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Subject: RE: Investor's Observations on public access to January 2020 hearing video - RE: PCA Case No. 2018-54: Tennant Energy, LLC (U.S.A.) v. Government of Canada

Dear Mr. President and Members of the Tribunal

Canada has asked the Tribunal to turn back the clock and to actively help Canada to hide hearing information that has been available to the public at a public hearing and on the internet. Canada's attack on transparency and public access is a serious attack on the fundamental principles of transparency and open government. If supported, there could be grievous damage to investor-state arbitration in general, and the legitimacy of the NAFTA Chapter Eleven investor-state arbitration process in particular.

After the Tribunal's last direction, the Investor believed that Canada was only seeking to address information arising in the non-public portions of the hearing. It is not clear that Canada is seeking to put the genie back in the bottle and have public information excised from transparent public access.

Clearly, the horse has left this barn. Information that has been disclosed to the public can no longer be considered as being confidential. That information is now part of the public realm. It cannot be considered confidential because with its disclosure, it is not confidential.

The fact that Ontario [REDACTED] as a matter of course was never a matter that merited being considered as a confidential matter.

Canada had time to address its concerns about any reference to [REDACTED] by Ontario after the hearing, Canada simply failed to comply with the procedures set out by the Tribunal in advance of the hearing. At this time, the existence of [REDACTED] by Ontario can no longer properly be considered as being confidential – and all such references must be made available to the public.

The public confidence in the NAFTA process would be tarnished by attempts to hide such public information. There is no urgency or secrecy related to the fact of [REDACTED]. The Investor is gravely concerned about the ramifications of "turning the clock back" and now ordering secrecy.

The Investor seeks an opportunity to respond in the event that the Tribunal is considering suppression of information that had been made public, This brief submission would not be necessary in the event that the Tribunal is not prepared to actively support Canada's attempt to hide previously-publicly disclosed information from the public.

The Investor awaits the Tribunal's direction, To be clear, the Investor is prepared to not file this further submission in the event that the Tribunal has sufficient information before it to determine this issue.

On behalf of counsel for the Investor

Barry Appleton
