

**IN THE MATTER OF AN ARBITRATION UNDER THE UNCITRAL
ARBITRATION RULES AND THE TREATY BETWEEN THE
GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE
GOVERNMENT OF CANADA UNDER THE NORTH AMERICAN FREE TRADE AGREEMENT**

Tennant Energy LLC.

INVESTOR

v.

Canada

RESPONDENT

WITNESS STATEMENT OF JOHN C. PENNIE

August 7, 2020

First Witness Statement of John C. Pennie

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I. INTRODUCTION

1. My name is John C. Pennie. I am a member of the management board of Tennant Energy LLC, the Investor in this arbitration, and the client representative in this arbitration. I was also a director and officer of Skyway 127 Energy Inc, the investment described in this arbitration.
2. I expressly consent to the use and processing of my personal data, in or related to this witness statement, being used by the arbitration participants for this dispute, including its subsequent consideration and enforcement.

3. I wrote this witness statement in the English language and would testify in English if called before the Tribunal. I believe that the contents of this statement are correct. The information set out in this statement arises from my own personal knowledge and experience as a wind power developer and an officer and director of Skyway 127 Energy Inc and a director of Tennant Energy LLC. If I rely upon another source for my information in this statement, I have specified the basis for that knowledge or belief in this statement.
4. Before this NAFTA arbitration started, I had no contact or knowledge of the members of the Tribunal or the Secretariat at the Permanent Court of Arbitration. I had no prior relationship with counsel for the Respondent or the Claimant, outside of that related to this arbitration. I also had no previous relationship with the experts at Deloitte, who are conducting the expert valuation on damages in this case.
5. As discussed more thoroughly below, my first inquiry to my counsel, Barry Appleton, was on June 1, 2015. I met Mr. Appleton on or about June 16, 2015. My first contact with Edward Mullins from the Reed Smith law firm was in the summer of 2015, after meeting Mr. Appleton. I first met counsel for the Government of Canada at the first procedural meeting in this arbitration. I have no relationship outside of this arbitration with any of the counsel or members of the Tribunal.

II. MY BACKGROUND

6. I am 81 years old. I reside at 3030 Concession Rd 3, Adjala, Hockley Valley, Palgrave, Ontario, which is about one hour north of the Greater Metropolitan Toronto area. I have been a business executive for more than 40 years.
7. I was the senior executive at Windrush Energy, a renewable wind energy developer based in Ontario. As the senior executive, I was responsible for the day to day development of the wind project at issue in this NAFTA Arbitration, Skyway 127 Wind Energy Inc. ("*Skyway 127*").
8. Tennant Energy, LLC ("*Tennant Energy*"), is a California limited liability corporation. It owns and controls the Skyway 127 wind project that is at the heart of this NAFTA arbitration. I am a member of the Tennant Energy Board of Management. I am the representative of the Investor in this NAFTA arbitration.

9. I attended business school at Huron College at the University of Western Ontario. I completed a Certificate in Industrial Management at the Richard Ivey School of Business at the University of Western Ontario in 1966. I also attended night classes in business and psychology at McGill University in Montreal, Quebec, between 1967 and 1969.

A. Corporate Involvement

10. From 1961 to 1973, I held positions as Advertising, Merchandising and Marketing Managers. I worked for several companies in Montreal and Toronto during this time. One of the companies for which I worked was General Electric in the GE Major Appliance Division in Montreal and in the GE Consumer Electronics division and the GSW Moffat division, both in Toronto.
11. In 1981, I founded Omnibus Computer Graphics Inc., which became a leader in the newly established business of computer simulation. While I was President & CEO of the company, the company achieved a 25% of the global market share for this segment – reaching \$55 million in revenues. The company had 225 IT employees located in New York, Los Angeles, and Toronto. Omnibus received awards for pioneering work in 3D software and won first place prizes in all categories at the 1985 World Computer Graphics Conference. The company was involved in major motion pictures including: *Star Trek II: The Wrath of Kahn*, *2010*, *Explorers*, *Flight of the Navigator*, and *Moonstruck*.
12. In 1990, I became the President of Eco Corporation, an energy services company. As President, I restructured the company and took it from its prior product launch losses of \$16 million to turning the company around. The company later began operating as American Eco Corporation ("AEC"), from 1995-1999 with Governor Mark White, a former Governor of the state of Texas, being appointed as Chairman. While I was Executive Vice-Chairman, I worked with the management team to acquire related oil field infrastructure and service companies in Canada and the USA, increasing total revenues to \$400 million. ACE constructed the Sable Island gas platform at its Halifax facility.
13. From 1999-2001, I was a non-executive Vice-Chairman and had semi-retired from most AEC operations, but was called upon by the Board to help AEC deal with its acquisition in 2000 of a large "smokestack" company, Dominion Bridge. Dominion Bridge required major restructuring and massive capital infusions. AEC was unable to make Dominion Bridge viable and AEC's business units were sold off and ceased operations as well.

14. In addition to my business activities, I have been deeply involved in philanthropic organizations supporting education in art. I served as the first Chairman of DAREarts Foundation Inc. for children, from 1994-2006 and Vice-Chairman of the DAREarts Foundation from 2006 -2018. DAREarts supports multicultural arts education programs for children from underserved communities. I am very proud of the work that DAREarts has done, in helping change the lives of thousands of Canadian children.

B. Wind Power Experience before the FIT Program

15. I realized that I was not ready for retirement. After 2002, I transitioned into the renewable energy business. I have developed nine energy projects in Ontario, Canada alone.

16. In 2002, I commenced the development of the three Ontario-based renewable energy wind projects in Ontario through my company, Windrush Energy. These projects were 10-Megawatt projects operating under a predecessor of the FIT Program – known as the RESOP program. Some of the RESOP renewable wind energy projects were in the Grand Valley and Dundalk area, north of Toronto:

- a) Grand Valley Wind Farms Inc. was a 9.8 MW project (RESOP 10066, Nov 27, 2006), and
- b) Ashton Ridge Wind Farms Inc. was a 9 MW (RESOP 10036).

17. We originally had partnered with Creststreet Wind Power Development (II) LP subsidiary on these two RESOP projects. They were later repurchased back by the founders and the energy projects were completed in 2012 with nine Siemens 2.3 MW turbines.

