

WITNESS STATEMENT OF JOHN TENNANT

- 1) My name is John Tennant. I reside at 250 Greenfield Avenue in San Mateo, California. I am an American citizen.
- 2) I was born in Canada, but I have resided in the United States since 1993. I became a US citizen in 1999. I have been a resident consistently in the state of California during the 2007 to 2017 period covered by the events in this witness statement.
- 3) I am a member of Tennant Energy, LLC, which is the claimant in this NAFTA arbitration. I am also a member of the management board of Tennant Energy, LLC.
- 4) Derek Tennant (Derek) and Jim Tennant (Jim) are my brothers. Jim lived for many years in Napa, California. After a serious injury, Jim moved to Delray Beach Florida. He lives there with his daughter. Derek lives in Barrie, Ontario, Canada.
- 5) I am 77 years old. My birthday is July 19, 1943.¹

I drafted this witness statement in English, and if called to testify, I would testify in English. I expressly consent to the use and processing of personal data, in or related to this witness statement, being used by the arbitration participants for this dispute, including its subsequent consideration and enforcement.

SKYWAY 127 WIND ENERGY.

- 6) Skyway 127 Wind Energy Inc ("Skyway 127" or "SW127") is an Ontario Company . Skyway bid on wind power projects under Ontario's Feed-in Tariff – (FIT) Program
- 7) My brother Derek was the president of Skyway 127. I understand from my brother Derek that Derek and John Pennie were working together on a variety of wind projects. These projects had been quite successful under the Ontario wind power program before 2009
- 8) I have attached the share register from Skyway 127 in 2007.² The share register shows that on October 18, 2007, Skyway 127 issued 1,750,000 Common shares to Derek through his holding

¹ John H Tennant US Passport Document, 19 August 1993 to 14 September 2019, **C-119 - Confidential**

² Skyway 127 Energy Inc Shareholders' Ledger, October 18, 2007. C-140

company, I.Q. Property Inc. Derek held half of the 3,500,000 common shares then issued of the company.

MY LOAN TO IQ PROPERTIES AND SHARES IN SKYWAY 127

- 9) On October 19, 2007, I lent my brother Derek \$200,000 to allow him to deal with investments he was making in the renewable energy business.
- 10) The formal promissory note securing the loan contemplated fund advances to Derek on September 12, 2007, of \$100,000 and September 19, 2007, of \$100,000 in the total amount of two-hundred-thousand Canadian Dollars.³ The loan was for three years and was repayable on October 19, 2010. The loan carried interest at 10% per year. Derek also acted as a personal guarantor of the loan.⁴
- 11) I have attached a copy of my bank statement showing the transfer of the \$200,000 to Derek in 2007.⁵
- 12) It was my understanding at the time I.Q. Property Inc. would pledge one-third of the shares, which amounted to 457,500 shares of Skyway 127 as collateral.⁶ The promissory note was for a duration of three years. It included a provision for a six-month extension. Under the terms of the note, my security rights as the Lender were:

The Lender has a Call Option ON DEMAND at any time after the due date or any extension thereof to convert its Promissory Note into the SW127 shares (or its successor company) such settlement shall be offset against the interest and principal of the note.

The Lender may grant a six-month extension of time or other indulgences provided that the interest earned as of the due date is paid in full, and the Lender may grant releases and discharges and otherwise deal with the Undersigned borrower as the Lender may see fit without prejudice to the rights of the Lender;

- 13) As the collateral were shares of Skyway 127, the loan was also acknowledged by Skyway 127.⁷ The acknowledgment stated:

WHEREAS Skyway 127 Wind Energy Inc. (the "Corporation") hereby acknowledges the attached Promissory Note between the Parties for \$200,000 Canadian funds, dated October 19th, 2007.

³ Promissory Note, 19 October 2007, **C-265**.

⁴ Promissory Note, 19 October 2007, **C-265**.

⁵ John Tennant Bank Statements with copies of cashed checks to Derek Tennant, September 2007, **C-264**.

⁶ Promissory Note, 19 October 2007, **C-265**.

⁷ Acknowledgement of Promissory Note, 20 October 2007, **C-266**.

