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Subject: PCA Case No. 2018-54 - Tennant Energy LLC v Canada
Date: 05 November 2021 20:21:31

Dear Members of the Tribunal,

Canada writes regarding its request to add the Award in *MAKAE Europe SARL v. Kingdom of Saudi Arabia* to the record in this arbitration (the "Award"). As advised by the Tribunal at the pre-hearing conference, Canada sent the Award to Tennant Energy's counsel on October 19, 2021. To date, Canada has not received a response from the Claimant.

As requested by the Tribunal, Canada has made inquiries as to the source of the Award that was made available on the IAREporter website. Unfortunately, we have not been able to secure any additional information. Despite this, Canada maintains its original request to have the Award added to the record. The Claimant has not provided the Tribunal with a credible basis to exclude the Award. The Claimant's purported concern, which its counsel Mr. Appleton stated orally during the pre-hearing conference, over the authenticity of the decision is unsupported. The Claimant should not be permitted to block Canada's attempt to add this legal authority to the record based on pure speculation alone.

There is no provision in the Procedural Orders for this arbitration that prevents a party from adding a new legal authority to the record. 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.

Further, the Claimant has not offered any evidence or credible reasons for its purported concern surrounding the authenticity of the Award. Canada notes that the cover page of the Award is on ICSID letterhead; is titled "CERTIFICATE"; contains the statement, "I hereby certify that the attached document is a true copy of the Tribunal's Award dated August 30, 2021"; and is signed by the Secretary-General of ICSID, Meg Kinnear. This is evidence that supports the authenticity of the Award.

Canada also observes that the Award has been available online on the IAREporter website for over two months. Neither party to *MAKAE* appears to have requested IAREporter to take the Award down from its website. In fact, the Award was also made available on another website, Jus Mundi, without a paywall over one week ago.

Canada's request to add this legal authority to the record in no way obliges the Tribunal to rely on it. Much like the Tribunal's discretion with respect to the weight to give to evidence articulated in Article 9.1 of the IBA Rules on the Taking of Evidence in International Arbitration, the Tribunal also has the ability to decide the appropriate weight to be given to certain legal authorities. Further, the Claimant will have the full opportunity to respond to this legal authority at the hearing, thus guaranteeing that due process is upheld.

Finally, Canada notes that the needless procedural difficulties that the Claimant has created over whether to admit this legal authority in the record – at a time when the disputing parties are preparing for the upcoming Hearing – warrants consideration by the Tribunal when rendering its decision on costs.

Best regards,

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