18. As a wind farm developer, we developed many projects and identified appropriate wind development sites. We obtained land leases from local landowners and site plans. We would then continue the project with the FIT Application filing, or we would sell the project to a third party. We developed many wind farms projects in Ontario that we sold before completion. Some of these included:

- a) Silver Springs (also known as Flesherton Wind Energy Inc.) was a 10 MW (RESOP 10042, March 6, 2007) project. My company developed this project to the Evaluation Service Report (ESR) approval stage. After completion of ESR approval, our company sold this

project to Energy Farming, a German-controlled company, who subsequently became responsible for completion of the project.

b) We also sold two other projects to Energy Farming; Skyway 124 Windrush Energy Inc was a 10 MW (RESOP 10480, March 26, 2008) and Skyway 8 Wind Energy Inc, another 10 MW – (RESOP 10030, March 6, 2007). The Skyway 8 Project was eventually completed with the installation of two Vesta 2.0 MW turbines by Capstone Infrastructure.

19. The 100 MW Skyway 9 Wind project was a large project for which we assembled 4,400 acres of land leases. We entered into a letter of agreement to sell this site to the Samsung Consortium (Pattern Renewable Holdings Canada ULC) on July 26, 2010. They paid an initial deposit to purchase the project but did not go through with it when they decided to develop an adjoining project due to transmission constraints in the Orangeville area. As a result, the Skyway 9 project did not proceed.

20. Another project, Skyway 125 Wind Energy Inc., a 10 MW project (F-000579-WIN-130-601 April 20, 2010), was unsuccessful. [REDACTED] investment in the project was acquired by GE Energy (USA) on August 23, 2011. However, the project was unsuccessful because the investors subsequently failed to meet a FIT contract deadline.

21. On other projects, we were able to undertake other wind energy developments. For example, Skyway 126 Wind Energy Inc. - a 10 MW wind project (F-000606-WIN-130-601 April 23, 2010) - was sold to a public company, Wind Works Power Canada Inc. on October 19, 2009. The wind project continued in 2016 under a joint venture development with Capstone Infrastructure.

22. I became the Chair of Windworks Power Corp, a public company operating 16.5 MW at the Wald wind project in Germany, from 2009 to 2010. As a result of this position, I was exposed to renewable energy projects in Europe in addition to my experience in Canada.

23. I also had the opportunity to sit on the Ontario IESO Renewable Energy Standing Committee.

C. The Ontario FIT Program

24. The Ontario government launched its renewable energy Feed-in-Tariff Program ("*FIT Program*") in 2009. The FIT Program was designed to guarantee electrical grid access to renewable energy

producers. Successful applicants would receive a Power Purchase Agreement from the Ontario Power Authority ("OPA"), which allowed an applicant to have a set electricity purchase price over a twenty-year period. To be offered this contract, the applicant would have to have the financial ability and sufficient transmission capacity available to connect the project. All projects were to be assessed within sixty days of a complete application.

25. Skyway 127 sought 100 MW of transmission access for the purpose of obtaining a twenty-year renewable energy Power Purchase Agreement under the FIT Program. I filed the FIT application for Skyway 127 on November 27, 2009. The application was for 100 MW of wind power. Our wind site was next to Lake Huron in the Bruce Transmission zone.
26. The Bruce to Milton Transmission Project would allow successful applicants to receive contracts in the region from Bruce County to Milton, Ontario. There was supposed to be 1,200 MW of renewable energy contracts offered for this area.
27. The Ontario Feed in Tariff process was a rules-based process where companies would be entitled to seek long-term renewable power contracts. The terms of the FIT Contracts were generous. They were of a twenty-year duration with a fixed contract price that was targeted to bring an 11% return on capital.
28. I reviewed the FIT Rules before we issued our launch period application. There were a number of OPA FIT seminars and information sessions. I attended all of them in person and raised questions during the sessions as well. I relied upon the information that I learned at the FIT information sessions to guide investments in the Ontario Wind Energy sector.
29. I understood from attending FIT Program information workshops that all available transmission would be applied for FIT Contracts. Further, the OPA confirmed that it would expand transmission access if necessary, for FIT Contracts. I relied upon the FIT Rules and the information provided by the OPA when making the FIT application.

30. The initial round of priority ranking took place in December 2010. According to evidence provided in the Mesa Power NAFTA Claim, over 10,000 MW were received in the FIT Applications.¹
31. A public list of projects was released by the OPA on December 21, 2010, setting out the FIT applicant projects that had available transmission access.² This was known as the "dry run." I understand from the OPA that thousands of applicants for FIT Contracts. Skyway 127 was highly ranked as it placed sixth out of the many thousands of applicants. The OPA announced that 1,200 MW of transmission access would be available for the Bruce Region in the next round of FIT contracts. Our project was within the transmission limits according to the publicly issued materials detailing the Transmission Access Test ("TAT") and the Economic Connection Test ("ECT") on June 6, 2011.
32. Companies with projects within the available access would obtain FIT contracts when they were awarded. While we had placed into the group of successful candidates during the "dry run," we were unfairly not awarded the FIT contract.
33. Projects without transmission access could not obtain a FIT Contract. As I noted above, Skyway 127 obtained sixth ranking in the priority position for transmission access (and thus contracts) in the Bruce to Milton Transmission area. Even with the five other applicants ahead of us, we were in a very strong position as the applicants ahead of us only sought 280 MW of transmission access. The OPA confirmed that there was at least 1200 MW of available transmission access for wind projects in the Bruce Region.
34. Our 100 MW project and its sixth priority rank confirmed that Skyway 127 would fit solidly within the available transmission access. This transmission quota would be available to accommodate those applicants ahead of us, and even for applicants with lower priority positions who were behind us.

¹ *Mesa Power Group LLC v. Government of Canada* (PCA Case No. 2012-17), Investor's Post Hearing Brief, 18 December 2014, ¶159, refers to testimony from two senior Ontario Government Energy officials stating "True to the OPA's expectations, both Mr. Jennings and Ms. Lo admitted during the hearing that the FIT program received an overwhelming response with close to 10,000 megawatts in applications by November 30, 2009, during the launch period." **C-017.**

² Bruce Transmission Project Rankings, 21 December 2010, **C-104.**

III. SKYWAY 127

35. Our most promising large-scale FIT Project was Skyway 127. It was one of most highly ranked projects in the Ontario renewable energy FIT Project process, which is described in much more detail below.
36. Skyway 127 was a wind farm project in Bruce County, Ontario. This project is located in the Municipality of Arran-Elderslie, Bruce County, Ontario, and situated on agricultural land. Development of the project started in 2008 when the first land option contract was signed and has been ongoing. The project had 39 properties comprising 6,617 acres under option as of September 2011. The project was a joint venture between Windrush Energy partners, ██████████ ██████████ of the Netherlands, and GE Energy LLC USA. I was the Chief Operating Officer of Skyway 127 in addition to my role with Windrush.
37. We submitted our FIT application for the Skyway 127 Wind Energy Inc. wind project on November 27, 2009. We bid for 100 MW of wind power. The application was numbered FIT-F020180.
38. When the FIT Rules were released, we recognized that it was essential to submit the projects during the "Launch Period," to maximize the likelihood that the Skyway 127 project would receive a FIT contract. Skyway 127 wanted to be successful and so we proposed sites with strong wind capacity, were ready to commence generation as early as possible, and already had secured a supply of turbines as required by the FIT Program.
39. Skyway 127 was prepared to comply with the FIT Rules. As the wind developer, I expected that because our project had the technical abilities, and successfully met the FIT Program requirements, we would succeed in obtaining a contract.
40. We entered a large number of wind leases with local farmers to prepare for the application. Windrush was the wind developer and worked closely with the other investors to develop the Skyway 127 project.
41. I signed some of the FIT Application documents as CEO of Skyway 127, along with Derek Tennent, who was the President of Skyway 127 Energy Inc.

