

Global Affairs Canada
Department of Justice



Affaires mondiales Canada
Ministère de la Justice

CANADA

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August 6, 2021

VIA EMAIL

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Dear Members of the Tribunal:

Re: *Tennant Energy LLC v. Government of Canada*

We write with respect to the direction of the Tribunal in Procedural Order No. 12, dated 6 May 2021, at paragraph 53. Canada and the Claimant have attempted to resolve the issue of the confidential designations to the *Mesa Power* Videos but have been unable to come to an agreement with respect to certain portions of the exhibits in question. The Claimant's objections to Canada's proposed designations are contained in its letter of July 23, 2021 to the Respondent (attached as Annex A). In accordance with the procedures set out in the Confidentiality Order for this arbitration, Canada now submits the outstanding proposed designations to the Tribunal for resolution.

In Procedural Order No. 7, dated 21 September 2020, at paragraph 50, the Tribunal provided that:

“[i]t may be that the Respondent will wish to protect the confidentiality of the information in the *Mesa Power* Videos, in accordance with the *Mesa Power* confidentiality order. **If the Respondent so requests, the Tribunal would be prepared to order that any confidential information contained in the *Mesa Power* Videos be redacted from the publicly available versions of the Parties' pleadings and any decision or award.** In this regard, the Tribunal

notes that the Confidentiality Order in this arbitration defines “Confidential Information” to include information “that is not publicly available and is designated by a Party as confidential on the grounds that it is...information subject to a confidentiality order issued by a court or tribunal in proceedings unrelated to the present proceedings” (emphasis added).

In the attached Annex B, Canada has identified confidential portions of the *Mesa Power* Videos that display or make reference to information of the Government of Ontario or third parties which was deemed confidential pursuant to the *Mesa Power, LLC v. Canada* Confidentiality Order, dated 21 November 2012.¹ This information should, therefore be treated as confidential under the Confidentiality Order in this arbitration under paragraph 1(1)(b)(v), as noted by the Tribunal at paragraph 50 of Procedural Order 7.

As noted in Canada’s previous submissions to the Tribunal, including Canada’s Motion of August 10, 2020 and Reply of August 26, 2020, Canada has not waived confidentiality over the information it proposes to designate as confidential in the *Mesa Power* Videos. Indeed, the Tribunal has already accepted Canada’s submissions that it did not make such a waiver at paragraph 38 of Procedural Order 7 where it noted that any disclosure of such information was inadvertent:

In this regard, the Tribunal accepts the Respondent’s submission that it did not waive confidentiality of the information contained in the *Mesa Power* Videos. The Tribunal notes that the Respondent and Mesa Power LLC agreed upon confidentiality instructions, whereby public versions of the hearing videos were to be created. While it may be that the Respondent could have re-visited the videos after they were published, the Tribunal accepts that the Respondent had a reasonable expectation that the confidentiality instructions would be followed and that any disclosure was purely inadvertent.

Further, Canada’s request extends only to Ontario’s information and that which relates to a third party. In light of Mr. Cole Robertson’s email of May 14, 2021, Canada has not requested that information belonging to Mesa Power that was confidential in the *Mesa Power v. Canada* arbitration be similarly treated here.

Despite undertaking to resolve these matters as provided in the Confidentiality Order paragraph 17, the Parties have not been able to reach an agreement on the objected designations identified in Annex B. Canada, therefore, submits to the Tribunal the Disputed Designations Schedule at Annex B for resolution.

¹ RLA-093 - *Mesa Power, LLC v. Canada* Confidentiality Order, dated 21 November 2012.

We thank the Tribunal for their assistance on these matters.

Yours very truly,

A handwritten signature in black ink that reads "Heather Squires". The signature is written in a cursive, flowing style.

