

APPENDIX 7

VANCOUVER ISLAND - CALL FOR TENDERS

PRELIMINARY FORM VIGP TRANSFER AGREEMENT

(Revised: 13 January 2004)

THIS AGREEMENT made the ____ day of _____, 2004.

BETWEEN:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY (“BC Hydro”) and VANCOUVER ISLAND ENERGY CORPORATION (“VIEC”), having offices at 333 Dunsmuir Street, Vancouver, B.C. V6B 5R3

(collectively, the “Vendor”)

AND:

• , a body corporate incorporated under the laws of • , having a registered office at •

(the “Purchaser”)

WITNESSES THAT WHEREAS pursuant to the Vancouver Island Call for Tenders issued 31 October 2003, BC Hydro has awarded an Electricity Purchase Agreement (“EPA”) to the Purchaser, and the Purchaser has agreed to purchase from the Vendor and the Vendor has agreed to sell to the Purchaser certain assets (the “Assets”) listed in Schedule “A” to this Agreement on the terms and conditions set forth in this Agreement;

NOW THEREFORE the parties hereto covenant and agree as follows:

1. Purchase and Sale

Subject to the terms and conditions hereof, the Vendor agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Vendor, the Assets described in Schedule “A” hereto.

2. Purchase Price

The aggregate purchase price for the Assets is \$50,000,000 (the “Purchase Price”). The Purchase Price is allocated as to \$1,500,000 to the VIGP Lands, and as to the balance, being \$48,500,000 to all other Assets in the aggregate.

3. Closing of Asset Sale

The purchase and sale of the Assets will be completed concurrently with execution and delivery of this Agreement at the offices of the Vendor’s counsel in Vancouver, British Columbia. At that time:

- (a) BC Hydro and the Purchaser will execute and deliver the EPA and the Purchaser will deliver the “Development Security” and any other securities required thereunder to be delivered at that time;

- (b) the Purchaser will pay to the Vendor the Purchase Price, by way of a wire transfer or other method of payment acceptable to the Vendor; and
- (c) upon receipt of such funds, all of the Vendor's right, title and interest in the Assets shall be deemed to be transferred to the Purchaser.

In addition, the parties agree that they will take all such additional steps, and execute and deliver transfer, assignment and assumption agreements in substantially the forms attached as Schedule C, and such other documents, including consents of third parties, as may be necessary or, in the reasonable opinion of counsel to the Vendor, advisable in order to effect the legal transfer of all Assets to the Purchaser and the assumption by the Purchaser of liabilities and obligations of the Vendor as herein provided.

The parties acknowledge and agree that, to the extent that any of the Assets are agreements, such agreements will be assigned absolutely to the Purchaser in their entirety and the Purchaser will not only be entitled to all of the rights and benefits of the Vendor under such agreements, but will also assume, without recourse to the Vendor, all liabilities and obligations of the Vendor under such agreements, save and except only liabilities arising from any breach by the Vendor of its obligations under any of such agreements occurring before the date hereof.

4. **Responsibility to Pay Applicable Taxes**

The Purchaser shall be responsible for paying all federal, provincial or other taxes or other statutory charges that BC Hydro is required to collect and remit, or for which it may become liable in connection with the sale and purchase of the Assets. The Purchaser agrees that it will make all necessary filings, and pay all necessary taxes payable by it in connection with the sale and purchase of the Assets, as required under applicable law.

5. **Vendor's Representations and Warranties**

The Vendor hereby represents and warrants to the Purchaser, and acknowledges that the Purchaser is relying upon such representations and warranties in executing and delivering this Agreement, as follows:

- (a) **Incorporation.** Each of BC Hydro and VIEC is duly incorporated, validly existing and in good standing under the laws of the Province of British Columbia.
- (b) **Corporate Power and Capacity.** Each of BC Hydro and VIEC has all necessary corporate power and capacity to execute and deliver this Agreement and to perform its obligations hereunder.
- (c) **Title to Assets.** The Vendor has good and marketable title to the Assets and such Assets are free and clear of all encumbrances other than the "Permitted Encumbrances" described on Schedule "B" hereto.
- (d) **Consents.** The Vendor has received all necessary consents, approvals, waivers and authorizations to permit the transfer of legal and beneficial title to the Assets to the Purchaser without breaching the terms of any material agreement which affects such Assets.