42. A public list of projects was released by the Ontario Power Authority in December 2010, setting out the projects that had available transmission access. This was known as the "dry run." Companies with projects within the available access would obtain FIT contracts when they were awarded. While we had placed into the group of successful candidates during the "dry run," we were unfairly treated and not awarded the FIT Contract.
43. I believed that the province of Ontario presented an excellent opportunity for investment in renewable energy. The passage of the *Green Energy and Economy Act* in the Spring of 2009, and the subsequent announcement of the FIT Program in September 2009, confirmed that Ontario was serious about renewable energy.
44. When we selected our wind-project sites in Ontario, we took several factors into consideration. Primarily, our team looked for locations that had an abundant and reliable supply of wind and access to available transmission. We engaged local staff with on-the-ground knowledge, expertise, and experience specific to the local markets in which we sought to operate.
45. Our development partners undertook an analysis of the Skyway 127 project showing that the Skyway 127 project would be economical as designed.

A. The Skyway 127 Partners

46. [REDACTED] was an initial investor in the Skyway 127 project.³ Derek Tennant was the President of Skyway 127 Energy Inc. and [REDACTED] was his personal holding company.
47. Derek Tennant transferred his interest in Skyway 127 (held through [REDACTED]) to his brother, John Tennant, on April 19, 2011. At the time, we were very busy at Skyway 127 with the FIT Applications, and John's shares were not registered in the Skyway 127 corporate books until June 20, 2011.

1. Tennant Energy LLC, and its predecessor company

48. John Tennant is an American citizen residing in California.⁴ John Tennant first acquired the rights to Derek Tennant's [REDACTED] interest in Skyway 127 on April 19, 2011. As discussed above, the

³ Shareholder's Ledger Skyway 127, 18 October 2007, **C-140**.

⁴ John H Tennant US Passport Document, 19 August 1993 to 14 September 2019, **C-119**.

share transfer between John and his brother Derek was not registered in the Skyway 127 company records until June 20, 2011.⁵ This was done while we were awaiting the FIT Launch Period Contract announcement for the Bruce Transmission zone. John Tennant told me that he was holding the Skyway 127 shares as a bare trustee for a corporation to be named. Eventually all the shares were registered into a California LLC holding company, that would be later known as Tennant Energy LLC. John Tennant acquired another [REDACTED] interest in Skyway 127 on December 30, 2011, for a total of [REDACTED].⁶ As I noted above, all these shares were initially held by John Tennant (as a bare trustee). In 2015, the intangible rights to Skyway 127 beneficially held by John Tennant on behalf of the company were registered over to a company -Tennant Travel LLC.⁷ John Tennant held the Skyway 127 shares from [REDACTED] and the ones later issued to him from Skyway 127 in December 2011 in trust for the benefit of the still undesignated holding company. Eventually, John Tennant used the existing California limited liability corporation set up by his brother Jim Tennant to acquire and maintain John's investment in Skyway 127. Skyway 127 registered the transfer as directed by the John Tennant.

49. Tennant Energy LLC initially was a wine tourism-based investment operated by Jim Tennant, John's brother, and original business partner in this company. Tennant Travel's registered office is at 27 Edgefield Ct, Napa, California, 94558. John and Jim often worked on projects together. Jim Tennant is also an American citizen and a resident in California.

50. On January 15, 2015, Tennant Travel Services, LLC received shares, bringing its total interest in Skyway 127 to [REDACTED].⁸ In 2015, Tennant Travel renamed the company to Tennant Energy. There was no change in the address of its registered corporate office arising from the name change. John Tennant, Jim Tennant, and I are members of Tennant Energy's Board of Management. Derek Tennant was the President of Skyway 127, and I was a member of the Skyway 127 Board.

51. Since June 2011, the interests of Tennant Energy have effectively controlled the Skyway 127 Investment. [REDACTED] vacated its active role. General Electric became a completely silent partner – simply focusing on the wind turbine orders and its commitment to provide equity for the entire project. By comparison, the members of the Tennant Energy board of

⁵ Shareholder's Ledger Skyway 127, 20 June 2011, **C-117**;

⁶ Shareholder's Ledger Skyway 127, 30 December 2011, **C-114**.

⁷ Skyway 127 Energy Inc Shareholder's Ledger, 15 January 2015, **C-115**;

⁸ Skyway 127 Energy Inc Shareholder's Ledger, 15 January 2015, **C-115**;

management, namely John Tennant were in control of the day to date decisions. By January 2015, Tennant Energy had nearly █████ of the voting shares but it effectively exercised 100% of the control over the company.

2. █████

52. █████ was a Dutch energy investment corporation. They were keenly interested in renewable energy development and the Ontario FIT Program.

█████ had worked on a vast number of wind projects in Europe, America, and Canada.

53. Pim de Ridder was Managing director of █████ and the lead for them on the Skyway 127 Project. Mr. de Ridder had extensive experience in the development of wind farms. █████ developed over 800 MW of renewable energy projects in Ireland, the Netherlands, Norway, Canada, and the United States.

3. The General Electric Consortium

54. **GE Energy LLC** ("*GE Energy*") is a global business of the General Electric group of companies. Through GE Energy, GE carried out Power Projects of all sizes, complexities, and under many different projects, structures incorporating technologies as diverse as wind, solar, thermal, and nuclear generation. GE Energy acts in part through GE Energy, LLC, of which General Electric Company is the ultimate parent.⁹

55. GE Energy was an original partner in the Skyway 127 project. I understood from our discussions with GE Energy that General Electric (the parent company), GE Energy and GE Capital had a consortium arrangement, working in joint venture amongst themselves on the Skyway 127 project. All these companies were American. In the Skyway 127 FIT Application, GE noted that it usually took the following approach to wind development projects:

- Preliminary wind resource evaluation
- Site visit and evaluation to include:
 - o Transmission
 - o Access, construction
 - o Power market
 - o Wind speeds

⁹ Letter from Mandar Pandit, GE Energy sent with Skyway 127 FIT Application, 24 November 2009, **C-161**.

