

APPENDIX 6

VANCOUVER ISLAND - CALL FOR TENDERS

SUMMARY OF SELLER EPA PERFORMANCE AND DELAY LDs, LIABILITIES AND SECURITIES

(Revised: ~~3 May~~23 June 2004)

This Appendix is a summary provided for convenience only. It is not intended to be exhaustive. There may be additional liabilities applicable to particular projects or project configurations. Bidders are advised to carefully review the EPA and all its Appendices. In the event of any conflict between this summary and the EPA, the EPA governs.

EPA Section	Event	Consequence
3.2	Failure to take steps required to enable satisfaction of <u>support a request to the BCUC approval condition in accordance with Section 3.2.</u>	\$80,000/MW x Bid Capacity In the case of full tolling -gas-fired <u>tolling</u> plants - \$120,000/MW x Bid Capacity
6.7 <u>6.8</u>	Demonstrated Capacity is less than 95% of Nominal Capacity in 2 consecutive tests <u>EPA Quarters</u> .	Reduction in Nominal Capacity. Reduces BC Hydro Buyer's payment obligation. Seller may increase Nominal Capacity within 180 days based on further demonstration <u>Demonstration tests</u> <u>Tests</u>
13.1	Failure to achieve development and construction milestones.	\$/MW amount (secured by Milestone Security) that increases with each missed milestone from \$2,000/MW for Material Permits milestone to \$7,000/MW for Synchronization milestone. Milestone Security returned if COD is achieved by Guaranteed COD Date.
13.2 <u>13.1</u>	COD delay.	\$222/MW/day (\$333/MW/day for full tolling -gas-fired <u>tolling</u> plants). This liability is in addition to the LDs for missed Milestones, if any. Maximum LD is \$222 or \$333/MW/day X 180 days. For full tolling -gas-fired <u>tolling</u> plants, Seller is also liable for the cost of unutilized gas transportation commitments in excess of increased LD amount: No <u>with no</u> contractual limit of liability.

<p>13.3<u>13.2</u></p>	<p>Shortfall in Capacity at COD compared to Bid Capacity.</p>	<p>\$80,000/MW for each MW below 95% of Bid Capacity.</p> <p>For full tolling-gas-fired <u>tolling</u> plants - \$120,000/MW for each MW below 95% of Bid Capacity.</p>
<p>13.4<u>13.3</u></p>	<p>Post-COD capacity<u>Capacity</u> shortfall.</p>	<p>\$/MW amount for each MW below 95% of Nominal Capacity. The \$/MW amount commences at \$80,000/MW (\$120,000/MW for full tolling-gas-fired plants) and declines<u>tolling plants</u>). <u>\$60,000/MW for all plants after the 1st anniversary of COD.</u> <u>Declines</u> at <u>14</u> year intervals <u>thereafter</u> over the <u>Initial</u> Term.</p>
<p>17.4</p>	<p>Termination by BC Hydro for missed Milestone (<u>other than Material Permits</u>), late COD or Seller Default<u>Termination Event</u>.</p>	<p>Seller required to pay Termination Payment. From EPA execution to 1st anniversary of COD - \$80,000/MW (\$120,000/MW for full tolling-gas-fired <u>tolling</u> plants) x Bid Capacity or Nominal Capacity depending on date of termination. After<u>At</u> 1st anniversary of COD Termination Payment declines<u>reduces to \$60,000/MW x Nominal Capacity for all plants.</u> <u>Declines</u> at <u>14</u> year intervals <u>thereafter</u> over the <u>Initial</u> Term.</p> <p>For full tolling-gas-fired <u>tolling</u> plants, Seller is also liable for the reasonable costs of terminating commitments to the Gas Transporter in excess of the increased Termination Payment. No contractual limit<u>After the 1st anniversary of COD, the maximum liability for such termination costs is limited to \$80,000/MW multiplied by the Bid Capacity.</u></p>
<p><u>17.4</u>, <u>17.2(eb)</u></p>	<p>Termination by Seller for failure to obtain Material Permits after using best<u>commercially reasonable</u> efforts</p> <p><u>Termination by Buyer for Seller's failure to obtain Material</u></p>	<p>\$20,000/MW x Bid Capacity.</p> <p>For full tolling-gas-fired <u>tolling</u> plants, Seller is also liable for the reasonable costs of terminating commitments to the Gas Transporter. No <u>with no</u></p>

