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Subject: RE: PCA Case No 2018-54 Tennant Energy LLC v. Government of Canada
Date: 11 March 2021 17:10:01

Dear Ms. Tham and Members of the Tribunal,

We write in response to the Claimant's email of March 10, 2021, which raises a number of issues.

1. With respect to the first issue raised by the Claimant, the Tribunal has already decided that the disputing parties may file no more than two rounds of submissions on jurisdiction. We refer to the Tribunal's letter of January 10, 2021 (emphasis added):

"The Tribunal recalls that Annex 1 of Procedural Order No. 1 provided that in the case of bifurcated proceedings, the Respondent would have the opportunity to file a Memorial and Reply on Jurisdiction, while the Claimant would have the opportunity to file a Counter-Memorial and Rejoinder on Jurisdiction. The Tribunal further recalls that in paragraphs 93(a) and 93(b) of Procedural Order No. 4, it modified this calendar by requesting the Claimant to "set out in full its detailed pleading on the issue of jurisdiction in its Memorial" and "[s]hould the Respondent wish to pursue bifurcation of the proceedings after having had sight of the Claimant's Memorial, the Respondent is to file its detailed objections on jurisdiction and a request for bifurcation within 45 days from the date of the Claimant's Memorial". As such, since each Party has already filed one round of submissions on jurisdiction, **the Tribunal is of the view that only one further round of submissions is necessary. The Tribunal further considers that it is not necessary for the Claimant to file another submission after the Respondent files its second submission on jurisdiction.**

The Tribunal has fully reviewed the schedule of pleadings and has given full consideration to equal treatment and due process of both disputing parties. The Claimant has filed two submissions on jurisdiction, and is not entitled to a third submission. The Claimant's proposed schedule should be rejected outright.

2. With respect to the second matter, Canada would be prepared to proceed with a 30-day period to respond to Non-Disputing Party submissions pursuant to NAFTA Article 1128 (should any be filed). Canada would also take no issue should the Tribunal maintain the currently anticipated 15-day period, as contemplated in the procedural schedules set out in Procedural Order No. 1, and in Procedural Order No. 9.
3. Regarding the dates for the jurisdictional hearing, we refer to the Tribunal's correspondence of December 23, 2020, in which it requested that both disputing parties reserve November 15-19, 2021 as potential hearing dates. The Tribunal recognized in its letter the uncertainty regarding the number of witnesses that the Claimant may put forward, as well as the outstanding issue with respect to the scope of the jurisdictional phase. In light of PO 9, and the Tribunal's comment in its December 23 letter that "[a]fter it has decided on the scope of the bifurcated hearing, the Tribunal shall then confirm the length of the bifurcated hearing as well", in Canada's view, the Tribunal is well placed to determine if the full five days will be required for the hearing, and will advise the disputing parties accordingly.

The Tribunal has fully addressed each of these issues. Canada sees no reason to depart from the procedural schedule provided by the Tribunal in Procedural Order No. 9, and previous decisions already made by the Tribunal.

Best regards,

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