- o Various permitting
- Land easement negotiation
- Install anemometers, collect wind data
- Complete the permitting process
- Power purchase agreement
- Turbine sale agreement
- Commence construction¹⁰

56. At the time of the making of the FIT Application in 2009, there was a global scarcity of wind turbines. Having GE Energy initially as a co-investor partner was crucial, not only given General Electric's financial commitment to the project and technological capabilities but also because General Electric was to be the supplier of our wind turbines. General Electric put its corporate resources behind our bid. General Electric's equity arms were available to provide capital for our project, and General Electric would supply our wind turbines through GE Energy. At that time, there was a global shortage of wind turbines, so this strategic alliance was beneficial for the Skyway 127 wind development.

57. GE Energy had guaranteed Skyway 127 a supply of the GE 2.5 MW turbines, and they were fast-tracking us to obtain delivery of the more efficient and newer 2.75 MW GE turbines. The 2.5 MW wind turbines were FIT Program compliant for local Ontario Content when we filed our FIT Application. Later, the 2.75 MW turbines would also meet the Ontario Content requirements. If the 2.75 MW turbines were compliant, we would certainly want to use them.¹¹ GE Energy carefully assessed the economics of our project and decided that it wanted to be a full co-investor in it. GE Energy would make more money as an investor with the 2.75 MW wind turbines, so we were confident that we would be able to obtain these wind turbines by the time that we needed them. GE Energy held an equity position in the Skyway 127 project (that position was increased while the FIT Program was underway). GE and its corporate subsidiaries (such as GE Energy) had financial incentives to optimize the economics of the Skyway 127 project. GE's objectives were well aligned with Skyway 127's.

¹⁰ Letter from Mandar Pandit, GE Energy sent with Skyway 127 FIT Application, 24 November 2009, **C-161**. Skyway 127 had its own existing local suppliers and experts for many of these services who had worked with Windrush on other Ontario wind projects – but the added input from General Electric was helpful even in areas where we had experience and expertise.

¹¹ The “Buy Ontario” FIT Program local content requirements in the FIT Program were later withdrawn. I understand from my lawyers that this modification occurred after the World Trade Organization ruled against the Ontario FIT local Content rules in a WTO dispute brought against Canada.

58. Over time, GE Energy became less involved in decisions on the Skyway 127 project. GE Energy's attention was primarily focused on the sale of GE wind turbines and the provision of equity. General Electric also went through a massive corporate reorganization that affected the attentions of GE Energy. Tennant Energy exerted its own control over the Skyway 127 project without objection or interference from GE Energy or any other part of General Electric
59. The Skyway 127 project was very desirable. Our competitors were interested in obtaining our project. Specifically, Samsung and KEPCO (the Korean Consortium) were interested in obtaining our project. A land swap agreement was entered into with the Korean Consortium's local wind partner (Pattern Renewable Holdings Canada ULC) on December 10, 2010, to acquire the Skyway 127 project. Pattern subsequently terminated this deal. When this deal fell apart, it became clear that ██████████ was no longer prepared to continue as a participant in the project, and after a debt settlement between ██████████ and GE, GE became a ██████ partner in Skyway 127 on December 30, 2011.
60. On July 4, 2011, FIT Contracts were awarded. The 750 MW Bruce region transmission limit prevented us from obtaining a FIT Launch Period offer as we were the next project in line for a FIT Contract. Furthermore, wind projects in the West of London area were given part of the overall 1050 MW of transmission – which resulted in us not having enough transmission capacity for a FIT Contract. Also, the regional connection change meant that connections from out of region were allowed into the Bruce region, allowing others to take our priority place for projects that had already failed the FIT Program priority rules. The biggest winners were those who had close ties as cronies or key supporters of the Liberal Government based in another transmission region.
61. Although we were not offered a contract on July 4, 2011, we were informed in a letter sent from JoAnne Butler, the Vice President of OPA, that we would remain in the running for a FIT Contract.¹² So while we were not rejected on July 4, 2011 – we did not receive a contract on that date.
62. Because of our very high priority rating, we believe that it was likely that Skyway 127 would be offered a FIT Contract. We knew that the OPA was supposed to offer all available transmission capacity to FIT Program Applicants. We also suspected that more transmission capacity would be

¹² Letter from JoAnne Butler, OPA to John Pennie, Skyway 127, 4 July 2011, **C-149**.

announced on the new Bruce to Milton transmission lines. We waited on the priority waitlist for a contract and continued our investment in Ontario.

63. Because of our history of successful wind power development and our strategic alliance with General Electric, we had a group of specialist providers available to assist us with technical and specific jobs that would need to be addressed once a FIT Contract was approved.

B. GE Energy's Priorities Change

64. GE Energy patiently waited for the FIT priority waitlist to clear. Eventually, GE Energy's operations were wound up in a major global corporate restructuring of General Electric.

65. Tennant Energy acquired a more significant position in the Skyway 127 project from GE Energy. Tennant Energy became a larger shareholder of Skyway 127.

66. Tennant Energy is the successor in interest to the equity investments of ██████████, John Tennant (as trustee for the LLC), and GE Energy. To be clear,

- a) Tennant owned virtually all of the shares in the corporation when it made the NAFTA claim on June 1, 2017.
- b) Tennant owned more than ██████ of the shares in Skyway 127, and it controlled Skyway 127 before the date that the NAFTA claim arose on August 15, 2015.
- c) Tennant owned and controlled the Skyway 127 shares at the time that the claim was filed, and still holds those shares today.

67. On June 30, 2016, GE Energy later transferred its shares in Skyway 127 to Tennant in exchange for consideration, including the irrevocable right to sell wind turbines to it if Skyway 127 is awarded a renewable energy contract by Ontario. GE Energy always was interested in this project and even without continuing its shareholding, GE Energy was supporting the Skyway 127 Project through its commitment to provide wind turbines.

68. After Tennant acquired GE Energy's interest in Skyway 127 in June 2016, Tennant owned almost all of the shares in Skyway 127, and Tennant continued to control Skyway 127. I have been the senior executive of Tennant since it took over control of the Skyway 127 project.

69. Tennant Energy and GE Energy were always US corporations during the period that they held investments in Skyway 127. John Tennant was, and continues to be, an American citizen. Tennant Energy has continued to continuously be a California Limited Liability Corporation while it held investments in Skyway 127.