6. **Assets Sold "As Is, Where Is"**

The parties acknowledge that the representations and warranties described in Section 5 above are the only representations and warranties given by the Vendor to the Purchaser in connection with sale of the Assets. In particular, the Vendor makes no representations or warranties regarding the condition or status of any of the Assets and all of such Assets are being sold on an "as is, where is" basis.

The Purchaser acknowledges that it has had sufficient access and opportunity to conduct a full due diligence investigation relating to the Assets and to form its own conclusions regarding the condition and status of the Assets prior to executing and delivering this Agreement.

7. **Purchaser's Representations and Warranties**

The Purchaser hereby represents and warrants to the Vendor, and acknowledges that the Vendor is relying upon such representations and warranties in executing and delivering this Agreement, as follows:

- (a) **Incorporation.** The Vendor is duly incorporated, validly existing and in good standing under the laws of •.
- (b) **Corporate Power and Capacity.** The Vendor has all necessary corporate power and capacity to execute and deliver this Agreement and to perform its obligations hereunder.

8. **Environmental Indemnities**

8.1 For purposes of this Section 8, the following terms have the meanings described below:

- (a) **"Contamination"** means the Release into the environment, of any pollutant, contaminant, waste, toxic or hazardous substance, deleterious substance, dangerous good or hazardous or special waste as defined in, or regulated by, applicable Environmental Laws.
- (b) **"Environmental Laws"** means all:
 - (i) statutes, laws, regulations, ordinances, bylaws, rules, codes, standards, guidelines, protocols and other lawful requirements of any governmental authority;
 - (ii) principles of common law or equity; and
 - (iii) applicable judicial and administrative decisions, orders and decrees, which relate to the environment or regulate the storage, manufacture, processing, labeling, disposal, treatment, generation, use, transport or remediation of any material which can, if Released, cause Contamination.
- (c) **"Release"** means any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal or dumping.
- (d) **"VIGP Lands"** means the three parcels of real property which are described and defined on Schedule "A" hereto as the VIGP Lands.

8.2 The Vendor shall indemnify and hold the Purchaser harmless against any liabilities which the Purchaser may suffer as a result of Contamination on the VIGP Lands, provided that such indemnification shall only extend to Contamination which occurred during the time that the Vendor owned the VIGP Lands.

8.3 The Purchaser shall indemnify and hold the Vendor harmless against any liabilities which the Vendor may suffer as a result of Contamination on the VIGP Lands, provided that such indemnification shall only extend to Contamination which occurred after the time at which title to the VIGP Lands is transferred from the Vendor to the Purchaser.

- 8.4 Where a party hereto (the “**Indemnitor**”) indemnifies the other party hereto (the “**Indemnitee**”) pursuant to either Section 8.2 or 8.3 and the Indemnitee has a claim for recovery against any third party with respect to the matter which is the subject of the claim for indemnification:
- (a) if the Indemnitor has either: (i) fully indemnified the Indemnitee; or (ii) partially indemnified the Indemnitee and the Indemnitee elects not to pursue further recovery from such third party, the Indemnitor shall have conduct of any litigation against the third party relating to such rights of recovery; or
 - (b) if the Indemnitor has partially indemnified the Indemnitee and the Indemnitee elects to pursue further recovery from such third party, the Indemnitee shall have conduct of any litigation against the third party relating to such rights of recovery.

In addition, regardless of which party has conduct of the litigation referred to above, both parties will fully cooperate with each other in order to prosecute such litigation as efficiently and quickly as possible.

