

Global Affairs Canada
Department of Justice



Affaires mondiales Canada
Ministère de la Justice

CANADA

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VIA EMAIL

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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, and to allow the disputing parties, should the Tribunal wish, to make brief, concise written submissions on the relevance of the decision to Canada's Motion for Security for Costs and Disclosure of Third-Party Funding:

Dirk Herzig as Insolvency Administrator over the Assets of Unionmatex Industrieanlagen GmbH v. Turkmenistan (ICSID Case No. ARB/18/35)
Decision on the Respondent's Request for Security for Costs and the Claimant's Request for Security for Claim, 27 January 2020.

This Decision was issued on January 27, 2020, and was publicly released today. As such, today is the earliest opportunity for Canada to introduce the legal authority into the record. The legal authority contains a decision by an international investment arbitration tribunal regarding the respondent State's request for security for costs. The tribunal's reasoning and conclusion on this matter are directly relevant to Canada's Motion for Security for Costs and Disclosure of Third-Party Funding.

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, and wishes to hear submissions on the matter, Canada proposes the following briefing schedule. Within five days of the Tribunal’s decision to admit the legal authority, Canada will provide its written submission to the Tribunal. Canada will append the new authority to this submission (with label RLA-112) and provide an updated cumulative index. The Claimant will then have five days to file its response. In order to uphold the efficiency of this arbitration, Canada requests that each party’s submission not exceed two pages in length.

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
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Trade Law Bureau

cc: Barry Appleton, TennantClaimant@appletonlaw.com (Appleton & Associates)
Ed Mullins, Ben Love (Reed Smith LLP)
Christel Tham, Diana Pyrikova (Permanent Court of Arbitration)
Annie Ouellet, Alexandra Dosman, Susanna Kam, Mark Klaver, Johannie Dallaire, Maria Cristina Harris (Trade Law Bureau)