C. Learning about Ontario's unfair Measures

70. As more fully described later in my witness statement, shortly after August 15, 2015, we first became aware of the actions taken by Ontario to harm Skyway 127, and other FIT Proponents in the Bruce transmission zone who relied upon the FIT Rules. I learned of information of a government systemic process to favor certain protected friends of the Government. In this Program, the Government ensured that unfair benefits were granted to their friends and supporters – at the cost of those, like Skyway 127, who invested and followed the FIT Program Rules. I could not have known about these measures without reading the public version of the documents published on August 15, 2015.

71. I later learned even more from watching the video recordings of the hearings on the PCA website. These videos did not remove information that had been blacked out in the public Mesa Power NAFTA hearing transcripts. As a result, I was able to learn more about the extent of the systemic unfairness perpetuated by a variety of government officials that had been coordinated at meeting such as the “Breakfast Club” where officials and political elites met to reward friends and supporters of the Government.

D. CONTRACT OPPORTUNITY DELAYED BY LACK OF ECONOMIC CONNECTION TEST

72. We expected the FIT Program to unfold in a manner that corresponded to the FIT Rules. As the FIT process advanced, it did not proceed in that manner. It deviated from the FIT rules, and the representations the OPA made.

73. FIT proponents like Skyway 127 were aware that applicants required an Economic Connection Test (ECT) to receive the FIT contracts we were applying for. In a letter that Skyway 127 received from the OPA on April 8, 2010, the OPA indicated that the ECT for the Bruce Region would occur

in the summer of 2010.¹³ The FIT Rules provided for an ECT to take place every six months.¹⁴ The OPA made various representations that the ECT would take place. No contracts could be issued until after the ECT took place and as a proponent in the FIT Program, we relied on the OPA's assurances as we awaited the delayed decision on FIT Contracts.

74. On May 19, 2010, the Ministry of Energy held a webinar that discussed the process for the ECT that was scheduled for the summer of 2010.¹⁵ The presentation confirmed our understanding of the ECT process that was set out in the FIT Rules.

E. June 3, 2011, New FIT Program Rules

75. On June 3, 2011, the OPA issued a new set of rules to award contracts in the FIT Program. The OPA did this without any prior notice being given to us. These new rules made significant changes to the FIT Program and the already existing rankings in the different regions.

76. The OPA awarded only 750 MW of the FIT Program contracts in the Bruce Region transmission zone under the new rules. There was more than 1200 MW of transmission access available in the Bruce Region. In fact, while preparing to make this witness statement in July 2020, I saw a video of the testimony of Bob Chow from the Ontario Power Authority during the Mesa Power NAFTA hearing. This video was posted on the website of the Permanent Court of Arbitration for public access. In this video, [REDACTED] I heard that the Ontario Minister of Energy directed the OPA not to make more than 750 MW of transmission access available even though there was more supply.

F. All Transmission should have been awarded to FIT Contracts

77. The December 2009 FIT Program announcement stated:

The basis of the FIT program is having the system built to accommodate all generators who wish to connect. If transmission and/or distribution capacity is not available, and a project

¹³ FIT ECT Process Information Letter, 8 April 2010, **C-150**.

¹⁴ OPA, *FIT Rules Version 1.1*, 30 September 2009, section 5.4(a), **C-162**.

¹⁵ Ontario Power Authority presentation, "The Economic Connection Test - Approach, Metrics and Process", 19 May 2010, **C-136**.

*meets certain economic and technical criteria, the system will be expanded to connect the project.*¹⁶

78. During the Mesa Power Hearing, this clear and express obligation on Ontario to make transmission capacity available to FIT Applicants was clear. In preparing this statement, I was able to identify other statements that also support my expectation. For example:

*The Investor's Post Hearing brief indicates that the issue was described as "No ability to hold capacity back".*¹⁷

79. The Mesa Power Investor's Post Hearing brief reports that:

*The Green Energy Act includes the right-to-connect. If the transmission capacity is not available and projects meet certain technical and economic criteria, the system will be expanded to connect them.*¹⁸

80. The public version of the Mesa Power Investor's Post-Hearing Brief confirms that [REDACTED]
[REDACTED]
[REDACTED] before Ontario unfairly decided to reduce the amount of available transmission in the Bruce Region through a mandate from the Minister:

*OPA has little ability to withhold amounts discovered due to wind diversity ... and is obligated to reveal the 150MW of additional capacity in the Bruce when the next steps for ECT are announced.*¹⁹

81. The June 2011 Ontario Ministry Direction to reduce the amount of available transmission for the FIT Program²⁰ went entirely against my expectation of how the FIT Program was to operate. It

¹⁶ FIT/Micro FIT Announcement, 15 December 2009, p.3, **C-175**.

¹⁷ *Mesa Power Group v. Government of Canada* (PCA Case No. 2012-17), Day 3 Part 4 Hearing Video (Public), Discussed at 0:27:44:("No ability to hold capacity back"), **C-201**; referenced in: *Mesa Power Group v. Government of Canada* (PCA Case No. 2012-17), Investor's Post-Hearing Brief (Public Version), 18 December 2014, Footnote 435 at ¶338, **C-017**

¹⁸ *Mesa Power Group v. Government of Canada* (PCA Case No. 2012-17), Investor's Post-Hearing Brief (Public Version), 18 December 2014, Footnote 435 at ¶338, **C-017**: Ministry of Energy presentation, "DRAFT ECT Design Considerations", p.8 [**CONFIDENTIAL**] referenced in: *Mesa Power Group v. Government of Canada* (PCA Case No. 2012-17), Day 3 Part 4 Hearing Video (Public), Discussed at 0:27:44: ("No ability to hold capacity back"), **C-201**; referenced in: *Mesa Power Group v. Government of Canada* (PCA Case No. 2012-17), Investor's Post-Hearing Brief (Public Version), 18 December 2014, Footnote 435 at ¶338, **C-017**.

¹⁹ *Mesa Power Group v. Government of Canada* (PCA Case No. 2012-17), Day 3 Part 4 Hearing Video (Public), 28 October 2014, **C-201**; *Mesa Power Group v. Government of Canada*, (PCA Case No. 2012-17), Day 3 Part 4 Hearing Video (Public), Screenshot at 0:36:43, **C-216**: Also Referenced in: *Mesa Power Group v. Government of Canada* (PCA Case No. 2012-17), Investor's Post-Hearing Brief (Public Version), 18 December 2014, Footnote 435 at ¶338, **C-017**.

²⁰ Directive from Minister of Energy, the Honourable Brad Duguid to Colin Anderson, CEO, Ontario Power Authority, 2 June 2011, **C-176**.

was grossly unfair and lacked evenhandedness, given the extensive investments that we had to make to participate in the FIT Process.

