Canada's Opening Slides, slide 39.</p>	<p>the Minister of Energy);</p> <p>RWS-Jennings-2, ¶¶ 20-22 (testifying that the Korean Consortium was given priority access to Ontario's transmission grid pursuant to the terms of the GEIA, not the FIT Program);</p> <p>Testimony of Susan Lo, October 28, 2014, Tr. p. 55:6-11 (testifying that the GEIA and the FIT Program are different procurement programs);</p> <p>Testimony of Shawn Cronkwright, October 29, 2014, Tr. pp. 25:19-29:3, 31:1-32:23 (testifying that the power purchase agreements the OPA negotiated for the projects of the Korean Consortium were based on specific directions from the Minister of Energy, not the FIT Program).</p>
62.	<p>The treatment accorded to FIT applicants pursuant the FIT Program cannot be compared with the treatment accorded to the members and partners of the Korean Consortium under the GEIA because the FIT Program and the GEIA are two distinct procurement initiatives with different requirements, different scales of investments, and different obligations.</p>	<p>Canada's Counter-Memorial, ¶¶ 363-375;</p> <p>Canada's Rejoinder, ¶¶ 123-125;</p> <p>Canada's Opening Statement, October 26, 2014, Tr. pp. 219:3-220:2, 223:13-225:22;</p> <p>Canada's Closing Statements, October 31,</p>	<p>RL-075, <i>UPS – Award</i>, ¶ 87;</p> <p>RL-065, <i>Paushok – Award</i>, ¶¶ 475-476, 488;</p> <p>CL-066, <i>MFN</i>, UNCTAD, p. 29;</p> <p>CL-054, United Nations Conference on Trade and Development (UNCTAD), "Most Favoured Nation Treatment" UNCTAD Series on Issues in International Investment Agreements (New York and Geneva: 1999) pp. 6-8;</p> <p>RL-105, Perkowski, M., Gruszewska, E. "Interpretation of Bilateral Treaties for the Promotion and Protection of Foreign Investments" Studies</p>	<p>RWS-Cronkwright, ¶¶ 5-10 (testifying that the FIT Program and the power purchase agreements negotiated as a result of the commitments made by the Government of Ontario in the GEIA are two distinct procurement initiatives);</p> <p>RWS-Cronkwright-2, ¶¶ 7, 11 (testifying that the FIT Program and the power purchase</p>

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		2014, Tr. pp. 196:22-198:6, 223:11-226:1	in Logic, Grammar and Rhetoric 32 (45), (2013), p. 99; RL-059 , <i>Merrill & Ring - Award</i> , ¶¶ 89-93; R-219 , Canada's Closing Slides, slides 79-80.	agreements negotiated as a result of the commitments made by the Government of Ontario in the GEIA are two distinct procurement initiatives); Testimony of Cole Robertson, October 27, 2014, Tr. pp. 145:14-147:14 (admitting that the Claimant was aware the FIT Program was distinct from the GEIA); Testimony of Rick Jennings, October 27, 2014, Tr. pp. 350:2-354:24 (testifying that the FIT Program and the GEIA were two different approaches to procuring green energy); Testimony of Shawn Cronkwright, October 29, 2014, Tr. pp. 25:19-29:3, 31:1-32:23, 94:19-95:12 (testifying that the power purchase agreements the OPA negotiated with the projects of the Korean Consortium were pursuant to specific directions from the Minister of Energy, not the separate and distinct FIT Program.).
63.	The Minister of Energy directed the OPA to negotiate power purchase agreements in the Bruce Region with	Canada's Counter-Memorial, ¶¶ 119-120; Canada's Rejoinder, ¶¶	C-0322 , <i>Green Energy Investment Agreement</i> (Jan. 21, 2010), Art. 3.1, 3.2, 7.4, 8.1, 8.8 (showing the unique commitments made by the Korean Consortium to 2,500MW of wind and solar generation with aggressive	RWS-Lo, ¶¶ 5, 19, 23-24, 26-29 (testifying to the benefits the GEIA would bring to Ontario, including

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
	<p>the members or partners of the Korean Consortium in accordance with the commitments under the GEIA because Ontario received value from the Korean Consortium in the GEIA. This value included the commitment of a marquee and anchor tenant (the Korean Consortium) to generate electricity in significant amounts, attract manufacturing plants to Ontario and facilitate the creation of jobs.</p>	<p>126-131; Canada's Opening Statements, October 26, 2014, Tr. pp. 225:23-226:18; Canada's Closing Statements, October 31, 2014, Tr. pp. 226:2-232:9.</p>	<p>in-service dates, and that the Government of Ontario's commitments in terms of transmission access and the economic development adder were conditional upon the Korean Consortium bringing actual operating manufacturing to Ontario on an aggressive schedule);</p> <p>R-076, Ministry of Energy Archived Backgrounder, "Ontario Delivers \$7 Billion Green Investment" (Jan. 21, 2010) (evidencing the value that Ontario believed that it had secured through the GEIA);</p> <p>C-0594, Siemens Website, "Siemens selects Tillsonburg, Ontario, as new home for Canadian wind turbine blade manufacturing facility" (Dec. 2, 2010) (proving that pursuant to the GEIA, the Korean Consortium succeeded in bringing actual manufacturing to Ontario and that it did so before contracts in the Bruce Region were even awarded);</p> <p>C-0282, Green Energy Investment Agreement – Amending Agreement, By and Among Her Majesty The Queen In Right Of Ontario as represented by the Minister of Energy And Korea Electric Power Corporation And Samsung C&T Corporation (Jul. 29, 2011), Arts. 8, 13, 15 (amending the GEIA to require the creation of a certain number of jobs at manufacturing facilities working with the Korean Consortium, obligating the Korean Consortium to ensure the operation of such manufacturing facilities until 2016, and reducing the economic development adder);</p> <p>R-133, Amended and Restated Green Energy Investment Agreement (Jun. 20, 2013), Art 3.1, 3.2, 8, 9.3 (reducing the size of the GEIA and thus reducing the priority transmission access guarantee, but maintaining the same conditions for the attraction of manufacturing facilities and the creation of jobs as the earlier agreements);</p> <p>R-190, Samsung Renewable Energy, Samsung C&T Statement on the Amended Green Energy Investment Agreement (describing the reduction in the size of the GEIA projects, but still valuing the investment in Ontario at \$5 billion);</p> <p>C-0593, Samsung Website, "Samsung Renewable Energy signs</p>	<p>the commitment of an anchor tenant, manufacturing facilities and job creation);</p> <p>Expert Report of Seabron Adamson, ¶ 40 (admitting that Samsung has announced four manufacturing partners in Ontario under the GEIA);</p> <p>RWS-Jennings-2, ¶¶ 4-7, 14-19, 21, 23 (testifying to the benefits the GEIA would bring to Ontario including the commitment of an anchor tenant, manufacturing facilities and job creation);</p> <p>RWS-Lo-2, ¶¶ 3-10 (testifying to the benefits the GEIA would bring to Ontario, including the commitment of an anchor tenant, manufacturing facilities and job creation);</p> <p>Testimony of Rick Jennings, October 27, 2014, Tr. pp. 247:16-18, 265:14-266:2, 275:18-276:3 (testifying to the benefits the GEIA would bring to Ontario, including the commitment of an anchor tenant, manufacturing facilities and job creation);</p> <p>Testimony of Susan Lo, October 28, 2014, Tr. pp. 44:20-50:9 (testifying to the benefits the GEIA would</p>

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			<p>manufacturing partnership agreement with Canadian Solar Inc.” (Jun. 26, 2013) (proving that pursuant to the GEIA, the Korean Consortium succeeded in bringing actual manufacturing to Ontario) ;</p> <p>R-191, Samsung Renewable Energy, Samsung Renewable Energy signs manufacturing partnership agreement with Canadian Solar Inc. (Jun. 26, 2013) (proving that pursuant to the GEIA, the Korean Consortium succeeded in bringing actual manufacturing to Ontario);</p> <p>R-192, Letter from Ki-Jung Kim, Executive Vice President of Samsung C&T Corporation to Hon. Bob Chiarelli (Feb. 28, 2014) (proving that pursuant to the GEIA, the Korean Consortium succeeded in bringing actual manufacturing to Ontario and in creating manufacturing jobs as a result);</p> <p>R-212, Canada's Opening Slides, slide 30;</p> <p>R-219, Canada's Closing Slides, slides 115-117.</p>	<p>bring to Ontario, including the commitment of an anchor tenant, manufacturing facilities and job creation);</p> <p>Testimony of Seabron Adamson, October 29, 2014, Tr. pp. 233:5-234:6, 249:9-258:21, 235:23-240:5 (admitting that one of the stated goals of the GEIA was to attract manufacturing facilities).</p>
64.	<p>It is not the Tribunal's role to second-guess whether Ontario received enough value in exchange for what it provided to the Korean Consortium in the GEIA (2500MW of guaranteed transmission access, the Economic Development Adder and regulatory assistance). This is a policy choice for the Government of Ontario.</p>	<p>Canada's Rejoinder, ¶¶ 132-134;</p> <p>Canada's Opening Statements, October 26, 2014, Tr. pp. 226:22-228:2;</p> <p>Canada's Closing Submissions, October 31, 2014, Tr. pp. 198:7-25, 232:14:233:10.</p>	<p>CL-195, GAMI - Award, ¶ 114;</p> <p>RL-065, Paushok - Award, ¶¶ 316, 366;</p> <p>R-219, Canada's Closing Slides, slide 81.</p>	
IV. The Claimant Has Failed to Demonstrate a Violation of Article 1105				
A. Article 1105(1) requires no more and no less than "the customary international law minimum standard of treatment of aliens"				
65.	<p>Article 1105 prescribes no more and no less than the customary</p>	<p>Canada's Counter-Memorial, ¶¶ 386-388;</p>	<p>CL-012, Canada, Department of Foreign Affairs and International Trade, <i>Statement of Implementation: North American Free Trade Agreement</i>, vol.</p>	

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
	international law minimum standard of treatment of aliens.	<p>Canada's Rejoinder, ¶¶ 137, 144;</p> <p>Canada's Opening Statements, October 26, 2014, pp. 144:13-145:21, 228:3-230:9;</p> <p>Canada's Closing Statements, October 31, 2014, pp. 202:5-203:2.</p>	<p>128, no. 1 (Ottawa: Canada Gazette, 1994), p. 149;</p> <p>RL-063, NAFTA Free Trade Commission, Notes of Interpretation of Certain Chapter Eleven Provisions, 31 July 2001 ("NAFTA, Notes of Interpretation");</p> <p>CL-138, <i>Glamis Gold, Ltd. v. United States of America</i> (UNCITRAL) Award, 8 June 2009, ¶¶ 599, 609 ("<i>Glamis - Award</i>");</p> <p>RL-045, <i>Cargill, Incorporated v. United Mexican States</i> (ICSID Case No. ARB(AF)/05/2) Award, 18 September 2009, ¶¶ 135, 267-268 ("<i>Cargill - Award</i>");</p> <p>CL-072, <i>ADF - Award</i>, ¶¶ 176-178;</p> <p>CL-090, <i>Chemtura Corporation v. Government of Canada</i> (UNCITRAL) Award, 3 August 2010, ¶ 121;</p> <p>R-212, Canada's Opening Presentation Slides, slides 130-135;</p> <p>R-219, Canada's Closing Presentation Slides, slides 85-90;</p>	
66.	The threshold for establishing a breach of the customary international law minimum standard of treatment is high. To breach Article 1105, the conduct must be sufficiently egregious and shocking, such as a complete lack of due process, evident discrimination or a manifest lack of reasons.	<p>Canada's Counter-Memorial, ¶¶ 394-402;</p> <p>Canada's Rejoinder, ¶¶ 146-147;</p> <p>Canada's Opening Statements, October 26, 2014, Tr. pp. 228:24-230:9;</p> <p>Canada's Closing Statements, October 31, 2014, pp. 205:1-208:17.</p>	<p>RL-063, NAFTA, Notes of Interpretation;</p> <p>CL-138, <i>Glamis - Award</i>, ¶¶ 627, 804;</p> <p>RL-045, <i>Cargill - Award</i>, ¶¶ 286, 296;</p> <p>CL-033, <i>S. D. Myers - First Partial Award</i>, ¶¶ 259, 261, 263;</p> <p>CL-104, <i>Azinian, Davitian, & Baca v. United Mexican States</i>, ICSID Case No. ARB (AF)/97/2) Award, 1 November 1999, ¶ 83;</p> <p>CL-168, <i>Mobil Investments Canada, Inc. and Murphy Oil Corporation v. Government of Canada</i> (ICSID Case No. ARB(AF)/07/4) Decision on Liability and on Principles of Quantum, 22 May 2012, ¶¶ 152-153 ("<i>Mobil-Decision on Liability</i>");</p> <p>R-212, Canada's Opening Presentation Slides, slides 132-135;</p> <p>R-219, Canada's Closing Presentation Slides, slides 83-84, 93-97;</p>	

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B. The Actions of the Government of Ontario Did Not Violate Article 1105				
1. The Green Energy Investment Agreement does not violate Article 1105				
(a) The Negotiation of the GEIA with the Korean Consortium Did Not Breach Article 1105				
67.	Article 1105 does not impose an obligation on the NAFTA Parties to act with complete transparency in all their operations and does not require all the details of commercial negotiations with private entities who are the Claimant's competitors to be publicly disclosed.	Canada's Rejoinder, ¶ 154; Canada's Closing Statements, October 31, 2014, Tr. pp. 210:20-212:10, 222:7-12.	RL-104 , OECD, Working Papers on International Investment Number 2004/3), Fair and Equitable Treatment Standard in International Investment Law, September 2004, p. 37; RL-100 , <i>The United Mexican States v. Metalclad Corporation</i> , 2001 BCSC 664, ¶¶ 68, 71-72.	
68.	The MOU that was signed between the Government of Ontario and the Korean Consortium required confidentiality to be maintained due to its commercially sensitive nature during the negotiations. Such confidentiality is common in commercial negotiations with investors.	Canada's Rejoinder, ¶ 154; Canada's Opening Statements, October 26, 2014, Tr. pp. 171:7-15; Canada's Closing Statements, October 31, 2014, Tr. pp. 210:20-212:10, 222:13-18.	C-0536 , Memorandum of Understanding, Art. 5.1 Confidentiality (Dec. 12, 2008) (requiring that the commercial negotiations between the Government of Ontario and the Korean Consortium be kept confidential); R-219 , Canada's Closing Presentation Slides, slides 102-105.	RWS-Jennings-2, ¶ 12 (testifying that as is the case with any commercial negotiation, the negotiations with the Korean Consortium were confidential); Testimony of Rick Jennings, October 27, 2014, Tr. pp. 259:10-15, 260:17-18 (testifying that commercial negotiations require confidentiality); Testimony of Susan Lo, October 28, 2014, Tr. pp. 23:12-22, 25:7-19, 27:1-28:1, 32:18-21, 39:17-41:12 (testifying that in a commercial negotiation, there are certain aspects which must be kept confidential and that it is inappropriate to release the terms

