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Subject: Re: PCA Case No 2018-54 Tennant Energy LLC v. Government of Canada
Date: 04 September 2021 00:32:21

Dear Mr. President and Members of the Tribunal,

We write concerning Canada's email of Friday, August 27, regarding the logistics for the November jurisdictional hearing.

The parties had been in communication on this matter most recently in June 2021. At that time, Canada expressed its desire to hold an in-person meeting. At that time, the Investor advised Canada that it did not share Canada's view about holding an in-person meeting in light of the pandemic situation.

The prevalence of the COVID delta variant has increased the genuine risk of yet another significant wave continuing throughout this fall. Today (September 3), Canada's Chief Public Health Officer, Dr. Theresa Tam, reported that Canada could see more than 15,000 new COVID cases a day by early October. Dr. Tam called this time "a crucial moment" The Government of Canada's daily epidemiology update for September 2, 2021 indicated 4,033 new COVID cases today. Canada is predicting almost a 400% increase in COVID infection from the current levels over the next month alone.

Given the ongoing risks, the most practical route would be for the disputing parties to plan for a virtual hearing in November. The infectious disease modeling for Canada does not support holding a hearing in Canada in the foreseeable future. To be clear, in light of the current widespread fourth wave of COVID infection, Tennant Energy does not support an in-person hearing for November 2021.

The health and safety of the disputing parties and the Tribunal needs to be given serious consideration. An in-person jurisdictional hearing necessitates considerable travel by the Tribunal and disputing parties. We note that many of the Claimant's potential witnesses are of an advanced age category and have underlying medical conditions that place them at additional risk of serious injury or death from the COVID Delta variant. We also have legal counsel with risk factors that complicate such considerations.

While we do not know who will be called as witnesses yet, an in-person hearing would create a potential need for significant witness travel and increase the risk to the Tribunal members and the supporting team from the PCA. All of this travel would be unnecessary if the hearing were to be held remotely.

Finally, we note that while holding a hearing in Toronto might be convenient for Canada, part of the Investor's legal team would be required to engage in mandatory 14-day quarantine in advance of the hearing to comply with Canada's existing border restrictions.

Should the COVID situation materially change between now and the October pre-hearing conference, then there could be the opportunity to revisit the matter.

The risks of cancellation of a live event are high. There is no need to speculate, given the existing technology for remote hearings that have been used successfully in many international arbitration hearings.

We also note that there have been public demonstrations by anti-mask protestors at Toronto's Pearson International Airport complaining about mandatory vaccination policies for travelers in Canada. The Airport has been warning travelers about potential disruption and travel delays. Such obstacles to smooth ingress and egress do not favor Canada's request for Toronto as a physical venue.

The disputing parties can rely on modern technology to have a fair and effective hearing. In this regard, we can benefit from the experience of the PCA to provide practical, efficient, and cost-effective remote hearings. There also would be considerable costs savings to a remote hearing.

Thus, counsel for the Investor suggests that there would be more certainty and efficiency for the hearing to be held remotely.

Yours very truly,
Nabeela Latif