- 8.5 Where litigation against a third party results in recovery of any amounts relating to the matter which is the subject of the claim for indemnification, such amounts shall be applied as follows:
- (a) first, to pay all costs and expenses (including legal fees) incurred in the prosecution of such claim against such third party;
 - (b) second, where the Indemnitor has only partially compensated the Indemnitee, to pay all further amounts as are required to fully compensate the Indemnitee; and
 - (c) last, to pay all remaining amounts to the Indemnitor.

9. **Re-conveyance**

If the EPA is properly terminated by BC Hydro or by the Purchaser pursuant to section 3.1 thereof, and provided that the Purchaser is not in breach of section 3.2 thereof, then on the 30th day following the date of termination, or if that day is not a business day, then on the next succeeding business day, the Purchaser shall re-convey to BC Hydro good and marketable title to the Assets, free and clear of all encumbrances, other than “Permitted Encumbrances” described on Schedule “B” hereto, and in the same condition as such Assets existed on the date hereof, and BC Hydro shall concurrently repay to the Purchaser the Purchase Price with interest at a rate per annum equal to the “Prime Rate” as defined in the EPA, calculated daily from the date hereof, by wire transfer or in any other manner acceptable to the Purchaser. The parties shall take all steps, and execute and deliver all such additional documents, including consents of third parties, as may be necessary, or in the reasonable opinion of counsel to the Vendor, advisable in order to effect a legal re-transfer of all the Assets to the Vendor.

10. **Miscellaneous Provisions**

- 10.1 Time shall be of the essence for this Agreement.
- 10.2 The parties shall execute all other documents and instruments and do all other things necessary to implement and carry out the terms of this Agreement.
- 10.3 This Agreement constitutes the entire agreement between the parties relating to the sale of the Assets and supercedes all previous communications, representations and agreements, whether verbal or written, between the parties with respect to the subject matter hereof.

- 10.4 This Agreement shall be governed and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.
- 10.5 Neither party shall assign its rights hereunder to any third party without the prior written consent of the other party, such consent not to be unreasonably withheld.
- 10.6 This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.
- 10.7 All dollar amounts referred to in this Agreement are in Canadian funds.
- 10.8 The Agreement may be executed in any number of original or facsimile counterparts. Each such counterpart shall be deemed to be an original, but all such counterparts together shall constitute one and the same document.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

BRITISH COLUMBIA HYDRO & POWER AUTHORITY

By: _____
(signature of authorized signatory)

(name and title of authorized signatory)

VANCOUVER ISLAND ENERGY CORPORATION

By: _____
(signature of authorized signatory)

(name and title of authorized signatory)

•

By: _____
(signature of authorized signatory)

(name and title of authorized signatory)

SCHEDULE A

List of Assets to be Transferred

Asset

The right to connect to the Water Works Facilities of the Harmac pulp mill granted by Pope & Talbot Ltd. under the Water and Effluent Services Agreement dated for reference August 31, 2002 between the Vendor and Pope & Talbot Ltd.

The right to connect to the Mill Effluent Treatment Facilities of the Harmac pulp mill granted by Pope & Talbot Ltd. under the Water and Effluent Services Agreement dated for reference August 31, 2002 between the Vendor and Pope & Talbot Ltd.

Title to real property described particularly as:

- (a) That Part of the West 60 Acres of Section 22, Range 1, Cedar District, and That Part of the East ½ of Section 2, Range 8, Nanaimo District, included in Plan VIP 74868 (Parcel Identifier: 025-586-840)
- (b) Lot 2, Sections 1 and 2, Range 8, Nanaimo District Plan VIP 63717 (Parcel Identifier: 023-493-186)
- (c) Lot 3, Section 2, Range 8, Nanaimo District Plan VIP 63717 (Parcel Identifier: 023-493-194)

