

APPENDIX 6

VANCOUVER ISLAND - CALL FOR TENDERS

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

(Revised: 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 support a request to the BCUC in accordance with Section 3.2.	\$80,000/MW x Bid Capacity In the case of gas-fired tolling plants - \$120,000/MW x Bid Capacity
6.8	Demonstrated Capacity is less than 95% of Nominal Capacity in 2 consecutive EPA Quarters.	Reduction in Nominal Capacity. Reduces Buyer's payment obligation. Seller may increase Nominal Capacity within 180 days based on further Demonstration Tests
13.1	COD delay.	\$222/MW/day (\$333/MW/day for gas-fired tolling plants). Maximum LD is \$222 or \$333/MW/day X 180 days. For gas-fired tolling plants, Seller is also liable for the cost of unutilized gas transportation commitments in excess of increased LD amount with no contractual limit of liability.
13.2	Shortfall in Capacity at COD compared to Bid Capacity.	\$80,000/MW for each MW below 95% of Bid Capacity. For gas-fired tolling plants - \$120,000/MW for each MW below 95% of Bid Capacity.

13.3	Post-COD Capacity shortfall.	<p>\$/MW amount for each MW below 95% of Nominal Capacity. The \$/MW amount commences at \$80,000/MW (\$120,000/MW for gas-fired tolling plants). \$60,000/MW for all plants after the 1st anniversary of COD. Declines at 4 year intervals thereafter over the Initial Term.</p>
17.4	Termination by BC Hydro for missed Milestone (other than Material Permits), late COD or Seller Termination Event.	<p>Seller required to pay Termination Payment. From EPA execution to 1st anniversary of COD - \$80,000/MW (\$120,000/MW for gas-fired tolling plants) x Bid Capacity or Nominal Capacity depending on date of termination. At 1st anniversary of COD Termination Payment reduces to \$60,000/MW x Nominal Capacity for all plants. Declines at 4 year intervals thereafter over the Initial Term.</p> <p>For gas-fired tolling plants, Seller is also liable for the reasonable costs of terminating commitments to the Gas Transporter in excess of the increased Termination Payment. After the 1st anniversary of COD, the maximum liability for such termination costs is limited to \$80,000/MW multiplied by the Bid Capacity.</p>
17.4, 17.2(b)	<p>Termination by Seller for failure to obtain Material Permits after using commercially reasonable efforts</p> <p>Termination by Buyer for Seller's failure to obtain Material Permits</p>	<p>\$20,000/MW x Bid Capacity.</p> <p>For gas-fired tolling plants, Seller is also liable for the reasonable costs of terminating commitments to the Gas Transporter with no contractual limit of liability.</p>
13.4, 17.7	Deliberate Breach.	Buyer can elect to sue for general damages. No contractual limitation of liability.

13.6	Liability for breaches of the EPA not subject to LD provisions.	General Damages. Maximum liability is a \$/MW amount that commences at \$80,000/MW x Bid Capacity until the 1 st anniversary of COD (\$120,000/MW for gas-fired tolling plants). After 1 st anniversary of COD, \$60,000/MW x Bid Capacity for all plants. Reduces at 4 year intervals thereafter during the Initial Term
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 per 1% shortfall in availability below 97%</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 for failure of regulatory approval, or for prolonged Force Majeure after COD or Buyer Termination Event.	Seller required to indemnify the Buyer for all losses suffered by the Buyer with respect to Network Upgrade Costs as a result of termination of the EPA. No contractual limit of liability.

SECURITIES

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

EPA Section	Description	Amount of Security
14.1	Development Security - Posted on EPA Execution. Released on COD.	\$80,000/MW \$120,000/MW for gas-fired tolling plants.
14.2	Operating Security - Posted on COD.	Until the 1 st anniversary of COD, \$80,000/MW for plants other than gas-fired tolling plants and \$120,000/MW for gas-fired tolling plants. Reduces to \$60,000/MW for all plants at the 1 st anniversary of COD. Reduces at 4 year intervals thereafter over the Initial Term.
14.3	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 gas-fired tolling plants.
14.8	Subordinated Mortgage.	Registered against title to Project Assets.