82. I reviewed Shawn Cronkwright's video during his testimony at the Mesa Power NAFTA Hearing. He shared my view that it was not within the OPA's Power to restrict the contract awards if there was available transmission. Mr. Cronkwright, an OPA official, wanted to be ordered by the Government to reduce transmission access to justify not purchasing all the available transmission under the FIT Program, as the OPA was supposed to do.²¹ It appears that Mr. Cronkwright did not want the OPA to take the blame for breaking the expectations of FIT Proponents who relied on the statements and rules issued by the OPA for the FIT Program. I surmise that Mr. Cronkwright wanted the Government to issue a mandatory order to the OPA, so the blame for this unfair policy would fall on the Ontario Minister of Energy and not on the OPA. I agree that the Ontario government ordered change was entirely unfair and that it was inconsistent with our expectations as a FIT proponent with an application underway in the Bruce Transmission Region. This statement about the legitimate expectations of those who applied under the Program was not confidential, and it appeared in the public transcript of the hearing.

83. Had Ontario issued FIT Contracts for available transmission, Skyway 127 would have obtained a FIT Contract. Any additional transmission capacity would have gone to Skyway 127 as we were the next project in the priority queue in the Bruce Transmission zone.

84. Also had Ontario not diverted 300 MW of the available transmission in the Bruce transmission region to the West of London Region to facilitate a FIT Contract for International Power Canada ("*IPC*"), Skyway 127 would have obtained a FIT Contract. Again, the reason was that Skyway 127 was the next project in the priority queue line.

85. After the first set of rankings, there was an unexpected announcement by the OPA. Following a Direction issued by Energy Minister Brad Duguid on June 3, 2011, there would be a five-day period from June 6-11, where projects could apply to change their connection points.

86. All along, the publicly announced criteria for connection had been that projects closest to the transmission lines would have the highest priority. Skyway 127 had immediate proximity as the

²¹ *Mesa Power Group v. Government of Canada* (PCA Case No. 2012-17), Hearing Transcript Day 4 (Public Version): Testimony of Shawn Cronkwright, 29 October 2014, p.80, Ins.19-24, **C-122**.

transmission towers were located on lands leased for the Skyway 127 project. Yet, in the Bruce to Milton Transmission Project rule change on June 3, 2011, the applicants could change to interconnect points outside the region. Unexpectedly and unfairly, they could suddenly build long transmission lines outside the region into neighboring regions, essentially like a several hundred-kilometer-long extension cord.

87. The most surprising result of this Direction and connection-point change was that NextEra was now able to connect its projects to the Bruce Region by the 500 kV Bruce to Longwood transmission line. My understanding [from listening to the video from the Mesa Power NAFTA hearing] was that this transmission line was reserved to provide backup transmission to the Bruce Nuclear facility and that renewable energy projects would not be permitted to connect to that line. These new rules changed the evaluation of projects to be done on a provincial-wide ranking basis instead of the previous priority rankings. This meant that Skyway 127 lost the value of our previous priority ranking that had allowed us to have the ability to get a contract.

88. The FIT Program was terminated on June 12, 2013. On that day, Bob Chiarelli, the Ontario Minister of Energy, issued a direction stating that all large FIT Project applications that had been submitted before that date and that had not already been offered a contract, would be discontinued.²² Our project was well over this small threshold amount – so our application was no longer active as of June 12, 2013.

89. However, it would not be until after the *Mesa Power v. Canada* ("Mesa Power") hearing and the award given to *Windstream Energy* in *Windstream Energy v. Canada* ("Windstream") became public that we would learn the real reason of us not receiving a contract was because talks, deals, preferences were being had on the side with companies like NextEra Energy, the Korean Consortium, and International Power Canada.

G. The time that we First Learned of the Corruption

90. Mesa Power Group owned the Arran Wind power project that was immediately adjacent to Skyway 127. I knew that Mesa Power had raised a NAFTA challenge. I first contacted Barry Appleton at Appleton & Associates International Lawyers on June 1, 2015 to ask him about the NAFTA and whether there had been a decision in that claim. Mr. Appleton was one of the lawyers

²² Direction from Minister of Energy, Bob Chiarelli, to Colin Anderson, OPA, 12 June 2013, C-152.

for Texas-based Mesa Power Group, and he was based nearby in Toronto. At that time, no decision had been made public.²³

91. I was able to speak with Mr. Appleton on or about June 16, 2015 for the first time. At that time, I asked Mr. Appleton about materials that were available about the case and said that Skyway 127 was interested to learn more. Mr. Appleton provided me with information about how to find information about the case on the internet, including the recently released public transcript from the *Mesa Power* NAFTA hearing. Mr. Appleton was not able to disclose other information to me as he said that matters were confidential at that time.

92. As of the time of my initial call with Mr. Appleton on or about June 16, 2015:

- a) I was not aware of the details of the exclusive and unfair access to FIT Contracts given to International Power Canada. That information was not released to the public.
- b) I was not aware of the details of the unfair access and the special meetings that senior corporate officials from NextEra had with the most senior Ontario energy officials and the Premier of Ontario, Dalton McGuinty.
- c) I was not aware that Ontario Energy Ministry officials had decided that they were not going to follow the terms of the FIT Program to save money and that the OPA would not allocate all of the available transmission access in the Bruce Transmission Region to the FIT proponents still awaiting Launch Round FIT Contracts like Skyway 127.
- d) I was not aware that International Power Canada was given an allocation of new transmission access while wind power projects in the Bruce Region were being arbitrarily cut back because the Ontario Power Authority wanted to reduce the cost of the FIT Program.

93. I continued to obtain public information from Appleton & Associates about the Mesa Power NAFTA claim as it became available.

²³ I attended the procedural hearing before the NAFTA Tribunal in January 2020. During the hearing, I was able to locate the date of my first contact with the Appleton law firm about a possible NAFTA Claim (see Day 1 Hearing Transcript – January 14, 2020 at page 186 – line 1 where Mr. Appleton referenced the date from my notes into the Transcript record.)