Heather Squires
Deputy Director & Senior
Counsel
Trade Law Bureau

cc: Barry Appleton, TennantClaimant@appletonlaw.com (Appleton & Associates)
Ed Mullins, Ben Love (Reed Smith LLP)
Christel Tham, Diana Pyrikova (Permanent Court of Arbitration)
Alexandra Dosman, Mark Klaver, Maria Cristina Harris, Stefan Kuuskne (Trade Law Bureau)



July 23, 2021
By email

Heather Squires
Counsel, Trade Law Bureau Global Affairs Canada
125 Sussex Dr, Ottawa, ON, K1A 0G2

Dear Ms. Squires:

Re: Confidentiality over portions of Mesa Power Hearing Video Exhibits (Exhibit Numbers C-201, C-204, C-205, C-206, C-208, C-226, C-227, C-228, C-229, C-230, C-231, C-232, C-233, C-236, C-237, C-239, C-243)

Tennant Energy writes further to Canada's July 2, 2021 email on the matter of Canada's preliminary confidentiality designations over portions of the Mesa Power Hearing Video Exhibits. Canada seeks to redact portions of the *Mesa Power* hearing videos, specifically selections in Exhibits **C-201, C-204, C-205, C-206, C-208, C-226, C-227, C-228, C-229, C-230, C-231, C-232, C-233, C-236, C-237, C-239, and C-243**.

In paragraph 50 of *Procedural Order No. 7*, the Tribunal confirmed that confidential information in the *Tennant Energy* arbitration had to meet the definition of confidential information in the *Tennant Energy* Confidentiality Order. It is not enough that the material was once covered by a confidentiality order by another tribunal. The information, to be confidential in the *Tennant Energy* arbitration, must continue to meet the definition of confidential information in the current arbitration.

The *Tennant Energy* Confidentiality Order contains specific definitions of what constitutes confidential information. Confidential information must meet two tests. It must be:

- A) information that is not publicly available, **and**
- B) information designated as confidential by a Party on the grounds that it is information subject to a confidentiality order issued by a court, Tribunal in proceedings unrelated to the present proceedings.

On May 14, 2021, new information was presented to this Tribunal. The client representative during the NAFTA arbitration for Mesa Power Group, Cole Robertson, issued a notification. In particular, Mr. Robertson stated:

Furthermore, I understand that the videos of the Mesa Power hearings were subsequently published on the internet for over five years. Mesa Power Group was not consulted by the Permanent Court of Arbitration when the PCA made the decision to remove these videos from the internet in 2020 upon the unilateral request of the Government of Canada. In my view, all of these videos are in the public domain. Had we been asked, we would have maintained our policy of public access to information about this NAFTA arbitration claim.

We had no objection to the continued publication of the full Mesa Power NAFTA hearing videos.

Thus, according to one of the disputing parties to the *Mesa Power* NAFTA claim, the hearing videos could no longer be considered to constitute confidential information. Mesa Power's representative also made clear that it had "no objection to the continued publication of the full Mesa Power NAFTA hearing".

Mr. Robertson based this view on the fact that the Mesa Power NAFTA hearing videos were publicly available on the internet for over five years. These videos were available on both the PCA website and by a link from the Government of Canada's own website since April 30, 2015. For Mesa Power the hearing videos no longer constituted confidential information as the information was public.

The fact that the full set of Mesa Power hearing videos were available to the public is undisputed. It is also undisputed that Mesa Power was not involved in any way in making these videos available to the public. The Tribunal also stated in paragraph 46 of *Procedural Order No. 7*, that "there is no evidence before this Tribunal that the Claimant's counsel, in breach of their obligations under the Mesa Power confidentiality order, disclosed confidential information which they received from Canada in the Mesa Power proceedings to the Claimant." Certainly Tennant Energy came across the information as a member of the public on the internet – again confirming the non-confidential status of the information.

The new fact for the Tribunal to consider is that one of the two disputing parties to the *Mesa Power* claim contends that the videos can no longer be considered as confidential under the terms of the *Mesa Power* Confidentiality Order.

This is relevant to the legal effect that flows from the undisputed fact that the hearing videos were available to the public on the internet for more than five years.

In this confidentiality designation, Canada clings to the pretense that the information made available to the public on the internet is somehow still secret. By definition, information available to public cannot be considered as confidential.

In essence Canada seeks to take information that one of the disputing parties to the *Mesa Power* case says is public, and that was undeniably available to the public, and hide it away from the public.

Tennant Energy cannot support such steps that would have the effect of denying necessary and relevant information to the public over Canada's conduct in relation to public legal duties under a public treaty.

Further, the specific redactions proposed by Canada do not address confidential information. Even if the Tribunal were to accept that the Mesa Power videos were still confidential, which it should not, Canada's proposed redactions in a number of places purport to redact information that could never have been confidential, and which are part of the public record even under Canada's unreasonable test.