The Corporation acknowledges and consents that the attached Promissory Note between the Parties is secured by a pledge of 437,500 common shares issued to I.Q. Properties Inc., by way of the Corporation's Certificate #COM-14, including but not limited to any anti-dilution, or other common share transfer rights from any other shareholder or shareholders by way of agreement, consent, or otherwise; and may not be transferred to any other party without the express written consent and Direction to the Corporation by both of the Parties.

14) In 2010, Derek still had not repaid the loan. I wanted to be repaid or have ownership in the Skyway 127 project. I notified Derek several times about repayment. By October 19, 2010, I still had not been repaid by I.Q. Property Inc. under the October 2007 loan agreement.

15) I issued a formal note to I.Q. Property Inc. on October 19, 2010, to request repayment within six months, by April 19, 2011. I noted:

The Lender hereby DEMANDS, in the event of failure to pay on or before April 19, 2011, that the security pledged of 437,500 common shares of Skyway 127 Wind Energy Inc., (Certificate #COM-14, including but not limited to any anti-dilution, or other common share transfer rights from any other shareholder or shareholders by way of agreement, consent, or otherwise) issued to I.Q. Properties Inc., be transferred to the Undersigned Lender.⁸

Unfortunately, Derek did not have the funds to repay me. The loan defaulted on October 19, 2010, and the six-month extension had passed on April 19, 2011. I was forced to use my call option on April 19, 2011 and obtain the Skyway 127 shares held as collateral from I.Q. Properties Inc. On April 19, 2011, Derek surrendered the shares in the Skyway 127 wind project.

16) I knew the amount that I.Q. Properties owed for principal and interest under the loan but there was uncertainty how to value the 437,500 shares of Skyway 127. These shares were not publicly traded shares with a public market value. My brother Derek was concerned about the risk that the shares in Skyway 127 might not be sufficient to cover all the debt, and that I would rely on the personal guarantee to make additional demands on my brother Derek.

17) My brother Derek proposed that I would agree that the 437,500 Skyway shares constituted full repayment of the principal and interest on the loan. I agreed to Derek's condition that I hold the Skyway 127 shares in a US holding company that I would designate. Derek wanted me to protect the shares. He explained that having the shares in a company would ensure that the Skyway 127 shares themselves might not constitute community property under California family law. While their value might form community property – the shares themselves would not be at risk of being tied up in any potential community property dispute.

18) On April 19, 2011, I agreed to allow the Skyway 127 shares to satisfy the debt. However, I was not sure about the company into which they would go. A few days later I spoke to my brother

⁸ Demand Notice on Promissory Note, 19 October 2011, C-267.

Jim Tennant. I did not have a holding company, but Jim had a company, Tennant Travel Services LLC. Jim was not doing anything with it. He let me have the company.

- 19) On April 26, 2011, I confirmed with Derek that I would nominate Tennant Travel Services, LLC to hold the Skyway 127 shares, and I agreed to release Derek's personal guaranty under the April 2007 promissory note in exchange for the 427,500 Skyway 127 common shares.
- 20) John Pennie was the corporate secretary of Skyway 127. I notified him that I had the Skyway shares and that I was holding them from Tennant Travel Services LLC. I told him that the shares should be transferred to Tennant Travel.
- 21) I understand from my brother Derek that the Skyway 127 corporate books indicated that the shares were held by me. I never represented that I personally owned these shares in Skyway 127. I always thought that I held Skyway 127 shares in trust as a trustee pending their transfer to Tennant Travel Services. I directed that these shares go to Tennant Travel Services. I refer to this shareholding in this witness statement as the "trust"
- 22) Derek and John Pennie advised me that on July 4, 2011, Skyway 127 was put on the FIT Priority waitlist. Skyway 127 did not obtain a FIT Contract as expected, but since we were in the FIT priority waitlist queue, I was patient. I knew that Derek had been working on the project for a long time and that this would be an excellent long-term investment.
- 23) While G.E. held shares in Skyway 127, it was a silent investor, and Derek advised me that GE never voted its shares. From all appearances, G.E. was most interested in selling wind turbines and servicing the wind farm once operational. That was fine with me because G.E. is an excellent company with proven wind energy technology and a solid balance sheet and a history of success.
- 24) I told John Pennie around late April 2011 (and Derek as company president) that I would vote my shares along with John and his wife Marilyn in Skyway 127. Tennant Travel had the largest bloc of shares. John Pennie and Marilyn Field agreed to vote their shares with me and that I would get the last word on corporate decisions in the voting bloc. This allowed me on behalf of Tennant Travel to make decisions for Skyway 127. That deal has been followed to this day.
- 25) On December 31, 2011, there was an internal re-organization of the company due to Premier Renewable leaving. As a result, the shareholding that I controlled as trustee increased from 11.3% to 22.6%.¹¹ I informed John Pennie and Derek that I would continue the voting agreement.