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
				of a commercial deal during negotiations).
69.	The negotiation of the GEIA and the content of its key terms were publicly known by September 2009. Further, the key terms were publicly described when the GEIA was signed and announced in January 2010.	Canada's Counter Memorial, ¶ 408; Canada's Rejoinder, ¶ 155; Canada's Opening Statements, October 26, 2014, Tr. pp. 171:19-173:12; Canada's Closing Statements, Tr. p. 216:5-217:9, 218:17-222:5.	<p>R-177. The Star News Article, Tyler Hamilton, "Ontario eyes green job bonanza" (Sep. 26, 2009) (publicly reporting the negotiations between Ontario and the Korean Consortium for a framework agreement);</p> <p>R-068. Ministry of Energy Archived News Release, "Statement from the Minister of Energy and Infrastructure and Samsung C&T Corporation" (Sep. 26, 2009) (officially announcing the negotiation of a framework agreement with the Korean Consortium);</p> <p>C-0105. Letter (Direction) from George Smitherman, Minister of Energy to Colin Andersen, Ontario Power Authority (Sep. 30, 2009) (giving public notice that parties that signed a framework agreement with Ontario would receive a priority transmission set aside);</p> <p>R-178. The Star News Article, Tyler Hamilton, "Samsung's turbine deal in jeopardy" (Oct. 31, 2009) (reporting that the framework agreement with the Korean Consortium would provide it with priority access to Ontario's transmission grid);</p> <p>R-076. Ministry of Energy Archived Backgrounder, "Ontario Delivers \$7 Billion Green Investment" (Jan. 21, 2010) (publicly announcing the signing of the GEIA with the Korean Consortium and describing all of its key terms);</p> <p>C-0079. Letter from Minister Brad Duguid (Ministry of Energy) to Colin Andersen (OPA), Direction to OPA (Apr. 1, 2010) (publicly directing the OPA to negotiate power purchase agreements with the project companies of the Korean Consortium in accordance with the commitment made in the GEIA, and describing the GEIA terms);</p> <p>R-212. Canada's Opening Presentation Slides, slides 34-36;</p> <p>R-219. Canada's Closing Presentation Slides, slides 106-111.</p>	<p>RWS-Jennings-2, ¶¶ 11-13 (testifying that in September 2009 the negotiation of the GEIA and its key terms were made public by the local media);</p> <p>Testimony of Cole Robertson, October 27, 2014, Tr. pp. 135:3-13, 143:19-145:5 (admitting that the key terms of the GEIA were made public in a September 2009 news article and that the Claimant was aware of this at the time it was released);</p> <p>Testimony of Seabron Adamson, October 29, 2014, Tr. pp. 211:10-218:7 (admitting that the Claimant could have known about the GEIA and its key terms as early as September 2009, prior to applying to the FIT Program).</p>

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70.	The Claimant invested in Canada, and applied to the FIT Program, following the announcement of the key terms of the GEIA in September 2009, and again following the public announcement of the signed GEIA in January 2010.	<p>Canada's Counter Memorial, ¶ 408;</p> <p>Canada's Rejoinder, ¶ 155;</p> <p>Canada's Opening Statements, October 26, 2014, Tr. pp. 171:19-173:12;</p> <p>Canada's Closing Statements, October 31, 2014, Tr. pp. 217:10-22, 218:6-222:5.</p>	<p>C-0087, Certificate of Incorporation for TTD Wind Project ULC under the <i>Alberta Business Corporations Act</i> (Nov. 17, 2009) (the first documentary evidence of the Claimant's investment into Canada for the TTD project);</p> <p>C-0049, Certificate of Incorporation for Arran Wind Project ULC under the <i>Alberta Business Corporations Act</i> (Nov. 17, 2009) (the first documentary evidence of the Claimant's investment into Canada for the Arran project);</p> <p>C-0364, Twenty-Two Degrees Wind Project, FIT Application (Nov. 25, 2009);</p> <p>C-0365, Arran Wind Project, FIT Application (Nov. 25, 2009);</p> <p>C-0050, North Bruce Project, ULC Certificate of Incorporation for North Bruce Project ULC under the <i>Alberta Business Corporations Act</i> (Apr. 6, 2010) (the first documentary evidence of the Claimant's investment into Canada for the North Bruce project);</p> <p>C-0041, Certificate of Incorporation for Summerhill Project ULC under the <i>Alberta Business Corporations Act</i> (Apr. 6, 2010) (the first documentary evidence of the Claimant's investment into Canada for the Summerhill project);</p> <p>C-0360, North Bruce Wind Energy I, FIT Application (May 29, 2010);</p> <p>C-0361, North Bruce Wind Energy II, FIT Application (May 29, 2010);</p> <p>C-0362, Summerhill Wind Energy I, FIT Application (May 29, 2010);</p> <p>C-0363, Summerhill Wind Energy II, FIT Application (May 29, 2010);</p> <p>R-219, Canada's Closing Presentation Slides, slides 107, 110-111.</p>	<p>Testimony of T. Boone Pickens, October 26, 2014, Tr. pp. 269:20-271:1, 275:18-276:22 (admitting that the Claimant's FIT applications were submitted following the announcement of the GEIA);</p> <p>Testimony of Cole Robertson, October 27, 2014, Tr. pp. 14:3-16:7, 135:3-13, 144:19-21, 145:3-5, 220:20-224:10 (admitting that the key terms of the GEIA were made public in a September 2009 news article and that the Claimant was aware of this at the time it was released, prior to applying to the FIT Program);</p> <p>Testimony of Bob Chow, October 28, 2014, Tr. p. 140:5-15 (testifying that as soon as the GEIA was announced, FIT applicants like the Claimant would know the Korean Consortium was interested in the Bruce Region due to its strong wind regime);</p> <p>Testimony of Seabron Adamson, October 29, 2014, Tr. pp. 211:10-212:21 (admitting that the Claimant could have known about the GEIA and its key terms as early as September 2009, prior to applying to the FIT Program).</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
71.	The GEIA did not prevent the Claimant from seeking a similar investment agreement from the Government of Ontario.	<p>Canada's Opening Statements, October 26, 2014, pp. 139:18-140:2.</p> <p>Canada's Closing Statements, October 31, 2014, Tr. pp. 233:11-238:11.</p>	<p>C-0536, Memorandum of Understanding by and among Her Majesty The Queen In Right Of Ontario, Korea Electric Power Corporation and Samsung C&T Corporation (Dec. 12, 2008), ¶¶ 4.1, 4.2 (showing that the MOU with the Korean Consortium only applied with respect to 2500MW and that the Government was not restricted in its other procurement efforts);</p> <p>C-0322, <i>Green Energy Investment Agreement</i> (Jan. 21, 2010), Art 8.7 (expressly permitting the Government of Ontario to enter into investment agreements with other developers similar to or better than the GEIA);</p> <p>R-076, Ministry of Energy, "Ontario Delivers \$7 Billion Green Investment", Archived Backgrounder (Jan. 21, 2010) (publicly announcing the signing of the GEIA with the Korean Consortium and describing all of its key terms);</p> <p>R-078, CityNews, "Korean Deal Approved: Wind Solar Farms Coming to Ontario" (Jan. 21, 2010) (reporting on the public announcement of the GEIA and its key terms and on the invitation of the Premier for other developers to approach the Government of Ontario with similar proposals);</p> <p>R-212, Canada's Opening Presentation Slides, slide 33;</p> <p>R-219, Canada's Closing Presentation Slides, slides 118-122.</p>	<p>RWS-Lo, ¶ 29 (testifying that the Government of Ontario was open to exploring investment opportunities with other companies, not just the Korean Consortium);</p> <p>RWS-Jennings-2, ¶¶ 7-8 (testifying that public statements were made by the Government of Ontario that they were open to considering other proposals of comparable size and manufacturing commitments);</p> <p>Testimony of T. Boone Pickens, October 26, 2014, Tr. pp. 280:2-283:21 (admitting that the Claimant never approached the Government of Ontario with a proposal for an investment agreement);</p> <p>Testimony of Cole Robertson, October 27, 2014, Tr. p. 146:2-7 (admitting that the Claimant never approached the Government of Ontario with a proposal for an investment agreement);</p> <p>Testimony of Rick Jennings, October 27, 2014, Tr. p. 264:16-265:9, 333:9-15 (testifying that the MOU and the GEIA did not prevent Ontario from doing other GEIA-like deals with other developers and</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
				<p>that after the GEIA was signed the Government of Ontario continued to talk to potential investors with respect to potential investment agreements);</p> <p>Testimony of Susan Lo, October 28, 2014, Tr. pp. 30:18-31:14, 31:19-25 (testifying that investors regularly come forward to the Government of Ontario with proposals related to green energy);</p> <p>Testimony of Seabron Adamson, October 29, 2014, Tr. pp. 212:22-214:21 (admitting that there was nothing stopping the Claimant from approaching the Government of Ontario with a proposal for an investment agreement that would include priority transmission).</p>
(b) Affording the Korea Consortium Priority Transmission Access in the Bruce Region did not violate Article 1105				
72.	Entering into an investment agreement which provides favorable treatment is not a breach of Article 1105. Such decisions of the government are a matter of policy.	Canada's Counter-Memorial, ¶ 407; Canada's Rejoinder, ¶ 123; Canada's Closing Statements, October 31, 2014, Tr. pp. 222:19-223:4, 238:22-243:25.	RI-065 , <i>Paushok - Award</i> , ¶¶ 475-476; CL-054 , United Nations Conference on Trade and Development, <i>Most-Favoured Nation Treatment</i> , UNCTAD Series on Issues in International Investment Agreements, p. 6-8 (1999); C-054 , United Nations Conference on Trade and Development, <i>Most-Favoured Nation Treatment</i> , UNCTAD Series on Issues in International Investment Agreements II, p. 29 (2010).	
73.	The set-aside of 500MW of transmission capacity in the Bruce	Canada's Counter Memorial, ¶¶ 404-408;	C-0322 , <i>Green Energy Investment Agreement</i> (Jan. 21, 2010), ss. 3.1, 3.2, 7.4, 8.1, 8.8, (showing the unique commitments made by the Korean	RWS-Lo, ¶¶ 23-29 (testifying to the benefits the GEIA would bring to

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
	<p>region for the Korean Consortium was provided in accordance with the commitments under the GEIA in exchange for investments by the Korean Consortium valued at \$7 billion. A government is permitted to enter into an investment agreement in which it accords certain advantages to a particular investor in exchange for certain investment commitments by that investor.</p>	<p>Canada's Opening Statements, October 26, 2014, Tr. p. 175:6-13; Canada's Closing Statements, October 31, 2014, Tr. pp. 223:5-10, 244:1-17.</p>	<p>Consortium to 2,500MW of wind and solar generation with aggressive in-service dates, and that the Government of Ontario's commitments in terms of transmission access and the economic development adder were conditional upon the Korean Consortium bringing actual operating manufacturing to Ontario on an aggressive schedule);</p> <p>R-076, Ministry of Energy, Archived Backgrounder, "Ontario Delivers \$7 Billion Green Investment" (Jan. 21, 2010) (evidencing the value that Ontario believed that it had secured through the GEIA);</p> <p>C-0079, Letter (Direction) from Brad Duguid, Minister of Energy to Colin Andersen, Ontario Power Authority (Apr. 1, 2010) (publicly directing the OPA to negotiate power purchase agreements with the project companies of the Korean Consortium in accordance with the commitment made in the GEIA, and describing the GEIA terms);</p> <p>C-0119, Letter (Direction) from Brad Duguid, Minister of Energy to Colin Andersen, Ontario Power Authority (Sep. 17, 2010) (publicly directing the OPA to hold in reserve 500MW of transmission capacity in the Bruce Region for power purchase agreements to be entered into with the project companies of the Korean Consortium);</p> <p>R-212, Canada's Opening Presentation Slides, slides 38-39</p> <p>R-219, Canada's Closing Presentation Slides, slides 108-109, 115-117.</p>	<p>Ontario, including the commitment of an anchor tenant, manufacturing facilities and job creation);</p> <p>RWS-Lo-2, ¶¶ 3-10 (testifying that the Korean Consortium was given priority access pursuant to the terms of the GEIA in exchange for the Government of Ontario receiving the commitment of an anchor tenant to generate renewable energy, attract manufacturing facilities and ensure job creation);</p> <p>RWS-Jennings-2, ¶¶ 18-23 (testifying that the Korean Consortium was given priority access pursuant to the terms of the GEIA in exchange for the Government of Ontario receiving the commitment of an anchor tenant to generate renewable energy, attract manufacturing facilities and ensure job creation);</p> <p>Testimony of Cole Robertson, October 27, 2014, Tr. pp. 131:21-132:6 (admitting that the GEIA contemplated a potential investment by Samsung of several billion dollars);</p> <p>Testimony of Rick Jennings, October 27, 2014, Tr. pp. 246:15-</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
				<p>24, 247:16-18, 265:14-16, 275:15-276:3, 354:12-24 (testifying that the Korean Consortium was given priority access pursuant to the terms of the GEIA in exchange for the Government of Ontario receiving the commitment of an anchor tenant to generate renewable energy, attract manufacturing facilities and ensure job creation);</p> <p>Testimony of Susan Lo, October 28, 2014, Tr. pp. 31:20-25, 140:5-16 (testifying that the Korean Consortium was given priority access pursuant to the terms of the GEIA in exchange for the Government of Ontario receiving the commitment of an anchor tenant to generate renewable energy, attract manufacturing facilities and ensure job creation).</p>
<p>2. The June 3 Minister's Direction to the OPA did not violate Article 1105</p>				
<p>(a) The Government of Ontario's decision to allocate the capacity through a regional ECT-like process did not violate Article 1105</p>				
74.	The FIT Rules originally contemplated a province wide Economic Connection Test ("ECT") and the Bruce-to-Milton capacity was to be allocated as part of this ECT.	Canada's Counter Memorial, ¶¶ 412, 427-431; Canada's Rejoinder, ¶ 162; Canada's Opening	C-0258, FIT Program Rules, v. 1.1 (Sep. 30, 2009), s. 5.4 (describing the original framework, without details, for the running of the ECT); C-0034, Ontario Power Authority Presentation, "The Economic Connection Test Process" (Mar. 23, 2010) (describing for all FIT applicants the steps in the ECT process, including the change in connection points that would be allowed, and that the intention was to	RWS-Lo, ¶¶ 34-40, 46 (testifying that the FIT Program originally contemplated the running of a province-wide ECT in order to allocate the Bruce-to-Milton capacity);

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
		<p>Statements, October 26, 2014, Tr. pp. 163:1-166:3, 184:8-25.</p> <p>Canada's Closing Statements, October 31, 2014, Tr. p. 144:8-22.</p>	<p>use this process to allocate the Bruce-to-Milton capacity);</p> <p>C-0088, Ontario Power Authority Presentation, "The Economic Connection Test - Approach, Metrics and Process" (May 19, 2010) (describing for all FIT applicants the steps in the ECT process, including the change in connection points that would be allowed, and that the intention was to use this process to allocate the Bruce-to-Milton capacity);</p> <p>C-0073, Ontario Power Authority, Priority ranking for First Round FIT Contracts (Dec. 21, 2010) (publicly indicating in the notes that projects would be allowed to change connection points prior to an ECT and that the Bruce-to-Milton capacity would be allocated through an ECT);</p> <p>R-212, Canada's Opening Presentation Slides, slides 26-28.</p>	<p>RWS-Chow, ¶¶ 25-36 (testifying that the FIT Program originally contemplated the running of a province-wide ECT in order to allocate the Bruce-to-Milton capacity);</p> <p>RWS-Cronkwright, ¶¶ 15-16 (testifying that the FIT Program originally contemplated the running of a province-wide ECT in order to allocate the Bruce-to-Milton capacity);</p> <p>RWS-Cronkwright-2, ¶ 13 (testifying that the FIT Program originally contemplated the running of a province-wide ECT in order to allocate the Bruce-to-Milton capacity);</p> <p>Testimony of Susan Lo, October 28, 2014, Tr. p. 129:10-13 ((testifying that the FIT Program originally contemplated the running of a province-wide ECT);</p> <p>Testimony of Bob Chow, October 28, 2014, Tr. p. 302:9-15 (testifying that the FIT Program originally contemplated the running of a province-wide ECT).</p>
75.	By the Spring of 2011, the FIT Program had generated more applications for generating capacity	Canada's Counter Memorial, ¶¶ 167, 178,	C-0414 , Ministry of Energy, Ontario's Long-Term Energy Plan (2010), pp. 3, 4, 11, 15, 31, 57-62 ("Ontario's Long-Term Energy Plan") (describing the success of the GEGEA and the FIT Program, but also	RWS-Lo, ¶¶ 35-40 (testifying that the FIT Program was far more successful than expected,

