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

Dear President Bull and Members of the Tribunal

We write further to Ms. Squires letter of this afternoon. As a preliminary matter, we welcome Ms. Squires return to the file and offer belated congratulations on the birth of her child. We also thank Ms. Pierdomenico for her assistance during the tenure on this matter for the Respondent.

Canada has requested that the Tribunal re-open the January 14 and 15th procedural hearing to permit the addition of argument on a new authority, and the admission of that authority.

Counsel for the Investor has not read the authority as Canada did not file it. Further, we understand that this ICSID decision has not been published by the ICSID and that it is not available to the public. Canada has not explained how it has come into possession of this non-public decision—or the ability that it has to share this confidential decision with persons not involved in that particular arbitration. Clearly the release of an embargoed decision to the Tribunal and the parties may very well raise serious questions of their own.

However, even without reading the authority, the Tribunal is already aware from the argument at the January 2020 hearing that the test for ICSID Convention interim measures provisions differ from the terms of Art 26 of the 1976 UNCITRAL Arbitration Rules and the governing provisions in NAFTA Article 1134. Such issues are not involved in an ICSID case involving Turkmenistan. The authority's title discloses that it is a procedural decision made by a Tribunal arising under the ICSID Convention.

Today, Canada makes an extraordinary request that would significantly delay the Tribunal's determination of issues and add significant cost to the proceedings.

Each disputing party had two days of argument in January 2020. Submissions for the procedural hearing took place over a period of months. The parties used the time at the hearing to raise arguments and many authorities were filed, including observations from the non-Disputing NAFTA Parties.

Adding new authorities and briefings at this late stage, would not only require giving the Investor another opportunity to respond, but it would also open the door to a new round of questions from the Tribunal and also a new NAFTA Article 1128 submissions as well. Interventions from the Tribunal and the non-disputing NAFTA Parties would then require yet another round of responsive briefings.

Canada's extraordinary request would add additional cost. It is obvious that Canada has a massive legal team available to defend this arbitration claim, and a seemingly unlimited legal budget. The Investor, by contrast, has a small legal team and a very much more modest budget because Tennant's

financial resources were devastated by the result of the wrongful conduct at issue in this arbitration claim.

We understand that Canada may now wish to reargue its premature and incomplete interim motion requests. However, the detrimental effect caused by the untimely addition of new authorities and briefings at this point in time is highly disruptive and inefficient. The additional costs arising from Canada's requests, when coupled with the delay arising from the due process obligations owed to the disputing parties, are disproportionately high. They could never justify the detrimental impact arising from the untimely addition of this information and a new extended procedural process.

The Investor is entitled to an end to the delay and the distraction caused by Canada's dilatory tactics. Thus, for these reasons, the Investor is unable to agree to Canada's extraordinary request to reopen the procedural hearing proceedings for the filing of new authorities and argument.

On behalf of counsel for the Investor,

Barry Appleton