

VANCOUVER ISLAND – CALL FOR TENDERS

SUMMARY OF KEY CHANGES IN THE FINAL FORM AGREEMENTS

(Issued: 23 June 2004)

The following is a summary of the key changes to the Preliminary Form EPA and Preliminary Form VIGP Transfer Agreement made in response to bidder comments on those documents. This summary is provided for convenience only. It is not intended to be exhaustive. Bidders are advised to carefully review the Final Form Agreements and all their Appendices. In the event of any conflict between this summary and the Final Form Agreements, the Final Form Agreements govern.

FINAL FORM EPA

Liability Issues

- No obligation to pay LDs for a missed Milestone
- Amount of LDs is reduced after the first anniversary of COD
- Capped Seller's liability for damages for breaches or defaults under the EPA
- Excluded liability for consequential damages
- Capped Seller's liability for "stranded" gas transportation costs where the EPA is terminated after the first anniversary of COD
- Buyer's liability on termination for Buyer default reflects Seller's loss

Security

- No requirement to post Milestone Security
- No requirement to post separate Network Upgrade Security
- Amount of Operating Security is reduced after the first anniversary of COD

Termination Rights

- Reduced the number of termination events
- Relaxed the test for termination based on poor availability
- Seller's ability to terminate for failure to obtain Material Permits is conditional on exercise of "reasonable efforts" rather than "best efforts"

COD/Capacity/Operational Issues

- Reduced testing requirements for COD
- Provided more opportunities to recover from a poor Demonstration Test
- Provided more opportunities to recover from a reduction in the Nominal Capacity
- Risk of Nominal Capacity reduction does not apply during first year after COD
- Buyer can only dispatch the Seller's Plant at full output or Minimum Turndown, except in the case of a System Emergency

Lender Issues

- Provided more notices to project lenders and greater opportunities for the project lenders to cure defaults before the Buyer can exercise rights such as Nominal Capacity reduction, set-off, termination or “step-in”
- Set-off can only be exercised for liquidated amounts or cost incurred on “step in”
- Lender financing given clear priority over Buyer’s Subordinated Mortgage

Regulatory Review Issues

- Buyer may extend regulatory review period to 180 days with day for day extension of Milestone and COD dates from the date all Material Permits are obtained

Renewal

- Removed Buyer’s ability to withdraw Renewal Notice after receipt of an arbitration award

Tolling Issues

- Buyer will reimburse Seller for costs incurred due to a change in gas quality or pressure under the gas transporter’s tariff
- Force Majeure treatment if transportation is unavailable for pre-COD gas

FINAL FORM VIGP TRANSFER AGREEMENT

Closing

- VIGP Transfer Agreement signed concurrently with EPA but closing deferred until (i) EPA no longer subject to termination for failure to secure favourable regulatory outcome and (ii) Material Permits are obtained.
- Absence of destruction of Equipment at the closing time is a condition of closing.

Payment Terms

- Purchase price payable by deposit (\$5 million) on signing and balance (\$45,000,000) on closing. Deposit is refundable, with interest, except where the transaction is not closed due to bidder’s fault.

Assets

- Assets will include all issued shares of VIEC, which holds the Environmental Assessment Certificate, has applied for the Air Emission Permit and is party to the Benefits Agreement. It will not be necessary to assign these interests in order to complete the transaction.
- Customary representations and warranties relative to VIEC have been added to the agreement.
- BC Hydro undertakes to take care of the Equipment prior to closing in accordance with the supplier’s instructions, and warrants that it has not acted in a manner that impairs the Equipment warranty.

Environmental Indemnity

- BC Hydro will extend its indemnity for environmental contamination to all contamination occurring on or before the closing of the transaction, but claims under this indemnity must be made within 3 years after the closing.