If the content of the Mesa Power Hearing videos are no longer confidential, then the videos and their content may not be subject to a confidentiality order issued by a tribunal in proceedings unrelated to the present proceedings. That status was lost when the information becomes public. The information no longer meets the essential definition for confidentiality under the Mesa Power Confidentiality Order. It certainly cannot meet the definition for confidentiality under the *Tennant Energy* Confidentiality Order.

Canada's proposed designations do not meet either of the two necessary elements of the confidentiality test in the *Tennant Energy* Confidentiality Order.

To call this information available to the public on the internet for five years as confidential borders on the manifestly absurd and strains all credulity to Canada's claims that it supports transparency by hiding information that had been available to the public from the public.

Accordingly, Tennant Energy cannot agree to Canada's preliminary confidentiality designations as outlined in Canada's Redfern from July 2, 2021 to the *Mesa Power* videos in relation to Exhibits C-201, C-204, C-205, C-206, C-208, C-226, C-227, C-228, C-229, C-230, C-231, C-232, C-233, C-236, C-237, C-239, and C-243.



Barry Appleton

APPLETON & ASSOCIATES
INTERNATIONAL LAWYERS



Edward M. Mullins

ReedSmith

Annex B: Canada's Proposed Designations to *Mesa Power* Hearing Video Exhibits

Exhibit	Time Frame to be Designated (HH:MM to HH:MM)	Objections to Designation		Reply to Objections	Tribunal's Decision
		Reasons	Designation Requested		
C-201	00:24:53 – 00:34:39 00:35:28 – 00:44:28 00:46:15 – 00:49:42	The Claimant's objections to Canada's proposed designations are contained in its letter of July 23, 2021 to the Respondent, found at Annex A to Canada's letter of August 6, 2021.		<p>The identified time frame portions of this exhibit display or make reference to information which was deemed confidential pursuant to the Confidentiality Order of <i>Mesa Power v. Canada</i> dated 21 November 2012. As such, these portions meet the criteria set out in Procedural Order No. 7 at para. 50 and the Confidentiality Order para. 1(1)(b)(v) as information that is subject to a confidentiality order issued by a court or tribunal in proceedings unrelated to the present proceedings.</p> <p>Canada has not waived confidentiality over the identified time frame portions of this exhibit, nor the information contained therein. As Canada has previously indicated to the Tribunal, including in Canada's Motion of August 10, 2020 and Canada's Reply of August 26, 2020 there has been no waiver by Canada of the information contained in this exhibit. Further, the Tribunal has already accepted Canada's position that it did not waive confidentiality of the information contained in the <i>Mesa Power</i> Videos at para. 38 of Procedural Order 7.</p> <p>Finally, should the Tribunal disagree that the information contained in the identified time frame portions meet the criteria set out in Confidentiality Order para. 1(1)(b)(v), Canada maintains that the information in the identified time frames be designated as confidential as provided in Confidentiality Order para. 1(1)(b).</p>	
C-204	1:24:54 – 1:26:22	The Claimant's objections to Canada's proposed designations are contained in its letter of July 23, 2021 to the Respondent, found at Annex A to Canada's letter of August 6, 2021.		The identified time frame portion of this exhibit displays or makes reference to information which was deemed confidential pursuant to the Confidentiality Order of <i>Mesa Power v. Canada</i> dated 21 November 2012. As such, this portion	

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				<p>meets the criteria set out in Procedural Order No. 7 at para. 50 and the Confidentiality Order para. 1(1)(b)(v) as information that is subject to a confidentiality order issued by a court or tribunal in proceedings unrelated to the present proceedings.</p> <p>Canada has not waived confidentiality over the identified time frame portion of this exhibit, nor the information contained therein. As Canada has previously indicated to the Tribunal, including in Canada's Motion of August 10, 2020 and Canada's Reply of August 26, 2020 there has been no waiver by Canada of the information contained in this exhibit. Further, the Tribunal has already accepted Canada's position that it did not waive confidentiality of the information contained in the <i>Mesa Power</i> Videos at para. 38 of Procedural Order 7.</p> <p>Finally, should the Tribunal disagree that the information contained in the identified time frame portion meets the criteria set out in Confidentiality Order para. 1(1)(b)(v), Canada maintains that the information in the identified time frame be designated as confidential as provided in Confidentiality Order para. 1(1)(b).</p>	
C-205	<p>00:08:15 – 00:25:40</p> <p>00:26:53 – 00:29:44</p> <p>00:40:43 – 44:32</p>	The Claimant's objections to Canada's proposed designations contained in its letter of July 23, 2021 to the Respondent, found at Annex A to Canada's letter of August 6, 2021.		The identified time frame portions of this exhibit display or make reference to information which was deemed confidential pursuant to the Confidentiality Order of <i>Mesa Power v. Canada</i> dated 21 November 2012. As such, these portions meet the criteria set out in Procedural Order No. 7 at para. 50 and the Confidentiality Order para. 1(1)(b)(v) as information that is subject to a confidentiality order issued by a court or tribunal in proceedings unrelated to the present proceedings.	

