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Sent: January-31-20 3:52 PM
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Cc: Cavinder.Bull@drewnapier.com; DBishop@kslaw.com; Daniel Bethlehem QC; Diana Pyrikova
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

Sent on behalf of Lori Di Pierdomenico

Dear Members of the Tribunal,

Canada wishes to clarify that the information which it seeks to designate as confidential in the hearing transcripts, and corresponding audio and video recordings, is information that has already been decided by the Tribunal in Procedural Order No. 3 to constitute “confidential information”. Canada is not seeking to designate additional information as confidential which has not already been decided by the Tribunal. Specifically, we note that there were two inadvertent disclosures during the oral hearing of such confidential information (Day 1, p. 10:19 and p. 80:24) where the term ██████████ was referred to in public session. As Canada explained at the hearing (Day 1, p. 14:16-20), the existence of the referenced documents is confidential and therefore these references are in need of redaction from the public record. Canada seeks only to redact the two inadvertent disclosures from the hearing transcripts, and corresponding audio and video recordings. We further note that Canada is in the process of reviewing the remainder of the transcript, in particular confidential sessions, with a view of ensuring that only information that falls within the definition of confidential information remains redacted.

To be clear, it is Canada’s position that the procedural hearing transcripts, audio recordings and video recordings that are posted on the PCA’s website must redact information that has been decided by the Tribunal to be confidential under Procedural Order No. 3. Otherwise, the Tribunal’s order and a Party’s designations would be rendered meaningless.

Moreover, Canada understood from the Tribunal that it would be given the opportunity to ensure the protection of information that has already been designated confidential, where it noted that “[a]fter the Hearing, a transcript obviously will be produced, and Parties will have an opportunity to designate things as confidential.” (Day 1, p. 81:1-3). Canada’s proposal to allow the Parties 30 days from the date of the procedural hearing to ensure their confidential information is properly redacted from the hearing record is consistent with paragraph 23 of the Confidentiality Order governing these proceedings, which allows the Parties 30 calendar days to designate information as Confidential in the transcript.

Yours truly,

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