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Subject: RE: PCA Case No. 2018-54 - Tennant Energy LLC v Canada -Canada"s request of March 8, 2022
Date: 15 March 2022 21:05:55

Dear Members of the Tribunal,

Canada writes in response to the Tribunal's invitation to comment on the Claimant's correspondence dated March 10, 2022. While the Claimant's correspondence contains many incorrect and unnecessary arguments, Canada provides below a brief response on the confidentiality issues concerning: (i) the Hearing transcripts; (ii) the Claimant's Post-Hearing Submission; and (iii) the Hearing videos.

i. Hearing Transcripts

The Claimant incorrectly argues that Canada waived confidentiality over the information that was inadvertently disclosed in the Hearing transcripts. Paragraph 35 of the Confidentiality Order states: "[i]nadvertent or improper disclosure of Confidential Information, as set forth in the present Order, does not constitute a waiver of the designation of the information as confidential." (Emphasis added.) To confirm, Canada does not waive confidentiality over the information that was inadvertently disclosed.

For background, Canada inadvertently disclosed certain confidential information within the Hearing transcript sections titled "Attorneys' Eyes Only" because it assumed those transcript sections would be redacted before publication. This mistake was unfortunate but not unreasonable. Upon identifying the inadvertent disclosure, Canada immediately contacted the Claimant to find agreement on the proposed designations, which are consistent with Canada's previous confidentiality designations in this arbitration. When the Claimant did not respond, Canada promptly proceeded to the Tribunal in order to request its confidential information be removed from the public domain as quickly as possible. Canada has taken the proper and necessary steps to address the inadvertent disclosure, and the Claimant has failed to show otherwise.

Accordingly, Canada respectfully requests the Tribunal to use its broad procedural powers under Article 15.1 of the 1976 UNCITRAL Rules and Article 2.2 of Procedural Order No. 1 to instruct:

- the PCA to remove the Hearing transcripts from its website temporarily and on a purely precautionary basis; and
- the Parties to endeavour to resolve between themselves Canada's additional proposed designations to the Hearing transcripts for up to fourteen (14) calendar days, before submitting any disputed designations to the Tribunal for resolution.

ii. Claimant's Post-Hearing Submission

The Claimant argues that Canada's proposed "designations to the Investor's Post-Hearing Brief should await the tribunal's determination of the Primary Transcript issue in the Preliminary Request." The Claimant's request to delay the designation process for its Post-Hearing Submission should be denied. It appears to be a thinly-veiled attempt to take advantage of the inadvertent disclosure. In any event, Canada's proposed designations to the Claimant's Post-Hearing Submission are identical to the information designated in Day 2 of the Hearing transcript, to which the Claimant previously agreed.

iii. Hearing Videos

The format in which Canada should provide the Claimant with its proposed designations to the Hearing videos is a matter that the Parties should resolve between themselves. The Claimant's request for an instruction from the Tribunal in this regard is premature. To assist, Canada will provide the Claimant with

copies of the Hearing transcripts with highlighting on the specific information it seeks to designate for the Hearing videos.

Yours very truly,

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