(the “**VIGP Lands**”), provided that such VIGP Lands are transferred subject to the “Permitted Encumbrances” listed in Schedule “B” to this Agreement

The right to use the South Road area of the Harmac pulp mill lands for the purposes of emergency and secondary construction access to the VIGP Lands granted by Pope & Talbot Ltd. under the South Road Access License dated as of February 20, 2003 between Pope & Talbot Ltd. and the Vendor

The right to install, operate and maintain a bypass effluent pipe from the VIGP lands over the Harmac pulp mill lands granted by Pope & Talbot Ltd. under the Effluent Pipe Licence dated for reference August 31, 2002 between Pope & Talbot Ltd. and the Vendor

Steam turbine supplied by Sumitomo Corporation of America currently housed at a warehouse at 12330 – 88th Avenue in Surrey, British Columbia, including all associated agreements, components, equipment, warranties, literature and diagrams

Design Basis Memorandum for the Vancouver Island Generation Project prepared by Amec E&C Services Limited in July of 2002

Specification Control Sheet regarding Plant Conditions prepared by Amec E&C Services Limited on July 18, 2002

Specification Control Sheet regarding Heat Recovery Steam Generator Accessories prepared by Amec E&C Services Limited on July 30, 2002

Transmission Line and Substation Options in the Nanaimo to Duke Point Area – Technical Review – Report No. 7002 prepared by British Columbia Hydro and Power Authority on May 10, 2002

Asset

B.C. Hydro, Vancouver Island Generation Project, Servicing Study for Duke Point Sites, Evaluation of Designs Options and Costs for Water Supply and Wastewater Discharge prepared by Koers & Associates Engineering Ltd. on March 14, 2002, including Preliminary Geotechnical Overview prepared by Levelton Engineering Ltd. on February 7, 2002

Commissioning Report for the Vancouver Island Generation Project Meteorological and Ambient Monitoring Stations at the Department of National Defence prepared by Levelton Engineering Ltd. on March 10, 2002

Commissioning Report for the Vancouver Island Generation Project Meteorological and Ambient Monitoring Stations at Harmac – Woobank prepared by Levelton Engineering Ltd. on April 2, 2002

Stage 1 Preliminary Site Investigation Vancouver Island Generation Project – Harmac Plant prepared by Levelton Engineering Ltd. on April 8, 2002

Vancouver Island Generation Project Effluent Treatment Study prepared by Amec E&C Services Limited in December 2001

Geotechnical Investigation for Proposed Subdivision of Lot 27 Creating Lots 13 and 14 Duke Point Industrial Park Nanaimo, B.C. prepared by Macleod Geotechnical Ltd. on February 23, 1996

Geotechnical Engineering Report for Proposed Harmac Effluent Treatment Facility prepared by Klohn Leonoff Ltd. on May 10, 1991

Vancouver Island Generation Project Interconnection Application Document Package prepared by British Columbia Hydro & Power Authority on February 21, 2003

Vancouver Island Generation Project Application to the British Columbia Environmental Assessment Office prepared by Vancouver Island Energy Corporation in June, 2002

Vancouver Island Generation Project Transmission Line Options in the Nanaimo to Duke Point Area prepared by Westland Resource Group in April, 2002

Schedule B

Permitted Encumbrances on Real Property

The VIGP Lands have the following encumbrances (the “**Permitted Encumbrances**”) registered against them:

