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**Subject:** RE: PCA Case No 2018-54 Tennant Energy LLC v. Government of Canada  
**Date:** 10 March 2021 21:45:37

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Dear Mr. President and Members of the Tribunal

We are writing concerning procedural and logistical matters connected to the terms of *Procedural Order No. 9* communicated to the disputing parties earlier today.

1. We believe that there are concerns with the procedure outlined in *Procedural Order No. 9*. The procedure has a process for Canada to file a second round of submissions. This Reply Memorial on Jurisdiction is currently due on April 26, 2021. Unfortunately, the current order omits Tennant Energy's opportunity to respond by filing a Rejoinder Memorial on Jurisdiction. Such an omission, if uncorrected, would appear inconsistent with NAFTA Article 1115 and Article 15 of the (1976) UCITRAL Arbitration Rules. As a result, we have set out a modified timeline below that protects equal treatment and due process for the Investor and the Respondent.
2. We note that the proposed timeline has a fifteen-day period to respond to the non-disputing Parties' submissions under NAFTA Article 1128. This period was noted in a letter of January 10<sup>th</sup>. At that time, we were preoccupied with the ongoing health and family challenges for Mr. Appleton (which unfortunately continue to this current day). The jurisdictional procedure formed a part of today's *Procedural Order No. 9*. Given the complexity of the materials generally contained in NAFTA non-disputing Party submissions, we would ask that the time permitted for a response be set at 30 days, the same time granted to the NAFTA non-disputing parties.
3. Finally, we turn to the hearing of the jurisdictional matter. Available hearing dates are starting to become scarce for the fall of 2021 with the expectation that live hearings will be had which were stayed since March 2020. Given that the Tribunal has now ruled on the hearing's scope and further to the Tribunal's December 23, 2020 letter, we seek guidance on the hearing date. Counsel for both disputing parties noted our availability in November 2021. Would it be possible for the Tribunal to provide more significant guidance on this matter?
4. Tennant Energy's proposed timeline is set out as follows:

<b>Procedural Event</b>	<b>Date</b>
Claimant's Reply on Jurisdiction	1 March 2021
Tribunal's Decision on Scope of Bifurcated Phase of Proceedings	[TBD]
Respondent's Rejoinder Memorial on Jurisdiction	+45 days
Submissions of the United States and Mexico Pursuant to NAFTA Article 1128 (if any)	+30 days

Responses to 1128 Submissions (if any) +15 days

The proposed order based on the March 10<sup>th</sup> date of Procedural Order No 9 is:

Respondent's **Reply** Memorial on Jurisdiction Monday 26 April (45 days)

**Investor's Rejoinder Memorial on Jurisdiction** Thursday 10 June (45 days)

Submissions of the United States and Mexico Pursuant to NAFTA Article 1128 (if any) Monday 12 July (30 days)

Responses to 1128 Submissions (if any) Wednesday 11 August (30 days)

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