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Subject: RE: PCA Case No. 2018-54: Tennant Energy, LLC v. Government of Canada - Motion for schedule change - June 25 2020
Date: 27 June 2020 00:20:11

Dear Mr. President and Members of the Tribunal:

We hope that this email finds you and your families to be safe and secure.

On May 2, 2020, the Investor wrote to the Tribunal seeking an extension to the procedural deadlines set out in the Tribunal's February 27, 2020, Procedural Order No. 4 for filing the Memorial on account of the effects of the COVID-19 pandemic. Canada consented to the schedule modification on May 8, 2020. The Tribunal issued an order on May 10th modifying the dates for filings. The Investor was ordered to file its Memorial on July 8.

At paragraph 20 of the May 2nd submission, the Investor wrote:

The Investor makes this request in the hope that this additional time will be sufficient. Public health and safety issues related to the COVID-19 pandemic may worsen, which may necessitate seeking additional accommodation on the schedule.

The Investor's concerns, unfortunately, were realized. Public health and safety issues related to the COVID-19 pandemic have worsened since May 2, 2020. The detrimental impacts do not arise as a result of the actions of the Investor and are beyond our control. As a result, the Investor is writing to seek additional accommodation to the schedule in light of the worsening of the COVID-19 pandemic.

As the Tribunal is aware, this is a case regarding the improper administration of a complex regulatory regime regarding electricity transmission and the awarding of long-term renewable energy contracts. The Investor has made progress during this time, but obtaining key documents has been difficult because of the effect of lockdowns. This has resulted in a delay in the expert evidence and difficulty in locating essential information necessary for the factual sections of the Memorial.

When the Investor wrote to the Tribunal, it anticipated that the worst effects of the COVID-19 situation was behind it and hoped that this wave of the pandemic mostly would be behind us at this point. Since writing to the Tribunal, the effects of the global pandemic have continued and have significantly affected the locations where the Investor and its counsel are located.

- The number of infections and deaths in the United States has doubled. The infection rate in the United States has escalated significantly. On June 24 (yesterday), Florida's Department of Health on Wednesday confirmed 5,508 additional cases of COVID-19, setting another daily total record high since the start of the pandemic.. <https://www.worldometers.info/coronavirus/country/us/>. The State then suffered 8,942 new cases today. Yesterday, Miami-Dade County reported 957 additional confirmed cases of COVID-19 and 24 new deaths. As of yesterday, the county now has a total of 27,779 confirmed cases and 926 deaths, the highest in the State. (<https://www.miamiherald.com/news/coronavirus/article243757872.html>) The State of Florida has broken case records all week, and there is no indication the numbers will slow down. Simultaneously with the new numbers, the State closed down all bars in the State immediately, a swift move that exhibits a retreat from its gradual opening.
- The entire world is aware of the horrific effects of COVID-19 upon the New York City region.
- 90% of the COVID-19 cases [in Canada] at the beginning of June have been in the provinces of

Ontario and Quebec. Canada's Prime Minister announced, "We're not out of the woods. The pandemic is still threatening the health and safety of Canadians.":

(<https://nationalpost.com/news/canada/covid-19-in-decline-across-canada-trudeau-says-but-the-country-not-out-of-the-woods>)

- Toronto and its surrounding regions account for a disproportionately high number of Ontario's new cases of COVID-19. (<https://www.cbc.ca/news/canada/toronto/covid19-ontario-gta-coronavirus-new-infections-1.5584693>) Toronto came out of its Phase 1 lockdown just two days ago. Most businesses continue to be closed, and infection risk continues.
- The Canada – US border has remained closed. At this time, it is closed until late July, and it seems very likely that the border closure will continue as a result of the ongoing effects of escalating pandemic infections.

The Investor noted in paragraph 17 of its submission that:

Among other things, counsel is experiencing delays in reaching witnesses, accessing documents, and obtaining expert witness reports that would be based on documents that are currently unavailable due to COVID-19 shutdowns.

The extraordinary situation continued because of the closures of workplaces due to the pandemic.

None of the offices of counsel has been able to reopen as a functioning office yet. Counsel working on the file has had to deal with the effects of COVID-19 infection in their families and their office colleagues. Unfortunately, this has included situations where there were COVID-19 deaths for family members... Fortunately, the management of the Investor are in self-isolation and none of the counsel working on the case has been diagnosed with COVID-19 illness.

Currently, the Investor is not able to complete its memorial filing by July 8.

This deadline is complicated by statutory national holidays in Canada on July 1 and on July 4 in the United States.

The Investor will need at least one more month to be able to file its case. The Investor believes the time will be sufficient as long as the crises does not increase, for example, the illness of a team member or his or her family.

We finally note that we recognize the enormity of the effects of the pandemic not only for the Investor and its counsel but for counsel for Canada, the Secretariat, and the team at the Permanent Court of Arbitration and all those assisting the Tribunal. We are mindful of all of the extra efforts being taken to protect the arbitration process and the health and safety of all those engaged in the administration of this arbitration.

RELIEF SOUGHT:

Based on the foregoing, Tennant respectfully requests that the Tribunal grants the following modification of the procedural schedule:

- a. The Investor's Memorial be filed on Friday, August 7, 2020
- b. The subsequent deadlines would follow the existing timelines under the Tribunal's direction set out in Procedural Order No. 4.

Respectfully submitted on behalf of the Investor, on June 25, 2020.

On behalf of counsel for the Investor,

Barry Appleton



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