

**Global Affairs Canada**  
**Department of Justice**



**Affaires mondiales Canada**  
**Ministère de la Justice**

**CANADA**

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October 6, 2020

**VIA EMAIL**

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Dear Members of the Tribunal:

**Re: *Tennant Energy LLC v. Government of Canada***

Further to the email sent on behalf of the Tribunal dated September 30, 2020, Canada wishes to make a few additional comments on its decision not to pursue its request for the Claimant's damages model in native format. At the outset, however, Canada notes that in the majority of arbitrations under NAFTA Chapter Eleven to which Canada has been a party, Canada and the claimant have agreed to provide each other with their respective damages models in native format. When such information is exchanged, the receiving party does not have to spend resources attempting to re-create a model that already exists.

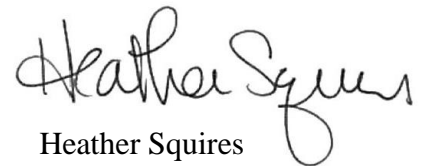
After reviewing the Claimant's submissions of August 28 and September 11, 2020, and the letter from Deloitte submitted by the Claimant on September 11, 2020, Canada consulted its clients and its damages experts and determined that consultations on this issue were highly unlikely to result in Canada obtaining the Claimant's damages model in native format. Moreover, consultations on this issue, beyond what the disputing parties have already submitted to the Tribunal, may have required Canada's experts to disclose their views on the report prepared by Deloitte well before Canada is required to file a counter-memorial, should this arbitration proceed to a merits and damages phase.

As a result, Canada decided not to pursue its request any further. Nonetheless, Canada remains of the view that sharing damages models is the most efficient and cost-effective way forward.

Canada's decision not to pursue its request should not be viewed as evidence that it no longer sees value in obtaining the Claimant's damages model in native format. In this regard, the Claimant's request for "an order dismissing Canada's motion with prejudice" should be denied. As Canada indicated in its response to the Claimant on September 23, 2020, Canada would like to keep the channels of communication open between the parties, even if Canada does not wish to pursue its request any further at this time.

Finally, with respect to an award of costs in relation to its motion, Canada notes that the Tribunal has so far reserved its decisions on matters of costs to a later stage of the proceedings. Therefore, Canada does not consider that the Tribunal needs to make a costs order at this stage, and in any event, given that Canada decided not to pursue its request for well justified reasons, no costs are warranted. In this regard, Canada will have its own representations to make with respect to costs that it has incurred as a result of the Claimant's motions and excessively long replies, including costs related to the Claimant's refusal to produce its damages model in native format, when the appropriate time comes. For now, Canada simply notes that each disputing party has control over its litigation strategy and that it is the Claimant that decided to file lengthy submissions on an issue that, in most cases, is easily and amicably resolved between opposing counsel. Canada should not be required to pay the costs of the Claimant's litigation strategy.

Yours very truly,



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