

Global Affairs Canada  
Department of Justice



Affaires mondiales Canada  
Ministère de la Justice

CANADA

125 Sussex Drive  
Ottawa, Ontario  
K1A 0G2

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**VIA EMAIL**

**Mr. Cavinder Bull, SC**  
Drew & Napier LLC  
10 Collyer Quay  
10<sup>th</sup> Floor Ocean Financial  
Centre  
Singapore 049315  
[cavinder.bull@drewnapier.com](mailto:cavinder.bull@drewnapier.com)

**Mr. Doak Bishop**  
King & Spalding LLP  
1100 Louisiana  
Suite 4000  
Houston, Texas 77002  
[dbishop@kslaw.com](mailto:dbishop@kslaw.com)

**Sir Daniel Bethlehem**  
QC  
20 Essex Street  
London, WC2R 3AL  
[DBethlehem@20essexst.com](mailto:DBethlehem@20essexst.com)

Dear Members of the Tribunal:

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

Canada respectfully requests a ruling from the Tribunal for permission to submit the following legal authority into the record:

*MAKAE Europe SARL v. Kingdom of Saudi Arabia* (ICSID Case No. ARB/17/42) Award, 30 August 2021.

This award was issued on August 30, 2021. As such, this is the earliest opportunity for Canada to introduce the legal authority into the record. The legal authority contains a decision by an international investment tribunal on the respondent State's objections to jurisdiction. The tribunal's analysis is directly relevant to certain issues arising from Canada's objections to jurisdiction in this arbitration.

Canada notes that Article 8.4 of Procedural Order No. 1 provides that "the Tribunal shall not consider any evidence that has not been introduced as part of the written submissions of the Parties, unless the Tribunal grants leave on the basis of exceptional circumstances." However, Article 8.4 does not apply to requests to introduce new legal authorities. Thus, the Parties are not required to show "exceptional circumstances" to submit new legal authorities into the record.

If the Tribunal admits this legal authority into the record, Canada proposes that the Parties address the legal authority in their oral submissions in the upcoming hearing on jurisdiction. This would uphold the efficiency of the arbitration, while protecting the Parties' rights to equal treatment and due process under Article 1115 of NAFTA and Article 15.1 of the 1976 UNCITRAL Rules.

Out of an abundance of caution, Canada has not annexed this authority, and will await the Tribunal's permission to have it admitted into the record.

Yours very truly,



Heather Squires  
Deputy Director & Senior  
Counsel  
Trade Law Bureau

cc: Barry Appleton, [TennantClaimant@appletonlaw.com](mailto:TennantClaimant@appletonlaw.com) (Appleton & Associates)  
Ed Mullins, Ben Love (Reed Smith LLP)  
José Luis Aragón Cardiel, Diana Pyrikova (Permanent Court of Arbitration)  
Alexandra Dosman, Mark Klaver, Stefan Kuuskne (Trade Law Bureau)