94. The first time Skyway 127 and I learned of the real reason that Skyway 127 was denied a FIT Contract was when I was able to see information from the Mesa Power NAFTA post hearing submissions. This occurred shortly after August 15, 2015 when these materials were posted to the public by the Permanent Court of Arbitration. I was not present at the live hearings for the *Windstream* NAFTA case or the *Mesa Power* NAFTA claim. I later looked at the decision in the *Windstream* NAFTA arbitration as well. Both the *Mesa Power* arbitration and the *Windstream* arbitration were eyeopeners to the fact that there was little fairness or transparency in the FIT Program.
95. I watched the video of the cross-examination at the Mesa Power Hearing of Ontario Energy Department Assistant Deputy Minister Sue Lo on the PCA website. I heard from that senior Ontario official that other government officials in a clandestine unofficial breakfast meeting decided to protect the interests of International Power Canada over those of ordinary and law-abiding FIT applicants. Shortly after this secret meeting, the Government changed the FIT Rules and separately ordered 300 MW of new transmission access to be given to the projects from International Power Canada that had been unsuccessful when the FIT Contracts were awarded in the London transmission zone. Had this transmission access been available for the Bruce Region, Skyway 127 would have been awarded a contract as we were the next project waiting for transmission access to obtain a FIT Contract. I was shocked by this. In her evidence, Ms. Lo confirmed that Ontario had available transmission access, but it simply decided that it did not want to award more FIT Contracts.
96. The Tennant NAFTA Claim is about:
- a) Special business opportunities provided to a politically connected local favourite, International Power Canada.
 - b) The Breakfast Club cabal of politicians and senior officials seeking to reward friends at the expense of everyone else.
 - c) Ontario's decision to not complete its FIT Program for the Bruce Region and its effect upon Skyway 127.
 - d) The delay of the award of contracts because of Korean Consortium's failure to comply with its contractual obligations.
 - e) The conspiracy in the systemic violations of the NAFTA and the destruction of evidence.

97. Not one of these issues was known to the public before the release of information from the Mesa Power hearing in 2015, nor could it be known in the absence of evidence available to the public.
98. I understand from my lawyers that the requirements for launching a NAFTA Claim require knowledge of the breach of the NAFTA and the knowledge of loss arising from that breach.
99. To my great surprise, I learned in late July 2020, that much of argument and evidence from the Mesa Power hearing was available to the public on the website of the Permanent Court of Arbitration. I had read the transcripts of the hearing rather than watching the six days of the video when I conducted my research. The hearing transcripts available to the public had many redactions of sensitive information. However, the videos of the witness testimony on the Permanent Court of Arbitration was presented without any redaction. This information was available to the entire world to view – and I took the opportunity to watch some of the videos – especially those with testimony from Ontario Government officials or for the closing argument made by the Mesa Power Group. From looking at the public transcript and watching the public video, I could hear the redacted portions of the transcripts and see documents (for example emails) that had been presented on a video projector at the hearing as well. I was also able to view content that had been removed from the public versions of the various post-hearing submissions. I could never have been aware of this previously secret information before the June 1, 2014 date, which I understand is relevant for jurisdiction in this arbitration. I was dismayed and shocked by the ongoing unfair and manipulative acts taken by Ontario that I learned from watching the uncensored hearing videos. From this testimony, I finally was able to learn of additional unfair practices taken by Ontario that had been concealed from the public due to the redactions in the public hearing transcripts.
100. Before the dates listed above, there was no way in which we would have learned of this information as it was the first time such information became public knowledge.
101. I have read the public versions of post-hearing briefs and submissions presented in that arbitration, as well as the decision of the NAFTA Tribunal. A great deal of this information arose from the release by the Permanent Court of Arbitration of the Mesa Power Investor's Post Hearing Brief on January 19, 2015 but the key information that resulted in bringing this claim arose after we were able to see the Post-Hearing submissions from the Mesa Power NAFTA hearings. These

were released on August 15, 2015. I also read the public transcript of the examination of witnesses at the Mesa Power hearing.

102. As set out above, when preparing for this witness statement in July 2020, I first accessed the video website of the Permanent Court of Arbitration (PCA). To my surprise, I discovered that the video of the Mesa Power hearing on the PCA website contained more information than in the public transcripts. As a result, finally, I was able to hear the witness evidence of Ontario's officials admitting unfair and inappropriate measures that had been redacted from the *Mesa Power* hearing transcripts released to the public. For example, it was only from the public information arising from the *Mesa Power* case that we learned of the fact that:

- a) International Power Canada, a Canadian entity owned by a high-ranking Liberal party member, had high-powered assistance from government officials to obtain FIT Contracts by unfairly taking over transmission access that was properly allocated and available to Skyway 127;
- b) NextEra Energy, another applicant in the Bruce to Milton Transmission Project of the FIT Program, had been given advanced access to information that would help them to corruptly advance themselves in the Program compared to the rest of us;
- c) I also was first able to understand why Pattern Energy (the joint venture partner of the Korean Consortium) was trying to lockup wind developments from the Windrush Energy, such as Skyway 127 and Skyway 9. I now understand that this was all part of a predatory practice where the Korean Consortium could use inside information and governmental assistance not available to others to manipulate the Feed in Tariff process;
- d) All available transmission power was supposed to be made available to FIT Applicants in the Bruce Region. Still, Ontario officials arbitrarily decided not to make it available in the Bruce Region but made more power available in the West of London region to give extraordinary business access to preferred friends of the Liberal Government in power at the time.

103. Only after I reviewed the lengthy public version of the *Mesa Power* Post Hearing Brief in June 2015 did I learn that very senior Ontario government officials conspired to protect International Power Canada and other protected companies by giving them preferential business access to FIT Contracts.

104. I am now aware from reviewing materials arising from the public release of materials in the *Mesa Power NAFTA* claim that:
- a) International Power Canada received special and entirely unfair protection from competitive pressures due to actions taken by government officials before the five-day interconnection change in June 2011;
 - b) The Ontario Government unfairly cut the amount of available transmission access in the Bruce transmission zone by nearly 50% without advance notice to the FIT Proponents and during the FIT Process. This cut was taken arbitrarily by the Government because it appears to have approved too many FIT applicants in other regions, and it punished applicants in the Bruce Transmission zone (while rewarding its protected friends from the West of London Transmission zone);
 - c) NextEra had advance knowledge of the interconnection change before the five-day interconnection change was announced in June 2011;
 - d) The Korean Consortium was given preferential access to transmission capacity under the Green Energy Investment Agreement, of which Skyway 127 was unaware;
 - e) The ECT was continuously delayed so that Samsung and Pattern could choose their and preferred connection points. Had the ECT been run on schedule, before NextEra was able to use unfair privileges to reserve transmission capacity in Bruce, Skyway 127 would have been awarded a FIT contract under the FIT Rules;
 - f) The ECT process was formally abandoned on April 28, 2011;²⁴
 - g) NextEra was directly engaged with the OPA and in meetings with the Ministry of

²⁴ Email from Kristen Jenkins to Craig MacLennan, April 29, 2011, referenced in: *Mesa Power Group LLC v. Government of Canada* (PCA Case No. 2012-17), Investor's Memorial (Public Version: 15 May 2014), 20 November 2013, Footnote 858 to ¶749, **C-133**.