A. Main Site

1. The exceptions and reservations contained in the original Crown grant or contained in any other grant or disposition from the Crown and the usual statutory exceptions and reservations to title;
2. Legal Notation: Hereto inter alia is annexed Easement EL85325 over that part of Lot 1, Plan VIP65621 shown as Area A on Plan VIP65622;
3. Legal Notation: Hereto inter alia is annexed Easement EL85326 over that part of the East ½ of Section 2, Range 8, Nanaimo District shown as Area A on Plan VIP65622;
4. Legal Notation: Hereto inter alia is annexed Easement EL85328 over that part of Lot 2, Plan VIP65621 shown as Area A on Plan VIP65622;
5. Legal Notation: this title may be affected by the *Forest Land Reserve Act*, see EN16484;
6. Exceptions and Reservations M76300 in favour of the Esquimalt and Nanaimo Railway Company;
7. Undersurface Rights M76301 in favour of Her Majesty the Queen in Right of the Province of British Columbia;
8. Right of Way 283786G in favour British Columbia Telephone Company;
9. Right of Way 287957G in favour British Columbia Hydro and Power Authority;
10. Mortgage 431201G (of Right of Way 283786G) in favour of Montreal Trust Company;
11. Mortgage E27813 (of Right of Way 283786G) in favour of Montreal Trust Company;
12. Statutory Right of Way EB42351 in favour of Greater Nanaimo Water District;
13. Statutory Right of Way EH70636 in favour of Macmillan Bloedel Limited;
14. Statutory Right of Way EK121118 in favour of Centra Gas British Columbia Inc.;
15. Easement EV16968;
16. Easement EV16969;
17. Option to Purchase EV16970 in favour of Pope & Talbot Ltd.

B. Lot 2, Plan VIP63717

1. The exceptions and reservations contained in the original Crown grant or contained in any other grant or disposition from the Crown and the usual statutory exceptions and reservations to title;

2. Legal Notation: this title may be affected by a permit under Part 26 of the *Municipal Act*, see EL89238;
3. Exceptions and Reservations M76300 in favour of the Esquimalt and Nanaimo Railway Company;
4. Undersurface Rights M76301 in favour of Her Majesty the Queen in Right of the Province of British Columbia;
5. Right of Way 188447G in favour British Columbia Hydro and Power Authority;
6. Right of Way 283786G in favour British Columbia Telephone Company;
7. Mortgage 431201G (of Right of Way 283786G) in favour of Montreal Trust Company;
8. Mortgage E27813 (of Right of Way 283786G) in favour of Montreal Trust Company;
9. Restrictive Covenant H28579;
10. Statutory Building Scheme L23753;
11. Statutory Right of Way L23759 in favour of the City of Nanaimo;
12. Statutory Right of Way L23760 in favour of the City of Nanaimo;
13. Statutory Right of Way M63134 in favour British Columbia Hydro and Power Authority;
14. Covenant EK82232 in favour of the City of Nanaimo;
15. Statutory Right of Way EK82240 in favour of the City of Nanaimo;
16. Statutory Right of Way EK124679 in favour of the City of Nanaimo; and
17. Undersurface Rights and other Exception and Reservations ET96692 in favour of the Crown in Right of British Columbia.

C. Lot 3, Plan VIP63717

1. The exceptions and reservations contained in the original Crown grant or contained in any other grant or disposition from the Crown and the usual statutory exceptions and reservations to title;
2. Legal Notation: this title may be affected by a permit under Part 26 of the *Municipal Act*, see EL89238;
3. Exceptions and Reservations M76300 in favour of the Esquimalt and Nanaimo Railway Company;
4. Undersurface Rights M76301 in favour of Her Majesty the Queen in Right of the Province of British Columbia;
5. Restrictive Covenant H28579;
6. Statutory Building Scheme L23753;

7. Statutory Right of Way L23759 in favour of the City of Nanaimo;
8. Statutory Right of Way L23760 in favour of the City of Nanaimo;
9. Statutory Right of Way M63134 in favour British Columbia Hydro and Power Authority;
10. Covenant EK82232 in favour of the City of Nanaimo; and
11. Undersurface Rights and other Exception and Reservations ET96692 in favour of the Crown in Right of British Columbia.

Schedule C

Closing Document Forms

Note: Standard form assignments will be posted in sufficient time to permit bidders to include comments, if any, on those forms on or before the deadline in the CFT Schedule for final comments on the Preliminary Form Agreements, currently 9 April 2004.