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
	<p>than was originally anticipated and than was actually needed to meet Ontario's transmission requirements. If all applications for FIT projects were awarded contracts under the Program, the impacts on electricity prices would have been significant.</p>	<p>194-196, 410; Canada's Rejoinder, ¶¶ 162-167; Canada's Opening Statements, October 26, 2014, Tr. pp. 181:25-184:16; Canada's Closing Statements, October 31, 2014, Tr. p. 228:4-10.</p>	<p>noting forecasted ratepayer impacts and a moderate demand growth forecast); R-212, Canada's Opening Presentation Slides, slides 57-58</p>	<p>generating proposals for more capacity than was actually needed, and costs to rate-payers were becoming a growing concern); RWS-Jennings, ¶¶ 17-18 (testifying that interest in the FIT Program was more than expected and this put significant upward pressure on electricity prices); Testimony of Rick Jennings, October 27, 2014, Tr. pp. 271:11-18, 355:6-356:11 (testifying that there was an overwhelming response to the FIT Program in 2009, and that the Government of Ontario was concerned with the impact on electricity prices); Testimony of Susan Lo, October 28, 2014, Tr. pp. 86:20-87:22 (testifying that there was an overwhelming response to the FIT Program in 2009).</p>
76.	<p>Accordingly, the 2010 Long Term Energy Plan ("LTEP") introduced a target amount for Ontario to procure a total of 10,700MW of renewable energy capacity by 2018.</p>	<p>Canada's Counter Memorial, ¶¶ 167, 194; Canada's Rejoinder, ¶ 164; Canada's Opening Statements, October 26, 2014, Tr. p. 183:21-23.</p>	<p>C-0414, Ministry of Energy, Ontario's Long-Term Energy Plan (2010), pp. 4, 15, 31, 37 (setting the 10,700MW for renewably generated electricity). R-212, Canada's Opening Presentation Slides, slide 57-58.</p>	<p>RWS-Lo, ¶ 38 (testifying that the adoption of a target was based on Ontario's planned transmission expansion, overall electricity demand, and the ability to integrate renewables into the system); Testimony of Rick Jennings, October 27, 2014, Tr. pp. 355:6-</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
				356:11 (testifying that the renewables target adopted in the LTEP was developed, in part, because of concerns about impacts on electricity prices).
77.	The decision to place a cap on the amount of electricity procured in the Bruce-to-Milton allocation was based on these policy developments in the Spring of 2011.	Canada's Counter Memorial, ¶¶ 167, 178, 194-196, 202-203; Canada's Rejoinder, ¶¶ 184-185; Canada's Opening Statements, October 26, 2014, Tr. pp. 182:9-184:16.	<p>C-0414, Ministry of Energy, Ontario's Long-Term Energy Plan (2010), pp. 3, 4, 8, 11, 13-15, 31, 57-62 (describing the success of the GESEA and the FIT Program, but also noting forecasted impacts on electricity prices and a moderate demand growth forecast and thus setting the 10,700MW for renewably generated electricity);</p> <p>R-182, DRAFT Ontario Power Authority Presentation, "Economic Connection Test (ECT) Moving Forward" (Mar. 1, 2011) (noting that an objective in the Bruce-to-Milton allocation was to limit the amount of megawatts awarded to keep it in line with the LTEP target);</p> <p>C-0444, Email from Sue Lo, Ministry of Energy to JoAnne Butler, Shawn Cronkwright and Michael Lyle (May 12, 2011) (evidencing that a cap was placed on the amount of megawatts to be procured during the Bruce-to-Milton allocation in order to control the volume of megawatts awarded);</p> <p>C-0083, Email from Sue Lo (Ministry of Energy) to Pearl Ing and Sunita Chander (Ministry of Energy) (May 12, 2011) [REDACTED];</p> <p>R-212, Canada's Opening Presentation Slides, slide 57-58, 66, 73-75.</p>	<p>RWS-Lo, ¶¶ 18, 32, 37-40, 46, 50 (testifying that a cap was placed on the amount of megawatts to be procured in the Bruce-to-Milton allocation as a result of the introduction of a renewables target in the 2010 LTEP);</p> <p>RWS-Lo-2, ¶¶ 15-16 (testifying that a cap was placed on the amount of megawatts to be procured in the Bruce-to-Milton allocation based on concerns over impacts on electricity prices and on the fact that procurement levels were getting close to the LTEP target);</p> <p>RWS-Cronkwright-2, ¶¶ 14-15, 19, 21 (testifying that the introduction of the LTEP had implications for the running of the ECT as originally contemplated);</p> <p>RWS-Chow-2, ¶ 5-6 (testifying that the introduction of the 2010 LTEP had implications for the running of the ECT as originally contemplated);</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
				<p>Testimony of Rick Jennings, October 27, 2014, Tr. p. 356:4-11 (testifying that a cap was placed on the amount of megawatts to be procured in the Bruce-to-Milton allocation based on concerns over ratepayer impact and the unexpected success of the FIT Program);</p> <p>Testimony of Susan Lo, October 28, 2014, Tr. pp. 132:1-133:18, 187:3-21 (testifying that the Government of Ontario had to slow down the rate of procurement as it was causing ratepayer impacts and that not doing so would create a surplus to Ontario's needs);</p> <p>Testimony of Shawn Cronkwright, October 29, 2014, Tr. p. 53:2-21 (testifying that the Government of Ontario was concerned with the impact on ratepayers and aligning the Bruce-to-Milton allocation with the 2010 LTEP).</p>
78.	Article 1105 does not prevent a government from changing the regulatory environment to account for new policies and needs provided such changes are not manifestly arbitrary or grossly unfair, discriminatory or otherwise inconsistent with the customary	<p>Canada's Counter Memorial, ¶¶ 410, 428;</p> <p>Canada's Rejoinder, ¶ 162;</p> <p>Canada's Closing Statements, October 31, 2014, Tr. pp. 200:24-</p>	<p>CL-168, <i>Mobil - Decision on Liability</i>, ¶ 153;</p> <p>RL-071, <i>TECO Guatemala Holdings, LLC v. Republic of Guatemala</i> (ICSID Case No. ARB/10/23) Award, 19 December 2013, ¶ 629.</p>	

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
	international law minimum standard of treatment.	201:22, 208:1-17, 260:5-9.		
79.	The FIT Rules expressly contemplated changes due to Ministerial Directions, changes in laws and regulations or other circumstances and further provided for a periodic review and amendment process.	Canada's Counter Memorial, ¶ 410; Canada's Rejoinder, ¶ 163.	R-003 , FIT Program Rules, v. 1.2 (Nov. 19, 2009), s. 10 (providing that the FIT Rules could be amended at any time if there was a Minister's Direction, and that they would be subject to change as part of the two year review).	RWS-Lo, ¶ 18 (testifying that the ability to adapt the FIT Program to changing circumstances as outlined in the FIT Rules meant that the FIT Program was subject to change from time to time); Testimony of Susan Lo, October 28, 2014, Tr. p. 149:6-22 (testifying that the Minister of Energy may make policy decisions and issue directions to the OPA which impact the FIT Program).
80.	The manner in which the new capacity made available by the Bruce-to-Milton line was to be allocated was extensively considered by the Government. In adopting the approach it did, the Government of Ontario acted in a considered fashion and in particular, crafted the process to reflect as much of the ECT process as possible, albeit on a regional basis.	Canada's Counter Memorial, ¶¶ 197-201, 412; Canada's Rejoinder, ¶¶ 166-170; Canada's Opening Statements, October 26, 2014, Tr. pp. 191: 14-192:14; Canada's Closing Statements, October 31, 2014, Tr. pp. 249:1-252:6.	R-182 , DRAFT Ontario Power Authority Presentation, "Economic Connection Test (ECT) Moving Forward" (Mar. 1, 2011) (reflecting the various policy considerations and decisions needing to be made, and the extensive discussions that took place, with respect to allocating the Bruce-to-Milton capacity); C-0438 , OPA Presentation, Economic Connection Test (ECT) & Program Evolution (Mar. 21, 2011) (reflecting the various policy considerations and decisions needing to be made, and the extensive discussions that took place, with respect to allocating the Bruce-to-Milton capacity); R-183 , Ontario Ministry of Energy Presentation, "DRAFT KC and Future FIT Accommodation on Near-Term Transmission Projects (Mar. 21, 2011) (reflecting the various policy considerations and decisions needing to be made, and the extensive discussions that took place, with respect to allocating the Bruce-to-Milton capacity); C-0448 , Bruce Scenario Analysis, Table of Results (Apr. 13, 2011) (reflecting the fact that the Government considered and debated various	RWS-Chow, ¶ 41 (testifying that a regionalized ECT approach was used for the Bruce-to-Milton allocation); RWS-Lo, ¶¶ 39-40, 46 (testifying that the Bruce-to-Milton allocation was developed as a fair process for allocating the new capacity, and was designed to meet developer expectations by including the relevant components of an ECT, but on a regional basis); RWS-Cronkwright, ¶¶ 15-17 (testifying that the Bruce-to-Milton allocation was a regionalized and modified ECT);

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			<p>alternatives for allocating the Bruce-to-Milton capacity);</p> <p>C-0440, Handwritten Notes "Our Recommendations-BxM Contract Awards" (Apr. 26, 2011) (reflecting the fact that the Government considered and debated various alternatives for allocating the Bruce-to-Milton capacity);</p> <p>R-104, Ontario Power Authority, Draft Memorandum RE: Release of Additional FIT Contracts from Bruce-to-Milton Transmission Capacity (Apr. 27, 2011) (reflecting the fact that the Government considered and debated various alternatives for allocating the Bruce-to-Milton capacity);</p> <p>C-0441, Ministry of Energy Presentation, "Draft Bruce-to-Milton Next Steps" (Apr. 28, 2011) (reflecting the various policy considerations and decisions needing to be made, and the extensive discussions that took place, with respect to allocating the Bruce-to-Milton capacity);</p> <p>C-0439, OPA Draft Memorandum (May 3, 2011)(reflecting the fact that the Government considered and debated various alternatives for allocating the Bruce-to-Milton capacity);</p> <p>C-0067, Ontario Ministry of Energy Presentation, "DRAFT Bruce-to-Milton Next Steps" (May 5, 2011) (reflecting the various policy considerations and decisions needing to be made, and the extensive discussions that took place, with respect to allocating the Bruce-to-Milton capacity, including in particular, the need to respect developer expectations);</p> <p>C-0091, E-mail from Shawn Cronkwright (OPA) to JoAnne Butler (OPA) and Sue Lo (Ministry of Energy) Re: BxM option (May 11, 2011) (noting that the process that the Government of Ontario was putting forward for the allocation was similar to the first step of the ECT process on regional basis);</p> <p>C-0269, Ministry of Energy Presentation, "Bruce-to-Milton Transmission Line FIT Contract Awards" (May 12, 2011) (reflecting the various policy considerations and decisions needing to be made, and the extensive</p>	<p>RWS-Cronkwright-2, ¶¶ 16-18, 20-21 (testifying that the Bruce-to-Milton allocation was carried out as a regionalized ECT process that included a connection point change window and generator paid upgrades, as was contemplated in the original ECT);</p> <p>RWS-Chow-2, ¶¶ 6-8 (testifying that the Bruce-to-Milton allocation process was carried out through a modified ECT);</p> <p>RWS-Lo-2, ¶¶ 14, 19 (testifying that the Bruce-to-Milton allocation was designed to respect developers' expectations and the need to manage overall renewable generation capacity);</p> <p>Testimony of Susan Lo, October 28, 2014, Tr. pp. 149:13-150:1, 154:11-19 (testifying that the Government of Ontario was looking to allocate the Bruce-to-Milton capacity in a manner which closely resembled a provincial ECT);</p> <p>Testimony of Shawn Cronkwright, October 29, 2014, Tr. pp. 92:12-94:18 (testifying that the June 3 Direction required the OPA to conduct a regionalized and</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			<p>discussions that took place, with respect to allocating the Bruce-to-Milton capacity, including in particular, the need to respect developer expectations);</p> <p>R-212, Canada's Opening Presentation Slides, slides 59, 65, 67-71 71, 75-77.</p>	modified ECT).
81.	<p>The June 3rd Minister's Direction allowed any project connecting in the Bruce or West of London region to change its connection point to anywhere within the Bruce or West of London region. This was always contemplated as part of the ECT and was expected by FIT Applicants.</p>	<p>Canada's Counter Memorial, ¶ 413-420;</p> <p>Canada's Rejoinder, ¶ 176-178;</p> <p>Canada's Opening Statements, October 26, 2014, Tr. pp. 163:11-164:25, 190:4-191:7;</p> <p>Canada's Closing Statements, October 31, 2014, Tr. pp. 246:13-252:6, 253:21-260:18.</p>	<p>R-003, FIT Rules, v. 1.2 (Nov. 19, 2009), ss. 5.4, 5.5(d) and 5.6(b) (noting that projects awaiting an ECT in the FIT Production Line or FIT Reserve would be permitted to change connection points, and imposing no limitations on such changes);</p> <p>C-0034, OPA Presentation, "The Economic Connection Test" (Mar. 23, 2010), slide 14 (noting that connection point changes would be permitted as part of the ECT process, and imposing no limitations on such changes);</p> <p>C-0088, Ontario Power Authority Presentation, "The Economic Connection Test - Approach, Metrics and Process" (May 19, 2010) slides 39, 46, 48, and 97 (describing for all FIT applicants the steps in the ECT process, including the change in connection points that would be allowed, and imposing no limitations on such changes);</p> <p>C-0073, Ontario Power Authority, Priority ranking for First Round FIT Contracts (Dec. 21, 2010) (publicly indicating in the notes that projects would be allowed to change connection points prior to an ECT and imposing no limitations on such changes);</p> <p>C-0444, Email from Lo, Sue (MEI) to JoAnne Butler, Shawn Cronkwright, Michael Lyle (May 12, 2011), p. 2 (noting that allowing connection point changes as part of the Bruce-to-Milton allocations was consistent with the FIT Rules).</p> <p>R-111, Email from Patricia Lightburn, Ontario Power Authority to Jim MacDougall, Tracy Garner and Bob Chow, Ontario Power Authority (May 18, 2011) (noting that developers had been planning to be able to change</p>	<p>RWS-Chow, ¶¶ 27-31 (testifying that the ECT, as originally contemplated in the FIT Rules, included an opportunity to change connection points and this was not limited to within regions);</p> <p>RWS-Chow-2, ¶¶ 12-13 (testifying that the ECT, as originally contemplated in the FIT Rules, included an opportunity to change connection points and this was not limited to within regions);</p> <p>Testimony of Susan Lo, October 28, 2014, Tr. pp. 151:4-11, 157:11-158:23, 160:1-161:8 (testifying that it would not make sense to limit where a FIT applicant could select a connection point and that connection point changes were always contemplated as part of the ECT);</p> <p>Testimony of Jim MacDougall, October 28, 2014, Tr. pp. 252:25-255:17, 289:7-11 (testifying that the ECT always contemplated connection point changes and that</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			<p>connection points as part of the Bruce-to-Milton allocation);</p> <p>R-113, Letter from Robert Hornung, President of CanWEA to the Honourable Brad Duguid, Minister of Energy (May 27, 2011) (showing that industry expected the ability to change connection points as part of the Bruce-to-Milton allocation);</p> <p>R-011, Letter from the Honourable Brad Duguid, Minister of Energy to Colin Andersen, Ontario Power Authority (Jun. 3, 2011) (public direction allowing connection points changes within the Bruce and West of London regions, and imposing no limitations on such changes);</p> <p>C-0666, Map compiled from Hydro One Transmission Data (Nov. 20, 2013) (showing that allowing changes in connection points only based on where the OPA located projects and drew regional boundaries would not have made sense because it would have prevented projects from connecting to points on their borders);</p> <p>R-212, Canada's Opening Presentation Slides, slides 28, 72;</p> <p>R-219, Canada's Closing Presentation Slides, slides 126-132.</p>	<p>this was the expectation of FIT applicants);</p> <p>Testimony of Bob Chow, October 28, 2014, Tr. pp. 302:22 - 303:11, 307:17 - 309:1-9 (testifying that the ECT always contemplated connection point changes and this was never limited to within regions; limiting within regions would not make sense from an electrical point of view);</p> <p>Testimony of Shawn Cronkwright, October 29, 2014, Tr. pp. 43:14-18, 79:22-80:4, 85:17-21 (testifying that the Bruce and West of London regions were similar electrically, and that connection point changes were envisioned as part of the original ECT).</p>
82.	<p>The June 3rd Minister's Direction allowed for generator paid upgrades. This was always contemplated as part of the ECT and was expected by FIT Applicants.</p>	<p>Canada's Rejoinder, ¶¶ 104, 169;</p> <p>Canada's Opening Statements, October 26, 2014, Tr. p. 187:10-14.</p>	<p>C-0088, Ontario Power Authority Presentation, "The Economic Connection Test - Approach, Metrics and Process" (May 19, 2010), p. 72 (describing how generator paid upgrades would be permitted as part of the ECT process);</p> <p>C-0444, Email from Lo, Sue (MEI) to JoAnne Butler, Shawn Cronkwright, Michael Lyle (May 12, 2011), p. 2 (noting that including generator paid upgrades in the Bruce-to-Milton allocation would be consistent with the ECT process as it had always been described);</p> <p>R-011, Letter from the Honourable Brad Duguid, Minister of Energy to Colin Andersen, Ontario Power Authority (public direction permitting generator paid upgrades as part of the Bruce-to-Milton allocation);</p>	<p>RWS-Chow, ¶ 27 (testifying that generator paid upgrades were part of the ECT);</p> <p>RWS-Lo-2, ¶ 16 (testifying that developer expectations that there would be generator paid upgrades was considered when determining how to allocate the Bruce-to-Milton capacity);</p> <p>Testimony of Shawn Cronkwright, October 29, 2014, Tr. p. 86:3-8 (testifying that generator paid</p>