Exhibit	Time Frame to be Designated (HH:MM to HH:MM)	Objections to Designation		Reply to Objections	Tribunal's Decision
		Reasons	Designation Requested		
				<p>Canada has not waived confidentiality over the identified time frame portions of this exhibit, nor the information contained therein. As Canada has previously indicated to the Tribunal, including in Canada's Motion of August 10, 2020 and Canada's Reply of August 26, 2020 there has been no waiver by Canada of the information contained in this exhibit. Further, the Tribunal has already accepted Canada's position that it did not waive confidentiality of the information contained in the <i>Mesa Power</i> Videos at para. 38 of Procedural Order 7.</p> <p>Finally, should the Tribunal disagree that the information contained in the identified time frame portions meet the criteria set out in Confidentiality Order para. 1(1)(b)(v), Canada maintains that the information in the identified time frames be designated as confidential as provided in Confidentiality Order para. 1(1)(b).</p>	
C-206	1:09:45 – 1:20:00	The Claimant's objections to Canada's proposed designations are contained in its letter of July 23, 2021 to the Respondent, found at Annex A to Canada's letter of August 6, 2021.		<p>Canada withdraws its confidential designations with respect to C-206 1:12:07 – 1:20:00 in consideration of the email of Mr. Cole Robertson May 14, 2021 as contained in the Claimant's objections set out in Annex A.</p> <p>However, Canada maintains its designation with respect to C-206 1:09:45 – 1:12:06, as this portion of the exhibit displays and/or makes reference to information which was subject to the Confidentiality Order of <i>Mesa Power v. Canada</i> dated 21 November 2012. As such, this portion meets the criteria set out in Procedural Order No. 7 at para. 50 and the Confidentiality Order para. 1(1)(b)(v) as information that is not publicly available and is designated by a Party as confidential on the grounds that it is information subject to a confidentiality order issued by a court or tribunal in</p>	

Exhibit	Time Frame to be Designated (HH:MM to HH:MM)	Objections to Designation		Reply to Objections	Tribunal's Decision
		Reasons	Designation Requested		
				<p>proceedings unrelated to the present proceedings.</p> <p>Canada has not waived confidentiality over the identified time frame portion of this exhibit, nor the information contained therein. As Canada has previously indicated to the Tribunal, including in Canada's Motion of August 10, 2020 and Canada's Reply of August 26, 2020 there has been no waiver by Canada of the information contained in this exhibit. Further, the Tribunal has already accepted Canada's position that it did not waive confidentiality of the information contained in the <i>Mesa Power Videos</i> at para. 38 of Procedural Order 7.</p> <p>Should the Tribunal disagree that C-206 1:09:45 – 1:12:06 meets the criteria set out in Confidentiality Order para. 1(1)(b)(v), Canada maintains that the identified time frame portion be designated as confidential as provided in Confidentiality Order para. 1(1)(b).</p>	
C-208	00:43:03 – 00:53:16 1:30:25 – 1:50:56 (i.e., end of video)	The Claimant's objections to Canada's proposed designations are contained in its letter of July 23, 2021 to the Respondent, found at Annex A to Canada's letter of August 6, 2021.		<p>The identified time frame portions of this exhibit display or make reference to information which was subject to the Confidentiality Order of <i>Mesa Power v. Canada</i> dated 21 November 2012. As such, these portions meet the criteria set out in Procedural Order No. 7 at para. 50 and the Confidentiality Order para. 1(1)(b)(v) as information that is not publicly available and is designated by a Party as confidential on the grounds that it is information subject to a confidentiality order issued by a court or tribunal in proceedings unrelated to the present proceedings.</p> <p>Canada has not waived confidentiality over the identified time frame portions of this exhibit, nor the information contained therein. As Canada has previously indicated to the Tribunal, including in</p>	

