

From: Christel Tham  
Sent: 05/12/2019 10:27:12  
To: 'Benjamin.Tait@international.gc.ca'; bappleton@appletonlaw.com;  
cavinder.bull@drewnapier.com; DBethlehem@20essexst.com; DBishop@kslaw.com  
CC: tennantclaimant@appletonlaw.com; EMullins@reedsmith.com; blove@reedsmith.com;  
MariaCristina.Harris@international.gc.ca; Johannie.Dallaire@international.gc.ca;  
Susanna.Kam@international.gc.ca; Darian.Bakelaar@international.gc.ca;  
Mark.Klaver@international.gc.ca; Annie.Ouellet@international.gc.ca; Lena.Yaali@international.gc.ca;  
Lori.DiPierdomenico@international.gc.ca; Diana Pyrikova  
BCC:  
Subject: RE: Request for Directions - PCA Case No. 2018-54: Tennant Energy, LLC (U.S.A.) v.  
Government of Canada

Dear Mesdames, dear Sirs,

I write on behalf of the Tribunal in the above-referenced matter.

The Tribunal acknowledges receipt of the Claimant's and Respondent's communications of 2 and 4 November 2019, respectively, regarding the Respondent's proposed Confidential Information designations in its Response to the Claimant's Request for Interim Measures, and exhibits R-021 and R-022.

The Tribunal notes that, after failing to reach an agreement within 21 days of the Respondent's response dated 12 November 2019, the Parties have submitted their Disputed Designations Schedule to the Tribunal for resolution, in accordance with paragraph 17 and Schedule 1 of the Confidentiality Order dated 24 June 2019. The Tribunal now considers it seized of the issue, and shall render a decision in this respect in due course.

As a separate but related issue, the Tribunal notes that the Parties disagree as to whether a further round of submissions on the disputed designations should be allowed.

In the Tribunal's view, the Respondent has raised in its response of 12 November 2019 arguments regarding Section 19 of the Ontario Freedom of Information and Protection of Privacy (the "FIPPA") that were not addressed in its initial submission of 9 October 2019, and that the Claimant has not had the opportunity to address. While the Tribunal recognizes that a further round of submissions is not expressly contemplated in the procedure set forth in Schedule 1 of the Confidentiality Order, paragraph 17 of the same Order provides that "[t]he Tribunal may invite further submissions on proposed designations of Confidential Information."

Having regard to the above, therefore, the Tribunal considers that it would benefit from hearing further from the Parties on this discrete issue, and directs that (i) the Claimant shall submit any comments it may have concerning the Respondent's arguments on Section 19 of the Ontario FIPPA by **Thursday, 12 December 2019**; and (ii) the Respondent shall submit any reply it may have to the Claimant's submission by **Thursday, 19 December 2019**.

Yours sincerely,  
Christel Y. Tham

Legal Counsel • Conseillère juridique  
Permanent Court of Arbitration • Cour permanente d'arbitrage  
Peace Palace • Palais de la Paix

Carnegieplein 2  
2517 KJ The Hague • La Haye  
The Netherlands • Pays-Bas  
Tel.: +31 70 302 4153  
Mob: +31 611 953 304  
Fax: +31 70 302 4167  
E-mail: [ctham@pca-cpa.org](mailto:ctham@pca-cpa.org)  
URL: <http://www.pca-cpa.org>

\*\*\*

This e-mail may be confidential and privileged and protected from disclosure. If you are not the intended recipient, please notify us immediately, you should not copy it or use it for any purposes, nor disclose its contents to any other person.

\*\*\*

Ce message est établi à l'attention exclusive de son destinataire et est confidentiel. Si vous recevez ce message par erreur, merci d'en avertir immédiatement l'expéditeur. Toute utilisation de ce message non conforme à sa destination, toute diffusion ou reproduction est interdite.

\*\*\*