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			R-212, Canada's Opening Presentation Slides, slides 28, 65, 70.	upgrades were contemplated as part of the original ECT).
83.	The decision to exclude the phase of the ECT for proposing and assessing new transmission expansion was based on the Government's desire to slow down the rate of renewable energy procurement due to the success of the FIT Program and the growing concern of the cost impact the program would have on ratepayers.	Canada's Counter Memorial, ¶¶ 137, 194-196; Canada's Rejoinder, ¶¶ 162-167, 182-183; Canada's Opening Statements, October 26, 2014, Tr. p. 183:6-15; Canada's Closing Statements, October 31, 2014, Tr. pp. 185:25-186:2.	C-0034, Ontario Power Authority Presentation, "The Economic Connection Test Process" (Mar. 23, 2010); C-0414, Ontario's Long-Term Energy Plan (2010), pp. 3, 11, 31, 37, 59, s. 7 (noting the success of the FIT Program and the GEGEA, and limiting new transmission projects to 5 identified priority projects); R-107, Ministry of Energy Presentation, "Bruce-to-Milton Transmission Line - FIT Contract Awards" (May 12, 2011), slide 2 (noting that the LTEP target had rendered a province-wide ECT unnecessary); C-0444, Email from Sue Lo, Ministry of Energy to JoAnne Butler, Shawn Cronkwright and Michael Lyle (May 12, 2011) (evidencing that the Ministry of Energy was looking to control the pace of new procurements due to ratepayer impacts); C-0269, Ministry of Energy Presentation, "Bruce-to-Milton Transmission Line FIT Contract Awards" (May 12, 2011), slide 2 (noting that there was no need to run the ECT and consider new expansion because of the success of the FIT Program and the LTEP target of 10,700 MW of renewable electricity); C-0439, OPA Draft Memorandum (May 3, 2011) (noting that there was no need to run the ECT and consider new expansion because of the success of the FIT Program and the LTEP target of 10,700 MW of renewable electricity); R-212, Canada's Opening Presentation Slides, slide 57; R-219, Canada's Closing Presentation Slides, slide 57.	RWS-Lo, ¶¶ 37-40 (testifying that due to the success of the FIT Program there was no need to run the second phase of an ECT in order to meet the targets in the LTEP); RWS-Chow, ¶¶ 37 (testifying that the second part of the ECT was unnecessary because the grid could handle all of the electricity that the Government of Ontario wanted to procure without expansion); Testimony of Susan Lo, October 28, 2014, Tr. p. 133:1-13 (testifying that the Government of Ontario needed to slow down the rate of procurement due to ratepayer impact and the fact that a surplus of electric would be problematic); Testimony of Shawn Cronkwright, October 29, 2014, Tr. pp. 46:2-48:12 (testifying that in light of the LTEP there was no economic justification for further expanding the system as originally contemplated in the second part of the ECT).

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
84.	A connection point change window of only 5 days in length was reasonable. FIT applicants had been preparing for months in advance because a connection point change window had always been contemplated, and in fact, industry was expecting the window to open as early as August 2010. Industry actually requested a short window as a result.	<p>Canada's Counter Memorial, ¶¶ 425-426</p> <p>Canada's Rejoinder, ¶¶ 186-187;</p> <p>Canada's Opening Statements, October 26, 2014, Tr. pp. 190:4-192:14, 194:9-195:15.</p> <p>Canada's Closing Statements, October 31, 2014, Tr. pp. 145:17-146:8, 253:21-255:25, 256:14-257:5.</p>	<p>C-0034, Ontario Power Authority Presentation, "The Economic Connection Test Process" (Mar. 23, 2010), slides 12, 14-15, 22-23 (describing for all FIT applicants the steps in the ECT process, including that a window to change connection points would be allowed, that the intention was to use this process to allocate the Bruce-to-Milton capacity, and noting that applicants should be ready by the summer of 2010);</p> <p>C-0088, Ontario Power Authority, Presentation, "The Economic Connection Test - Approach, Metrics and Process" (May 19, 2010) slides 39-41 (describing for all FIT applicants the steps in the ECT process, including that a window to change connection points would be allowed, that the intention was to use this process to allocate the Bruce-to-Milton capacity, and noting that applicants should be ready in the summer of 2010);</p> <p>C-0073, Ontario Power Authority, "Priority ranking for first-round FIT Contracts" (Dec. 21, 2010) (publicly indicating in the notes that projects would be allowed to change connection points prior to an ECT and that the Bruce-to-Milton capacity would be allocated through an ECT);</p> <p>R-113, Letter from Robert Hornung, President of CanWEA to Brad Duguid, Minister of Energy (May 27, 2011) (indicating that industry had been preparing their interconnection strategies for months by that time and that the window for connection point changes should be opened immediately and only for a short time);</p> <p>R-011, Letter (Direction) from Minister Brad Duguid, Ministry of Energy to Colin Andersen, Ontario Power Authority (Jun 3, 2011) (public direction allowing a connection point change window of 5 business days);</p> <p>R-212, Canada's Opening Presentation Slides, slides 67, 69, 72, 76, 78-80;</p> <p>R-219, Canada's Closing Presentation Slides, slides 130, 133-134.</p>	<p>RWS-Chow, ¶¶ 25-33, 50-51 (testifying that a connection point change window was always contemplated as part of the ECT, FIT applicants were preparing for such an announcement well in advance);</p> <p>RWS-Lo, ¶ 50 (testifying that a five day connection point change window was chosen because both the Premier's Office and the wind industry expressed a desire for a short change window);</p> <p>RWS-Lo-2, ¶ 16 (testifying that the marketplace expected that there would be the option of changing connection points as part of the Bruce-to-Milton allocation);</p> <p>Testimony of Susan Lo, October 28, 2014, Tr. pp. 142:13-143:1 (testifying that developers were already positioned for a connection point change window when it was announced on June 3);</p> <p>Testimony of Jim MacDougall, October 28, 2014, Tr. pp. 256:16-257:21, 271:13-273:10 (testifying that developers were preparing well in advance of June 3 for a connection point change window);</p> <p>Testimony of Bob Chow, October</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
				<p>28, 2014, Tr. pp. 358:19-360:22 (testifying that developers were preparing well in advance of June 3 for a connection point change window);</p> <p>Testimony of Seabron Adamson, October 29, 2014, Tr. pp. 181:14-206:17 (admitting that prudent developers would have been preparing for a connection point change window well in advance of its June 3 announcement).</p>
(b) The Bruce-to-Milton allocation was not designed to favour any specific FIT applicant				
85.	<p>The Government of Ontario had no preference as to which developers would be awarded contracts as a result of the Bruce-to-Milton allocation process.</p>	<p>Canada's Counter Memorial, ¶¶ 421-426; Canada's Rejoinder, ¶¶ 191-199; Canada's Closing Statements, October 31, 2014, Tr. p. 148:1-20.</p>	<p>R-182, DRAFT Ontario Power Authority Presentation, "Economic Connection Test (ECT) Moving Forward" (Mar. 1, 2011) (evidencing that there was a general concern regarding developer expectations, but not the expectations of any particular developer);</p> <p>C-0067, Ontario Ministry of Energy Presentation, "DRAFT Bruce-to-Milton Next Steps" (May 5, 2011) (evidencing that there was a general concern regarding developer expectations, but not the expectations of any particular developer);</p> <p>C-0269, Ministry of Energy Presentation, "Bruce-to-Milton Transmission Line FIT Contract Awards" (May 12, 2011) (evidencing that there was a general concern regarding developer expectations, but not the expectations of any particular developer);</p> <p>R-212, Canada's Opening Slides, slides 76-78.</p>	<p>RWS-Lo, ¶¶ 14, 52-57 (testifying that at no time were special promises made to individual developers, and at no time were any special preferences accorded);</p> <p>RWS-Lo-2, ¶¶ 12-19 (testifying that the decision on how to allocate the Bruce-to-Milton capacity was neither a response to requests from NextEra nor a result of a desire to ensure NextEra's FIT applications were offered FIT contracts);</p> <p>Testimony of Susan Lo, October 28, 2014, Tr. pp. 172:14-173:7, 173:20-23, 174:11-177:14, 178:1-23 (testifying that the Ministry of</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
				Energy did not given an advantage to one FIT applicant over another); Testimony of Jim MacDougall, October 28, 2014, Tr. p. 258:1-11 (testifying that the OPA did not have any discussions with the Ministry of Energy with respect to which specific FIT applicants would receive FIT contracts).
C. Even if Attributable to Canada, the Actions of the OPA Did Not Violate Article 1105				
1. The OPA's ranking of the TTD and Arran Projects did not breach Article 1105				
86.	The review process for the launch period FIT Applications was fair and reasonable.	Canada's Counter Memorial, ¶¶ 434-435 Canada's Rejoinder, ¶¶ 203-205; Canada's Opening Statements, October 26, 2014, Tr. p. 141:9-14; Canada's Closing Statements, October 31, 2014, Tr. pp. 136:18-137:4, 137:12-138:2.	R-003, FIT Program Rules, v. 1.2 (Nov. 19, 2009), s. 13 (establishing the rules for the review of launch period applications); R-082, London Economics Report, pp. 14-16 (concluding that the review of launch period applications was carried out fairly by the OPA); R-212, Canada's Opening Presentation Slides, slide 23; R-219, Canada's Closing Presentation Slides, slides 113-114;	RWS-Duffy, ¶¶ 52-55 (testifying that London Economic International ("LEI") concluded that the OPA's process for the ranking of FIT applications during the launch period was fair and consistent with the FIT Rules); RWS-Duffy-2, ¶¶ 23-25 (testifying that both the OPA and LEI were satisfied that the OPA had done everything it could do to treat applicants as fairly and equally as possible in the review of the launch period applications); Testimony of Gary Timm, October 29, 2014, Tr. pp. 113:5-115:8, 118:12-120:3, 130:15-131:2 (admitting that while the LEI

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
				report caused him to question the fairness of the launch period review, he did not conclude any actual fairness related issues existed).
2. The ranking of the TTD and Arran Projects was fair, reasonable and appropriate given the FIT application materials submitted by the Claimant to the OPA				
87.	The information submitted by the Claimant in support of its bid for the Prior Experience point was insufficient. The information provided for the five individuals and three entities in the Claimant's applications did not give detail on the renewable energy projects (similar facilities) that these individuals or entities had brought into successful operation.	Canada's Counter Memorial, ¶¶ 436-439; Canada's Rejoinder, ¶¶ 200-202; Canada's Opening Statements, October 26, 2014, Tr. pp. 178:4-179:8; Canada's Closing Statements, October 31, 2014, Tr. pp. 136:18-138:2.	<p>R-003, FIT Program Rules, v. 1.2 (Nov. 19, 2009), s. 13.4(a)(iii) (describing the requirements for the prior experience criteria point);</p> <p>C-0364, Twenty-Two Degrees Wind Project, FIT Application (Nov. 25, 2009), pp. 21-29 (the evidence submitted by the Claimant to obtain the prior experience criteria point lacked the required information or details);</p> <p>C-0365, Arran Wind Project, FIT Application (Nov. 25, 2009), pp. 21-29 (the evidence submitted by the Claimant to obtain the prior experience criteria point lacked the required information or details);</p> <p>R-198, NextEra Energy - Adelaide Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 14-21 (showing the sort of quality evidence that was required to be awarded the criteria point for prior experience);</p> <p>R-199, NextEra Energy - Bluewater Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 13-20 (showing the sort of quality evidence that was required to be awarded the criteria point for prior experience);</p> <p>R-200, NextEra Energy - Bornish Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 14-21 (showing the sort of quality evidence that was required to be awarded the criteria point for prior experience);</p> <p>R-201, NextEra Energy - East Durham Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 14-21 (showing the</p>	<p>RWS-Duffy, ¶¶ 35-37, 40, 46-53 (testifying that the Claimant failed to receive the prior experience criteria point because it failed to state on what grounds they were applying for the point and additionally, failed to provide evidence of the successful development of any similar facilities);</p> <p>RWS-MacDougall, ¶¶ 25-26 (testifying as to the rationale behind the prior experience criteria point);</p> <p>RWS-Duffy-2, ¶¶ 3, 8-15, 22 (testifying that the Claimant failed to receive the prior experience criteria point because it failed to provide evidence that the applicant control group or three full time employees of the applicant control group had experience in the successful development of any similar facilities);</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			<p>sort of quality evidence that was required to be awarded the criteria point for prior experience);</p> <p>R-202, NextEra Energy - Goshen Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 14-21 (showing the sort of quality evidence that was required to be awarded the criteria point for prior experience);</p> <p>R-203, NextEra Energy - Jericho Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 14-21 (showing the sort of quality evidence that was required to be awarded the criteria point for prior experience);</p> <p>R-212, Canada's Opening Presentation Slides, slides 24, 40, 44-46, 55.</p>	<p>Testimony of Cole Robertson, October 27, 2014, Tr. pp. 12:11-14:3, 37:20-69:23 (admitting that the Claimant failed to provide evidence that the applicant control group or three full time employees of the applicant control group had experience in the successful development of any similar facilities as required in the FIT Rules);</p> <p>Testimony of Gary Timm, October 29, 2014, Tr. pp. 116:15-117:8 (admitting that he did not conclude that the Claimant should have been awarded this criteria point).</p>
88.	<p>The information submitted by the Claimant in support of its bid for the Financial Capacity point was insufficient. The Claimant relied on unaudited financial statements of Mesa Power Group and did not provide audited balance sheets for its other Designated Equity Provider, GE Energy. Further, the Claimant also failed to provide the required calculation of Tangible Net Worth for Mesa Power Group and GE Energy.</p>	<p>Canada's Counter Memorial, ¶¶ 436-439;</p> <p>Canada's Rejoinder, ¶¶ 200-202;</p> <p>Canada's Opening Statements, October 26, 2014, Tr. pp. 179:9-181:16;</p> <p>Canada's Closing Statements, October 31, 2014, Tr. pp. 136:18-138:2.</p>	<p>R-003, FIT Program Rules, v. 1.2 (Nov. 19, 2009), s. 13.4(a) (iv) (describing the requirements for the financial capacity criteria point);</p> <p>C-0364, Twenty-Two Degrees Wind Project, FIT Application (Nov. 25, 2009), pp. 30-101 (the evidence submitted by the Claimant to obtain the financial capacity criteria point consisted of unaudited financials for the Claimant, financials for the wrong entity for GE, and incorrect or missing TNW calculations for both the Claimant and GE);</p> <p>C-0365, Arran Wind Project, FIT Application (Nov. 25, 2009), pp. 30-102 (the evidence submitted by the Claimant to obtain the financial capacity criteria point consisted of unaudited financials for the Claimant, financials for the wrong entity for GE, and lacked correct calculations for both the Claimant and GE);</p> <p>R-198, NextEra Energy - Adelaide Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 22-32 (showing the sort of quality evidence that was required to be awarded the criteria point for financial</p>	<p>RWS-Duffy, ¶¶ 38-39, 49 (as corrected on October 15, 2014) (testifying that the Claimant relied on the wrong year audited financial statements)</p> <p>RWS-MacDougall, ¶¶ 27-29 (testifying as to the rationale behind the financial capacity criteria point);</p> <p>RWS-Duffy-2, ¶¶ 3, 5, 16-22 (as corrected on October 15, 2014) (testifying that the Claimant failed to provide a summary of tangible net worth as outlined in the FIT Rules);</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			<p>capacity);</p> <p>R-199, NextEra Energy - Bluewater Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 21-30 (showing the sort of quality evidence that was required to be awarded the criteria point for financial capacity);</p> <p>R-200, NextEra Energy - Bornish Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 22-31 (showing the sort of quality evidence that was required to be awarded the criteria point for financial capacity);</p> <p>R-201, NextEra Energy - East Durham Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 22-31 (showing the sort of quality evidence that was required to be awarded the criteria point for financial capacity);</p> <p>R-202, NextEra Energy - Goshen Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 22-31 (showing the sort of quality evidence that was required to be awarded the criteria point for financial capacity);</p> <p>R-203, NextEra Energy - Jericho Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 22-31 (showing the sort of quality evidence that was required to be awarded the criteria point for financial capacity);</p> <p>R-212, Canada's Opening Presentation Slides, slides 24, 40, 47-55.</p>	<p>Testimony of Cole Robertson, October 27, 2014, Tr. pp. 69:24-84:15 (admitting that the Claimant failed to provide the correct year audited financial statements for Mesa Power Group and failed to provide audited financial statements for GE Energy, the designated equity provider, as required in the FIT Rules);</p> <p>Testimony of Gary Timm, October 29, 2014, Tr. pp. 115:9-116:14 (admitting that he did not conclude that the Claimant should have been awarded this criteria point).</p>
89.	The information submitted by the Claimant in support of its bid for the Major Equipment Control point was insufficient. The Claimant failed to provide evidence that it owned or had a fixed or guaranteed maximum price contract for the supply of towers, turbines or nacelles and	Canada's Counter Memorial, ¶¶ 436-439; Canada's Rejoinder, ¶¶ 200-202; Canada's Opening Statements, October 26,	<p>R-003, FIT Program Rules, v. 1.2 (Nov. 19, 2009), s. 13(a)(ii) (describing the requirements for the major equipment control criteria point);</p> <p>Letter from GE Energy to Mesa Power Group, LLC, (Nov. 24, 2009) contained in C-0364, Twenty-Two Degrees Wind Project, FIT Application (Nov. 25, 2009), p. 103 (the evidence submitted by the Claimant to obtain the major equipment control criteria point lacked the required information or details);</p>	RWS-Duffy, ¶¶ 31-34, 40-45 (testifying that the Claimant failed to receive this criteria point as it did not provide evidence that it was able to meet Ontario's domestic content requirements); RWS-MacDougall, ¶¶ 23-24