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		Reasons	Designation Requested		
				<p>Canada's Motion of August 10, 2020 and Canada's Reply of August 26, 2020 there has been no waiver by Canada of the information contained in this exhibit. Further, the Tribunal has already accepted Canada's position that it did not waive confidentiality of the information contained in the <i>Mesa Power</i> Videos at para. 38 of Procedural Order 7.</p> <p>Finally, should the Tribunal disagree that the information contained in the identified time frame portions meet the criteria set out in Confidentiality Order para. 1(1)(b)(v), Canada maintains that the information in the identified time frames be designated as confidential as provided in Confidentiality Order para. 1(1)(b).</p>	
C-226	1:02:01 – 1:07:41 1:14:25 – 1:16:04	The Claimant's objections to Canada's proposed designations are contained in its letter of July 23, 2021 to the Respondent, found at Annex A to Canada's letter of August 6, 2021.		<p>Canada withdraws its confidential designations with respect to C-226 1:02:01 – 1:07:41 and 1:15:17 – 1:16:04 in consideration of the email of Mr. Cole Robertson May 14, 2021 as contained in the Claimant's objections set out in Annex A.</p> <p>However, Canada maintains its designation with respect to C-226 1:14:25 – 1:15:16, as this portion of the exhibit displays and/or makes reference to information which was subject to the Confidentiality Order of <i>Mesa Power v. Canada</i> dated 21 November 2012. As such, this portion meets the criteria set out in Procedural Order No. 7 at para. 50 and the Confidentiality Order para. 1(1)(b)(v) as information that is not publicly available and is designated by a Party as confidential on the grounds that it is information subject to a confidentiality order issued by a court or tribunal in proceedings unrelated to the present proceedings.</p> <p>Canada has not waived confidentiality over the identified time frame portion of</p>	

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		Reasons	Designation Requested		
				<p>this exhibit, nor the information contained therein. As Canada has previously indicated to the Tribunal, including in Canada's Motion of August 10, 2020 and Canada's Reply of August 26, 2020 there has been no waiver by Canada of the information contained in this exhibit. Further, the Tribunal has already accepted Canada's position that it did not waive confidentiality of the information contained in the <i>Mesa Power</i> Videos at para. 38 of Procedural Order 7.</p> <p>Should the Tribunal disagree C-226 1:14:25 – 1:15:16, meets the criteria set out in Confidentiality Order para. 1(1)(b)(v), Canada maintains that the identified time frame portion be designated as confidential as provided in Confidentiality Order para. 1(1)(b).</p>	
C-231	00:16:35 – 00:24:30 1:28:34 – 1:30:13	The Claimant's objections to Canada's proposed designations are contained in its letter of July 23, 2021 to the Respondent, found at Annex A to Canada's letter of August 6, 2021.		<p>The identified time frame portions of this exhibit display or make reference to information which was deemed confidential pursuant to the Confidentiality Order of <i>Mesa Power v. Canada</i> dated 21 November 2012. As such, these portions meet the criteria set out in Procedural Order No. 7 at para. 50 and the Confidentiality Order para. 1(1)(b)(v) as information that is subject to a confidentiality order issued by a court or tribunal in proceedings unrelated to the present proceedings.</p> <p>Canada has not waived confidentiality over the identified time frame portions of this exhibit, nor the information contained therein. As Canada has previously indicated to the Tribunal, including in Canada's Motion of August 10, 2020 and Canada's Reply of August 26, 2020 there has been no waiver by Canada of the information contained in this exhibit. Further, the Tribunal has already accepted Canada's position that it did not</p>	

