

**IN THE MATTER OF AN ARBITRATION UNDER  
CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE AGREEMENT  
AND THE UNCITRAL RULES OF 1976**

**BETWEEN:**

**WILLIAM RALPH CLAYTON, WILLIAM RICHARD CLAYTON, DOUGLAS  
CLAYTON, DANIEL CLAYTON AND BILCON OF DELAWARE, INC.**

Claimants/Investors

**AND:**

**GOVERNMENT OF CANADA**

Respondent

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**REPLY WITNESS STATEMENT OF**

**MICHAEL G. WASHER**

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August 8, 2017

**I. INTRODUCTION**

1. This statement is supplemental to my witness statement dated December 8, 2016 (“My December Witness Statement”) and responds to parts of the Expert Report of SC Market Analytics dated June 9, 2017 (the “SCMA Report”).

**II. COSTINGS ADDRESSED IN SCMA REPORT**

2. In my December Witness Statement, I explain how I prepared detailed costing for the plant and infrastructure for the Whites Point Quarry. A copy of my detailed costing for the Whites Point crushing plant infrastructure titled “Plant/Infrastructure Costing [REDACTED]” is attached as Exhibit 1 to My December Witness Statement (the “Plant Costing”).

3. The SCMA Report’s discussion of the Plant Costing is largely premised on SCMA’s conclusion that [REDACTED]

Most of the SCMA Report’s response to the Plant Costing is therefore inapplicable.

4. Below, I address two points SCMA makes regarding costing that are not dependent, or necessarily dependent, on SCMA’s mistaken premise about the quantity of quarried rock that would have to be processed.

**A. CONTINGENCY**

5. The SCMA Report states that a “10% contingency should be added to the quarry’s onshore capital expenditures” (at p. 46). In fact, I included an approximately 10% contingency through the pricing information I used in the Plant Costing.

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**A. CONTINGENCY**

5. The SCMA Report states that a “10% contingency should be added to the quarry’s onshore capital expenditures” (at p. 46). In fact, I included an approximately 10% contingency through the pricing information I used in the Plant Costing.

6. The Plant Costing used manufacturers' and suppliers' budgetary pricing instead of quoted or contracted pricing. Budgetary pricing is the "starting" price provided by the manufacturer or supplier without any negotiation or the certainty of a contract. As such, the pricing is virtually always approximately 10% higher than the price that will be quoted or charged under a firm supply contract.
7. Additionally, in costing items requiring engineering (such as structural steel and foundations), I used the General Arrangements to establish surface areas and then applied a unit weight in pounds-per-square-foot. This calculation formed the basis for my final cost estimate. In my experience, this method results in a cost estimate that is approximately 10% to 20% greater than actual final cost.
8. The actual cost is therefore likely to be in the range of 10% less than indicated in the Plant Costing. As such, a 10% contingency is, in effect, already incorporated and was not – and should not be – added.

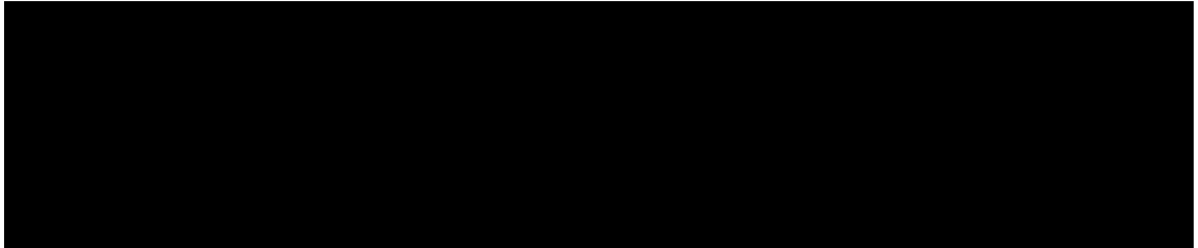
[REDACTED]

9.

[REDACTED]

10.

11.

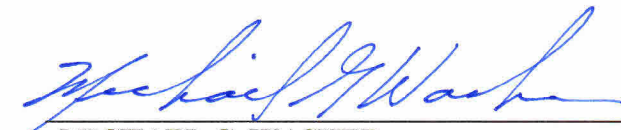


**III. “CLIMATE-RELATED” MAINTENANCE**

12. The SCMA Report states that maintenance costs for the plant should be “increased by a factor of 4% to account for climate-related issues” (at p. 46). No explanation of “climate-related issues” is included, and no specific information is provided in support of the “4%” factor.
13. In My December Witness Statement, I analysed the likely maintenance and repair costs associated with the plant and mobile equipment. I set out my conclusions in a chart titled “Maintenance/Replacement Cost Projection Criteria” (attached as Exhibit 4 to My December Witness Statement).
14. An analysis of projected maintenance costs includes, among other things, the anticipated effect of geography and weather. As such, when I analysed projected maintenance costs for the Whites Point Quarry, I took the plant’s location and exposure into account. These considerations were factored into my determination of a reasonable percentage of the original cost of equipment, as well as in my estimates of the percentage increases for maintenance as the plant ages (set out at pages 75 (plant) and 76 (mobile equipment)).

15. Accordingly, no additional amount for maintenance costs on account of geography, weather or “climate-related issues” should be added.

Dated: August 8, 2017

  
MICHAEL G. WASHER