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
	<p>letter from a supplier committing to Ontario's domestic content requirements. The Claimant submitted a one sentence letter confirming it had executed a fixed price contract for wind turbines, but did not attach a copy of its contract, nor did the letter mention Ontario's domestic content requirements or indicate that they would be met.</p>	<p>2014, Tr. pp. 176:23-178:3. Canada's Closing Statements, October 31, 2014, Tr. pp. 136:18-138:2.</p>	<p>Letter from GE Energy to Mesa Power Group, LLC. (Nov. 24, 2009) contained in C-0365, Arran Wind Project, FIT Application (Nov. 25, 2009), p. 104 (the evidence submitted by the Claimant to obtain the major equipment control criteria point lacked the required information or details);</p> <p>R-071, Letter from Roslyn McMann, General Electric to Pim de Ridder, Premier Renewable Energy Ltd. (Skyway) (Nov. 27, 2009) (showing the sort of quality evidence that was required to be awarded the criteria point for major equipment control);</p> <p>R-070, FIT Application – FIT – F020180 – Skyway 127 (Nov. 27, 2009), p. 5, Article 1 (showing the sort of quality evidence that was required to be awarded the criteria point for major equipment control);</p> <p>R-198, NextEra Energy - Adelaide Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 12-13 (showing the sort of quality evidence that was required to be awarded the criteria point for major equipment control);</p> <p>R. 199, NextEra Energy - Bluewater Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 7, 11-12 (showing the sort of quality evidence that was required to be awarded the criteria point for major equipment control);</p> <p>R-200, NextEra Energy - Bornish Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 7, 12-13 (showing the sort of quality evidence that was required to be awarded the criteria point for major equipment control);</p> <p>R-201, NextEra Energy - East Durham Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 7, 12-13 (showing the sort of quality evidence that was required to be awarded the criteria point for major equipment control);</p> <p>R-202, NextEra Energy - Goshen Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 7, 12-13 (showing the sort of</p>	<p>(testifying as to the rationale behind the major equipment control criteria point);</p> <p>RWS-Duffy-2, ¶¶ 4-7 (testifying that the evidence submitted by the Claimant for this criteria point (a one line letter from GE) did not demonstrate that the turbines would comply with the domestic content rules for the FIT Program);</p> <p>Testimony of Cole Robertson, October 27, 2014, Tr. pp. 84:16-87:3 (admitting that the evidence provided by the Claimant for this criteria point (a one line letter from GE) did not satisfy the requirements of the FIT Rules for this criteria point);</p> <p>Testimony of Gary Timm, October 29, 2014, Tr. p. 114:16-23 (admitting that even though the Claimant asked him to provide comments on the OPA's award of each of the criteria points the Claimant applied for, he did not have any comments with respect to the OPA's evaluation of the major equipment control criteria point).</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			<p>quality evidence that was required to be awarded the criteria point for major equipment control);</p> <p>R-203, NextEra Energy - Jericho Wind Energy Centre FIT Application Package [Excerpt] (Nov. 30, 2009), pp. 7, 12-13 (showing the sort of quality evidence that was required to be awarded the criteria point for major equipment control);</p> <p>R-212, Canada's Opening Presentation Slides, slides 24, 40, 42-43, 55.</p>	
90.	<p>The OPA did not provide specific calculations supporting the launch period scoring and ranking of Mesa's TTD and Arran projects, because the Claimant never asked for this information. However, even if it had asked, it is the OPA's general policy not to provide the individual results of a procurement program's evaluation process in order to avoid giving proponents unfair advantages.</p>	<p>Canada's Counter Memorial, ¶¶ 445-448.</p>	<p>C-0098, Letter from Mark Ward (Mesa), Chuck Edey (Leader Resources) and Michael Bernstein, (Capstone Infrastructure) to Shawn Cronkwright (Ontario Power Authority) (May 20, 2011) (asking for clarifications on the process, but not for specific information about the rankings of the TTD and Arran projects);</p> <p>C-0195, Letter from Shawn Cronkwright, Ontario Power Authority to Mark Ward, Mesa, Charles Edey, Leader Resources, and Michael Bernstein, Capstone Infrastructure (Jun. 17, 2011) (responding to the specific questions raised by the Claimant in its May 20 letter);</p> <p>R-120, Email from Shawn Cronkwright, Ontario Power Authority to Chris Benedetti, Sussex Strategy (Jun. 22, 2011) (confirming that the OPA could not provide information specifically about the rankings of the TTD and Arran projects because it would give the Claimant an unfair advantage);</p> <p>R-212, Canada's Opening Presentation Slides, slide 41.</p>	<p>RWS-Cronkwright, ¶¶ 21-29 (testifying that the OPA does not give proponents information on the score it receives as doing so would provide advice to that proponent on how to better prepare its response on procurement programs and the OPA cannot give this unfair advantage if such information is not offered to all proponents);</p> <p>RWS-Cronkwright-2, ¶¶ 24-28 (testifying that the OPA does not divulge confidential information as a policy, nor did the OPA want to communicate anything to a proponent that might not have been said publicly).</p>
3. The OPA's implementation of the Bruce-to-Milton Allocation Process did not violate Article 1105				
91.	<p>The decision to offer contracts to FIT applicants who specified a connection point on the 500kV Bruce to Longwood Line was</p>	<p>Canada's Rejoinder, ¶¶ 206-211;</p> <p>Canada's Closing</p>	<p>R-175, IESO, "System Impact Assessment Report - Kingsbridge II Wind Generation Station (WGS)", IESO REP 0329 (Feb. 9, 2007) (showing that other investors who wanted to connect to the Bruce to Longwood</p>	<p>RWS-Chow, ¶¶ 46-48 (testifying that following the Bruce-to-Milton capacity coming online, the OPA felt comfortable suggesting in the</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
	<p>consistent with past practice, industry expectations, and the fact that the line was no longer required as a backup line once the new Bruce-to-Milton line was approved. Further, any developer who wanted information on such connections merely had to ask, even before the Bruce-to-Milton allocation was announced.</p>	<p>Statements, October 31, 2014. Tr. pp. 138:3-139:9.</p>	<p>(500kV) line asked the IESO);</p> <p>C-0149, E-mail from Bobby Adjemian (NextEra) to Ioan Agavrioloai (IESO) (Jul. 2, 2010) (showing that, unlike the Claimant, when other developers had questions about capacity, they approached the relevant entity);</p> <p>R-181, E-mail from Chuck Edey to Cole Robertson and Mark Ward (Jan. 21, 2011) (showing that the Claimant was aware of the possibility of connecting to the Bruce to Longwood (500kV) line);</p> <p>C-0166, Ontario Power Authority, Transmission Availability Table (Jun. 3, 2011) (providing the express guidance that if a developer wanted to connect to the Bruce to Longwood (500kV) line it should speak with IESO);</p> <p>C-0478, Email from John Sabiston to Hydro One, IESO, OPA (Jul. 4, 2011) (proving that questions concerning connecting to the 500kV line were technical, not about the appropriateness of allowing the connection).</p> <p>C-0481, E-mail from Bob Chow, Ontario Power Authority to Kun Xiong, Ontario Power Authority (Aug. 16, 2011) (proving that questions concerning connecting to the 500kV line were technical, not about the appropriateness of allowing the connection).</p>	<p>June 3 TAT Table that applicants who wanted to connect to the Bruce to Longwood (500kV) speak with the IESO);</p> <p>RWS-Chow-2, ¶¶ 21-27 (testifying that renewable energy developers were able to inquire about connecting to the Bruce to Longwood (500kV) line even prior to the FIT Program and that several FIT applicants applied to connect to this line during the FIT Program launch period).</p>
92.	<p>The information published in the TAT Tables with respect to connection point capability was known by developers to be only the minimum number of megawatts available on the weakest section of each circuit. Developers were also aware that if their project required more capacity than was listed, they were required to discuss it with relevant entities.</p>	<p>Canada's Rejoinder, ¶¶ 212-218.</p>	<p>R-179, Ontario Power Authority Presentation, "Feed-in Tariff Program: Transmission and Distribution Technical Information Session", p. 7 (Nov. 20, 2009) (making clear to all FIT applicants that the information in the TAT table was for guidance only, and represented the weakest part of the circuit);</p> <p>C-0166, Ontario Power Authority, Transmission Availability Table (Jun. 3, 2011) (making clear that the TAT Table was for guidance purposes only);</p> <p>C-0291, Ontario Power Authority, Questions and Answers, Bruce-to-Milton Contract Allocation Process (Jun. 8, 2011) (providing the same</p>	<p>RWS-Chow, ¶¶ 10, 31-33 (testifying that information provided in the TAT Table was intended to reflect the weakest portion of a circuit);</p> <p>RWS-Chow-2, ¶¶ 17-20 (testifying that the information provided in a TAT Table was meant to be indicative only and that this was explained to FIT applicants during</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
			response to everyone about the capacity on the L7S circuit).	webinars); Testimony of Seabron Adamson, October 29, 2014, Tr. pp. 164:1-174:18 (admitting that the information in the TAT Table was meant to be indicative only and that FIT applicants could have asked the OPA if they required further information).
93.	The OPA did not favor any FIT applicant during the FIT Program, nor did they provide any FIT applicant with information that was not otherwise publicly available.	Canada's Counter Memorial, ¶¶ 440-444.	<p>C-0298, Email from Tracy Garner, Ontario Power Authority to Bob Chow, Ontario Power Authority (Jun. 6, 2011) (showing that the OPA cancelled meetings with NextEra once the Bruce-to-Milton allocation was underway in order to avoid any possibility of unfairness);</p> <p>R-115, Email from Shawn Cronkwright, Ontario Power Authority to Bob Chow, Ontario Power Authority et al. (Jun. 6, 2011) (making clear to all relevant OPA employees that, in order to ensure fairness, they were not to have individuals communications with developers about the Bruce-to-Milton process during the connection point change window).</p>	<p>RWS-Chow, ¶¶ 49-59 (testifying that the OPA did not provide NextEra, or any other FIT applicant, with any inside or advance information about the Bruce-to-Milton allocation process);</p> <p>RWS-MacDougall, ¶¶ 36-49 (testifying that the OPA did not provide NextEra, or any other FIT applicant, with any inside or advance information about the Bruce-to-Milton allocation process);</p> <p>RWS-Cronkwright-2, ¶ 23 (testifying that he did not believe that the June 3 Direction was developed to favour particular proponents).</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
THE CLAIMANT HAS FAILED TO PROVE ITS CLAIM FOR DAMAGES				
I. The Claimant Can Only Recover Damages for Actual Losses Caused by the Alleged Wrongful Conduct				
94.	The Claimant may recover damages under NAFTA Article 1116, only if it can prove that it incurred actual losses and that those actual losses were caused by the breaches alleged. This rule applies to all of the Claimant's claims, whether under Article 1102, 1103, 1105 or 1106.	Canada's Counter-Memorial, ¶¶ 453-457; Canada's Rejoinder, ¶¶ 222-228; Canada's Opening Statements, October 26, 2014, Tr. pp. 209:13-210:25, 233:4-15; Canada's Closing Statements, October 31, 2014, Tr. pp. 140:14-142:7, 261:6-18, 263:5-272:2.	RL-069 , <i>S.D. Myers Inc. v. Canada</i> (UNCITRAL) Second Partial Award, 21 October 2002, ¶ 140; CL-092 , <i>Biwater Gauff (Tanzania) Ltd. v. Tanzania</i> , (ICSID Case No. ARB/05/22) Award, 24 July 2008, ¶ 779; CL-040 , <i>Feldman - Award</i> , ¶ 194; RL-048 , <i>Duke Energy Electroquil Partners & Electroquil S.A. v. Republic of Ecuador</i> (ICSID Case No. ARB/04/19) Award, 18 August 2008, ¶ 468; CL-006 , ILC Articles, Article 31, Commentary(10), pp. 204-205; CL-169 , <i>Case Concerning the Factory at Chorzów (Germany v. Polish Republic)</i> PCIJ, 13 September 1928 (Ser.A) No. 17, p. 47; RL-097 , <i>LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc. v. Argentine Republic</i> (ICSID ARB/02/1) Award, 25 July 2007, ¶ 42; R-219 , Canada's Closing Presentation Slides, slides 139-147.	
95.	The Claimant bears the burden of proving the quantum of any losses that it alleges that it suffered as a result of the breaches.	Canada's Counter-Memorial, ¶ 490; Canada's Rejoinder Memorial, ¶¶ 261-262; Canada's Closing Statements, October 31, 2014, Tr. pp. 140:19-141:4, 263:1-264:4	CL-041 , <i>Grand River Enterprises Six Nations, Ltd. et al. v. United States of America</i> (UNCITRAL) Award, 12 January 2011, ¶ 237 (" <i>Grand River - Award</i> "); CL-033 , <i>S. D. Myers - First Partial Award</i> , ¶ 316; RL-079 , <i>Archer Daniels Midland Company and Tate & Lyle Ingredients Americas Inc. v. United Mexican States</i> (ICSID Case No. ARB(AF)/04/05) Decision on the Requests for Correction, Supplementary Decision and Interpretation, 10 July 2008, ¶ 38 (" <i>ADM-Decision on Requests for Correction & Interpretation</i> "); CL-081 , <i>Saluka - Award</i> , ¶ 244; R-219 , Canada's Closing Presentation Slides, slides 139-147;	