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		Reasons	Designation Requested		
				<p>waive confidentiality of the information contained in the Mesa Power Videos at para. 38 of Procedural Order 7.</p> <p>Finally, should the Tribunal disagree that the information contained in the identified time frame portions meet the criteria set out in Confidentiality Order para. 1(1)(b)(v), Canada maintains that the information in the identified time frames be designated as confidential as provided in Confidentiality Order para. 1(1)(b).</p>	
C-232	0:57:12 – 1:03:39	The Claimant's objections to Canada's proposed designations are contained in its letter of July 23, 2021 to the Respondent, found at Annex A to Canada's letter of August 6, 2021.		<p>The identified time frame portion of this exhibit displays or makes reference to information which was deemed confidential pursuant to the Confidentiality Order of <i>Mesa Power v. Canada</i> dated 21 November 2012. As such, this portion meets the criteria set out in Procedural Order No. 7 at para. 50 and the Confidentiality Order para. 1(1)(b)(v) as information that is subject to a confidentiality order issued by a court or tribunal in proceedings unrelated to the present proceedings.</p> <p>Canada has not waived confidentiality over the identified time frame portion of this exhibit, nor the information contained therein. As Canada has previously indicated to the Tribunal, including in Canada's Motion of August 10, 2020 and Canada's Reply of August 26, 2020 there has been no waiver by Canada of the information contained in this exhibit. Further, the Tribunal has already accepted Canada's position that it did not waive confidentiality of the information</p>	

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				<p>contained in the Mesa Power Videos at para. 38 of Procedural Order 7.</p> <p>Finally, should the Tribunal disagree that the information contained in the identified time frame portion meets the criteria set out in Confidentiality Order para. 1(1)(b)(v), Canada maintains that the information in the identified time frames be designated as confidential as provided in Confidentiality Order para. 1(1)(b).</p>	
C-237	00:03:06 – 00:09:08	The Claimant's objections to Canada's proposed designations are contained in its letter of July 23, 2021 to the Respondent, found at Annex A to Canada's letter of August 6, 2021.		<p>The identified time frame portion of this exhibit displays or makes reference to information which was deemed confidential pursuant to the Confidentiality Order of <i>Mesa Power v. Canada</i> dated 21 November 2012. As such, this portion meets the criteria set out in Procedural Order No. 7 at para. 50 and the Confidentiality Order para. 1(1)(b)(v) as information that is subject to a confidentiality order issued by a court or tribunal in proceedings unrelated to the present proceedings.</p> <p>Canada has not waived confidentiality over the identified time frame portion of this exhibit, nor the information contained therein. As Canada has previously indicated to the Tribunal, including in Canada's Motion of August 10, 2020 and Canada's Reply of August 26, 2020 there has been no waiver by Canada of the information contained in this exhibit. Further, the Tribunal has already accepted Canada's position that it did not waive confidentiality of the information contained in the <i>Mesa Power</i> Videos at para. 38 of Procedural Order 7.</p> <p>Finally, should the Tribunal disagree that the information contained in the identified time frame portion meets the criteria set out in Confidentiality Order para. 1(1)(b)(v), Canada maintains that the information in the identified time frames</p>	

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				be designated as confidential as provided in Confidentiality Order para. 1(1)(b).	
C-239 ¹	00:24:36 – 00:25:13	The Claimant's objections to Canada's proposed designations are contained in its letter of July 23, 2021 to the Respondent, found at Annex A to Canada's letter of August 6, 2021.		<p>The identified time frame portion of this exhibit displays or makes reference to information which was deemed confidential pursuant to the Confidentiality Order of <i>Mesa Power v. Canada</i> dated 21 November 2012. As such, this portion meets the criteria set out in Procedural Order No. 7 at para. 50 and the Confidentiality Order para. 1(1)(b)(v) as information that is subject to a confidentiality order issued by a court or tribunal in proceedings unrelated to the present proceedings.</p> <p>Canada has not waived confidentiality over the identified time frame portion of this exhibit, nor the information contained therein. As Canada has previously indicated to the Tribunal, including in Canada's Motion of August 10, 2020 and Canada's Reply of August 26, 2020 there has been no waiver by Canada of the information contained in this exhibit. Further, the Tribunal has already accepted Canada's position that it did not waive confidentiality of the information contained in the <i>Mesa Power</i> Videos at para. 38 of Procedural Order 7.</p> <p>Finally, should the Tribunal disagree that the information contained in the identified time frame portion meets the criteria set out in Confidentiality Order para. 1(1)(b)(v), Canada maintains that the information in the identified time frames be designated as confidential as provided in Confidentiality Order para. 1(1)(b).</p>	

¹ Canada has only proposed designations up until the 00:29:50 time stamp, as the exhibit as no sound or picture appears on the video beyond this point. Should the Claimant choose to file a fully functioning version of this exhibit, Canada reserves its right to propose designations to the remainder of the video. Canada notes that the Claimant has not responded to Canada on this point as of the time this submission has been made to the Tribunal.