	<u>Permits</u>	contractual limit of liability.
13.5 , <u>13.4</u> , 17.7	Deliberate Breach.	BC Hydro Buyer can elect to sue for general damages. No contractual limitation of liability.
13.5 <u>13.6</u>	Liability for breaches of the EPA not subject to LD provisions.	General Damages. No contractual limitation of <u>Maximum</u> liability, except in is a <u>\$/MW amount that commences at \$80,000/MW x Bid Capacity until the case of termination 1st anniversary of COD (\$120,000/MW for breach where gas-fired tolling plants).</u> After 1 st anniversary of COD, <u>\$60,000/MW x Bid Capacity for all plants. Reduces at 4 year intervals thereafter during the Termination Payment under Section 17.4 caps the liability.</u> <u>Initial Term</u>
Appendix 3	<p>Payment reduction based on availability.</p> <p>Heat Rate Bonus/Penalty (Applicable only to gas-fired tolling plants other than “split bids”).</p> <p>Fuel Use Bonus/Penalty (Applicable only to gas-fired tolling plants other than “split bids”).</p>	<p>CC Payment (CC), OMC Payment (OMC), SUP (Start-Up Payment) and EC Payment reduced by \$250/MW x Demonstrated Capacity for every <u>per</u> 1% shortfall in availability below 97% to a maximum amount equal to \$16,667/MW x Demonstrated Capacity (\$20,000/MW in the case of full tolling gas-fired plants).</p> <p>Amount of Heat Rate Bonus/Penalty depends on Guaranteed Heat Rate, gas price, gas toll (if applicable), and actual heat rate.</p> <p>Amount of Fuel Use Bonus/Penalty depends on guaranteed fuel use during starts, gas price, gas toll (if applicable), and actual fuel use during Starts</p>
Appendix 17 – Network Upgrades	Early termination of EPA, except where the Seller terminates for a	Seller required to repay all or a portion of the <u>indemnify the</u>

	<p>Buyer Default <u>failure of regulatory approval, or for prolonged Force Majeure after COD or Buyer Termination Event.</u></p>	<p><u>Buyer for all losses suffered by the Buyer with respect to Network Upgrade Costs</u> incurred by BC Hydro to the date <u>as a result of termination of the EPA.</u> Amount <u>No contractual limit of repayment obligation declines at 1-year intervals after COD</u> <u>liability.</u></p>
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SECURITIES

(All in the form of a Letter of Credit except the Subordinated Mortgage)

EPA Section	Description	Amount of Security
14.3	Milestone Security—Posted if Milestone not achieved by Guaranteed Milestone Date.	Amount of Milestone LDs (see above). Returned without deduction if COD achieved by Guaranteed COD Date.
14.1	Development Security - Posted on EPA Execution. Released on COD.	\$80,000/MW \$120,000/MW for full tolling gas-fired tolling plants.
14.2	Operating Security - Posted on COD.	<u>Until the 1st anniversary of COD,</u> \$80,000/MW <u>for plants other than gas-fired tolling plants and</u> \$120,000/MW for full-tolling gas-fired tolling plants. <u>After 1st anniversary of COD,</u> <u>Reduces to \$60,000/MW amount declines for all plants at the 1st anniversary of COD. Reduces at 4 year intervals thereafter over the Initial Term.</u>
14.4 <u>14.3</u>	Capacity Shortfall Security - Posted at Provisional COD. Called upon completion of Nominal Capacity Reset Test if Capacity shortfall persists.	\$80,000/MW of shortfall below 95% of Bid Capacity \$120,000/MW for full-tolling gas-fired tolling plants.
14.9 <u>14.8</u>	Subordinated Mortgage.	Registered against title to Project Assets.
Appendix 17	Network Upgrade Security. Posted at time BCUC condition is satisfied or waived.	Prior to completion of Network Upgrades—Amount of Network Upgrade Cost Estimate. Upon completion of Network Upgrades—Adjusted to actual amount of Network Upgrade Costs. Subject to reduction at 1-year intervals during the Term.