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
A. The Claimant Has Failed to Prove that Many of the Challenged Measures Caused It Any Actual Losses				
1. The Claimant Has Failed to Prove that it Suffered Any Actual Losses as a Result of the Domestic Content Requirements				
96.	The domestic content requirements of the FIT Program did not cause the Claimant to enter into the MTSA with GE and nor did they cause the Claimant to make an immediate non-refundable deposit of over \$150 million to GE. The Claimant entered into this agreement and paid this deposit in 2008, before the FIT Program existed, and before the Claimant invested into Canada.	Canada's Counter-Memorial, ¶¶ 472-474; Canada's Rejoinder Memorial, ¶¶ 229-232; Canada's Opening Statement, October 26, 2014, Tr. pp. 233:8-234:6.	R-042 , Master Turbine Sale Agreement ([REDACTED]), s. 3D (setting out the schedule for the application of a termination charge upon the signing of the agreement); C-0381 , Invoice from GE Company to Mesa Power LP ([REDACTED]) (showing that the deposit was paid in 2008).	Testimony of T. Boone Pickens, October 26, 2014, Tr. pp. 255:21-259:17 (admitting that the Claimant made a non-refundable deposit of \$150 million in 2008); Testimony of Cole Robertson, October 27, 2014, Tr. pp. 150:21-152:15 (admitting that the Claimant made a non-refundable deposit of \$150 million in 2008).
97.	The domestic content requirements did not cause the Claimant to use the GE 1.6 XLE turbines.	Canada's Counter-Memorial, ¶¶ 498-499; Canada's Rejoinder, ¶¶ 229-232; Canada's Closing Statement, October 31, 2014, Tr. pp. 273:12-274:22.	BRG-123 , E-mail from Michael Volpe to Mark Ward (Jul. 7, 2010) (proving that [REDACTED]); C-0107 , E-mail from Michael Volpe to Mark Ward (Aug. 5, 2010) (proving that in [REDACTED]); R-219 , Canada's Closing Presentation Slides, slides 157-158.	BRG Rejoinder Report, ¶¶ 56-62; Testimony of Robert Low, October 30, 2014, Tr. pp. 130:21-131:15 (admitting that the Claimant was bound to use GE turbines only because of the MTSA that it had signed prior to the FIT Program existing).
98.	The Claimant has failed to prove that it incurred any costs, let alone higher costs, as a result of selecting the GE 1.6 MW XLE turbines for its projects.	Canada's Counter Memorial, ¶¶ 497-500; Canada's Rejoinder, ¶¶ 231-232; Canada's Opening Statement, October 26,	C-0075 , Letter from Lee A. Cole Robertson to Deloitte LLP (Nov. 2013), p. 2, [REDACTED].	BRG Report, ¶¶ 87-91 and 184-188, BRG Attachment VII; BRG Rejoinder Report, ¶¶ 56-62; Testimony of Robert Low, October 30, 2014, Tr. pp. 80:1-81:11 (admitting that he had seen no

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
		<p>2014, Tr. p. 211:1-14; Canada's Closing Statements, October 31, 2014, Tr. pp. 273:12-274:22.</p>		<p>evidence of higher costs and that he was relying upon Mr. Robertson's representation); Testimony of Christopher Goncalves, October 30, 2014, Tr. pp. 160:10-162:6 (explaining why the Claimant had failed to introduce sufficient evidence to make BRG comfortable with their assumption that the use of the GE 1.6 MW XLE turbine would have resulted in higher costs); BRG Closing Summary Presentation Slides, slide 15 (showing that there was no specific harm caused by the domestic content requirements and that damages would be speculative).</p>
99.	<p>The Claimant has failed to prove the quantum of any losses that it alleges were incurred as a result of having to comply with the domestic content requirements of the FIT Program.</p>	<p>Canada's Counter-Memorial, ¶ 456; Canada's Rejoinder Memorial, ¶¶ 229-232.</p>		<p>Testimony of Robert Low, October 30, 2014, Tr. pp. 37:21-39:7 (admitting that all of the losses claimed for Article 1106 are future losses, not actual losses already incurred, and that Deloitte had made no attempt to quantify the specific amount of costs allegedly incurred in the past because of the domestic content requirements) Testimony of Chris Goncalves, October 30, 2014, Tr. pp. 161:3-11 (explaining that the domestic</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
				content requirements did not cause the Claimant's projects to not obtain FIT Contracts and hence did not cause damages on their own).
2. The Claimant Has Failed to Prove that it Suffered Any Actual Losses as a Result of Certain Aspects of the GEIA				
(a) The Claimant Has Failed to Prove that it Suffered Any Actual Losses as a Result of the Allegedly Confidential Nature of the Negotiation of the GEIA				
100.	The Claimant knew of the negotiations with the Korean Consortium and the key terms of those negotiations in September and October 2009, prior to its investing in Canada and prior to its initial applications to the FIT Program. The Claimant knew that the GEIA had been signed and was aware of the key terms of that agreement in January 2010, prior to its investments in and FIT Applications for the North Bruce and Summerhill projects.	Canada's Counter Memorial, ¶ 408 Canada's Rejoinder, ¶¶ 155, 234; Canada's Opening Statements, October 26, 2014, Tr. pp. 171:19-173:1. Canada's Closing Statements, Tr. pp. 216:5-217:9, 218:17-222:5, 275:8-17.	<p>R-068, News Release, Ministry of Energy (Sept. 26, 2009) (officially announcing the negotiation of a framework agreement with the Korean Consortium);</p> <p>R-177, The Star News Article, Tyler Hamilton, "Ontario eyes green job bonanza" (Sept. 26, 2009) (publicly reporting the negotiations between Ontario and the Korean Consortium for a framework agreement);</p> <p>C-0105, Letter (Direction) from George Smitherman, Minister of Energy to Colin Andersen, Ontario Power Authority (Sept. 30, 2009) (giving public notice that parties that signed a framework agreement with Ontario would receive a priority transmission set aside);</p> <p>R-178, The Star News Article, Tyler Hamilton, "Samsung's turbine deal in jeopardy" (Oct. 31, 2009) (reporting that the framework agreement with the Korean Consortium would provide it with priority access to Ontario's transmission grid);</p> <p>C-0087, Certificate of Incorporation for TTD Wind Project ULC under the Alberta Business Corporations Act (Nov. 17, 2009);</p> <p>C-0049, Certificate of Incorporation for Arran Wind Project ULC under the Alberta Business Corporations Act (Nov. 17, 2009);</p> <p>C-0364, Twenty-Two Degrees, FIT Application (Nov. 25, 2009);</p> <p>C-0365, Arran Wind, FIT Application (Nov. 25, 2009);</p> <p>R-076, Ministry of Energy, "Ontario Delivers \$7 Billion Green</p>	<p>RWS-Jennings-2, ¶¶ 11-13 (testifying that the negotiations with the Korean Consortium were known publicly by September 2009);</p> <p>Testimony of Cole Robertson, October 27, 2014, Tr. pp. 130:12-134:15, 135:3-13, 139:6-146:7, 146:21-147:9, 220:20-224:10 (admitting that the Claimant was aware of the GEIA negotiations in September 2009 prior to applying to the FIT Program and the reports about its terms, but that it did nothing to investigate further and chose instead to continue with its FIT applications even after the GEIA was signed);</p> <p>Testimony of Bob Chow, October 28, 2014, Tr. p. 140:5-15 (testifying people would have known from the beginning that the Korean Consortium would be looking for capacity in the Bruce Region</p>

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			<p>Investment", Archived Backgrounder (Jan. 21, 2010) (publicly announcing the signing of the GEIA with the Korean Consortium and describing all of its key terms);</p> <p>C-0079, Letter from Minister Brad Duguid (Ministry of Energy) to Colin Andersen (OPA), Direction to OPA (Apr. 1, 2010) (publicly directing the OPA to negotiate power purchase agreements with the project companies of the Korean Consortium in accordance with the commitment made in the GEIA, and describing the GEIA terms);</p> <p>C-0050, North Bruce Project, ULC Certificate of Incorporation for North Bruce Project ULC under the Alberta Business Corporations Act (Apr. 6, 2010);</p> <p>C-0041, Certificate of Incorporation for Summerhill Project ULC under the Alberta Business Corporations Act (Apr. 6, 2010);</p> <p>C-0360, North Bruce Wind Energy I, FIT application, (May 29, 2010);</p> <p>C-0361, North Bruce Wind Energy II, FIT Application, (May 29, 2010);</p> <p>C-0362, Summerhill Wind Energy I, FIT Application (May 29, 2010);</p> <p>C-0363, Summerhill Wind Energy II, FIT Application (May 29, 2010);</p> <p>R-212, Canada's Opening Presentation Slides, slides 34-36;</p> <p>R-219, Canada's Closing Presentation Slides, slides 106-111.</p>	<p>because of the strong wind resource there);</p> <p>Testimony of Seabron Adamson, October 29, 2014, Tr. pp. 211:10-218:7 (admitting that the Claimant could have been aware that the Korean Consortium would have priority access to Ontario grid space prior to making their FIT applications).</p>
101.	<p>The alleged confidential nature of the negotiations with the Korean Consortium did not cause the Claimant's FIT applications to not receive contracts. The only losses that could have theoretically have been caused by the confidential nature of the negotiations prior to September 2009 are any investment</p>	<p>Canada's Rejoinder Memorial, ¶ 234;</p> <p>Canada's Closing Statement, October 31, 2014, Tr. pp. 275:1-276:4.</p>		

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
	costs made by the Claimant prior to this date.			
102.	The Claimant has failed to prove that it would not have made its investments in Canada and applied to the FIT Program if it had been aware of the negotiations of the GEIA, or of more details concerning the GEIA's terms. In fact, it continued to invest in Ontario even after the GEIA was signed and announced.	Canada's Rejoinder Memorial, ¶ 234; Canada's Closing Statement, October 31, 2014, Tr. pp. 275:1-276:4.	C-0322, <i>Green Energy Investment Agreement</i> (Jan. 21, 2010); R-076, Ministry of Energy Archived Backgrounder, "Ontario Delivers \$7 Billion Green Investment" (Jan. 21, 2010) (publicly announcing the signing of the GEIA with the Korean Consortium and describing all of its key terms); C-0079, Letter from Minister Brad Duguid (Ministry of Energy) to Colin Andersen (OPA), Direction to OPA (Apr. 1, 2010) (publicly directing the OPA to negotiate power purchase agreements with the project companies of the Korean Consortium in accordance with the commitment made in the GEIA, and describing the GEIA terms); C-0360, North Bruce Wind Energy I, FIT application, (May 29, 2010); C-0361, North Bruce Wind Energy II, FIT Application, (May 29, 2010); C-0362, Summerhill Wind Energy I, FIT Application (May 29, 2010); C-0363, Summerhill Wind Energy II, FIT Application (May 29, 2010).	Testimony of Cole Robertson, October 27, 2014, Tr. pp. 139:25-146:7, 146:21-147:9 (admitting that the Claimant was aware of the GEIA and decided to make investments in Ontario and apply to the FIT Program instead of seeking to negotiate an investment agreement with Ontario).
103.	The Claimant has failed to prove the quantum of any of the investments that it alleges that it made prior to becoming aware of the negotiations with the Korean Consortium.	Canada's Counter-Memorial, ¶¶ 483-490; Canada's Rejoinder Memorial, ¶¶ 261-262; Canada's Opening Statement, October 26, 2014, Tr. pp. 234:22-235:6; Canada's Closing Statement, October 31, 2014, Tr. pp. 275:1-276:4.	C-0461, Written Consent of the Member of AWA TTD Development LLC (Aug. 14, 2009) (proving only that as of August 2009, AWA TTD Development LLC was authorized and empowered to conclude an asset purchase agreement for the TTD Project, not that it actually concluded and invested into Canada at that time).	BRG Report, ¶ 235; BRG Rejoinder Report, ¶ 207; Testimony of Cole Robertson, October 27, 2014, Tr. pp. 220:20-224:10 (admitting that he was unaware of any evidence in the record that showed the Claimant actually invested in Ontario prior to November 2009, just that it had been authorized to so invest).

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
(b) The Claimant Has Failed to Prove that it Suffered Any Actual Losses as a Result of Ontario's Offer of an Economic Development Adder to the Korean Consortium				
104.	The Government of Ontario's agreement to cause the OPA to pay the Korean Consortium an economic development adder, under certain conditions, pursuant to the terms of the GEIA did not cause the Claimant's projects to not obtain FIT Contracts. Nor did it cause the Claimant any other losses.	Canada's Counter Memorial, ¶¶ 492-494; Canada's Rejoinder, ¶ 235; Canada's Closing Statement, October 31, 2014, Tr. p. 143:9-16.	C-0322, <i>Green Energy Investment Agreement</i> (Jan. 21, 2010), ss. 9.1, 9.3, 9.4 (providing the conditions under which the economic development adder was to be paid); C-0282, Amended <i>Green Energy Investment Agreement</i> , s. 5 (amending the terms under which the economic development adder would be paid).	Testimony of Chris Goncalves, October 30, 2014, Tr. pp. 154:6-157:4 (explaining that it would be inappropriate to give the Claimant the terms of the GEIA in a damages analysis because there is no evidence of but for causation); BRG Closing Summary Presentation Slides, slides 6-7 (showing the proper approach to damages causation which would not award the Claimant the GEIA terms).
105.	No economic development adder had been paid to the Korean Consortium on the valuation dates identified by the Claimant.	Canada's Rejoinder, ¶ 235; Canada's Closing Statement, October 31, 2014, Tr. p. 143:9-16.		RWS-Lo-2, fn. 2 (testifying that as of the date of her second witness statement, no economic development adder had been paid); Testimony of Susan Lo, October 28, 2014, Tr. p. 111:5-16 (testifying that as of the hearing, the process for paying the adder had to her knowledge been started).
(c) The Claimant Has Failed to Prove that it Suffered Any Actual Losses as a Result of Ontario's Offer of a Capacity Expansion Option to the Korean Consortium				
106.	The agreement of the Government of Ontario in the GEIA that entitled the	Canada's Counter Memorial, ¶¶ 495-496;	C-0322, <i>Green Energy Investment Agreement</i> , s. 3.4 (describing the ability of the Korean Consortium to increase the size of one of the phases	Testimony of Chris Goncalves, October 30, 2014, Tr. pp. 154:6-

