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Subject: Re: PCA Case No 2018-54 Tennant Energy LLC v. Government of Canada
Date: 21 May 2021 22:00:41

Dear Mr. President and Members of the Tribunal,

Tennant Energy has been invited to provide its observations on the Government of Canada's request to extend the filing of its confidentiality designations on the Mesa Power Hearing videos. I am writing in the absence of Mr. Appleton, who has still not returned full-time to the office.

In general, Tennant Energy is inclined to support reasonable accommodations of the schedule. Tennant Energy has already agreed to Canada's request for the sizable extension of its jurisdictional submission that is due next week. However, there are problematic issues raised by Canada's request.

Tennant Energy has written to Canada separately, providing constructive advice on how Canada could best address this issue. We have not heard back from Canada yet. As the matter may yet be resolved, we will spare making complete observations at this time.

Canada has had since last August to take steps to identify and redact this video evidence. No investor-state arbitration has allowed a party to substitute evidence instead of redaction. The Tribunal denied Canada's troubling request.

As a result of the May 14, 2021 email of Mesa Power's client representative Cole Robertson (attached to Mr. Mullin's email to the Tribunal of the same May 14th date), the Tribunal is aware of the position of Mesa Power Group on the status of the Mesa Power Hearing videos. Mr. Robertson takes the position that the Mesa Power Hearing videos can no longer be considered as constituting "confidential information" under the *Mesa Power Confidentiality Order* because the unredacted videos were fully released to the public on the internet. Indeed, the release was supported by Canada who had links to the material on its website. This information was available to the public for nearly five years. Mesa Power concludes that this cannot be confidential information. This email confirms that Mesa Power Group was not consulted before the videos were removed from the PCA website at the unilateral request of Canada.

We hope that there will still be an opportunity for the disputing parties to agree on the treatment of the Mesa Power videos, making an extension unnecessary.

Should there be a disagreement between the parties on Canada's potential application, Tennant Energy will have an opportunity to make the Tribunal aware of the Investor's position.

Yours very truly,
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