Energy and with the Minister and the Premier of Ontario; with no notice to other proponents like Skyway 127, and no suggestion to the other FIT Proponents that the representations about the ECT could no longer be relied on by proponents;

h) NextEra had advanced knowledge of the connection-point change window, and intended to poach transmission capacity for proponents in the Bruce Region as there was no more transmission capacity available to it in its home region.

105. As a wind developer, I knew that after a project was awarded a FIT contract, the project would need to undergo environmental risk assessments and eventually require approvals. The FIT Program made provisions to ensure that a successful FIT proponent would have to complete all necessary government regulatory environmental assessment procedures and would have to address the concerns of aboriginal persons. We were prepared to address such issues as part of the normal process to complete our wind power facility. We had experienced with obtaining environmental approvals for our RESOP projects. I know that other FIT Projects in our area were also able to successfully obtain environmental approvals.

106. We were not aware that Samsung, KEPCO, and their joint venture partners, were able to obtain significantly better treatment from Ontario officials concerning environmental regulatory approvals. We also were not aware that, under the *GEIA*, Ontario was facilitating First Nations consultations for the Korean Consortium.

107. The terms of the *GEIA* established close proximity for regulators and Korean Consortium members and their partners where they could work out environmental regulatory issues privately and in advance, including any necessary mitigation matters to address the concerns of regulators. This private process had the effect of significantly reducing the risk of an adverse consideration being made by government environmental regulators. Also, by conveying information to a proponent at an early stage, this ensured that a maximum of planning and budgeting flexibility could be achieved by the members of the Korean Consortium and their partners. Skyway 127 was never provided with treatment of this nature, and, if we had, it would have significantly decreased the operational risks of our wind power projects.

108. It was grossly unfair for these exceptional business opportunities to be provided to the Korean Consortium, who was actively competing against Skyway 127 for a FIT contract. Pattern Renewable, the Korean Consortium's joint venture partner, who had offered to buy projects from us, never disclosed that it was obtaining these special and highly unfair regulatory privileges.
109. Under the FIT Program, a power producer could be confident that it would receive payment for the power that its wind project produced, and the most significant concern about the success of the project was the risk that the PPA could be terminated for cause.
110. I am also now aware that the *GEIA* had provisions to remove the termination for cause provisions in PPAs entered by the Korean Consortium members, and their joint venture partners. During the Ontario provincial election, on August 2, 2011, the Government of Ontario agreed to provide the same treatment to all persons who were awarded a PPA under the FIT Program.
111. With this waiver of termination rights, the Government had removed a significant operational risk to the project. In essence, if a proponent built its facility, and obtained the necessary environmental approvals, and if the wind continued to blow, then it would be guaranteed a 20-year stream of revenues for the energy it produced. These factors significantly decreased the risk profile for a PPA under the FIT Program.
112. While I, as a proponent, expended effort, and cost to ensure our application was fully compliant with the FIT Rules, to be impartially assessed by the OPA, other events were unfolding without my knowledge. These other events were surprising and not conducted in a manner I expected a governmental regulatory program to be pursued in a place like Ontario, Canada.
113. The Ontario FIT process was not operated in accordance with the published rules. Cronyism and secret access for friends appear to be the way that proponents were able to succeed over the Skyway 127 application. We spent considerable time and money complying with the published FIT Program rules. We reasonably relied on Ontario following its own FIT Rules reasonably and in a lawful manner. I now understand that Skyway 127 would have received its 100 MW wind power contract but for these unfair decisions, taken to protect special friends and supporters of the Government. Had I known all of this information about the unfair process and cronyism in advance of submitting our application, I would have never made the investment in the Skyway 127 wind project in the first place.

H. LOSS FROM NOT RECEIVING CONTRACTS

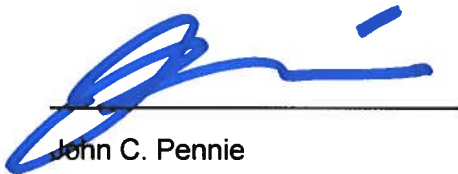
114. Skyway 127 has suffered an injury, harm, and loss as a result of its honest participation in the FIT Program. We did not receive a 100MW fixed term and price Ontario FIT Contract due to abusive last-minute manipulations, talks behind closed doors, and favors that allowed other companies to be granted the contracts instead of Skyway 127 and other proponents who reasonably relied upon the FIT Program rules and the information provided by Ontario.
115. The loss of the FIT Contract because of the unfair measures taken by Ontario was financially devastating to Skyway 127. However, the effects were more than just financial. As a result of the loss of the Skyway 127 project, the management of Tennant Energy and Skyway 127 suffered in other ways.
- a) I suffered anxiety and stress because of the loss of the FIT Contract. I suffer from hypertension, as well. The distress from Ontario's wrongful conduct became worse in 2015 when learning about the extent of the unfair reasons for the loss of our FIT application for Skyway 127. This knowledge caused disruption of my sleep patterns, increased my blood pressure, and resulted in a deterioration of my general health.
 - b) The loss of the Skyway 127 project affected our relationship with [REDACTED] and our successful track record in the development of wind power in Ontario.
 - c) Jim Tennant spoke with me often. He told me that he was deeply bothered by being treated unfairly and having the investment in Ontario destroyed in this way. Jim later suffered a debilitating stroke.
 - d) John Tennant also spoke with me frequently. He told me that he had distress because of the way in which Ontario damages the investment in Skyway 127.
 - e) Derek Tennant spoke with me regularly. He was visibly upset after learning of the underhanded and rotten treatment that was given to Skyway 127 and the unfair business advantages that were granted to IPC by secret dealings of senior government officials. Derek told me that he suffers from the effects of this stress, which developed into nerve damage arising from shingles. Unfortunately, the effects of the stress manifested poorly for Derek. He eventually suffered double vision and a stroke. He also was concerned about the damage done to the corporate reputation of Skyway 127 and Tennant Energy.

116. We were entitled to reasonably expect that we would be awarded a FIT Contract. Since we were not awarded a FIT Contract by the time the FIT Program ended, we lost all future income associated with it.

117. The Skyway 127 was a major loss to Tennant Energy. The failure to succeed because of Ontario's unfair measures resulted in a catastrophic lost in the value in Skyway 127.

118. I make this witness statement in support of the Investor's Memorial in this NAFTA Arbitration and for no other or improper purpose.

Signed in Palgrave, Ontario on August 7, 2020



John C. Pennie