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
	Korean Consortium to increase the capacity of one of its five phases by 10% so long as it decreased the capacity of another phase by the same amount did not cause the Claimant's projects to not receive a FIT Contract.	Canada's Rejoinder, ¶ 236; Canada's Closing Statement, October 31, 2014, Tr. p. 143:17-24.	by 10% so long as the overall project capacity did not increase); R-133 , Amended and Restated GEIA (Jun. 20, 2013), s. 3.4 (describing the ability of the Korean Consortium to increase the size of one of the phases by 10% so long as the overall project capacity did not increase).	157:4 (explaining that it would be inappropriate to give the Claimant the terms of the GEIA in a damages analysis because there is no evidence of but for causation); BRG Closing Summary Presentation Slides, slides 6-7 (showing the proper approach to damages causation which would not award the Claimant the GEIA terms).
107.	The Korean Consortium never used the capacity expansion option in the Bruce Region, the only region in which the Claimant's projects were located.	Canada's Rejoinder, ¶ 236	C-0119 , Letter from Brad Duguid (Ministry of Energy) to Colin Andersen (OPA) (Sep. 17, 2010) (publicly directing the OPA to hold in reserve 500MW of transmission capacity in the Bruce Region for power purchase agreements to be entered into with the project companies of the Korean Consortium).	
3. The Claimant Has Failed to Prove that It Suffered any Actual Losses as a Result of Certain Aspects of the Bruce-to-Milton Allocation Process				
(a) The Claimant Has Failed to Prove that it Suffered Any Actual Losses as a Result of Ontario's Decision Not to Run a Full, Province-Wide ECT				
108.	The Bruce-to-Milton allocation process was consistent with what would have been the first step of the ECT, known as the Individual Project Assessment (IPA) phase, for the Bruce and West of London regions.	Canada's Counter Memorial, ¶¶ 197-201, 412; Canada's Rejoinder, ¶¶ 166-170; Canada's Opening Statements, October 26, 2014, Tr. pp. 191:14-192:14; Canada's Closing	R-003 , FIT Program Rules, v. 1.2 (Nov. 19, 2009), ss. 5.4, 5.5(d) and 5.6(b) (noting that projects awaiting an ECT in the FIT Production Line or FIT Reserve would be permitted to change connection points, and imposing no limitations on such changes); C-0034 , OPA Presentation, "The Economic Connection Test" (Mar. 23, 2010), slide 14 (noting that connection point changes would be permitted as part of the ECT process, and imposing no limitations on such changes); C-0088 , Ontario Power Authority Presentation, "The Economic Connection Test - Approach, Metrics and Process" (May 19, 2010) slides 39, 46, 48, and 97 (describing for all FIT applicants the steps in the ECT	RWS-Chow, ¶ 41 (testifying that the Bruce-to-Milton allocation was a regionalized and modified ECT); RWS-Lo, ¶ 46 (testifying that the goal in developing the Bruce-to-Milton allocation process was to include the relevant components of the ECT, without being a province-wide ECT); RWS-Cronkwright, ¶¶ 15-17 (testifying that the Bruce-to-Milton

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
		<p>Statements, October 31, 2014, Tr. pp. 249:1-252:6.</p>	<p>process, including the opening of a window to change connection points, and imposing no limitations on such changes);</p> <p>C-0073, Ontario Power Authority, Priority ranking for First Round FIT Contracts (Dec. 21, 2010) (publicly indicating in the notes that projects would be allowed to change connection points prior to an ECT and imposing no limitations on such changes);</p> <p>C-0091, E-mail from Shawn Cronkwright (OPA) to JoAnne Butler (OPA) and Sue Lo (Ministry of Energy) Re: BxM option (May 11, 2011) (noting that the process that the Government of Ontario was putting forward for the allocation was similar to the first step of the ECT process on regional basis);</p> <p>R-212, Canada's Opening Presentation Slides, slides 59, 65, 67-71 71, 75-77.</p>	<p>allocation was a regionalized and modified ECT that contained almost all of the same elements as the first step of the ECT);</p> <p>RWS-Cronkwright-2, ¶¶ 16-18, 20-21 (testifying that the Bruce-to-Milton allocation process was an ECT-like process);</p> <p>RWS-Chow-2, ¶¶ 6-8 (testifying that the Bruce-to-Milton allocation was a regionalized and modified ECT);</p> <p>RWS-Lo-2, ¶¶ 14, 19 (testifying that the Bruce-to-Milton allocation was like a regionalized ECT);</p> <p>Testimony of Susan Lo, October 28, 2014, Tr. pp. 149:13-150:1, 154:11-19 (testifying that the Government was trying to run a process for the Bruce-to-Milton allocation that closely resembled an ECT because of developer expectations);</p> <p>Testimony of Shawn Cronkwright, October 29, 2014, Tr. pp. 92:12-94:18 (testifying as to the similarities and differences between the Bruce-to-Milton allocation and the province-wide ECT process).</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
109.	The Claimant has failed to show how the decision not to run the second part of the ECT for the Bruce and West of London regions caused it any losses. Running that part of the ECT would not have guaranteed that any particular project would have been granted a FIT Contract. Even if more transmission capacity was identified, there would have been no guarantee that such an infrastructure project (just as is the case with wind generation infrastructure development) would have been developed.	Canada's Counter Memorial, ¶¶ 468-471; Canada's Rejoinder, ¶¶ 182-186, 239	C-0701, Email from Bob Chow (OPA) to Ceiran Bishop (MOE) (Mar. 2, 2011) (showing that all other options for increasing transmission capacity in the Bruce Region were at a preliminary stage and might not be technically or economically desirable); C-0708, Ontario Power Authority Presentation 'Bruce/SWO Reactive Compensation' (Aug. 11, 2011) (showing that all other options for increasing transmission capacity in the Bruce Region were at a preliminary stage and might not be technically or economically desirable).	RWS-Chow, ¶¶ 35-37 (testifying that the running of the second phase of the ECT would not guarantee anyone a FIT Contract because of various factors, including regulatory approvals); Testimony of Bob Chow, October 28, 2014, Tr. pp. 329:21-337:19 (testifying as to the preliminary and non-conclusive nature of the work that was done in order to understand in 2011 whether transmission capacity should be expanded in the Bruce Region).
110.	The Claimant has failed to prove that not running a province-wide ECT as contemplated in the FIT Rules and, consequently, not allowing applicants from regions other than the Bruce and West of London regions to compete for the capacity on the Bruce-to-Milton line, caused it any harm. In fact, allowing applicants from all Ontario regions to compete for the capacity on the Bruce-to-Milton line would have resulted in even more new entrants with higher provincial rankings than the Claimant changing into the Bruce Region.	Canada's Counter-Memorial, ¶¶ 468-471; Canada's Rejoinder Memorial, ¶¶ 182-186, 239; Canada's Closing Statement, October 31, 2014, Tr. pp. 143:25-145:16.		Testimony of Chris Goncalves, October 30, 2014, Tr. pp. 230:19-232:10 (explaining that if a province-wide ECT had occurred, it is reasonable to assume that more projects would have changed their connection points in order to connect in the Bruce Region).

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
(b) The Claimant Has Failed to Prove that it Suffered Any Actual Losses as a Result of NextEra's Goshen Project Connecting to the L7S Circuit during the Bruce-to-Milton Allocation Process				
111.	NextEra's Goshen project had a nameplate production capacity of 102 MW. If it had failed to pass the connection test, this capacity would have been available, but would have been awarded to the Cedar Point Wind Power Project Phase 1 (50 MW) which was ranked ahead of the Claimant's projects. This would have only left 78.5 MW of capacity remaining to be allocated, which would have been insufficient to offer a contract to the next highest provincially ranked Skyway 127 project (100 MW), let alone any of the Claimant's projects in the Bruce region.	Canada's Rejoinder, ¶ 240	<p>C-0073, OPA Priority Ranking for first-round FIT Contracts (Dec. 21, 2010) (showing the ranking of the Cedar Point and Skyway 127 projects ahead of the Claimant's projects);</p> <p>C-0292, Ontario Power Authority, "FIT Contract Offers for the Bruce-Milton Capacity Allocation Process" (Jul. 4, 2011) (showing the award of a contract to the Goshen project for 102 MW);</p> <p>C-0293, Ontario Power Authority, "FIT Contract Priority Ranking by Region" (Jul. 4, 2011) (showing the Cedar Point and Skyway 127 projects ranked ahead of the Claimant's projects and still waiting for a contract)</p>	
(c) The Claimant Has Failed to Prove that it Suffered Any Actual Losses as a Result of Ontario's Decision to Allow Generator Paid Upgrades During the Bruce-to-Milton Allocation Process				
112.	No projects in the Bruce region that received contract offers during the Bruce-to-Milton allocation required generator paid upgrades. Thus, even if upgrades had not been permitted, no additional transmission capacity would have been available for any of the Claimant's projects in the Bruce region.	Canada's Rejoinder, ¶ 241	C-0292, Ontario Power Authority, "FIT Contract Offers for the Bruce-Milton Capacity Allocation Process" (Jul. 4, 2011) (showing the contract offers made in the Bruce Region)	RWS-Chow-2, ¶ 20 (testifying that no project in the Bruce region that received a contract offer on July 4, 2011, required a generator paid upgrade).

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
(d) The Claimant Has Failed to Prove that it Suffered Any Actual Losses as a Result of NextEra's Bluewater and Jericho Projects Being Permitted to Select Connection Points During the Bruce-to-Milton Allocation Process				
113.	NextEra's Bluewater and Jericho projects were originally enabler requested projects, with a combined capacity of 210 MW. If they had not been permitted to select connection points, this capacity would have been awarded to the Cedar Point (Phase I) and Skyway projects, both of which were ranked ahead of the Claimant's projects. This would have left only 86.5 MW available, which was not enough capacity for any of the Claimant's projects to obtain a FIT Contract.	Canada's Rejoinder, ¶ 242	<p>C-0073, OPA Priority Ranking for first-round FIT Contracts (Dec. 21, 2010) (showing Bluewater and Jericho as enabler requested projects);</p> <p>C-0292, Ontario Power Authority, "FIT Contract Offers for the Bruce-Milton Capacity Allocation Process" (Jul. 4, 2011) (showing Bluewater and Jericho being offered contracts for a combined 210MW in the Bruce Region);</p> <p>C-0293, Ontario Power Authority, "FIT Contract Priority Ranking by Region" (Jul. 4, 2011) (showing that the Cedar Point and Skyway projects were ranked ahead of the Claimant's projects and still waiting for a contract).</p>	
(e) The Claimant Has Failed to Prove that it Suffered Any Actual Losses as a Result of the Short Notice Period for the Connection Point Change Window or of the Connection Point Change Window Being Only Five Business Days Long				
114.	More notice and a longer connection point change window would not have resulted in fewer higher ranked projects deciding to connect in the Bruce region as part of the Bruce-to-Milton allocation process. If anything, it would have resulted in more competition for the Bruce-to-Milton capacity.	<p>Canada's Rejoinder, ¶¶ 243-244;</p> <p>Canada's Closing Statement, October 31, 2014, pp. 145:17-146:8.</p>		Testimony of Christopher Goncalves, October 30, 2014, Tr. pp. 230:19-232:14 (explaining that if more notice and time that was allowed, it is reasonable to assume that more projects would have changed to connect in the Bruce Region).

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
B. The Claimant Has Failed to Prove that Any of the Challenged Measures Caused Any of Its Losses Associated with the Cancellation of the GE MTSA				
115.	The Claimant did not enter into the MTSA or immediately put at risk a non-refundable deposit of approximately \$150 million because of any measure of the Government of Ontario. The Claimant put its turbine deposit at risk when it signed the MTSA with GE in 2008 for its failed Pampa wind farm in Texas. This was before the FIT Program even existed, and before the Claimant made any investments into Canada.	Canada's Counter-Memorial, ¶¶ 126-127, 472-474; Canada's Rejoinder Memorial, ¶¶ 229-232; Canada's Opening Statement, October 26, 2014, Tr. pp. 233:8-234:6.	R-042, Master Turbine Sale Agreement (), s. 3D; (setting out the schedule for the application of a termination charge upon the signing of the agreement); C-381, Invoice from GE Company to Mesa Power LP () (showing that the deposit was paid in 2008).	Testimony of T. Boone Pickens, October 26, 2014, Tr. pp. 255:21-259:17 (admitting that the Claimant made a non-refundable deposit of \$150 million in 2008); Testimony of Cole Robertson, October 27, 2014, Tr. pp. 150:21-152:15 (admitting that the Claimant made a non-refundable deposit of \$150 million in 2008); Testimony of Chris Goncalves, October 30, 2014, Tr. pp. 162:7-23 (explaining that there was no evidence to establish to BRG's satisfaction that the alleged breaches caused the Claimant to either incur or forfeit the MTSA deposit); BRG Closing Summary Presentation Slides, slide 16 (evidencing that there is no causal link between the alleged breaches and the Claimant signing the original MTSA, incurring the turbine deposit, or forfeiting the deposit).
116.	The MTSA was not terminated by the Claimant even after it failed to receive FIT Contracts in Ontario.	Canada's Counter-Memorial, ¶¶ 475-476; Canada's Rejoinder ¶¶ 250-	C-0379, Amended and Restated Master Turbine Sale Agreement () (showing that the agreement was for projects not just in Ontario); R-124, Business Week, Bloomberg News, "Pickens Reviving Plans for	BRG Report, Attachment VIII; Testimony of T. Boone Pickens, October 26, 2014, Tr. pp. 268:13-

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
		251.	<p>Texas Wind Power at Smaller Scale" (Apr 4, 2012) (showing that the Claimant was allocating the turbines under its deal with GE to projects in Texas, approximately a year after its applications for FIT Contracts failed);</p> <p>R-125, PR Newswire, "Mesa Power Group to Partner With Wind Tex Energy on Stephens Bor-Lynn Project South of Lubbock" (Apr. 4, 2012) (showing that the Claimant was allocating the turbines under its deal with GE to projects in Texas, approximately a year after its applications for FIT Contracts failed);</p> <p>R-085, "Billionaire T. Boone Pickens is building a 377-megawatt wind farm in Texas"(Apr. 12, 2012) (showing that the Claimant was allocating the turbines under its deal with GE to projects in Texas, approximately a year after its applications for FIT Contracts failed);</p> <p>R-126, Second Amended and Restated Master Turbine Sales Agreement ██████████ (renegotiation of the MTSA over a year after its applications for FIT Contracts failed);</p> <p>R-129, Master Turbine Sale Agreement – External Change Order Proposal No. 4 (Letter from Gary Elieff, GE, to Mark Ward, Mesa ██████████ (confirming that the turbines being purchased under its deal with GE were for a project in Texas, nearly 18 months after its applications for FIT Contracts failed).</p>	<p>269:19 (admitting that the Claimant attempted to develop other projects to use the GE turbines but that it never brought any into commercial operation);</p> <p>BRG Closing Summary Presentation Slides, slide 16 (evidencing that there is no causal link between the alleged breaches and the Claimant signing the original MTSA, incurring the turbine deposit, or forfeiting the deposit).</p>
117.	The eventual termination of the MTSA by the Claimant was not caused by any measure of Ontario but rather by the Claimant's failure to bring the Stephens Bor-Lynn Project in Texas into operation.	Canada's Counter-Memorial, ¶¶ 476-477; Canada's Rejoinder, ¶ 251.	C-0382 , Letter from Cole Robertson, Mesa, to Stephen Swift, GE (Dec. 21, 2012) (terminating the MTSA after the sale of its Stephens Bor-Lynn project in Texas).	Testimony of Robert Low, October 30, 2014, Tr. pp. 72:25-75:17 (admitting that the MTSA was renegotiated several times and was not terminated after the failure of the Claimant's Ontario projects, but rather after the failure to develop a project in Texas); Testimony of Chris Goncalves,

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
				<p>October 30, 2014, Tr. pp. 162:7-23 (explaining that there was no evidence to establish to BRG's satisfaction that the alleged breaches caused the Claimant to either incur or forfeit the MTSA deposit);</p> <p>BRG Closing Summary Presentation Slides, slide 16 (evidencing that there is no causal link between the alleged breaches and the Claimant signing the original MTSA, incurring the turbine deposit, or forfeiting the deposit).</p>
C. The Claimant Has Failed to Prove that Any of the Challenged Measures Resulted in Any Actual Losses with Respect to Its Summerhill and North Bruce Projects				
1. The Claimant Has Failed to Prove that the Priority Access Granted to the Korean Consortium Resulted in Summerhill and North Bruce Failing to Obtain Contracts				
118.	<p>The Claimant's Summerhill and North Bruce projects were ranked between 318 and 321 in the Province. Even if the Korean Consortium had not been provided with a 500 MW set aside in the Bruce Region in accordance with the commitments under the GEIA, there would still not have been enough capacity to offer FIT Contracts for the Summerhill and North Bruce projects.</p>	<p>Canada's Counter-Memorial, ¶¶ 459-460; Canada's Rejoinder, ¶ 246; Canada's Closing Statement, October 31, 2014, Tr. p. 276:5-17.</p>	<p>C-0233, FIT CAR Priority Ranking, p. 1 (showing the rankings of the North Bruce and Summerhill projects).</p>	<p>BRG Report, ¶ 109(b), 179(a); BRG Report, Attachment IV, ¶¶ 38-39a, Figure 4; Testimony of Christopher Goncalves, October 30, 2014, Tr. pp. 159:4-12, 225:2-228:1 (explaining how even if the set aside had not been provided to the Korean Consortium, Summerhill and North Bruce still could not be offered contracts because of</p>

