
From: Barry Appleton <bappleton@appletonlaw.com>
Sent: March 6, 2020 11:01 AM
To: Jose Luis Aragon Cardiel; Squires, Heather -JLTB; Klaver, Mark -JLTB; Ouellet, Annie -JLTB; Kam, Susanna -JLTB; Harris, Maria Cristina -JLTB; Dallaire, Johannine -JLTB; Bakelaar, Darian -JLTB; Dosman, Alexandra -JLTB; Ed Mullins; Ben Love; sbustillos@reedsmith.com; Tait, Benjamin -JLTB; Tennant Claimant; Lillian De Pena; Girvan, Krystal -JLTB
Cc: Cavinder.Bull@drewnapier.com; DBishop@kslaw.com; dbethlehem@20essexst.com; Christel Tham; Diana Pyrikova
Subject: RE: Tennant Energy -- Investor's objections to the assertions of confidentiality over [REDACTED]

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr. Aragon

The matter at issue is simple. The NAFTA Parties have publicly identified transparency as an essential principle to NAFTA investor-state dispute settlement. Transparency applies all the time, not just when it is convenient for one of the NAFTA Parties. Generally, information is to be made available to the public unless it meets the definitions in the Confidentiality Order.

Canada has made some objections over whether [REDACTED] is subject to confidentiality protection. For the reasons set out in our last email to the Tribunal, [REDACTED] does not meet the definition of confidential information as defined in the Confidentiality Order. As a result, Canada cannot designate non-confidential information as being confidential. The Investor cannot support Canada's proposal about non-publication because Canada is asking the Tribunal to suppress the publication of information that does not meet the definition of confidentiality.

Canada claims confidentiality (and thereby attempts to suppress the publication of [REDACTED] in the documents and also again the references to [REDACTED] in the hearing transcript. (We anticipate the need to write to the Tribunal on this matter in due course).

Canada is required to demonstrate that [REDACTED] constitutes "confidential information" as defined by the Confidentiality Order. Given that the existence of the Confidentiality Order was made public during the public portions of the January Procedural Hearing (as Canada failed to make timely objection at the hearing) and subsequently disseminated in the video published by the PCA (as Canada was unable to make timely objection to such publication), there is no plausible way that Canada can demonstrate that the information that it seeks to suppress from the public meets the minimum requirements established by the Confidentiality Order.

Canada's repeated motions are without merit and are vexatious. The data was released to the public, and Canada has repeatedly failed to take the appropriate steps to provide notifications about the information despite being told to do so by the President during the last hearing.

PUBLIC VERSION

Thus, the Investor cannot provide its assent in these circumstances. It believes that Canada's motion should be dismissed.

On behalf of counsel for the Investor



Barry Appleton

Managing Partner

Appleton & Associates International Lawyers LP

Tel 416.966.8800 • Fax 416.966.8801

bappleton@appletonlaw.com • www.appletonlaw.com

77 Bloor St. W, Suite 1800, Toronto, Ontario • M5S 1M2