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Subject: PCA Case No. 2018-54: Tennant Energy, LLC (U.S.A.) v. Government of Canada

Dear Mesdames, dear Sirs,

I write on behalf of the Tribunal in the above-referenced matter.

The Tribunal has carefully considered the requests from the United States Government and the Government of Mexico set out in their letters dated 1 November 2019 and 4 November 2019 respectively, as well as the Parties' respective submissions on the requests.

The Tribunal hereby directs as follows:

- 1) The United States ("US") and Mexico are to inform the Tribunal by 13 November 2019 whether they will be making any written submissions on questions of interpretation of the Treaty in connection with the Parties' Preliminary Motions.
- 2) The US and Mexico are to file any such submissions by 27 November 2019.
- 3) The Parties are to file their responses (if any) to the submissions from the non-disputing Parties on questions of interpretation of the Treaty in connection with the Parties' Preliminary Motions by 27 December 2019.
- 4) In line with paragraph 12.2 of Procedural Order No. 1 dated 24 June 2019 which provides that hearings shall be open to the public except for portions of the hearing held *in camera* for the protection of confidential information, and paragraph 32 of the Confidentiality Order dated 24 June 2019 which provides that confidential information may be disclosed to representatives of non-disputing Parties, the Tribunal would allow the non-disputing Parties to attend the hearing on 14-15 January 2020.
- 5) As regards oral submissions, the Tribunal recalls that Article 1128 provides that a non-disputing Party may make submissions "[o]n written notice to the disputing Parties". Given this, in the event that a non-disputing Party wishes, or anticipates that it may wish, to make oral submissions, this must be notified to the disputing Parties in writing in a timely manner. Failing this, subject to the Tribunal's latitude to depart from this approach if the circumstances so warrant, the Tribunal would not be minded to permit oral submissions by a non-disputing Party that have not been notified in writing to the disputing Parties in a timely manner. In proceeding in this manner, the Tribunal notes that it is following the approach taken by the NAFTA Chapter 11 tribunal in the case of *Eli Lilly v. Canada* [Transcript, Day 8, 8 June 2016, pp.1983 – 1989].

- 6) For the avoidance of doubt, the Parties have a right to reply to any submissions, whether written or oral, of a non-disputing Party.

The US and Mexico are requested to confirm, at their earliest convenience, to the Tribunal and the Permanent Court of Arbitration (the “PCA”) the names and contact details of their representatives and counsel for purposes of the present proceedings. Going forward, the US and Mexico are also requested to direct all communications to the Tribunal directly, copying the Parties and the PCA, using the following e-mail distribution list:

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Yours sincerely,  
Christel Y. Tham

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