¹¹ Shareholder's Ledger Skyway 127, 30 December 2011, C-114.

- 26) Nothing happened with the Skyway 127 wind project after Ontario's government canceled the FIT Program on June 12, 2013. I spoke with Derek, John Pennie, and Marilyn Field. They agreed with me that we should keep Skyway 127 alive. I wanted to ensure that we could have future opportunities for Skyway 127.
- 27) Derek as president was instructed to continue with maintaining corporate requirements GE made clear that it would not continue with the Skyway 127 project more than a year and a half later. I supported acquiring the GE shares when GE exited the Skyway 127 project. John and Marilyn supported this approach. After GE left the project, Skyway 127 did not have another meeting until after we learned about the existence of a NAFTA breach in late 2015.
- 28) I did not worry about how the shares were held until sometime in late 2014. As a trustee, I had assumed that the corporate records of Skyway 127 reflected the fact that I had the investment in Skyway 127 for the benefit of Tennant Travel Services LLC. The Skyway 127 shares in the trust were formally transferred over to Tennant Travel Services and registered in January 2015. These shares were always held for the benefit of Tennant Travel. I acted consistently with that belief.
- 29) On January 15, 2015, as trustee I received additional shares in Skyway 127 to bring the trust's ownership stake to 42.5%.¹² These additional shares had no practical impact on control because the trust's shares were already controlling the company's day-to-day activities and had been since 2011. The transfer of the shares formally to Tennant Energy was registered on January 15, 2015.¹³
- 30) While the shares were registered in the name of Tennant Travel Services LLC, I agreed to transfer any personal intangible rights that the trust had, or that I might have had, over to Tennant Travel Services LLC.
- 31) In April 2015, Tennant Travel Services LLC was renamed Tennant Energy, LLC. The change was registered by the California Secretary of State on April 20, 2015.¹⁴ The name change was to effectuate more accurately the limited liability corporation's purpose.
- 32) Tennant Travel Services LLC was the successor in interest to the rights that I held personally as the trustee of the shares in Skyway 127. I confirmed this transfer of these intangible rights at the time to Derek, who was the president of Skyway 127, and to John Pennie, who was the operating officer of Tennant Energy.

¹² Skyway 127 Energy Inc Shareholder's Ledger, 15 January 2015, **C-115**.

¹³ Skyway 127 Energy Inc Shareholder's Ledger, 15 January 2015, **C-115**.

¹⁴ California Secretary of State registration of amendment, April 20, 2015. **C-269**

- 33) I also confirmed this transfer in a written instrument that I sent to Tennant Energy on February 8, 2016, before Tennant Energy made our notification of the investment dispute through a NAFTA Notice of Intent to Canada.¹⁵
- 34) The February 8, 2016 memorandum referred again to
- a) the existence of the trust;¹⁶
 - b) that I had communicated about this trust to Derek Tennant at Skyway 127 and John Pennie at Skyway and Tennant Energy.¹⁷
 - c) That Tennant Travel Services, LLC (and Tennant Energy LLC) were the irrevocable successors in interest to any rights or benefits that I received while acting as trustee over the Skyway 127 shares:¹⁸
 - d) That Tennant Energy LLC (and its predecessor Tennant Travel Services LLC) was the successor in interest to any personal rights or benefits that I received while acting as trustee over the Skyway 127 shares:¹⁹
- 35) I never owned the shares in Skyway 127 for my personal benefit. These shares always were held for the benefit of a holding company to be named, which was Tennant Travel Services LLC, currently known as Tennant Energy, LLC.