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				transmission constraints); BRG Closing Summary Presentation Slides, slide 12 (evidencing that if the priority transmission access granted to the Korean Consortium's projects is found to be in breach of NAFTA, only the Claimant's TTD and Arran projects would have been awarded contracts, not the Summerhill and North Bruce projects).
2. The Claimant Has Failed to Prove that the Window to Change Connection Points in the Bruce-to-Milton Allocation Resulted in Summerhill and North Bruce Failing to Obtain Contracts				
119.	The Claimant's Summerhill and North Bruce projects were ranked between 318 and 321 in the Province. Even if the Bruce-to-Milton allocation process had not included the opportunity for projects connecting in the Bruce and West of London to change their connection points, there still would not have been enough capacity to offer FIT Contracts for the Summerhill and North Bruce projects	Canada's Counter Memorial, ¶ 460; Canada's Rejoinder, ¶ 248; Canada's Closing Statement, October 31, 2014, Tr. p. 277:9-21.	C-0233, FIT CAR Priority Ranking, p. 1 (showing the rankings of the North Bruce and Summerhill projects); C-0091, E-mail from Shawn Cronkwright (OPA) to JoAnne Butler (OPA) and Sue Lo (Ministry of Energy) Re: BxM option (May 11, 2011) (confirming that the physical limit in the Bruce Region with the Bruce-to-Milton line was 1250MW, 750MW for FIT and 500MW for Korean Consortium).	BRG Report, ¶ 116, 179(a); BRG Report, Attachment IV, ¶¶ 38-39b, Figure 5; Testimony of Christopher Goncalves, October 30, 2014, Tr. pp. 159:13-24, 228:2-230:7 (explaining how even if the change in connection points had not been allowed, Summerhill and North Bruce still could not be offered contracts because of transmission constraints); BRG Closing Summary Presentation Slides, slide 13 (evidencing that if allowing connection point changes during the Bruce-to-Milton allocation is

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				found to be in breach of NAFTA, only the Claimant's TTD and Arran projects would have been awarded contracts, not the Summerhill and North Bruce projects).
3. The Claimant Has Failed to Prove that the Priority Access Granted to the Korean Consortium and the Window to Change Connection Points in the Bruce-to-Milton Allocation, Considered Together, Resulted in Summerhill and North Bruce Failing to Obtain Contracts				
120.	The Claimant's Summerhill and North Bruce projects were ranked between 318 and 321 in the Province. Even if the Korean Consortium had not been provided with a 500 MW set aside in the Bruce Region in accordance with the commitments under the GEIA and the Bruce-to-Milton allocation process had not included the opportunity for projects connecting in the Bruce and West of London to change their connection points, there still would not have been enough capacity to offer FIT Contracts for the Summerhill and North Bruce projects	Canada's Counter Memorial, ¶ 460; Canada's Rejoinder, ¶ 248;	C-0233, FIT CAR Priority Ranking, p. 1 (showing the rankings of the North Bruce and Summerhill projects); C-0091, E-mail from Shawn Cronkwright (OPA) to JoAnne Butler (OPA) and Sue Lo (Ministry of Energy) Re: BxM option (May 11, 2011) (confirming that the physical limit in the Bruce Region with the Bruce-to-Milton line was 1,250MW).	BRG Report, ¶ 179(a); BRG Report, Attachment IV, ¶¶ 38-39c, Figure 6; Testimony of Christopher Goncalves, October 30, 2014, Tr. pp. 159:25-160:9 (explaining how even if both the set aside had not been provided to the Korean Consortium and connection point changes had not been permitted as part of the Bruce-to-Milton process, Summerhill and North Bruce still could not be offered contracts because of transmission constraints); BRG Closing Summary Presentation Slides, slide 14 (evidencing that if the priority transmission access granted to the Korean Consortium's projects and allowing connection point changes during the Bruce-to-Milton allocation is found to be in breach

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
				of NAFTA, only the Claimant's TTD and Arran projects would have been awarded contracts, not the Summerhill and North Bruce projects).
4. The Claimant Has Failed to Prove that the Connection of Jericho, Bornish, Adelaide and Cedar Point (Phase II) Projects to the Bruce to Longwood (500kV) Line During the Bruce-to-Milton Allocation Caused Summerhill and North Bruce to Not Obtain Contracts				
121.	The Jericho, Bornish, Adelaide and Cedar Point (Phase II) projects had a combined capacity of 383.5 MW. Even if they had not been permitted to connect to the Bruce to Longwood (500kV) line and had failed the connection tests, there still would not have been sufficient available capacity for the Claimant's Summerhill and North Bruce projects to have been offered FIT Contracts.	Canada's Rejoinder, ¶ 249.	C-0233, FIT CAR Priority Ranking, p. 1 (showing the rankings of the North Bruce and Summerhill projects and how much capacity was ranked in front of their projects); C-0292, Ontario Power Authority, "FIT Contract Offers for the Bruce-Milton Capacity Allocation Process" (Jul. 4, 2011) (showing the capacities of the Jericho, Bornish, Adelaide and Cedar Point projects).	
II. The Claimant Has Failed to Establish that It is Entitled to the Damages It Claims for TTD and Arran				
A. The Claimant Has Failed to Provide Evidence that All Damages Claimed Were Suffered by the Claimant Itself				
122.	The Claimant bears the burden of proving that it, and not some other entity, has suffered all of the damages it seeks to recover.	Canada's Counter Memorial, ¶¶ 478-481; Canada's Rejoinder, ¶ 254-255	CL-033, <i>S. D. Myers - First Partial Award</i> , ¶ 316; RL-079, <i>ADM - Decision on Requests for Correction & Interpretation</i> , ¶ 38; CL-041, <i>Grand River - Award</i> , ¶ 237; CL-081, <i>Saluka - Award</i> , ¶ 244.	
123.	GE was a 50% owner of all of the Claimant's projects at the time that	Canada's Counter-Memorial, ¶¶ 134-139,	C-0364, <i>Twenty -Two Degrees Wind Project</i> , FIT Application (Nov. 25, 2009), pp. 21-22, 31 (providing that GE was a joint venture partner and	CWS-Robertson, ¶ 5 (admitting that GE was a joint venture partner

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	the investments were made in Canada and the applications were filed to the FIT Program.	478-481; Canada's Rejoinder Memorial, ¶¶ 255-260.	owned at least 15% of the project); C-0365 , Arran Wind Project, FIT Application (Nov. 25, 2009), p. 21, 31 (providing that GE was a joint venture partner and owned at least 15% of the project); R-088 , GE Draft Presentation, "Twenty-two degrees wind project - U.S. ExIm Briefing, [REDACTED]) p. 6 (providing that GE has a [REDACTED] ownership interest in AWA, which owned the projects); R-080 , Golder Associates, Twenty Two Degree Wind Energy Project, Draft Project Description Report (Mar. 2010), p. 2 (describing GE as a joint venture partner in the project); R-094 , Letter from Mark Ward to OPA (Jul. 22, 2010) [REDACTED]).	with Mesa).
124.	The Claimant has failed to prove when GE allegedly sold its 50% stake in American Wind Alliance.	Canada's Rejoinder, ¶¶ 255-260.		
B. The Claimant Has Failed to Prove its Claims for Sunk Costs				
125.	Other than the single invoice for the GE deposit, the Claimant has failed to produce a single invoice, bill, receipt or other document proving the quantum of the alleged sunk costs related to its projects.	Canada's Counter Memorial, ¶ 490; Canada's Rejoinder, ¶ 262; Canada's Opening Statement, October 26, 2014, Tr. pp. 234:22-235:6; Canada's Closing Statement, October 31, 2014, Tr. pp. 276:1-4, 276:24-277:8.		BRG Report, ¶¶ 169a, 197a and 235.

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
C. To the Extent Future Losses Related to TTD and Arran are Permitted, the Claimant's Damages Analysis is Speculative, Exaggerated and Based on Inappropriate Assumptions				
126.	Where an investment is still pre-operational or has no history of profits, awarding any amount for future losses requires an impermissible degree of speculation.	Canada's Counter Memorial, ¶¶ 483-487; Canada's Rejoinder, ¶ 261	<p>CL-098, <i>Metalclad Corporation v. The United Mexican States</i>, Award, 2000 WL 34514285, 30 August 2000, ¶¶ 121-122;</p> <p>CL-144, <i>Siemens A.G. v. Argentine Republic</i> (ICSID No. ARB/02/8) Award, 6 February 2007, ¶¶ 355, 368-370;</p> <p>CL-136, <i>Wena Hotels Limited v. The Arab Republic of Egypt</i> (ICSID Case No. ARB/98/4) Award on Merits, 8 December 2000, ¶¶ 123-125;</p> <p>RL-077, <i>Compagna de Aguas del Aconquija S.A. and Vivendi Universal v. Argentina</i> (ICSID Case ARB/97/3) Award, 20 August 2007, ¶¶ 8.3.5 and 8.3.13;</p> <p>CL-102, <i>PSEG Global, Inc. et al. v. Republic of Turkey</i> (ICSID Case No. ARB/02/5) Award, 19 January 2007, ¶¶ 310-319.</p>	
127.	The Claimant has failed to prove that its allegedly preferred GE 2.5 MW XL turbines were available for use, on what pricing GE was willing to supply them or how much they would cost to maintain.	Canada's Counter Memorial, ¶¶ 497-500; Canada's Rejoinder, ¶ 266.		<p>BRG Report, ¶¶ 87-91 and Attachment VII;</p> <p>Testimony of Christopher Goncalves, October 30, 2014, Tr. pp. 160:10-162:6 (explaining that the Claimant had failed to introduce evidence to justify their assumptions concerning the use of the GE 1.6 MW XLE);</p> <p>BRG Closing Summary Presentation Slides, slide 15 (showing that there was no specific harm caused by the domestic content requirements and that damages would be speculative).</p>

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
128.	The Claimant has failed to prove that it would have been able to obtain financing for its projects in accordance with the terms of the letter of interest from the US Ex-Im Bank to GE. The letter is not a commitment to finance, relates only to the TTD project, appears to be based on a cost that is significantly more expensive than those used by the Claimant here and contains a US domestic content requirement inconsistent with the FIT Program.	Canada's Counter Memorial, ¶¶ 502-504.	C-0377, Letter from Barbara A. O'Boyle (Export-Import Bank of the United States) to Steven W. Howlet, GE Capital Markets Corporate (Sep. 23, 2010) (indicating the provisional and limited interest of the Ex-Im Bank as well as the conditions for the potential financing).	Testimony of Robert Low, October 30, 2014, Tr. pp. 81:25-85:24 (admitting that the US Ex-Im Bank letter is not a commitment to finance and that it was only an expression of interest for the TTD project).
129.	The Claimant has failed to prove that it is appropriate to make a downward adjustment of its discount rate by 3.0% on the basis that the Claimant's projects faced essentially no development and completion risks. The Claimant's projects all suffered from significant development and completion risks and in particular the Claimant had no successful experience in bringing wind farms into operation.	Canada's Counter-Memorial, ¶ 507; Canada's Rejoinder, ¶ 270.	BRG-037, Deloitte, "Valuing wind farm developers" (Aug. 2011), p. 9 (discussing the project development risks for all wind projects). BRG-107, Letter from Samsung C&T Corporation to the Honorable Dalton McGuinty (Mar. 15, 2012) (showing that all wind projects faced development risks, even those of the Korean Consortium); BRG-073, Letter from the OPA to BRG (Feb. 28, 2014) (providing information on the number of projects that have yet to reach the Notice-To-Proceed stage and the number of projects that have missed their commercial operation deadline).	BRG Report, ¶¶ 75-81, 144-145, 149-154, 202-204 and Attachments X and XI; BRG Rejoinder Report, ¶¶ 99-112, 189-190; Testimony of T. Boone Pickens, October 26, 2014, Tr. pp. 250:6-252:1, 268:13-269:19 (admitting that the Claimant employed managers with no experience in wind farm development and that it never succeeded in bringing any wind farm into commercial operation); Testimony of Christopher Goncalves, October 30, 2014, Tr. pp. 164:4-165:10, 168:19-169:19 (explaining the risks faced by

No.	POST-HEARING SUBMISSION	PREVIOUS SUBMISSION REFERENCES	EXHIBITS / AUTHORITIES	WITNESS TESTIMONY
				<p>projects at the same stage of development as the Claimant's, and how such risks affect valuation);</p> <p>BRG Closing Summary Presentation Slides, slide 19 (showing the difference in the discount rate assumptions between Deloitte and BRG).</p>
130.	The Claimant has failed to prove that it is entitled to a size risk premium because its projects are less risky than those of larger more well-established companies.	Canada's Counter-Memorial. ¶ 506.; Canada's Rejoinder. ¶ 271		<p>BRG Report, ¶¶ 144-145, 199-201; BRG Rejoinder Report, ¶¶ 147, 186-188;</p> <p>Testimony of Christopher Goncalves, October 30, 2014, Tr. pp. 164:4-165:10, 169:20-171:16 (explaining the risks faced by projects at the same stage of development as the Claimant's, and how such risks affect valuation, and how the Claimant's projects were more risky, not less risky, than the proxy group analyzed by the Claimant);</p> <p>BRG Closing Summary Presentation Slides, slide 19 (showing the difference in the discount rate assumptions between Deloitte and BRG).</p>
131.	The Claimant has failed to prove the appropriate valuation date for its damages claims. None of the alleged	Canada's Counter-Memorial ¶¶ 129-133, 163, 179, 182, 216;	C-0400, Ontario Power Authority, FIT Contracts April 8-10 - Applicant Legal Name Order (Apr. 8, 2010) (showing that no FIT Contracts were awarded to projects of the size of the Claimant in this round of contract	Testimony of Cole Robertson, October 27, 2014, Tr. p. 103:9-15 (admitting that the Claimant

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	<p>breaches could have had any actual impact on its investments on the dates that it proposes because the Claimant's projects applied for FIT Contracts in the Bruce Region, and thus could not have received a FIT Contract prior to July 4, 2011.</p>	<p>Canada's Rejoinder, ¶¶ 272-273.</p>	<p>offers);</p> <p>C-0073, Ontario Power Authority, "Priority ranking for first-round FIT Contracts" (Dec. 21, 2010) (showing that the Claimant's TTD and Arran projects applied to connect in the Bruce Region of Ontario);</p> <p>C-0233, FIT CAR Priority Ranking by Region (Feb. 24, 2011), p. 1 (showing that the Claimant's TTD, Arran, North Bruce and Summerhill projects applied to connect in the Bruce Region of Ontario);</p> <p>R-102, Ontario Power Authority website excerpt: "February 24, 2011 - Second Round of Large-Scale Renewable Energy Projects" (Feb. 24, 2011) (showing that no FIT Contracts were awarded to projects of the size of the Claimant in this round of contract offers);</p> <p>C-0292, Ontario Power Authority, "FIT Contract Offers for the Bruce-Milton Capacity Allocation Process" (Jul. 4, 2011) (showing the first offers for FIT Contracts for projects proposing to connect in the Bruce Region).</p>	<p>understood that because of transmission constraints, it would have to wait for capacity on the Bruce-to-Milton line to be allocated in order to be able to compete for a FIT Contract)</p> <p>BRG Report, ¶¶ 165-167;</p> <p>BRG Rejoinder Report, ¶¶ 125-127, 139, 203-204;</p> <p>Testimony of Christopher Goncalves, October 30, 2014, Tr. pp. 162:24-164:3 (explaining why the only appropriate valuation date would be July 4, 2011, the date on which the Claimant's projects were not awarded a FIT Contract);</p> <p>BRG Closing Summary Presentation Slides, slide 18 (showing the difference in valuation date assumptions between Deloitte and BRG).</p>