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23 March 2021

RE: PCA CASE N° 2018-54 – TENNANT ENERGY, LLC V. GOVERNMENT OF CANADA

Dear Mesdames, dear Sirs,

I write on behalf of the Tribunal with reference to the Claimant's e-mail communication of 10 March 2021, and the Respondent's responsive e-mail communication of 12 March 2021.

In its e-mail communication, which followed the Tribunal's issuance of Procedural Order No. 9 ("PO 9") on the same day, the Claimant raised various procedural issues concerning the bifurcated jurisdictional phase, which the Tribunal shall address in turn below.

Whether PO 9 Omits the Claimant's Opportunity to File a Rejoinder on Jurisdiction

The Claimant contends that PO 9 erroneously "omits Tennant Energy's opportunity to respond by filing a Rejoinder Memorial on Jurisdiction", and proposes a modified procedural schedule for the remainder of the bifurcated jurisdiction phase which corrects for this alleged error. The Respondent submits that the Claimant's proposed schedule "should be rejected outright" because the Claimant has, like the Respondent, already "filed two submissions on jurisdiction, and is not entitled to a third submission."

The Tribunal notes that, to date, the Claimant has filed two rounds of submissions on the issue of jurisdiction—the first in its Memorial dated 7 August 2020, and the second in its Counter-Memorial on Jurisdiction dated 1 March 2021.

The Tribunal recalls that, in its letter dated 10 January 2021, it decided that “two rounds of submissions on jurisdiction from each Party are sufficient” and that “it is not necessary for the Claimant to file another submission after the Respondent files its second submission on jurisdiction.”

The Tribunal sees no reason to depart from its decision of 10 January 2021, and accordingly rejects the Claimant’s proposed schedule and corresponding request to file an additional submission on jurisdiction after the Respondent’s second submission on jurisdiction.

Deadline for Parties’ Responses to the Non-Disputing Parties’ Submissions

The Claimant requested an extension, from 15 to 30 days, of the time period for the Parties to respond to the non-disputing Parties’ submissions. The Respondent stated that it “would be prepared to proceed with a 30-day period” but “would also take no issue should the Tribunal maintain the currently anticipated 15-day period”.

In the absence of any objections from the Respondent to the Claimant’s request, the Tribunal confirms that the time period for the Parties to respond to the non-disputing Parties’ submissions shall be extended from 15 to 30 days.

Length and Dates of the Bifurcated Hearing

The Tribunal recalls that, in its letter dated 23 December 2020, it requested both Parties to reserve 15 to 19 November as potential dates for the bifurcated hearing, and stated that it would confirm the length of the hearing after it has decided on the scope of the bifurcated jurisdictional phase.

Further to its decision in PO 9 to grant the Respondent’s Renewed Request for Bifurcation in respect of both the First and Second Objections, and in consideration of the witness and expert evidence submitted by the Parties on these issues to date, the Tribunal hereby decides that the bifurcated hearing shall take place over a maximum of four days, in the period from **15 to 19 November 2021**, the final hearing schedule to be determined in the light of the Parties’ agreement, if any, or submissions, in advance of the pre-hearing conference. Pending final determination of the hearing schedule, the Parties are directed to reserve the full five-day period.

It is the Tribunal’s current intention that the hearing will take the form of an in-person hearing in Washington, D.C., but this issue will be revisited in the light of the prevailing circumstances, notably concerning any subsisting COVID-19-related travel constraints.

Pre-Hearing Conference and Hearing Schedule

The Tribunal also wishes to set the time and date for the pre-hearing conference (the “**PHC**”), and can confirm its availability on 12, 18, and 19 October 2021 at 09:00 EDT. The Parties are requested to reserve up to 3 hours for the PHC, which the Tribunal is minded to hold by videoconference using the Zoom platform, rather than by telephone.

The Parties are invited to indicate by **Monday, 29 March 2021**, whether they would be available during the proposed times, and whether they would have any objections to holding the PHC by videoconference using the Zoom platform.

In advance of the PHC, the Parties are directed to endeavour to reach agreement on a schedule for the hearing, and to notify the Tribunal no later than two weeks prior to the PHC of any such agreement or, failing which, each Party's respective position on the appropriate schedule for the hearing.

Once the time and date for the PHC is confirmed, the Tribunal shall issue a procedural order setting out the revised procedural calendar for the bifurcated jurisdictional phase.

Should you have any questions regarding this letter, please do not hesitate to contact me at the details set forth above.

Yours sincerely,



Christel Y. Tham
Legal Counsel

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Sir Daniel Bethlehem QC (*by e-mail: dbethlehem@twentysex.com*)