TENNANT ENERGY LLC AND OUR KNOWLEDGE ABOUT THE NAFTA BREACH

- 36) Derek, Jim, and I are members of Tennant Energy's Board of Management. As a member of Tennant Energy's Board of Management, we make the decisions for the company.
- 37) I assumed that Ontario would follow the law and followed the FIT Rules fairly. I assumed that Skyway 127 was not awarded a FIT contract through the fair and proper operation of the FIT Program Rules. I never attended any NAFTA hearings, including those for Mesa Power or Windstream. When those cases were underway, I was not aware that I would have any reason to go to those hearings.
- 38) Before the summer of 2015, I did not know that Ontario had applied the FIT Rules unfairly and in a contrived manner that resulted in the loss of my investment in Tennant Energy and Skyway 127. The information that we discovered from the documents describing the events at the *Mesa Power* Hearing was not public before 2015. I would have no other way of knowing about the government's treatment, especially given that the government took steps to keep the information hidden from the public.

¹⁵ John Tennant memo to Tennant Energy, **C-268** .

¹⁶ John Tennant memo to Tennant Energy **C-268** .

¹⁷ John Tennant memo to Tennant Energy, **C-268** .

¹⁸ John Tennant memo to Tennant Energy, **C-268** .

¹⁹ John Tennant memo to Tennant Energy, **C-268** .

- 39) I did not know about how Ontario unfairly affected our company before the middle of June 2015. John Pennie and my brother Derek had a meeting with Barry Appleton in his office in 2015. I remember that there was a call which I joined by phone. I was astonished when I later was told by John Pennie that he had found information on the internet coming from materials circulated after the *Mesa Power* NAFTA hearing about how Ontario treated our competitors in the FIT Program better than we had been treated because of political connections that were not related to the public terms of the FIT Program.
- 40) To be clear, until summer 2015, I did not know about the following information:
- a) the Breakfast Club conspiracy of government officials as was discussed in the submissions filed publicly after the Mesa Power NAFTA hearing, which became public in 2015.
 - b) That International Power Canada was obtaining special preferential and unfair treatment in the FIT Program, as was discussed in the submissions filed publicly after the Mesa Power NAFTA hearing, which became public in 2015.
 - c) Special meetings between senior Ontario government officials and senior wind power corporate officials as was discussed in the submissions filed publicly after the Mesa Power NAFTA hearing, which became public in 2015.
 - d) The Ontario Ministry of Energy decided not to follow the Ontario FIT Program's terms, as was discussed in the submissions filed publicly after the Mesa Power NAFTA hearing, which became public in 2015.
 - e) The decision to not allocate all the available power transmission to successful FIT Program applicants as was discussed in the submissions filed publicly after the Mesa Power NAFTA hearing, which became public in 2015.
- 41) Since filing our NAFTA Claim, I continued to speak with my brother Derek and John Pennie about additional discoveries of unfair treatment, which came from information arising from the NAFTA hearing that was not made available to the public at that time.
- 42) As a member of the Tennant Energy Committee of Management, I was astonished to learn more from John Pennie after he watched the full NAFTA hearing videos in 2020.
- 43) I have been surprised to learn of the unfair treatment that Skyway 127 received in Ontario. We were not treated fairly, and this has deprived me of the benefit of my investment in Tennant Energy and its ultimate investment in the Skyway 127 wind project. This just was not fair.
- 44) I also know directly from my brother Derek that he has suffered a tremendous amount of stress from Canada's actions, which took away our legitimate opportunities to reward the local Ontario

government's political friends. In my opinion, Skyway 127 fairly and honestly was entitled to a long term Ontario FIT renewable energy contract. This contract was taken away from us all due to political expediency. I could not believe a government in a developed and democratic country such as Canada would engage in such unfair and improper behavior.

45) I make this witness statement in support of this NAFTA arbitration and for no other or improper purpose.

Signed in San Mateo, California, this 3rd day of February 2021.

A handwritten signature in cursive script that reads "John H. Tennant". The signature is written in black ink and is positioned above the printed name.

John H. Tennant