

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

BETWEEN:

TENNANT ENERGY, LLC

Claimant

AND:

GOVERNMENT OF CANADA

Respondent

Witness Statement of Lucas McCall

September 21, 2020

Trade Law Bureau
Government of Canada
Lester B. Pearson Building
125 Sussex Drive
Ottawa, Ontario
K1A 0G2
CANADA

1. My name is Lucas McCall. I am a Deputy Director in the Asia Trade Policy and Negotiation Division at Global Affairs Canada (“GAC”).

2. From November 2010 until August 2017, I was with the Investment Trade Policy Division at GAC, serving as Trade Policy Officer from November 2010 to June 2013 and Senior Trade Policy Officer from June 2013 to August 2017. My responsibilities included providing trade policy advice on NAFTA Chapter Eleven cases, including the *Mesa Power LLC v. Canada* NAFTA Chapter Eleven arbitration (“*Mesa* arbitration”).

3. As part of my role working on the *Mesa* arbitration, I was tasked with ensuring that the GAC website page maintained for the purposes of the *Mesa* arbitration was up to date with all submissions filed in the arbitration. I can confirm that, as of May 8, 2013, the following submissions in the *Mesa* arbitration were publicly available on that website:

- Notice of Intent to Submit a Claim to Arbitration
- Notice of Arbitration
- Government of Canada Outline of Potential Issues
- Government of Canada Objection to Jurisdiction
- Government of Canada Request for Bifurcation
- Investor’s Response on Bifurcation
- Procedural Order No. 1
- Confidentiality Order
- Procedural Order No. 2
- Procedural Order No. 3

4. Attached as Exhibit R-030 is a true and correct copy of a version history screenshot of the *Mesa* arbitration page of the GAC website as of May 8, 2013.¹

¹ R-030, Global Affairs Canada, *Mesa Group LLC v. Government of Canada*, Webpage Screenshot, as of 8 May 2013, p. 1.

5. I can also confirm that, as of September 11, 2013, in addition to the documents listed in paragraph 3, the following documents were publicly available on the GAC website page maintained for the purposes of the *Mesa* arbitration:

- Investor's Answer on Canada's Preliminary Objections on Jurisdiction
- Procedural Order No. 4
- Procedural Order No. 5

6. Attached as Exhibit R-030 is a true and correct copy of a version history screenshot of the *Mesa* arbitration page of the GAC website as of September 11, 2013.²

7. From January 4, 2016 onward, GAC's practice was not to post submissions from NAFTA Chapter Eleven proceedings on the GAC website. Instead, to ensure Canada's transparency obligations under the NAFTA were met, GAC website pages maintained for NAFTA Chapter Eleven arbitrations directed visitors to the website of the relevant administering institution. As a result, from January 4, 2016 onward, the GAC webpage maintained for the *Mesa* arbitration directed visitors to the website of the Permanent Court of Arbitration.³

Dated: September 21, 2020



Lucas McCall

² **R-030**, Global Affairs Canada, *Mesa Group LLC v. Government of Canada*, Webpage Screenshot, as of 11 September 2013, p. 2.

³ Global Affairs Canada, *Mesa Group LLC v. Government of Canada* Webpage, available at: <https://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/diff/ mesa.aspx?lang=eng> [Accessed on September 21, 2020].